

POSITION PAPER

July 2012

**CECA's contribution to EBA Consultation on
draft *Guidelines for assessing the suitability of
members of the management body and key
function holders of a credit institution***

CECA, the Spanish Confederation of Savings Banks (Cajas de Ahorros) represents the interest of the Spanish Savings Banks sector, integrated by the original Savings Banks, as well as the new commercial banks created by them. The whole Sector represented by CECA comprises 19 Groups of entities reaching €1.289 billion of total assets, 20.723 branches and 1156.59 employees (figures at December of 2011). Furthermore, CECA actually represents almost half of the Spanish Financial system by market share.

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Spanish Confederation of Savings Banks (CECA) welcomes the opportunity to make comments to EBA consultation on the draft Guidelines for assessing the suitability of members of the management body and key function holders of credit institutions.

Preliminary comment

As a preliminary remark, we would like to highlight that the definition of key function holder should be further clarified in order to avoid uncertainty when deciding the positions that should comply with the criteria laid on the document.

Questions raised in the consultation document

Question 1:

While the principle of proportionality is a general principle within European legislation, it may be desirable to spell out this principle in more detail for the application of the Guidelines. Which criteria could be applied by institutions and competent authorities to differentiate the assessment process and the assessment criteria regarding the nature, scale and complexity of the business of the credit institution and how should such a differentiation look like?

The proportionality principle aims to consistently match the assessment of the suitability policies and practices with the nature, scale and complexity of the business of the credit institution, so that the objectives of the principles are more effectively achieved¹.

The proportionality principle applies to the general as well as to the specific requirements of the CRD IV.

¹ Recital 75 and articles 73, 92 and 150 of the CRD IV are examples of requirements in which the proportionality principle is explicitly referred to.

The effect of the proportionality principle is that not all institutions have to give substance to the assessment requirements in the same way and to the same extent.

Proportionality operates both ways: some institutions will need to apply more sophisticated policies or practices in fulfilling the requirements; other institutions can meet the requirements of the CRD IV in a simpler or less burdensome way.

However, the application of the proportionality principle may lead to the neutralization of some requirements if this is reconcilable with the nature, scale and complexity of the business of the credit institution. If institutions deem neutralization for these requirements appropriate for their type of institution or identified staff, they should be able to explain the rationale for every single requirement that can potentially become neutralized (the “Comply or Explain” corporate governance principle). Thus, regarding the suitability of Board members and key function holders, we deem that the principle of proportionality may be focused on the experience requirements (as they should always be of good repute and have the necessary knowledge or education). Therefore we consider that some experience requirements may be softened or neutralized taking into account the scale and complexity of the business.

Moreover the notion of proportionality must be taken into account by both institutions, when implementing the assessment requirements, and by supervisors, when carrying out supervision over assessment policies and practices.

In fine, characteristics among institutions justify a proportionate implementation of the assessment principles. According to the CRD, criteria addressing the application of the proportionality principle among institutions are the size (for instance differentiation could be made between G. SIFIS, domestic SIFIS and others), internal organization and the nature, scope and complexity of their activities.

Question 2:

Should competent authorities be required by the Guidelines to assess the policies of institutions for assessing the suitability of key function holders aiming to ensure that institutions have appropriate policies in place ensuring that key function holders would fulfill the suitability requirements?

No. We consider that such policies should be at the disposal of the competent Authorities, which may require them for review if they consider it necessary.

Madrid, 17th July 2012.