Henry Penikas

EBA Consultation Paper on draft Guidelines for assessing the suitability of members of the management body and key function holders of a credit institution

POSITION PAPER

This Position Paper is an output of a research project implemented at the National Research University Higher School of Economics (HSE). Any opinions or claims contained in this Position Paper do not necessarily reflect the views of HSE.
Dear Sirs,

**EBA Consultation Paper on**

**Draft Guidelines for assessing the suitability of members of the management body and key function holders of a credit institution**

On behalf of the National Research University Higher School of Economics (NRU HSE), and particularly the International Laboratory of Decision Choice and Analysis we would like to thank European Banking Authority for the opportunity to deliver our opinion on the Consultation Document ‘Draft Guidelines for assessing the suitability of members of the management body and key function holders of a credit institution’ published by the European Banking Authority on April 18, 2012 at [http://www.eba.europa.eu/Publications/Consultation-Papers/All-consultations/2012/EBA-CP-2012-03.aspx](http://www.eba.europa.eu/Publications/Consultation-Papers/All-consultations/2012/EBA-CP-2012-03.aspx).

The comments are presented in two parts:

(a) ‘Responses to Questions for Consultation’;
(b) ‘Other Comments’.

We hope our comments would be of use for further development of the international regulatory framework.

In case of further questions, please, do not hesitate to get in touch through email (dhm-econ@hse.ru), telephone (+7.495.621.13.42, ext. 2006) or fax (+7.495.772.95.90, ext. 2101).

Dr. Henry Penikas
Senior Lecturer
Junior Research Fellow
Economics Department
Higher School of Economics
E-mail: Penikas@gmail.com
Responses to Questions for Consultation

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?

To extend the BIPRU regulation logic on proportionality (cf. points 2.2.24-27; https://fsahandbook.info/FSA/html/handbook/BIPRU/2/2) it is proposed to use the following differentiating criteria:

<table>
<thead>
<tr>
<th>Bank Criteria Group</th>
<th>Criteria Name Example</th>
<th>Qualification Criteria</th>
</tr>
</thead>
<tbody>
<tr>
<td>Nature of business</td>
<td>Exposure amount and types</td>
<td>Different minimum number of years of work experience</td>
</tr>
<tr>
<td>Scale of business</td>
<td>Size of the bank</td>
<td>Knowledge of the respective regulation (e.g. on DSIBs / GSIBs / SIFIs)</td>
</tr>
<tr>
<td>Complexity</td>
<td>Geography</td>
<td>Knowledge of local peculiarities</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Knowledge of local macromeconomics and forecasts</td>
</tr>
</tbody>
</table>

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 fulfil the suitability requirements?

Yes, they should (during regular supervisory review of credit institutions corporate governance). Beforehand primarily requirements to policy or policy template based on the guidelines might be attached to current guidelines text (as EBA published a template on recovery plan at http://www.eba.europa.eu/Publications/Discussion-Papers/Year/2012/EBA-DP-2012-2.aspx).
Other Comments

p. 5 – “The Guidelines shall be implemented by competent authorities [4 months after publication] and credit institutions by [6 month after publication]”

It is proposed to grant additional 6 months for credit institutions after the date of its implementation by competent authorities for banks to make a smooth revision and change of personnel if necessary to satisfy the requirements.

p. 6 – III.1 – “at least two persons who effectively direct the business of a credit institution”.

It is proposed to extend the criteria to three people as having two people even at different roles might not lead to a constructive solution if one is for and another is against. Then having three qualifying persons the bank is guaranteed to always take decision (supposing majority voting rule is used). The ability to take immediate solutions is vital especially at crisis times. Otherwise having only 1 qualifying person is expected to be better, than two.

p. 8 – III.13 – “sufficient skills and knowledge, which cannot merely be expressed in terms of a period of duty in a certain position or a specific educational degree”

Though the sufficiency cannot be expressed, the necessary minimum level is proposed to be mentioned.

Particularly consider the Supreme Court system as an example. In Russia to be a Supreme Court judge one needs to be elder than 35 years old.

Thus minimum length of experience (e.g. 10 years including 5 at the managerial position) and educational level (at least M.A./M.Sc.) should be stated.

p. 15 – IV, art. 8.2. – “If a credit institution’s assessment concludes that a person is not suitable to be appointed as a member of the management body in its supervisory function”

It is proposed to switch from binary appraisal system (suitable/non-suitable) to the one use in BIS document on evaluation of effective banking supervision (cf. http://www.bis.org/publ/bcbs213.htm), i.e. to introduce 4 categories with the respective action to be taken:
<table>
<thead>
<tr>
<th>Category</th>
<th>Action to take</th>
</tr>
</thead>
<tbody>
<tr>
<td>Completely suitable</td>
<td>Appoint a person</td>
</tr>
<tr>
<td>Mostly suitable</td>
<td>Appoint and train a person</td>
</tr>
<tr>
<td>Mostly non-suitable</td>
<td>Might be appointed temporarily (for no more than 6 months), but need further dismissal</td>
</tr>
<tr>
<td>Completely non-suitable</td>
<td>Do not appoint a person</td>
</tr>
</tbody>
</table>

p. 17 – IV, art. 11.2 – “competent authorities may use a selection of these criteria and accord them different weight”

It is vitally important for the banking industry to have the weights explicitly announced before the start of formal assessment procedures.

p. 17 – IV, art. 11.4 – “The assessment under Article 3 (2a) and (2b) by the competent authority should be completed within good time”.

For the banking community to have the assessment process forecastable in terms of time needed it is recommended to put an exact length of the review discussed, i.e. no more than 1 month.