

Subjecting executives in the financial sector to reliability scrutiny

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Abstract

Under Dutch law, executives in the financial sector have to meet a reliability criterion. When the supervisor determines that someone fails to meet this criterion, he is faced with a *de facto* *Berufsverbot*. It has been argued that this is often disproportional to the behaviour that has led to the unreliability judgment, especially when the law leaves no room to consider the specific circumstances of the case. In addition, legal certainty is at stake, as in most cases the supervisors have a great deal of room for discretion in deciding on someone's reliability.

The reliability criterion is laid down by EC law. The relevant directives prescribe that when someone is unreliable, he cannot keep his position. However, there are few guidelines on what reliability entails. An examination of German law shows that a more nuanced approach, where some transgressions do not lead to unreliability, but are remedied in other ways, is indeed possible.

Keywords

reliability; supervision; Wet op het Financieel Toezicht; Kreditwesengesetz

[full text](#) [back](#)

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