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Consultation Paper on RTS to specify the minimum content of the suitability questionnaire

Q1: Are the draft RTS appropriate and sufficiently clear?

Article 5 (3) lit c

The national provisions on the presumption of innocence must in any case be observed, as they may, under certain circumstances, conflict with these requirements.

Article 5 (3) lit e

The reasons for the refusal must also be taken into account and evaluated accordingly.

P.11, Article 10 Abs 2 lit b in conjunction with Article 5 Abs 3 lit a Assessment of reputation, honesty and integrity

Extending the disclosure requirement regarding prior stays to ten years is overburdening

Reasoning: Extending the period for which information must be disclosed back five more years - and therefore doubling it - appears arbitrary and would require more justification or the provision of additional circumstances and legal grounds. It appears to be a disproportionate increase in the burden of reporting and creates additional difficulties regarding compliance, especially since no reason for prolonging this particular requirement is currently warranted. We therefore see no basis for such an extension that could potentially justify it as a necessary measure. In light of the strict data protection regulations, we strongly urge for this requirement to be reconsidered, and we certainly oppose its implementation in the RTS.

Suggested change:

Article 5 (3) The assessment shall be based at least on the following information:

(a) Criminal records, considering periods of limitation in force in the national law, including, where available, from countries where the individual is a citizen, is resident or works, or has

been a citizen or been resident or has worked within the last ~~10~~ 5 years, or other equivalent document according to national law, and where possible and relevant, information on criminal investigations and proceedings;

Article 10 (2) The suitability questionnaire shall provide for, at least, the following information and details on:

(a) the name of the entity, including the contact person within the entity who is responsible for filling-in and submitting to the competent authority the suitability questionnaire;

(b) the identity of the individual for whom the suitability questionnaire is filled-in and submitted, including their name, gender where available, their date of birth, place of birth, country of birth, current residence and where relevant countries where the individual has lived over the past ~~10~~ 5 years in accordance with Article 5(3)(a);

P. 14, Article 10 Abs 2 lit k

Financial Obligations towards the entity should be limited in line with the ECB Questionnaire

Reasoning: As stated in the updated F&P questionnaire from December 2021, part of the questions has always been “Do you have any financial obligations towards the supervised entity, the parent undertaking or their subsidiaries cumulatively exceeding EUR 200,000 (excluding private mortgages) or any loans of any value that are not negotiated “at arm’s length” or that are non-performing (including mortgages)” (By removing this threshold- and hereby any kind of de minimis threshold, EBA will be responsible for suddenly and unjustifiably burdening every institution with even stricter requirements, leading to significantly more workload. It cannot be reasonably argued that every loan - completely regardless of its size - must be disclosed, therefore automatically implying a conflict of interest.

We urge EBA to reflect the well-established limitations to financial obligations which have been in place for up to 10 years with ECB supervision.

Suggested change:

Article 10 (2) The suitability questionnaire shall provide for, at least, the following information and details on:

[...]

(k) any financial obligations **cumulatively exceeding EUR 200,000 (excluding private mortgages) or any loans of any value that are not negotiated “at arm’s length” or that are non-performing (including mortgages)** towards the entity, the parent undertaking or their subsidiaries the individual or his close relatives or any legal person in which the individual is or was a member of the management body, or a qualifying shareholder, ~~at the relevant time, have, including any loans of any value that are not negotiated under market’s conditions or are non-performing;~~

P. 15, Article 11 (1) lit d.

Regarding the organisations for which the individual has worked instead of "all organisations" only "relevant experience" should be required

Reasoning: The requirement that every professional experience has to be disclosed is excessive and neither reasonable nor justified. There is no apparent basis for requiring the full disclosure of each and every previous professional experience if it is not in any way relevant to the appointed position. The associated requirement for complete and thorough disclosure will, in practice, only lead to complications, difficulties in application and administrative burdens. We urge that this requirement be narrowed down to 'relevant' professional experience

Suggested change:

Article 11 [...] (d) **relevant** professional experience: name and nature of all **relevant** organisations for which the individual has worked, and the nature and duration of the functions performed, in particular highlighting any activities within the scope of the position sought such as banking and/or management experience.