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EACB Answer to the EBA's consultation on its revised Guidelines on the assessment of the suitability of members of the management body and key function holders and on Regulatory Technical Standards to specify the minimum content of the suitability questionnaire, curriculum vitae and internal suitability assessment

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The **European Association of Co-operative Banks** (EACB) is the voice of the cooperative banks in Europe. It represents, promotes and defends the common interests of its 29 member institutions and of cooperative banks in general. Cooperative banks form decentralised networks which are subject to banking as well as cooperative legislation. Democracy, transparency and proximity are the three key characteristics of the cooperative banks' business model. With 2,400 locally operating banks and 40,000 outlets cooperative banks are widely represented throughout the enlarged European Union, playing a major role in the financial and economic system. They have a long tradition in serving 228 million customers, mainly consumers, retailers and communities. The cooperative banks in Europe represent 91 million members and 737,000 employees and have a total average market share of about 20%.

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Regulatory Technical Standards to specify the minimum content of the suitability questionnaire, curriculum vitae and internal suitability assessment

Question 1: Are the draft RTS appropriate and sufficiently clear?

Definitions, Article 1 (b)

Article 1(b) defines the suitability questionnaire by referring to Article 91(1e)(a) of Directive 2013/36/EU. This reference is problematic at two distinct levels.

First, Article 91(1e)(a) concerns the documentation to be submitted to the competent authority in the context of an ex ante suitability application. As clarified in recital 49 of Directive (EU) 2024/1619 (CRD VI), this procedural framework is only relevant in Member States where the suitability assessment by the competent authority is carried out after the member of the management body has taken up the position. Consequently, referring to Article 91(1e)(a) is not appropriate for Member States where competent authorities assess suitability before the member takes up the position (as the ex-ante suitability application does not apply in such Member States.)

Second, the reference to Article 91(1e)(a) is also inappropriate in terms of personal scope. Under CRD VI, the obligation to submit an ex-ante suitability application to the competent authority applies only to the appointment of members of the management body in its management function and to the chair of the management body in its supervisory function. By referring to Article 91(1e)(a), Article 1(b) of the draft RTS risks extending these procedural obligations to all members of the management body and to key function holders (the latter being, under CRD VI, subject only to an ex post suitability assessment and only in large entities), thereby going beyond the scope and mandate conferred on the EBA under Article 91(10) CRD VI.

- Article 1(b) should therefore be aligned with the Level 1 framework and reflect the limited procedural and personal scope of Article 91(1e)(a), in order to ensure legal certainty and compliance with the mandate set out in CRD VI.

Article 2

It should be made clear that the provisions of the RTS apply in accordance with the overarching derogations set out in Article 91(13) and (14) of the CRD, without prejudice to the provisions of the Member States on the representation of employees in the management body, on the appointment of members of the management body in its supervisory function by regional or local elected bodies and on appointments where the management body does not have any competence in the process of selecting and appointing its members.

Assessment of knowledge, skills and experience, Article 4(2)

The wording of Article 4(1) places a strong emphasis on “appropriate experience” as the central element of the suitability assessment, with knowledge and skills largely assessed through this prism. This focus may unintentionally favour candidates with extensive practical or operational experience and disadvantage younger individuals or recently qualified candidates with shorter professional trajectories. As a result, profiles based on strong academic backgrounds, theoretical knowledge or formal qualifications may be undervalued, despite their potential relevance for the position. Such an approach could indirectly limit age diversity within the composition of management bodies. Furthermore, Article 4(1) does not provide any reference points or criteria for determining when knowledge, skills and experience should be considered “relevant and sufficient.”

This lack of guidance may lead to inconsistent interpretations across institutions and competent authorities, potentially undermining supervisory convergence.

The requirement that non-material weaknesses must be remedied within a maximum period of six months introduces a rigid timeframe not foreseen in the CRD VI.

Suitability under Article 91 is framed as an ongoing and principle-based obligation. While remedial measures are appropriate

Where weaknesses are identified, the imposition of a fixed maximum period may not be suitable in all circumstances, particularly in complex institutions or in case involving specialised knowledge.

We would therefore suggest replacing the six-months maximum with a requirement that remedial measures be implemented within a reasonable and proportionate timeframe, taking into account the nature of the identified gap and the responsibilities attached to the position.

Article 4.(3) (a)

This seems to refer to the individual statement provided for in the Guidelines on Internal Governance, which should normally concern only members of the management body in its management function and the KFH. This article should be more precise.

Assessment of reputation, honesty and integrity, Art 5

As regards the assessment of reputation, honesty and integrity, the article raises significant concerns.

As a preliminary remark, the use of the expression “at least” when referring to the information to be collected should be reconsidered. In this context, the deletion of the wording “at least” would be more appropriate, as it would avoid establishing an exhaustive or cumulative documentation expectation that may not be feasible in practice and would better reflect the principle-based nature of the suitability assessment.
In addition, several of the documents and pieces of information envisaged under Article 5 may not always be realistically obtainable by the individual, particularly in cross-border situations or where national authorities do not issue the specific certificates contemplated. In such cases, it should be expressly clarified that duly signed declarations by the candidate, made in good faith and to the best of their knowledge may suffice, subject to subsequent verification where necessary. A rigid documentary requirement may otherwise create disproportionate barriers and legal uncertainty, particularly as it would de facto require individuals to evidence the absence of adverse elements relating to good repute, honesty and integrity.

The inclusion in the assessment of investigations, enforcement proceedings or sanctions in which the individual has been "indirectly involved" is unclear, unnecessary and against the presumption of innocence. This language should be deleted.

Furthermore, the provisions referring to “any other reliable internal or external resources available to the entity” remains excessively open-ended and may generate inconsistent interpretation and over collection of personal data. The RTS should clarify that only information that is objectively relevant, proportionate and directly related to the suitability assessment under Articles 91 and 91 a of the CRD may be considered, in line with the principles of necessity and data minimisation and in full compliance with fundamental rights as enshrined in the Charter of Fundamental Rights of the European Union, in particular Article 7 concerning the respect for private and family life. Finally, although the presumption of innocence is referenced, the overall

structure of the provision risks creating indirect adverse consequences for individuals based solely on the existence of ongoing investigations or unresolved allegations. It should therefore be explicitly clarify that the mere existence of investigations or proceedings does not, in itself, give rise to a presumption of unsuitability, unless there are objective and substantiated grounds directly attributable to the individual concerned.

Moreover, it is important - both in the Regulation and in the Guidelines - not to assign relevance to administrative proceedings, given, on the one hand, the embryonic stage of such proceedings and, on the other, their limited significance; a similar argument applies to potential civil judgments, which do not appear to affect reputation requirements but would instead excessively broaden the range of relevant cases.

Besides, we have strong concerns regarding Article 5(3)(h), which introduces the consideration of an individual's past performance as part of the assessment of reputation, honesty and integrity. In our view, this provision should be deleted.

Assessing past performance is conceptually and legally distinct from assessing reputation, honesty and integrity as performance relates to professional effectiveness and outcomes, which are already appropriately addressed under the assessment of knowledge, skills and experience.

Moreover, the draft RTS does not explain how performance outcomes could objectively evidence deficiencies in honesty or integrity.

Independence of mind, Article 6(1)(a)

The additional requirement concerning the obligation to provide evidence of independence of mindis particularly problematic (Article 6(1)(a)). We do not see what evidence, other than a self-declaration, we could provide.

Furthermore, Article 6(1)(a)(i) provides that, in order to have independence of mind, a person must in particular be able to independently assess and challenge the decisions proposed by the other members of the management body. However, we consider that independence cannot be defined by independence. This is of no practical use, not requested by CRD and contrary to the cooperative governance as we have elected members.

Independence of mind should not be defined as acting independently, as this could lead to confusion between independence of mind and formal independence, whereas paragraphs 89 and 90 of the Fit and proper Guidelines distinguish between these two concepts. The terms "independently" should therefore be removed.

Time commitment, Article 7

Relating to time commitment, this article requires detailed annual estimates of time devoted to mandates, number of meetings and time allocation per activity. While sufficient time commitment is clearly required under Article 91 CRD, the level of predictive quantification required by the RTS is inherently speculative and may expose both institutions and candidates to supervisory scrutiny based on ex post deviations from ex ante estimates. The RTS should clarify that time commitment assessments may be based on reasonable and good faith estimates, without requiring precise quantitative forecasting that cannot realistically be guaranteed.

Assessment of collective suitability of the management body, Article 8

The identification of gaps in collective suitability and detailed remedial planning may also benefit from a clearer articulation of proportionality. While collective competence is a central element of the suitability framework, the RTS is risk imposing a uniform and formalised assessment structure irrespective of institutional size, complexity or governance model including situations where the management body (in its management function) is not organised as a collegiate body. A clarification that the depth and format of the collective assessment must be proportionate the nature, scale and complexity of the entity would ensure alignment with the proportionality principle embedded in CRD VI.

Finally, the reference to individual statements of responsibilities in Article 8(2) is problematic, as it may be interpreted as extending the scope of persons subject to such documentation beyond what is required by CRD VI (i.e. management body in its management function, senior management and key function holders). In addition, this reference risks altering the nature and purpose of individual statements as set out in CRD VI. As clarified in recital 54 CRD VI, these statements are intended as supervisory tools available to competent authorities for the purpose of assessing institutions' governance arrangements, and not as documents to be systematically produced by institutions as part of their internal individual or collective suitability assessment processes.

Employee representatives, Article 9

The confirmation of suitability required under Article 9 may, where applicable, not be provided for employee representatives in the management body or for members of the management body in its supervisory function over whose selection and appointment the institution has no influence. These specific legal circumstances in Member States have been taken into account by Article 91(13) and (14) of the CRD. The overarching exemptions in Article 91(13) and (14) of the CRD should be explicitly incorporated into the text of the draft RTS for the sake of clarity (see also our further comments on Article 2).

Information to be included in the suitability questionnaire
Art 10 (1)

The individual should not be jointly responsible with the entity for providing the competent authority with the necessary information. The current drafting may create disproportionate personal exposure and disincentivise qualified candidates from accepting board positions. It would be appropriate to clarify that such joint responsibility relates to the provision of information in good faith and to the best of the knowledge of the signatories at the time of submission and does not create strict liability for omissions that were not reasonably knowable.

Moreover, it is important to distinguish the respective responsibilities of the individual and of the institution in providing the information required by the Authority, bearing in mind that the institution may be responsible for aspects concerning the assessment conducted at both individual and collective level, but not for information pertaining specifically to the individual.

Given that in practice - at least in certain jurisdictions - it is the entity that compiles the information and files it with the authority, any personal liability on the person to do the same would only work to confuse the roles and responsibilities of the different parties involved.

In addition, certain related requirements within the RTS appear excessively broad. The reference to information covering a period of ten years may in many cases be disproportionate to the objective pursued,

particularly where the relevance of older information is limited or remote. A shorter, risk-based timeframe would better reflect the principle of proportionality embedded in CRD VI.

Likewise, the requirement to disclose relationships with "suppliers or competitors" is formulated in overly expansive terms and may capture a wide range of ordinary professional or commercial interactions that are not materially relevant to the suitability assessment. Greater precision is needed to ensure that only relationships of a material nature, capable of giving rise to genuine conflicts of interest, are required to be disclosed.

Art 10 (2) (h)

This section should be drafted more precisely as to be precise which shareholdings are required to be included in the suitability questionnaire. Any and all shareholdings (e.g. all securities held for personal savings and investment purposes) should not be included. The drafting would benefit of clarifying and/or simplified wording, e.g.: "The information referred to in this letter (h), shall be provided only for alleged wrongdoing which happened in the period in which the individual was associated with the entity."

Art 10 (2) (i)

This section should be drafted more precisely as to the relationships intended to fall within the scope. "Any of the individual's personal relations" is very wide ranging and should be limited to e.g. direct family relations.

Art 10 (2) (j)

- "Close relatives" should be deleted as this poses challenges from the perspective of individual legal protection.
- Candidates should not be adversely affected solely on the basis of familial or associative links, without any substantiated indication of personal involvement or wrongdoing.
- It is also unclear how the examination of family relationships or third-party conduct can be reconciled with applicable data protection and privacy requirements, or how candidates would be expected to disclose or substantiate information that may not be publicly available and may be subject to confidentiality or secrecy obligations.

Art 10 (2) (k)

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

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 treshold– 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. The following wording is suggested:

- (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;**~~

Art 10 (3)

- Add language: "…signed either on paper on or another durable medium or prepared by electronic means as approved by the competent authority, in accordance with EU or national legislation…"
- This is to expressly not limit any digital filing means in use in Member States, currently or in the future.

Assessment of reputation, honesty and integrity, Art 10 (2) (b) in conjunction with Art 5 (3) (a)

Extending the disclosure requirement regarding prior stays to ten years is overburdening.
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.
The reference to 5 years should be maintained in both Article 10(2)(b) and Article 5(3)(a) and not replaced with '10 years'.

Article 11(1)(d)

Regarding the organisations for which the individual has worked in, we believe that instead of "all organisations", only "relevant experience" should be required:
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.
For this reason, we would like to suggest following changes:
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.

Besides, we propose to delete the wording "at least". The proposed information in CV in Art. 11 of the RTS is sufficient for the suitability assessment. There should not be any national gold-plating.

Conclusion

Our comments on the draft Guidelines are intended to contribute constructively to the consultation process, with the objective of ensuring that the final Guidelines achieve supervisory convergence without exceeding the CRD VI mandate, while preserving feasability, legal certainty, competitiveness, proportionality and respect for national corporate law diversity across the European Union.

We hope that the expected ECB Guide will be fully align with the revised EBA guidelines, taking into consideration the reactions from the banking industry.

While we support the harmonisation objective underlying Article 91(10) CRD VI, we respectfully submit that the Draft RTS would benefit from recalibration to ensure that they remain within the scope of defining minimum content, preserve proportionality and legal certainty, fully respect the presumption of innocence and fundamental rights, and avoid transforming the suitability framework into an excessively rigid and formalistic compliance regime. We fear that the current drafting may create disproportionate personal exposure and disincentivise qualified candidates from accepting board positions in European banks.

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The EACB trusts that its comments will be taken into account.

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