
Consultation Paper on Guidelines on supervisory independence

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Legal & Compliance Unit

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The objective of independence – Why independence matters?

- ***‘Independence is key to ensuring that fair, effective and transparent decisions are taken by appropriately resourced competent authorities.’***
(Joint ESAs Criteria on the independence of supervisory authorities)
- In turn, **this supports the objectives of the European System of Financial Supervision (ESFS):**
 - a) ensuring financial sector rules are adequately implemented,
 - b) preserving financial stability,
 - c) ensuring confidence in the financial system and
 - d) providing sufficient protection for customers and consumers of financial services.

EBA tasks on supervisory independence

Fostering and monitoring supervisory independence (Article 8(1)(b) EBA Regulation)

1. The Authority shall have the following tasks: (...) b) to contribute to the consistent application of legally binding Union acts, in particular by contributing to a common supervisory culture, ensuring consistent, efficient and effective application of the legislative acts referred to in Article 1(2), preventing regulatory arbitrage, ***fostering and monitoring supervisory independence, (...)***

Common supervisory culture (Articles 8(1)(b) and 29(1) EBA Regulation)

1. The Authority shall play an active role in building a common Union supervisory culture and consistent supervisory practices, as well as in ensuring **uniform procedures** and **consistent approaches** throughout the Union. (...) **2. The Authority may, as appropriate, develop new practical instruments and convergence tools** to promote common supervisory approaches and practices.

Peer reviews (Article 30(3) EBA Regulation)

3. The peer review shall include an assessment of, but shall not be limited to:
(a) the *adequacy of resources, the degree of independence, and governance arrangements of the competent authority, (...)*

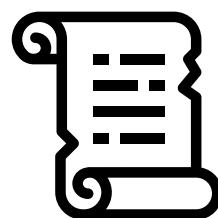
What has been done so far

Overview of the European Supervisory Authorities' (ESAs) activities performed in this area



2021 ESAs individual reports on supervisory independence

The 3 ESAs published in October 2021 their individual reports (factual situation) on the supervisory independence of competent authorities (CAs) in their financial sectors (not assessed)



2023 (October) Joint ESAs criteria on the independence of supervisory authorities

The 3 ESAs have used existing international standards and findings of their individual reports to establish common EU-wide criteria for supervisory independence



2026 (envisaged) Joint ESA assessment of supervisory independence

The 3 ESAs will follow up on the 2023 joint ESAs criteria on supervisory independence and assess a sample of CAs' practices in this area

The CRD mandate

New Article 4a Directive 2013/36/EU (as amended by Directive (EU) 2024/1619) Supervisory independence of competent authorities (CAs)

Operational independence

- Supervisory powers to be exercised independently and objectively without seeking or taking instructions from public or private bodies;
- CAs' governance bodies must be functionally independent from other public and private bodies.

Personal independence

- Maximum duration of mandate for members of a CA's governance body: 14 years;
- Appointment of members of governance body to be based on published, transparent and objective criteria;
- Reasons for dismissal (to be published): no longer meeting the appointment criteria or convicted of a serious criminal offence.

Arrangements to prevent conflicts of interest

- Prohibition of trading in financial instruments issued by supervised institutions;
- Cooling-off restrictions: prohibition to be hired for a minimum period of 6-12 months with exceptions ('cooling-off period') by supervised institutions which the staff member has been directly involved in for supervision, lobbying entities, service-providing entities;
- Compensation for that prohibition;
- Declarations of interests including at least financial holdings;
- Powers of CAs to require or allow staff the sale or disposal of financial instruments.

Accountability and transparency

- Publication of CAs' objectives and accountability thereto.

The CRD mandate (ctd.)

Article 4a Directive 2013/36/EU (as amended by Directive (EU) 2024/1619) Supervisory independence of competent authorities

‘(...)

9. To ensure a proportionate application of this Article, EBA shall, by 10 July 2026 **issue guidelines**, in accordance with Article 16 of Regulation (EU) No 1093/2010, addressed to the competent authorities, **on the prevention of conflicts of interest in, and on the independence of, competent authorities**, taking into account international best practices.’

The draft Guidelines - Scope of application



Members of staff

- ✓ Employees + directly involved in supervision/decision-making
- ✓ Seconded personnel
- ✓ Non-staff carrying out supervisory tasks (optional)



Board members (1)

If executive functions are assigned to an executive director or members of another collective body → *GLs apply to the executive members of the most senior collective body that may give instructions to them*



Board members (2)

If no allocation of executive/non-executive functions → *the GLs apply to all members of the most senior decision-making body, excluding governors of central banks*

The draft Guidelines – Personal independence

- To safeguard the trust in the governance body of competent authorities and transparency of procedures, **the appointment of the members of the governance body should be made through an objective and non-discriminatory process of selection, which together with the appointment criteria and the outcome is made public.**
 - ✓ These requirements only apply if a competent authority has responsibility for the appointment process for a board member.
- The guidelines also clarify the **calculation of the 14-year limit** for the term of office of the members of the governance body;
 - ✓ All periods, consecutive or non-consecutive;
 - ✓ Periods before 11 January 2026 (cut-off date under Article 4a(2) CRD) are not taken into account.

The draft Guidelines – Arrangements to prevent conflicts of interests (Col)

Col situation includes cases where a member of staff or board member

- has a direct or indirect **personal interest** (*financial or non-financial benefit*) that influences or compromises, or
- may be **perceived** (*even if the Col does not materialise or the member does not benefit from the situation*) as influencing or compromising, the impartial and objective performance of their professional duties

CAs should have **appropriate mechanisms, rules and practices to prevent and manage Col:**

- Declarations of interest;
- Measures addressing non-compliance with Col rules, including disciplinary measures;
- Sale of financial instruments (FIs) subject to approval by the CA's ethics or compliance function;
- suspension of access to confidential information or allocation of a different role or task;
- Prohibition of trading in FIs;
- Cooling-off restrictions.

Declarations of interest

1

Pre-employment declarations of interests

Financial holdings (stocks, equities, bonds, investment funds) issued by or referenced to supervised institutions

4

Ad-hoc declarations of interest

Any acquisition or disposal of financial holdings between declarations. Any other Col situation (optional)

2

Other pre-employment disclosures (optional)

Recent roles in supervised institutions, their groups or lobbying entities

5

Assessment of declarations

CAs' to verify whether the interest declared is compatible with the member's tasks

3

Annual declarations of interest

Financial holdings issued by or referenced to supervised institutions. Roles in credit

6

institutions (optional)

CAs' power to require sale of FIs

If required, the member should execute the sale within reasonable time, if possible before taking office

The draft Guidelines – Prohibition of trading in financial instruments (FIs)



What does it entail?

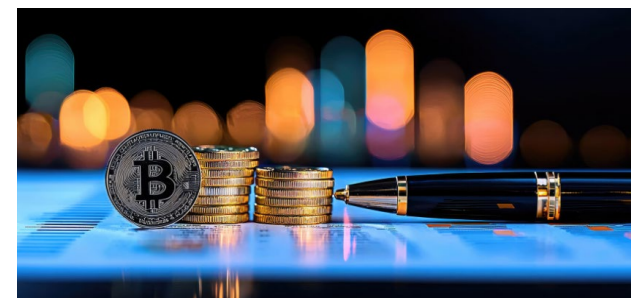
CAs should ensure staff and board members:

- ✓ Do not trade in FIs issued by supervised institutions
- ✓ Do not recommend or induce another person to trade or not to trade in FIs



Scope of FIs covered by the prohibition

- ✓ Issued by 'supervised institutions' (CRD)
- ✓ Or their group, including 'affiliates' (i.e. entities within the prudential or accounting consolidation)



FIs exempted from prohibition

- ✓ If instruments are managed independently third parties, acc. to investment management agreement
- ✓ If a collective investment undertaking or third-party does not predominantly invest in the FIs acc. to the investment policy

The draft Guidelines - What is a cooling-off restriction (Article 4a(3), point (b) of CRD)

'Member States shall, in particular, ensure that competent authorities have in place all the necessary arrangements to prevent conflicts of interest of their members of staff and of the members of their governance bodies. For that purpose, Member States shall lay down rules that are proportionate to the role and responsibilities of the members of staff and the members of governance bodies, and that, at a minimum, prohibit them from:

*.../... b) **being hired by or accepting any kind of contract for the provision of professional services during a certain period ("cooling-off period") with any of the following:***

*(i) **institutions** with which the member of staff or the member of the competent authority's governance body has been **directly involved** for the purposes of supervision or decision-making, including the direct or indirect parent undertakings, subsidiaries or affiliates of those institutions;*

*(ii) **entities providing services** to any of the entities referred to in point (i), unless the member of staff or the member of the competent authority's governance body is strictly precluded from taking part in the provision of those services during the cooling-off period;*

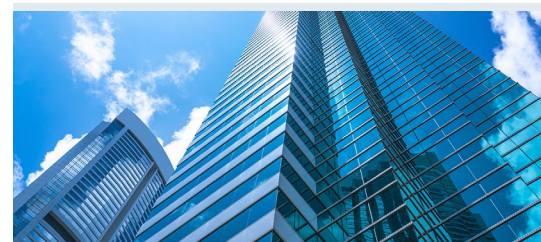
*(iii) **entities conducting lobbying and advocacy activities** directed at the competent authority on matters for which the member of staff or the member of the competent authority's governance body was responsible during that member's employment or term of office.'*

Scope of cooling-off restriction



Staff

The cooling off restriction includes members of **staff engaged in horizontal or cross-cutting functions**, who have been directly involved in the supervisory function or decision-making in relation to the supervised institution



Entities providing services to institutions

Include **entities to which tasks or parts of critical or important functions of the institutions have been outsourced**, as well as the provision of **legal, accounting or consultancy services**



Lobbying and advocacy activities

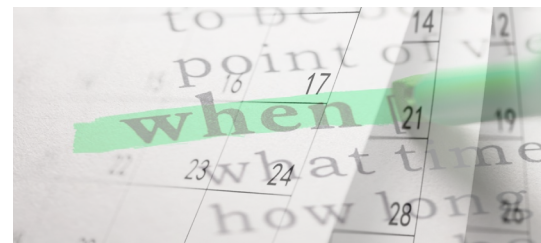
Include any **professional activity conducted with the objective of, directly or indirectly, influencing the decision-making processes of the CA, the implementation of such decisions and any other activity under the scope of competence of the CA, or the public perception of the competent authority**.
Secondments or unpaid leave activities involving **positions with national ministries or other public bodies and EU institutions agencies or bodies should not be considered as 'lobbying and advocacy activities'**

Notification procedures



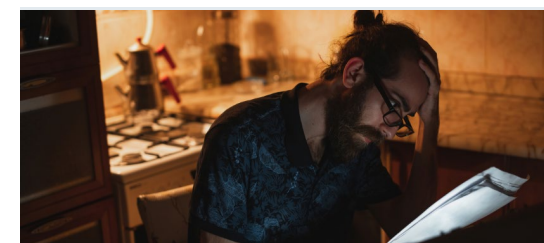
Who should notify?

Members of staff and board members are required to **inform their CA of their intention to take up employment** or provide professional services



When?

At the latest when an offer has been received and before accepting such offer and in any case no later than a point in time which allows the CA to consider appropriate cooling-off restrictions.

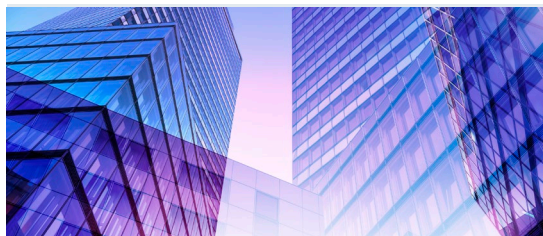


Unpaid leave

Procedures should be put in place to ensure that **during unpaid leave** members of **staff or board members do not enter into employment** or provide professional services *which may conflict with the legitimate interests of the CA*.

Members during unpaid leave should notify of their intention to take up employment during unpaid leave when such employment falls under the Cooling-off restriction.

Assessment



TRANSPARENCY

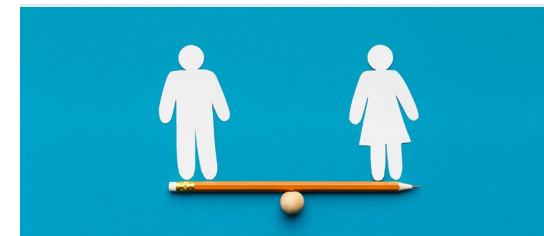
A transparent process or a **collective body** should be established **to assess the cooling-off period** that should be applied to the member concerned.



OBJECTIVITY

The applicable cooling off period should be based on **objective criteria** such as:

- The seniority of the staff member
- The description of the job position
- Involvement in policy activities that could potentially be applicable in the institution or entity concerned
- Other measures taken to address the conflicts of interest



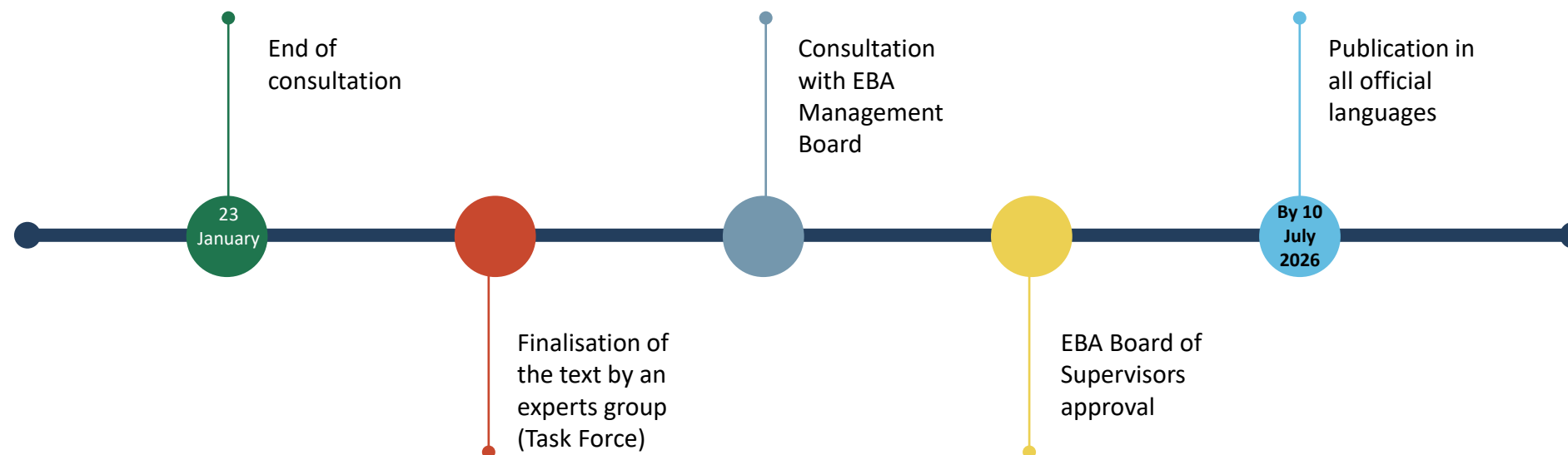
CONFLICTING TASKS

While a notification is being assessed, *competent authorities should remove or limit the individual's access to confidential or sensitive information and participation in relevant decision-making activity.*

Consideration should be given to whether the cooling off should be served:

- a) In a different (non-supervisory related) position in the authority
- b) In secondment to another public sector entity
- c) Fully or partially served after cessation of employment

Next steps



Consultation questions

- **Question 1:** While respecting the terms used and defined in Directive 2013/36/EU, the guidelines further clarify certain concepts used by the Directive. Do you have any comments on the concepts used in these guidelines?
- **Question 2:** Do you have any comments on sections 4.1 and 4.2 concerning the appointment of members of the competent authority's governance body and their tenure period? Do you agree with the proportionality approach taken therein?
- **Question 3:** Do you have any comments on sections 4.3 and 4.4 on arrangements to prevent conflicts of interest and breaches of conflicts of interest rules, corrective measures, including disciplinary measures? Do you agree with the proportionality approach taken therein?
- **Question 4:** Do you have any comments on section 4.5.1 concerning the prohibition of trading in financial instruments? Do you agree with the proportionality approach taken therein?
- **Question 5:** Do you have any comments concerning section 4.5.2 on cooling-off restrictions? Do you agree with the proportionality approach taken therein?



Thank you!



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