

EBA/GL/2026/04

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28 April 2026

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# Final Report

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## Guidelines

on supervisory independence of competent authorities under  
Directive 2013/36/EU

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# 1. Executive Summary

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Directive (EU) 2024/1619 amends Directive 2013/36/EU (Capital Requirements Directive) as regards supervisory powers, sanctions, third country branches, and environmental, social and governance risks. It extends its scope to cover supervisory independence of competent authorities by introducing a new Article 4a in Directive 2013/36/EU on this subject matter. Its main objective is to ensure that competent authorities, their members of staff and the members of their governance bodies are independent and to prevent that risks of conflicts of interest undermine the integrity of the Union financial system and harm the goal of an integrated banking and capital markets union.

Article 4a of Directive 2013/36/EU establishes new requirements applicable to the competent authorities and their members of staff and of their governance bodies on operational or functional independence, personal independence, transparency and accountability, and measures to prevent conflicts of interest, such as declarations of interest, limitations to trading in financial instruments or cooling-off periods.

Article 4a does not set out in detail all practical aspects for the application of the new requirements, including the necessary arrangements to prevent conflicts of interest that the competent authorities must put in place. Instead, it mandates the European Banking Authority (EBA) to issue guidelines, in accordance with Article 16 of Regulation (EU) No 1093/2010 (the EBA Regulation) addressed to competent authorities, to ensure a proportionate application of Article 4a of Directive 2013/36/EU, taking into account international best practices.

Risks to supervisory independence pose challenges to the soundness of supervision and to good governance. To ensure the resilience of competent authorities and the appropriate management of conflicts of interest, the guidelines further clarify and harmonize the requirements set out in Directive 2013/36/EU and set arrangements that competent authorities should or may have in place.

The guidelines have been updated to reflect the feedback received during consultation including requirements to put in place appropriate internal channels for reporting breaches of conflicts of interest rules, or on how Directive 2013/36/EU applies to periods on a governance body for appointments pre-11 January 2026.

Competent authorities should implement these guidelines by putting in place proportionate arrangements to address supervisory independence risks and prevent conflicts of interest of their members of staff and of the members of their governance bodies.

## Next steps

The guidelines will apply from 24.08.2026.

## 2. Background and rationale

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### 2.1 Supervisory independence

1. Competent authorities are required to serve the public interest and ensure the highest standards of integrity. Accountability, transparency and the highest standards of ethics are placed at the centre of the competent authorities' approach to good governance. Adherence to these principles is a key element of the competent authorities' credibility and vital to securing the trust of European citizens.
2. Directive 2013/36/EU (Capital Requirements Directive) recognises that the supervisory independence of competent authorities has an important role to play in safeguarding the integrity of the Union financial system and achieving the goal of an integrated banking and capital markets union.
3. Risks to the independence of competent authorities, including operational or functional independence, personal independence and risks of conflicts of interest of the members of the competent authority's governance body and of members of staff, affect the exercise of supervision.
4. To maintain adequate resilience to the negative impacts of the risks to supervisory independence, competent authorities need to be able to systematically identify and manage these risks. However, the specificities of risks to supervisory independence such as their forward-looking nature and distinctive impacts over various time horizons as well as the different practices of competent authorities means that understandings, management and monitoring practices can differ significantly.
5. The EBA's observations stemming from supervisory experience from competent authorities and from its work on the Joint European Supervisory Authorities' ('ESAs') criteria on the independence of supervisory authorities show that despite action taken to combat risks to supervisory independence, several shortcomings still exist in particular in the area of conflicts of interest. These shortcomings may pose challenges to the proper exercise of the competent authorities' supervisory tasks.
6. While the Joint ESAs' criteria on the independence of supervisory authorities set out high-level cross-sectoral non-binding standards that might be used by all relevant stakeholders (legislators, governments, supervisory authorities and the ESAs), these guidelines are the specific instrument with which the EBA is mandated to ensure a proportionate application of Article 4a of Directive 2013/36/EU dealing with supervisory independence. Although non-binding, they are specifically addressed to competent authorities responsible for supervision

under CRD/CRR which must make every effort to comply with them, otherwise they are obliged to give reasons for non-compliance, including in cases where relevant legislative or regulatory measures are needed to bring into force any necessary measures to comply with the guidelines. The guidelines are designed to complement the Joint ESAs' supervisory independence criteria rather than duplicate them.

## 2.2 Legal mandate and objective of these guidelines

7. These guidelines are issued in accordance with Article 8 (1), points (a) and (b) and Article 16 of Regulation (EU) No 1093/2010 (the EBA Regulation) and Article 4a (9) of Directive 2013/36/EU.
8. Article 4a (9) of Directive 2013/36/EU specifically mandates the EBA to issue guidelines on the prevention of conflicts of interest and on the independence of, competent authorities to ensure a proportionate application of that Article. The EBA should take into account international best practices in the area of supervisory independence.
9. Article 4a of Directive 2013/36/EU provides, *inter alia*, that competent authorities:
  - a) exercise their supervisory powers independently and objectively, without seeking or taking instructions from supervised institutions, from any institution, agency or body of the Union or any government of a member State or from any other public or private body.
  - b) ensure that members of their governance body are appointed on the basis of published, objective and transparent criteria and that these members can be dismissed if they no longer meet the criteria of appointment or have been convicted of a serious criminal offence. Members of the governance body who are appointed after 11 January 2026 should not remain in office for more than 14 years.
  - c) 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 including limitations on trading of financial instruments issued by supervised institutions, cooling-off periods for staff and members of their governance bodies being hired or providing professional services with certain types of entities, declarations of interest and arrangements for the sale or disposal of financial instruments which may give rise to conflicts of interest.
10. To foster robust supervisory independence practices and ensure convergence across the Union, the EBA has been empowered in Article 4a (9) of Directive 2013/36/EU to issue guidelines addressed to the competent authorities.
11. Pursuant to the mandate entrusted to the EBA by Article 4a (9) of Directive 2013/36/EU, these guidelines address the aspects of supervisory independence referred to in paragraph 9, letters b) and c) above.

12. These guidelines aim at enhancing identification, management and monitoring by competent authorities of supervisory independence risks and at supporting good governance.
13. Flexibility is left to competent authorities regarding specific details for reasons of proportionality and to facilitate adaptation of the guidelines to competent authorities' specificities.

## 2.3 Personal independence

14. To safeguard the trust in the governance body of competent authorities and transparency of procedures, where competent authorities are responsible for or take part in appointment procedures, the appointment of the members of the governance body should be made through an objective and non-discriminatory process of selection. The process should be as transparent as possible while ensuring the necessary confidentiality in identifying, assessing and selecting candidates.
15. To ensure effective governance and independence of the governance body from any risk to personal independence arising out of the tenure of its members, the guidelines clarify the 14-year limitation in the term of office set out in the second subparagraph of Article 4a (2) of Directive 2013/36/EU. Following consultation, the guidelines have been updated to clarify that periods in which a member of a competent authority's governance body has been in office relating to appointments that occurred before 11 January 2026 (date of application of Article 4a of Directive 2013/36/EU), are excluded from the 14-year limitation.

## 2.4 Arrangements to prevent conflicts of interest

16. To maintain the highest standards of professional ethics and integrity as well as coherence of standards, a common definition of conflicts of interest as well as some details around the concept of institutions supervised by competent authorities and affiliates are provided.
17. To ensure that appropriate mechanisms to prevent and manage conflicts of interest are put in place, the guidelines contain minimum harmonized standards for the submission of declarations of interests on a pre-employment, annual and ad-hoc basis. In order to account for the different institutional set-ups and sizes of competent authorities, the guidelines are not too prescriptive with regard to the internal procedural aspects relating to declarations of interest.
18. The guidelines propose harmonized procedural requirements for the sale or disposal of financial instruments that may give rise to conflicts of interest owned by a member of staff or a member of a competent authority's governance body at the time of being hired or appointed or subsequently. Following consultation, the guidelines have been adjusted to avoid the new requirements of Directive 2013/36/EU having an unforeseen impact on the use of banking services of credit institutions which have membership requirements involving holding financial instruments (e.g. cooperative banks). The guidelines enable competent authorities to allow

those holdings where certain conditions are met which ensure that there is no trading in the instruments and no material conflict of interest. The guidelines further specify the scope of the prohibition of trading in financial instruments set out in the first subparagraph of Article 4a(3), point (a) of Directive 2013/36/EU, including clarifications of the meaning of some terms used in that Article. Following consultation, the guidelines have been updated to reduce the scope of the term ‘affiliates’ to facilitate a simpler and more proportionate application of the provision.

19. The guidelines also contain minimum harmonised standards regarding breaches of conflicts of interest rules and corrective measures. Following consultation, the guidelines have been updated to require competent authorities, when addressing cases of non-compliance with conflicts of interest rules, to include any impact on supervisory decision-making, and to reflect that corrective measures should take into account the gravity of the breach, whether it was negligent or intentional and its duration.
20. Any measures adopted by the competent authorities in order to prevent or manage conflicts of interest should be effective, proportionate and dissuasive. Following consultation, the guidelines have been amended to require competent authorities to implement certain minimum standards such as having in place appropriate channels for internal reporting and safeguards for persons reporting breaches of conflicts of interest rules in accordance with Directive (EU) 2019/1937.

## 2.5 Cooling-off restrictions

21. To ensure harmonization and equal treatment of staff members between competent authorities on cooling-off restrictions a common definition of lobbying and advocacy activities, as well as the underlying meaning of directly influencing and indirectly influencing, have been provided.
22. High-level procedures are also proposed for notifications which require members of staff and members of their governance body to inform the competent authority of their intention to take up employment or accept any kind of contract for the provision of professional services.
23. To ensure that appropriate, proportionate and consistent assessment of cooling-off practices are used by competent authorities for the assessment of cooling-off periods (where national law enables cooling-off periods beyond the CRD minimum), the guidelines set out procedures and assessment criteria to be considered by competent authorities when making their determinations on cooling-off periods.

## 2.6 Proportionality

24. The guidelines have been drafted taking into account the proportionality principle as referred to in Article 4a (9) of Directive 2013/36/EU. These guidelines establish that all competent



authorities should design and implement proportionate processes, rules and practices to prevent conflicts of interest.

25. The guidelines take into account that all competent authorities are prone to risks of conflicts of interest. However, different competent authorities might be prone to different levels of risk depending on their internal structure and the scope of their activities and powers.
26. Therefore, the guidelines recognize that depending on their applicable legal framework and their internal structure some competent authorities may implement less complex or sophisticated arrangements, provided that this does not put at risk their ability to manage risks of conflicts of interest in a sufficiently prudent manner.
27. For example, competent authorities may extend the application of the guidelines to non-staff members carrying out supervisory tasks.
28. In addition, competent authorities may waive some of the information that members of staff and members of the governance body should provide in the declarations of interests.

## 2.7 Interaction with international developments and other European Supervisory Authorities products

29. The guidelines build on existing EU and international standards and/or principles on the management of risks of supervisory independence and conflicts of interest, such as:
  - the ECB code of conduct for high-level European Central Bank Officials (2022/C 478/03);
  - The Ethics Framework of the ECB (C/2026/1049);
  - Guideline (EU) 2021/2256 of the European Central Bank of 2 November 2021 laying down the principles of the Ethics Framework for the Single Supervisory Mechanism (ECB/2021/50);
  - Guideline (EU) 2021/2253 of the European Central bank of 2 November 2021 laying down the principles of the Eurosystem Ethics Framework (ECB/2021/49) (recast);
  - Decision of the Single Resolution Board of 24 June 2020 adopting the Code of Conduct of the Single Resolution Board (SRB/PS/2020/16);
  - Commission guidance on the avoidance and management of conflicts of interest under the Financial Regulation.
30. Moreover, these guidelines also build on the Joint European Supervisory Authorities' criteria on the independence of supervisory authorities of 25 October 2023 (JC 2023 17).

31. They also take into account the analysis performed, and recommendations included in the OECD reports such as its Recommendation of the Council on OECD Guidelines for Managing Conflict of Interest in the Public Service (OECD/LEGAL/0316, OECD 2025) and Being an Independent Regulator, The Governance of Regulators (OECD 2016).

## 3. Guidelines

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28/04/2026

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# Guidelines on supervisory independence of competent authorities under Directive 2013/36/EU

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# 1. Compliance and reporting obligations

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## Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>1</sup>. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

## Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by 24.08.2026. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2026/0'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

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<sup>1</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

## 2. Subject matter, scope and definitions

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### Subject matter

5. These guidelines specify certain aspects of the prevention of conflicts of interest in, and on the supervisory independence of, competent authorities in accordance with Article 4a of Directive 2013/36/EU<sup>2</sup>, taking into account international best practices including the Core Principles for effective banking supervision issued by the Basel Committee on Banking Supervision and the Joint European Supervisory Authorities' criteria on the independence of supervisory authorities<sup>3</sup>.

### Scope of application

6. These guidelines apply in relation to prudential supervision of credit institutions by competent authorities under Directive 2013/36/EU including arrangements for the independence of the members of their staff and of their governance bodies and for managing the conflicts of interest of their members of staff and of the members of a competent authority's governance body.
7. For the purposes of paragraph 6, 'members of staff' should be understood as including all persons having an employment relationship with the competent authority who are directly involved in the supervisory function or decision-making in relation thereto, including staff engaged in horizontal or cross-cutting functions, for the purposes of carrying out the functions and duties provided for in Directive 2013/36/EU and in Regulation (EU) No 575/2013<sup>4</sup> or, in the case of the European Central Bank, Regulation (EU) No 1024/2013. Competent authorities should also apply the guidelines to persons seconded to competent authority on a temporary basis in relation to the activities or functions set out above by putting in place appropriate arrangements. Competent authorities may extend the application of these guidelines to non-staff members carrying out supervisory tasks for the competent authority on a contractual basis and/or put in place appropriate arrangements with service providers.

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<sup>2</sup> Directive 2013/36/EU, Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC Text with EEA relevance (OJ L 176, 27.6.2013, p. 338).

<sup>3</sup> [JC 2023 17 Joint ESAs Supervisory Independence criteria.pdf](#)

<sup>4</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

8. For the purposes of paragraph 6, where the tasks of the day-to-day management of the supervisory function of the competent authority are entrusted to an executive director or similar position below the level of the most senior collective decision-making body referred to in Article 4a(1) of Directive 2013/36/EU or to members of another collective body, these guidelines should be applied to the executive members of the most senior collective decision-making body that may give instructions to that executive director or members of that other collective body.
9. Where the most senior collective decision-making body of the competent authority does not differentiate between members who are vested with the power to exercise executive functions regarding the day-to-day management of the supervisory function and non-executive functions, or does not provide for an allocation of tasks and decision-making powers of those members, these guidelines should be applied in relation to all members of that senior decision-making body, excluding governors of central banks.

## Addressees

10. These guidelines are addressed to competent authorities as defined in Article 4, point (2)(i) of Regulation (EU) No 1093/2010.

## Definitions

11. Unless otherwise specified, terms used and defined in Directive 2013/36/EU have the same meaning in the guidelines.

# 3. Implementation

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## Date of application

11. These guidelines apply from 24.08.2026.

## 4. Guidelines

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### 4.1 Appointment of members of a competent authority's governance body

12. Where competent authorities are responsible for or take part in the appointment of the members of their governance body, they should do both of the following:
- a) make public the process, appointment criteria and outcome of the process, and information on the profile of the appointed candidate;
  - b) ensure that the members of their governance body are appointed based on principles of objectivity and non-discrimination.

### 4.2 Tenure period

13. In relation to a member of a competent authority's governance body who is appointed after 11 January 2026, the 14-year period referred to in the second subparagraph of Article 4a(2) of Directive 2013/36/EU should be calculated to include:
- a) all periods, during which the member has been a member of the competent authority's governance body, consecutive or non-consecutive, and whether or not in the same position, excluding periods that relate to an appointment that occurred before 11 January 2026.
  - b) periods other than active employment, such as parental leave, sick leave or leave on personal grounds.



## 4.3 Arrangements to prevent conflicts of interest

### *Concept of conflict of interest*

14. Competent authorities should ensure that their rules and practices consider that situations where a conflict of interest arises include situations where a member of staff or the member of a competent authority's governance body has a direct or indirect personal interest that influences or compromises, or may be perceived as influencing or compromising, the impartial and objective performance of their professional duties and responsibilities.
15. For this purpose:
  - a) a personal interest should include any benefit or potential benefit, of a financial or non-financial nature, for a member of staff or a member of the competent authority's governance body, his/her direct family members including but not limited to his/her spouse, registered partner in accordance with national law, child or parent;
  - b) a perceived conflict of interest should cover objective circumstances affecting the trust and confidence in the independence and impartiality of a member of staff or a member of the competent authority's governance body even if the conflict of interest does not materialise or even if the member does not actually benefit from the situation.

### *Establishment of mechanisms, rules and practices to prevent conflicts of interest*

16. Competent authorities should have in place appropriate mechanisms, rules and practices to prevent and manage conflicts of interest. Those mechanisms, rules and practices should reflect that conflicts of interest may arise pre-employment, during employment, as well as due to post-employment occupational activities and during unpaid leave.
17. Competent authorities should have in place appropriate channels for internal reporting, follow-up and safeguards in place for persons who report breaches of conflicts of interest rules in accordance with Directive (EU) 2019/1937<sup>5</sup>.

### *Pre-employment declarations of interest*

18. The pre-employment declaration of interest referred to in Article 4a(7) of Directive 2013/36/EU to be submitted by prospective members of staff and members of the competent authority's governance body should at least include information on the prospective members' holdings set out in Article 4a(7) of Directive 2013/36/EU, issued by or referenced to the institutions supervised by the competent authority, and the direct and indirect parent undertakings, subsidiaries or affiliates of those institutions, which the concerned member currently holds.

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<sup>5</sup> Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (OJ L 305, 26.11.2019, p. 17).

Holdings specified in Article 4a(3), points (a)(i) and (ii) of Directive 2013/36/EU need not be declared.

#### *Other pre-employment disclosures*

19. Competent authorities may require prospective members of staff and members of their governance bodies to disclose information on other conflicts of interest, including recent roles in institutions with which they are expected to be directly involved for the purposes of supervision or decision-making, including the direct or indirect parent undertakings, subsidiaries or affiliates of those institutions, or entities conducting lobbying and advocacy activities directed at the competent authority on matters for which they are expected to be responsible.

#### *Annual declarations of interest*

20. The annual declarations of interest referred to in Article 4a(7) of Directive 2013/36/EU to be submitted by members of staff and members of the competent authority's governance body should include information on the members' holdings referred to in paragraph 18.
21. Competent authorities may also require the submission of information referred to in paragraph 19 as part of the annual declarations of interest.

#### *Ad-hoc declarations of interest*

22. Competent authorities should ensure that members of staff and members of a competent authority's governance body declare any acquisition or disposal of the holdings referred to in paragraph 18 that may take place between declarations.
23. Competent authorities may also require that their members of staff and the members of their governance body declare promptly any other situation of actual or perceived conflict of interest that may arise between declarations.

#### *Assessment of declarations*

24. Competent authorities should assess declarations by considering whether the specific interests declared by their members of staff or members of their governance body are compatible with their tasks.
25. Where the staff member or member of the governance body performs tasks for another public organisation or entity as part of that person's role, the competent authority should where appropriate take into account such tasks in the assessment.

#### *Powers of the competent authorities regarding financial instruments owned at the time of being hired or afterwards*

26. For the purposes of the application of Article 4a(8) of Directive 2013/36/EU, financial instruments which may give rise to conflicts of interest should include at least the holdings subject to the declaration of interest referred to in Article 4a(7) of Directive 2013/36/EU.
27. Holding financial instruments can be considered as not giving rise to conflicts of interest or as amounting to trading where all the following conditions are met:
- a) the financial instruments are issued by an institution which is a mutual, cooperative society, savings bank, credit institution established to provide services to a competent authority's staff and former staff, or a similar institution;
  - b) holding the financial instruments is necessary in order to access the normal banking and other services of the institution;
  - c) the level of financial interest in the institution arising from the holding can be considered negligible;
  - d) investment or divestment operations of the financial instruments may only take place between the members of the institution or through the institution itself.
28. Competent authorities should ensure that the sale or disposal of financial instruments referred to in Article 4a(8) of Directive 2013/36/EU is subject to prior approval by the competent authority's ethics, compliance or equivalent function in charge of monitoring compliance with the conflicts of interest policy.
29. Where a competent authority requires a member of staff or a member of its governance body who owns financial instruments referred to in Article 4a(8) of Directive 2013/36/EU, to sell or dispose of those instruments, that member should execute the sale or transfer the financial instruments within a reasonable timeframe established by the competent authority. The competent authority should take into account any obligations to hold instruments arising out of the remuneration requirements set out under Article 94 of Directive 2013/36/EU. Where the prospective member owns the financial instruments at the time of being hired or appointed, to the extent possible, such sale or disposal should be executed by the prospective member prior to taking office.

#### 4.4 Breaches of conflicts of interest rules, corrective measures, including disciplinary measures

30. Competent authorities should ensure that potential cases of non-compliance with conflicts of interest rules are addressed promptly, including, where relevant, any impact on supervisory decision-making.
31. Measures taken by competent authorities should be effective, proportionate and dissuasive. Measures should take into account the gravity of the breach, whether it was negligent or intentional and its duration, and include where appropriate disciplinary measures.

## 4.5 Other measures taken to address conflicts of interest

32. Competent authorities may take other measures to address conflicts of interest, including the suspension of access to confidential or sensitive information or the allocation of a different role or task at the competent authority or at another organisation.

## 4.6 Forbidden conducts

### 4.6.1 Prohibition of trading in financial instruments

33. Competent authorities should ensure that members of staff and members of their governance body do not trade in, and do not recommend or induce another person to trade or not to trade in the financial instruments referred to in Article 4a(3) point (a) of Directive 2013/36/EU.

#### *Scope of financial instruments covered*

34. For the purposes of Article 4a(3), point (a) and (b)(i) of Directive 2013/36/EU:

- a) ‘institutions supervised by their competent authorities’ should be understood as including institutions subject to the prudential supervision of competent authorities under Directive 2013/36/EU, including the European Central Bank with regard to matters relating to the tasks conferred on it by Regulation (EU) No 1024/2013;
- b) ‘affiliates’ should be understood as including those corporate entities, other than the supervised institutions’ parent undertakings or subsidiaries, which fall at least under any of the following categories:
  - i. entities which are included in the consolidated financial statements drawn up by the supervised institution;
  - ii. entities which fall within the same institutional protection scheme as referred to in Article 113(7) of Regulation (EU) 575/2013, as the supervised institution; or
  - iii. entities which are permanently affiliated to the same central body as referred to in Article 10 of Regulation (EU) 575/2013 as the supervised institution.

35. For the purposes of the first subparagraph of Article 4a(3), point (a)(i), of Directive 2013/36/EU, competent authorities should require that a written investment management agreement is in place that provides for independent portfolio management.

36. For the purposes of the second subparagraph of Article 4a(3) of Directive 2013/36/EU, when establishing whether a third party or collective investment undertaking predominantly invests in instruments issued by or referenced to the entities referred to in Article 4a(3), point (a) of Directive 2013/36/EU, competent authorities should take into account, among others, the investment policy or strategy.

#### 4.6.2 Cooling-off restrictions

##### *Scope of staff or members of the competent authority's governance body affected by the cooling-off periods*

37. For the purposes of Article 4a(3), point (b)(i) of Directive 2013/36/EU competent authorities should include those staff engaged in horizontal or cross-cutting functions who have been directly involved in the supervisory function or decision-making in relation thereto.
38. For the purposes of Article 4a(3), point (b)(ii) of Directive 2013/36/EU, competent authorities should consider 'entities providing services' as including entities to which tasks or parts of critical or important functions<sup>6</sup> of the institutions have been outsourced, as well as the provision of legal, accounting or consultancy services.
39. For the purposes of Article 4a(3), point (b)(iii) of Directive 2013/36/EU 'lobbying and advocacy activities' should include any professional activity conducted with the objective of, directly or indirectly, influencing the decision-making processes of the competent authority, the implementation of such decisions and any other activity under the scope of competence of the competent authority in accordance with Directive 2013/36/EU or, in the case of the European Central Bank, Regulation (EU) No 1024/2013, or the public perception of the competent authority. Secondments or unpaid leave activities involving positions within national ministries or other public bodies and EU institutions, agencies or bodies should not be considered as 'lobbying and advocacy activities'.

For these purposes:

- a) 'directly influencing' means influencing by way of a direct contact or communication with the competent authority or other action following up on such activities; and
- b) 'indirectly influencing' means influencing through the use of intermediate vectors such as media, public opinion, conferences or social events, targeting the competent authority.

##### *Notification procedures*

40. Competent authorities should put in place procedures requiring members of staff and members of their governance body to inform the competent authority of their intention to take up employment or accept any kind of contract for the provision of professional services with any institutions or entities falling under any of the following categories:
  - a) institutions subject to prudential supervision of the competent authority, including the direct or indirect parent undertakings, subsidiaries or affiliates of those institutions;

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1. <sup>6</sup> As defined in the EBA Outsourcing Guidelines (EBA/GL/2019/02).

- b) entities providing services to any of the institutions or entities mentioned in point a. above;  
or
  - c) entities conducting lobbying and advocacy activities directed at the competent authority.
41. These notifications should be provided at the latest when an offer has been received and before accepting such offer. If this conflicts with any relevant workers' rights as set out in national labour law, notifications should be provided no later than a point in time that allows the competent authority to consider appropriate cooling-off periods.
42. Competent authorities should put in place procedures with regard to members of staff or members of a competent authority's governance body who have applied for unpaid leave, to ensure that during the duration of the unpaid leave the concerned member does not enter into employment or accept any kind of contract for the provision of professional services for such an entity which may conflict with the legitimate interests of the competent authority.
43. Competent authorities should also require staff members or members of their governance body who intend to take unpaid leave to notify the authority within the periods set out in paragraph 41 if they intend to engage in activities with the institutions or entities referred to in paragraph 40; or, to notify their competent authority in good time before they begin any such activities during unpaid leave.

### *Assessment process*

44. Where competent authorities are responsible for determining the appropriate length of the cooling-off period applicable to a staff member or to a member of their governance body, competent authorities should establish a transparent process or collective body to assess the cooling-off period that should be applied to the member concerned pursuant to Article 4a(4) and (5) of Directive 2013/36/EU, taking into account the criteria set out in paragraph 46, and the measures to avoid conflicts of interest.
45. 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, together with the reallocation of conflicting tasks.

### *Length of the cooling-off periods*

46. Where competent authorities are responsible for determining the appropriate length of the cooling-off period applicable to a staff member or to a member of their governance body and subject to any limits set out in national law, they should take into account the following criteria in relation to the individual concerned to assess whether the cooling-off period should be extended to a period longer than the minimum periods set out in Article 4a(4) and (5) of Directive 2013/36/EU:
- a) the seniority of the staff member;

- b) the decision-making functions performed;
  - c) the nature of the work performed, including tasks performed for another organisation, e.g. another member of the European System of Financial Supervision or the Basel Committee, the level of involvement in the prudential supervision or decision-making directly applicable to the institution or entity concerned, the extent of access to confidential or sensitive information and the types of institutions or entities that the staff member may have contacted with;
  - d) involvement in any policy activities which could potentially be applicable to any institution or entity, including the institution or entity concerned;
  - e) the expected level of seniority or decision-making activities in the institution or entity concerned;
  - f) whether the potential position is with a private sector organisation that has significant scale of influence on financial sector practices and policy making.
  - g) the job description of the potential position;
  - h) previous professional contact with the institution or entity concerned;
  - i) the recruitment process used by the hiring organisation, in particular whether the potential position was subject to open and competitive recruitment;
  - j) other measures taken to address the conflict of interest;
47. In Member States where cooling-off periods must be established at the point of employment, where competent authorities are responsible for setting these terms (in conjunction with, where applicable, any relevant national bodies), they should determine the appropriate cooling-off period to be applied to certain job functions. Competent authorities should notify prospective employees of these periods in advance.
48. Consideration should be given to whether the cooling-off period should:
- a) be served in employment in the competent authority, provided that the member's access to confidential or sensitive information is terminated and that any duties relating to the supervisory function or decision-making in relation thereto, and policy development which relates to the scope of competence of the competent authority are ceased;
  - b) include a secondment to another public sector entity;
  - c) be fully or partly served after the cessation of employment of the concerned member at the competent authority.

## 4. Accompanying documents

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### 4.1 Final cost-benefit analysis / impact assessment

#### Introduction

1. As per Article 16(2) of Regulation (EU) No 1093/2010 (EBA Regulation), any guidelines and recommendations developed by the EBA shall be accompanied by an Impact Assessment (IA), which analyses ‘the potential related costs and benefits’. This analysis presents the IA of the main policy options included in this Consultation Paper on the draft Guidelines on supervisory independence of competent authorities under Directive 2013/36/EU (‘the draft Guidelines’). The IA is high level and qualitative in nature.

#### Problem identification and background

2. Directive (EU) 2024/1619 amends Directive 2013/36/EU (Capital Requirements Directive) as regards supervisory powers, sanctions, third country branches, and environmental, social and governance risks. It extends its scope to cover supervisory independence of competent authorities by introducing a new article (Article 4a) in Directive 2013/36/EU on this subject matter. Its main objective is to ensure that competent authorities, their members of staff and the members of their governance bodies are independent and to prevent that risks of conflicts of interest undermine the integrity of the Union financial system and harm the goal of an integrated banking and capital markets union.
3. Article 4a of Directive 2013/36/EU establishes new requirements applicable to the competent authorities and their members of staff and of their governance bodies on operational or functional independence, personal independence, transparency and accountability, and measures to prevent conflicts of interests such as declarations of interest, limitations to trading in financial instruments or cooling-off periods. Nevertheless, Article 4a does not set out in detail all practical aspects for the application of these new requirements.

#### Policy objective

4. The draft Guidelines on supervisory independence of competent authorities under Directive 2013/36/EU aims at providing support to competent authorities regarding the new requirements of Article 4a of Directive 2013/36/EU on the prevention of conflicts of interest in, and on the independence of, competent authorities.



## Options considered, assessment of the options and preferred options

5. Section C. presents the main policy options discussed and the decisions made by the EBA during the development of the draft Guidelines. Advantages and disadvantages, as well as potential costs and benefits from the qualitative perspective of the policy options and the preferred options resulting from this analysis, are provided.

### Issuing Guidelines on supervisory independence of competent authorities under Directive 2013/36/EU

6. The Guidelines on supervisory independence of competent authorities under Directive 2013/36/EU objectives is to give guidance on the prevention of conflicts of interest in, and on the independence of, competent authorities. Apart from the fact that the EBA is mandated to draft such guidelines, the two following options could be considered:

#### **Option 1a: Not issuing Guidelines on supervisory independence of competent authorities under Directive 2013/36/EU.**

#### **Option 1b: Issuing Guidelines on supervisory independence of competent authorities under Directive 2013/36/EU covering explicit aspects of Article 4a of this Directive and also non-explicit aspects which are necessary to ensure effective and consistent application of this Article.**

7. Not issuing Guidelines could be seen as giving the benefit of not creating an additional burden for competent authorities and granting them full latitude for the implementation of the supervisory independence and conflict of interests requirements laid down in Article 4a of Directive 2013/36/EU. The costs for competent authorities would be very heterogeneous and could thus be more or less significant depending on the manner the requirements would be implemented.
8. On the other hand, providing guidance on the supervisory independence and conflict of interests and setting out details on the practical aspects for their application could, on the contrary, lower the burden for competent authorities as it would support them in the implementation process by providing a framework for the implementation of these requirements and by clarifying terms – used in the Article 4a of Directive 2013/36/EU – that could have been subject to lack of understanding.
9. For instance, the clarification of the term “affiliates”, in the context of the requirements related to the trading in financial instruments issued by affiliates of supervised institutions, would limit the costs (e.g. staff costs) dedicated by competent authorities to the interpretation and analysis of this term. A similar example is the clarification of the term “members of staff” as this term could have been subject to a difficult, and thus burdening and costly, interpretation by competent authorities because some employment contracts (e.g. officials seconded to

competent authorities) could be not seen as obvious “members of staff”. On the latter term, two competent authorities specifically mentioned that clarifying it was much appreciated.

10. Then, it has to be noticed that the costs related to the implementation of the draft Guidelines would be attenuated by the fact that, taking into account that the risk of conflict of interest might differ depending on the competent authorities, the draft Guidelines would leave some flexibility to the competent authorities. For examples, competent authorities may – but would not be asked to – extend the application of the draft Guidelines to non-staff members carrying out supervisory tasks and competent authorities may waive some of the information that members of staff and members of the governance body should provide in the annual declarations of interests.
11. Finally, it is worth mentioning that the costs would not all be associated with the provisions set out in the Guidelines but with the underlying related requirements brought by Article 4a of Directive 2013/36/EU. For aspects non-explicitly mentioned in the Article 4a of Directive 2013/36/EU their costs are not deemed to be significant (for instance, the draft guidelines include the need of disclosures of the members’ recent roles in any institutions supervised by the competent authority with which they are expected to be directly involved for the purposes of supervision or decision-making or in an entity conducting lobbying and advocacy activities directed at the competent authority on matters for which they are expected to be responsible. The related costs should not be significant as those disclosures are limited to the time just before preceding the submission of the pre-employment declaration and the guidelines give flexibility to the competent authorities to require such disclosures in the annual declarations - if they consider it appropriate and they are also, somehow, absorbed by the costs of this Article’s implementation as those aspects are necessary to ensure effective and consistent application of this Article.
12. On the benefit side, amongst others, issuing Guidelines on supervisory independence of competent authorities under Directive 2013/36/EU would, even though leaving some latitude to the competent authorities, harmonize the application of the supervisory independence requirements amongst the competent authorities. Additionally, it will improve the efficiency of those requirements by specifying and/or detailing them.
13. On these grounds, **the Option 1b has been chosen as the preferred option** and EBA proposes to issue new Guidelines on supervisory independence of competent authorities under Directive 2013/36/EU covering explicit aspects of Article 4a of this Directive and also non-explicit aspects which are necessary to ensure effective and consistent application of this Article.

## Conclusion

14. The development of draft Guidelines on supervisory independence of competent authorities under Directive 2013/36/EU was deemed necessary to give guidance on prevention of conflicts of interests in, and on the independence of, competent authorities. The benefits would be the harmonization and the higher efficiency of the requirements of Article 4a of Directive

2013/36/EU which would support the resilience of competent authorities and the appropriate management of conflicts of interests. The costs associated with these draft Guidelines are not deemed to be material and the main costs are largely absorbed by the cost associated with the compliance with the Article 4a of Directive 2013/36/EU. As such costs will be exceeded by the aforementioned benefits. These draft Guidelines hence should achieve, with acceptable costs, their objectives.

## 4.2 Feedback on public consultation

### Summary of responses to the consultation and the EBA's analysis

| Comments                | Summary of responses received                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | EBA analysis                                                                                                                                                | Amendments to the proposals            |
|-------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------|
| <b>General comments</b> | Overall, the Guidelines are broadly welcomed and supported, as stakeholders noted that clear rules on appointment and tenure, and robust conflicts of interest arrangements are a cornerstone of genuine supervisory independence. They also consider it is essential to mitigate 'revolving doors' risks and preserve public confidence in the integrity of supervisory decisions. Stakeholders are also supportive of the proportionality approach taken to the extent that it should not undermine the minimum restrictions/core safeguards. | The EBA has taken note of the comments received and thanks respondents for their contributions. Answers to specific issues and comments are included below. | Guidelines amended as described below. |

#### Responses to questions in Consultation Paper EBA/CP/2026/23

**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?**

|                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |            |
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| <b>Concepts used by the Guidelines</b> | <p>We support the aim of clarifying concepts used in the Guidelines, as greater definitional precisions improve supervisory convergence and reduces heterogeneous interpretation across competent authorities. In our view, the most important principle is that any clarified concept should be operational, evidence-based, and auditable, with clear links to supervisory expectations and decision-making outcomes.</p>                                                                       | <p>The definition of concepts used by the Guidelines indeed aim at ensuring clarity, consistency and reduce heterogenous interpretation across competent authorities. They respond to practical situations encountered by competent authorities due to its different internal structures.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | No change. |
|                                        | <p>Clarify how proportionality is applied (scope, depth, frequency) while preserving non-negotiable baseline of procedural safeguards. Materiality thresholds should be described in a way that is measurable and consistently applied. Terms that relate to independence, conflicts management, and internal challenge functions should be accompanied by minimum expectation (refusal rules, escalation paths, record-keeping), especially where decisions can be sensitive or high impact.</p> | <p>As stated in the background to the Guidelines, they take into account that all competent authorities are prone to risks of conflicts of interest. However, different competent authorities might be prone to different levels of risk depending on their internal structure and the scope of their activities and powers. Therefore, the guidelines recognize that depending on their applicable legal framework and their internal structure some competent authorities may implement less complex or sophisticated arrangements, provided that this does not put at risk their ability to manage risks of conflicts of interest in a sufficiently prudent manner. Accordingly, flexibility is left to competent authorities regarding specific details for reasons of proportionality and to facilitate adaptation of the Guidelines to competent authorities' specificities.</p> |            |

**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?**

|                                                      |                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |            |
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| <b>Transparent, merit-based appointment criteria</b> | <p>The Guidelines should encourage competent authorities to apply objective selection criteria and to document the rationale for appointment and renewals. Where political or executive involvement exists under national arrangements, minimum safeguards should ensure that appointments remain shielded from undue influence and that decisions are auditable.</p> | <p>Article 4a(2), second subparagraph of CRD requires that members of a competent authority's governance body are appointed on the basis of published criteria that are objective and transparent. The Guidelines also require competent authorities to apply the principle of objectivity when appointing the members of the governance body and to make public the process, the criteria and the outcome of the process, as well as information on the profile of the appointed candidate. Administrative decision-making should always be documented appropriately; it is not considered necessary to specify it in this particular case. However, competent authorities are not responsible for appointment processes in all Member States. The guidelines can only address competent authorities, and not other bodies which take part in appointment processes: such issues may however be taken into account in ESA exercises assessing supervisory independence under the ESAs' joint criteria on supervisory independence.</p> | No change. |
|------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|

### Tenure design

Fixed terms are appropriate, but tenure rules should also address: (i) limits on repeated renewals (or, at minimum, reinforced justification and transparency for renewals); (ii) staggered terms to reduce “single-moment” capture risk; and (iii) clear, narrowly defined grounds and procedures for early removal, with documentation and, where possible, review safeguards.

Sections 4.1–4.2 should explicitly cross-reference minimum conflict-of-interest standards applicable before, during, and after tenure (including cooling-off where relevant), with clear disclosure, recusal, and record-keeping requirements.

Article 4a(2), second subparagraph CRD already establishes limits on repeated renewals, setting a maximum limit of 14 years for the term of office. The Guidelines further clarify how to calculate that 14-year limit. The CRD also establishes that members of the governance body can be dismissed if they no longer meet the (published) criteria for appointment or have been convicted of a serious criminal offence.

Regarding the appropriateness of cross-referring to minimum Col standards, please note that the ‘tenure period’ section 4.2 deals with the calculation of the 14-year limitation. The conflict-of-interest standards are set out in other sections of the Guidelines. These apply before, during and after tenure.

Clarification included on how CRD applies to periods on a governing body for appointments pre-11 January 2026.

**Question 3: Do you have any comments on sections 4.3 to 4.5 on arrangements to prevent conflicts of interest; breaches of conflicts of interest rules, corrective measures, including disciplinary measures; and other measures taken to address conflicts of interest? Do you agree with the proportionality approach taken therein?**

### Clear scope and definitions

The Guidelines should make explicit that Col coverage includes actual, potential and

The Guidelines define Col as a direct or indirect personal interest that influences or

No change.

perceived conflicts, and applies not only to individual staff but also to governance body members, external experts/contractors, and any persons with decision-shaping influence. It should also explicitly cover gifts/hospitality, outside interests, revolving doors, and situations where political, economic or reputational pressure may create a de facto conflict environment.

compromises, or may be perceived as influencing or compromising, the impartial and objective performance of their professional duties and responsibilities. The Guidelines apply not only to staff but also governance members, and establish that competent authorities may also apply them to non-staff carrying out supervisory tasks for them. The other aspects referred to are also embedded in the Guidelines.

|                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |            |
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| <b>Other pre-employment disclosures</b> | <p>The Guidelines do not establish safeguards for situations where a supervisor previously worked at a supervised institution. Although paragraph 18 allows disclosure of “recent roles” in supervised institutions, the Guidelines do not prescribe any mandatory safeguards to ensure independence. Add a requirement that competent authorities implement safeguards to when an examination is conducted in a bank where supervisors worked before.</p> | <p>The Guidelines have been drafted taking into account the proportionality principle as referred to in Article 4a (9) of Directive 2013/36/EU. These guidelines establish that all competent authorities should design and implement proportionate processes, rules and practices to prevent conflicts of interest. Specifically, the Guidelines establish that competent authorities may require prospective members of staff and members of their governance bodies to disclose information on recent roles in institutions with which they are expected to be directly involved for the purposes of supervision or decision-making, leaving to those competent authorities implement less complex or sophisticated arrangements, provided that this does not put at risk their</p> | No change. |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|



ability to manage risks of conflicts of interest in a sufficiently prudent manner.

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| <b>Rules to prevent conflicts of interest</b> | <p>The Guidelines do not address the situation where the same supervisor conducts multiple consecutive formal examinations on the same topic in the same institution. This can present a risk of bias. To strengthen independence, the Guidelines should foresee safeguards in both situations, ensuring that supervisory staff are not placed in roles where their neutrality could be questioned.</p> | <p>The Guidelines have been drafted taking into account the proportionality principle as referred to in Article 4a (9) of Directive 2013/36/EU. These guidelines establish that all competent authorities should design and implement proportionate processes, rules and practices to prevent conflicts of interest.</p> | <p>Section 4.3 amended.</p> |
|                                               |                                                                                                                                                                                                                                                                                                                                                                                                         | <p>The Guidelines establish the competent authorities may take other measures to address conflicts of interest, including the allocation of a different role or task at the competent authority or at another organisation.</p>                                                                                          |                             |
|                                               |                                                                                                                                                                                                                                                                                                                                                                                                         | <p>The Guidelines have also been amended to require competent authorities to have in place appropriate channels for internal reporting, follow-up and safeguards for persons reporting breaches of conflicts of interest rules in accordance with Directive (EU) 2019/1937 (Whistleblowing Directive).</p>               |                             |

|                                                                                |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                      |
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| <b>Mandatory disclosure and recusal rules/ minimum safeguards and controls</b> | <p>Minimum requirements should include: (i) periodic and event-driven declarations; (ii) clear recusal triggers; (iii) replacement procedures; and (iv) a central register/log. Importantly, the rationale and actions taken should be documented in a way that is auditable and defensible.</p> <p>The Guidelines should include minimum expectations for enforceability: mandatory disclosures, pre-clearance (where a limited permission regime exists), central registers/logs, periodic attestations and monitoring checks, Where exceptions are allowed (e.g., diversified funds), these should be narrowly framed and documented.</p> | <p>The Guidelines contain minimum harmonized standards for the submission of declarations of interests on a pre-employment, annual and ad-hoc basis. However, in order to account for the different institutional sets-ups and sizes of competent authorities, the Guidelines are not too prescriptive with regard to the internal procedural aspects relating to such declarations.</p>                                                                                                                                                                                                     | No change.           |
| <b>Breach handling and corrective measures</b>                                 | <p>We support the inclusion of corrective and disciplinary measures but recommend that the Guidelines further clarify: (i) a tiered approach to breaches (minor vs material); (ii) minimum response standards and timelines; (iii) remediation expectations (training, process fixes, enhanced monitoring); (iv) consequences for repeated breaches and (v) clear escalations for breaches. Where breaches may have influenced a decision, the Guidelines should encourage a documented review of the affected decision and, where appropriate, mitigation steps.</p>                                                                        | <p>The Guidelines contain minimum harmonized standards regarding breaches of Col rules and corrective measures. In particular, competent authorities should ensure that potential cases of non-compliance with Col rules are addressed promptly. In order to account for the different institutional sets-ups and sizes of competent authorities, the Guidelines are not too prescriptive with regard to the internal procedural aspects.</p> <p>The Guidelines have been amended to include reference addressing the potential impact on supervisory decision-making of a breach of the</p> | Section 4.4 amended. |

Col rules and to establish that measures taken should take into account the gravity of the breach, whether it was negligent or intentional and its duration.

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| <b>Protected reporting and escalation channels</b> | The Col framework should include effective internal reporting channels (including whistleblowing) with explicit protection against retaliation, clear follow-up procedures, and documentation of outcomes. Escalation pathways should be defined for high-sensitivity cases where ordinary line management is not an adequate safeguard. | The Guidelines have been drafted taking into account the proportionality principle as referred to in Article 4a (9) of Directive 2013/36/EU. These guidelines establish that all competent authorities should design and implement proportionate processes, rules and practices to prevent conflicts of interest.<br><br>The Guidelines have been amended to require competent authorities to have in place appropriate channels for internal reporting, follow-up and safeguards in place for persons who report breaches in accordance with Directive (EU) 2019/1937. | Section 4.3 amended |
|----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|

**Question 4: Do you have any comments on section 4.6.1 concerning the prohibition of trading in financial instruments? Do you agree with the proportionality approach taken therein?**

|                                                                     |                                                                                                                                                                                                                                                                    |                                                                                                                                                                                                                                                                                                         |            |
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| <b>Scope of the prohibition of trading in financial instruments</b> | The scope should be defined clearly: which categories of persons are covered (governance body members, senior management, supervisory staff, staff in policy/decision-shaping roles, and relevant contractors), and which instruments fall within scope (including | The scope of application of the Guidelines is set out in section 'Scope of application' (paragraphs 6 to 9) and is aligned with the personal scope of application set out in Article 4a of CRD. The instruments falling under the prohibition of trading is set out in Article 4a(3), point (a) of CRD. | No change. |
|---------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|

derivatives, complex products, and instruments linked to supervised entities or their groups). Consider explicitly addressing indirect exposures (e.g., through closely related persons or controlled entities) to prevent circumvention.

The Guidelines further clarify some of the concepts and aspects referred to in that article, including the exception of investments in collective investment undertakings.

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**Question 5: Do you have any comments on section 4.6.2 on cooling-off restrictions? Do you agree with the proportionality approach taken therein?**

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| <b>Scope and coverage</b>                                 | Cooling-off restrictions should clearly apply to governance body members, senior management, and staff in roles with material influence over supervisory judgments, enforcement decisions, policy positions, or sensitive information. The scope should also address movements to: (i) supervised entities and their groups, (ii) entities closely linked to supervised groups (e.g., key service providers, major consultants in supervisory matters), and (iii) roles that involve representation, lobbying, compliance advisory, or litigation support in matters connected to the competent authority's work. | The scope of application of the cooling-off provisions is set out in Article 4a(3), point b) of the CRD. The Guidelines have further specified some concepts used in the CRD text such as 'institutions supervised', 'affiliates', 'lobbying and advocacy activities' or 'entities providing services', as well as other aspects related to the cooling-off restrictions, such as criteria for the determination of the cooling-off periods, which take into account elements such as the 'seniority of the staff members' or the 'decision-making functions performed', amongst others. | No change. |
| <b>Minimum baseline duration and risk-based extension</b> | We support a proportionality approach for administrative implementation, but the core safeguard should have a minimum baseline (i.e., a defined minimum cooling-off period for high-impact roles). Proportionality can then operate through risk-based extensions or                                                                                                                                                                                                                                                                                                                                              | Article 4a(4) and (5) of CRD set the minimum baseline, whether competent authorities can go beyond this depends on the national law. To ensure that appropriate, proportionate and consistent assessment of cooling-off practices are used by competent authorities for the                                                                                                                                                                                                                                                                                                              | No change. |

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tailored restrictions (e.g., additional limits where the individual had direct responsibility for a specific institution/portfolio, or where the destination role creates a clear influence risk).

assessment of cooling-off periods (where national law enables cooling-off periods beyond the CRD minimum), the Guidelines set out procedures and assessment criteria to be considered by competent authorities when making their determinations on cooling-off periods.

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| <b>Enforceability: pre-clearance monitoring</b> | <b>disclosure, and</b> | Cooling-off restrictions should be operationalised through: mandatory disclosure of post-employment plans, pre-clearance for certain moves where allowed by national law, written decisions on whether restrictions apply, and monitoring mechanisms. Any exemptions should be narrowly framed, reasoned, documented, and subject to internal review. | The Guidelines establish notification procedures which require members of staff and members of the competent authority's governance body to inform the competent authority of their intention to take up employment or accept any kind of contract for the provision of professional services. Likewise, the Guidelines set out provisions on the assessment process and the criteria for determining the length of the cooling-off periods. | No change. |
| <b>Confidentiality and use of information</b>   |                        | The Guidelines should explicitly cross-reference confidentiality obligations and expectations regarding the non-use of non-public supervisory information after departure, including practical reminders and documented acknowledgements (and consequences for breaches where legally possible).                                                      | The Guidelines include, amongst the measures to address Col, the suspension of access to confidential or sensitive information. They also explicitly require competent authorities to remove or limit, while assessing notifications of post-employment plans, the individual's access to confidential or sensitive information and participation in relevant decision-making activity, together with the reallocation of conflicting tasks. | No change. |

