



EBA REPORT ON THE SUPERVISORY INDEPENDENCE OF COMPETENT AUTHORITIES

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AUTHORITY

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Abbreviations

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| AML/CFT | Anti-money laundering/countering the financing of terrorism |
| BCBS | Basel Committee on Banking Supervision |
| BU | Banking Union |
| CA | Competent authority |
| DGS | Deposit guarantee scheme |
| DGSDA | DGS designated authority |
| EBA | European Banking Authority |
| EEA | European Economic Area |
| EFTA | European Free Trade Association |
| EIOPA | European Insurance and Occupational Pensions Authority |
| ESFS | European System of Financial Supervision |
| ESMA | European Securities and Markets Authority |
| EU | European Union |
| FATF | Financial Action Task Force |
| IADI | International Association of Deposit Insurers |
| IOSCO | International Organization of Securities Commissions |
| RA | Resolution Authority |

Executive Summary

Background

The EBA has an obligation to foster and monitor supervisory independence¹. Independence is key to ensuring that fair, effective and transparent decisions are taken by appropriately resourced competent authorities. In turn, this supports the objectives of the European System of Financial Supervision (ESFS): ensuring financial sector rules are adequately implemented, preserving financial stability, ensuring confidence in the financial system and providing sufficient protection for customers and consumers of financial services.

The EBA has been carrying out work to establish how, and the extent to which, key aspects of supervisory independence have been incorporated into the governance and activities of CAs within the EBA's scope of action. Parallel work has been carried out by ESMA and EIOPA in relation to CAs in the securities and insurance sectors.

Methodology

The EBA decided to carry out this initial work through a self-assessment survey and to ask all CAs within its scope of action to complete the survey. The survey provided the EBA with a large amount of information to use in determining the direction of future work and an initial information base for that work. The current project did not extend to carrying out assessments of the information provided, or of the extent to which individual authorities can be said to be independent, and has not done so. By sharing the self-assessment information contributed, together with some initial EBA analysis, stakeholders can use this report to develop their own views.

The EBA categorised CAs in five groups:

- prudential supervisors of credit institutions;
- conduct supervisors of credit institutions, payment institutions and non-bank creditors;
- AML supervisors of financial sector operators, including credit institutions, investment firms and insurance companies;
- resolution authorities;
- deposit guarantee schemes or their designated authorities where deposit guarantee schemes are private.

In total, 82 CAs out of approximately 100 identified as potential respondents contributed to the survey². A list of contributing CAs is set out in Annex 1.

¹ Article 8(1)(b) of Regulation (EU) No 1093/2010.

² Unfortunately, no comprehensive list of CAs is currently available. The CAs that responded include the principal banking and AML/CFT CAs in each EU and EEA EFTA State. The work of ESMA and EIOPA also covers some CAs that did not respond to the EBA's survey, such as certain insurance or securities supervisors, which are also AML/CFT supervisors. Other CAs

Taking into account existing requirements in Union sectoral legislation and international standards on supervisory independence³, and in common with the approach of ESMA and EIOPA, the self-assessment and this report are organised around four principles of supervisory independence:

- operational independence;
- financial independence;
- personal independence;
- accountability and transparency.

Each of these principles is explained in more detail in the first chapter of the report. Subsequent chapters report on each of these principles in turn using the survey self-assessment responses. As the aim of the self-assessment survey was not to look at the independence of individual authorities, the report takes the approach of highlighting some areas where survey responses show consistent or different practices across the sector, where responses from CAs highlight that there may be concerns about current arrangements in particular areas, or where information is limited and further work may be merited. The first chapter sets out these findings in respect of each of the principles of supervisory independence used by the EBA.

The report highlights the main observations resulting from the information gathered and uses a factual approach based on the self-assessments provided by CAs. The report does not provide an assessment of the responses or the independence of individual CAs.

Conclusion

Overall, CA self-assessments provide a reasonably consistent picture of a good level of mechanisms being in place to support supervisory independence. The precise nature of those mechanisms frequently varies, however, and there are indications of limits on the mechanisms in certain authorities.

These indications often concern CAs that do not have banking prudential and resolution responsibilities. In the prudential and resolution areas, practices and frameworks have often been heavily influenced by authorities being housed within, or with close ties to, central banks that have long-established independence requirements, including under Article 130 of the Treaty on the Functioning of the European Union. Therefore, there may be scope for the EBA to focus more on fostering the extension of those practices and frameworks to supervisory areas where criteria in EU sectoral legislation do not exist and/or international standards are less well-established (e.g. in relation to conduct supervisors and DGS designated authorities), in addition to seeking greater legislative consistency in the tools and powers that should be available to CAs.

that did not contribute tended to be those with mandates that only partially fall within the EBA's scope, such as consumer protection authorities that also cover non-financial services issues, and some ministries with conduct, AML/CFT or DGS responsibilities.

³ Annex [3] summarises the relevant existing Union sectoral requirements relating to supervisory independence, together with applicable international standards.

Potential issues are not, however, limited to non-prudential authorities. In particular, there is scope for greater clarity on personal independence (such as terms and removal conditions for CA senior management and board members, conflicts of interest of staff and the scope of non-contractual liability for CAs and their staff) and further consideration of what is required to ensure the independence of financial and staff resources while ensuring accountability.

At the same time, the survey has not indicated any overall difference in the standards that should apply to different types of supervisor. This is supported by the consistency of the topics addressed and criteria found at international level across the various banking, resolution, DGS, AML/CFT, insurance and securities standards. Therefore, even if future work on fostering independence were to focus on particular types of supervisor, the evidence so far is that supervisory independence and the general standards to be expected do not need to be sector-specific. Where specific standards are needed, such as the principle of segregation of resolution from supervision, they could be accommodated within a cross-sector framework.

Next steps

The EBA will use the findings to consider, together with ESMA and EIOPA, how to further develop the monitoring and fostering of supervisory independence. Potential activities might include:

- **Monitoring supervisory independence through periodic surveys**

Periodic surveys could be used to monitor changes in approaches to supervisory independence, using this first survey as a baseline. The survey could be refined in the light of the experience gained from this first survey and the work on identifying criteria for assessing supervisory independence (see below). Further surveys could focus on particular aspects of supervisory independence in order to provide greater depth.

- **Monitoring conflicts of interest**

The EBA already monitors the personal independence of members of its Board of Supervisors, Resolution Committee and Anti-Money Laundering Standing Committee and publishes declarations of interest on its website⁴. This monitoring provides assurance of the existence of conflicts of interests of those members, who are the heads and senior representatives of CAs. Further analysis of conflict of interest policies at CAs could be carried out by the EBA's Ethics Officer with a view to establishing the scope for greater convergence in this area.

- **Establishing common EU-wide criteria for supervisory independence**

The supervisory independence requirements for the banking sector in EU law and international standards are partial and fragmented, especially in relation to conduct supervision. A common EU-wide platform for competent authorities would be desirable

⁴ See the [EBA's webpage on its conflict of interest policy for non-staff](#).

in terms of supervisory independence. This might involve establishing clear criteria to further develop on the four principles already identified, setting out the standards for supervisory independence in the EU. Given that many CAs supervise the insurance and/or securities and markets sectors, these criteria should, as far as possible, be established on a cross-sectoral basis.

- **Benchmarking/assessment of supervisory independence**

The EBA could then use the principles and criteria established to benchmark or assess the extent to which the criteria are met. This could be done through dedicated peer review exercises, when assessing the adequacy of resources, degree of independence and governance arrangements as part of other peer reviews, and in exercises such as the EBA's AML/CFT implementation reviews of CA approaches to AML/CFT supervision.

- **Advice on legislative change**

The EBA plays a role in advising the Commission on legislative changes needed to foster supervisory convergence. Not all criteria are likely to need legislative support, but there may be cases where establishing standards in legislation could be the most effective approach, for example, in relation to establishing more consistent tools and powers for CAs.

In light of the self-assessment responses, focus areas for this work could include: the role of supervisory independence when supervisors are part of ministries or are under close ministry control; the adequacy and external delegation of supervisory powers; the impact of government budget rules and controls over staffing and salary scales; clarity over liability for supervisory actions; and conflicts of interest. Where joint priorities are identified, work could be carried out with the other ESAs to ensure a consistent approach and avoid duplication.

Competent authorities, ministries and legislators and wider stakeholders may also use this report and its findings to understand how supervisory independence could be developed further within their respective jurisdictions.

Finally, this report will be submitted to the Commission as the EBA's contribution to the Commission's own report on supervisory convergence, which it will be developing as part of the current ESAs Review⁵. The EBA's work on this topic will, in turn, take into account the outcome of that report.

⁵ See Article 81(1)(a)(i) of Regulation (EU) No 1093/2010.

1. Survey methodology and findings

1.1 The survey

1. In order to receive input on the status of supervisory independence, the EBA asked all CAs within its scope of action to complete a survey in mid-April 2021. The survey sought to cover CAs in five different sectors:
 - prudential banking supervision;
 - bank resolution;
 - AML/CFT supervision;
 - banking and payments conduct and consumer protection supervision;
 - DGS/DGSDAs/relevant administrative authorities.
2. The survey was closely aligned with the survey conducted by ESMA, which in turn was based on an IOSCO questionnaire. The EBA survey took into account some additional questions to reflect specific resolution and deposit guarantee scheme issues. As that questionnaire also reflected international standards applicable to banking and AML/CFT supervision, using it has enabled a consistent approach to be obtained. A copy of the survey is set out in Annex 2.
3. The report highlights the main observations resulting from the information gathered and uses a factual approach based on the self-assessments provided by CAs. The report does not provide an assessment of the responses or independence of individual CAs. The number of CAs may not always add up to the total number of participating CAs. This is mainly due to the different level of detail provided. Where CAs did not provide certain information, respective CAs are not mentioned in a footnote. Therefore, converse conclusions should be handled with care.
4. 82 substantial responses were received. While the EBA relied on Member States to identify which authorities should complete the survey, it would appear that more than three quarters of CAs that fell within its scope did provide a response. Annex 1 sets out the competent authorities which responded to the survey, together with the references used in this report and the sectors covered by them.
5. The level of detail provided in response to survey questions varied. However, very broadly, more detailed responses tended to be provided by prudential banking supervisors which have historically been the CAs involved in the core of the EBA's work and whose heads are members of the Board of Supervisors. Less detailed responses tended to be provided by CAs that are involved in specific aspects of the EBA's work such as DGS(DA), conduct and AML/CFT

supervisors from outside the banking sector. A few authorities did not participate or provided limited responses as they will be covered by parallel work being carried out by ESMA and EIOPA.

6. Out of 82 survey responses, 31 relate to prudential banking supervisory authorities, where only the ECB is an exclusive prudential banking supervisor. 35 survey responses relate to CAs that are resolution authorities, of which only 4 CAs⁶ are exclusive resolution authorities. 45 responses relate to conduct authorities, of which 10 CAs⁷ are exclusive conduct authorities (mostly consumer authorities). 48 survey responses relate to AML/CFT supervisors, of which 14 CAs⁸ are exclusive AML/CFT supervisors (from an EBA perspective). Of these 14 authorities that act exclusively as AML/CFT supervisors, 5 CAs⁹ are FIUs with additional AML/CFT responsibilities, 4 CAs¹⁰ are also insurance supervisors under EIOPA's remit and 2 CAs¹¹ are also securities regulators under ESMA's remit. Finally, 33 responses relate to authorities that are DGSs or DGSDAs, of which 14 CAs¹² belong exclusively to the DGS sector. Of these 14 CAs, 13¹³ act exclusively as DGSs and 1 CA¹⁴ is an authority that acts exclusively as a DGSDA. In summary, 43 CAs cover only one sector.

⁶ SRB, ES (FROB), RO (FSA), SK (RA).

⁷ BE (FPSE), CY (CPA), EL (CPA), FI (FCCA), IE (CCPC), IS (CPA), NL (ACM), NO (CPA), RO (CPA), SI (MIRS).

⁸ BG (FIU), CY (CMA), ES (SEPBLAC), HR (FI, HANFA), IT (IVASS), LU (CAA), MT (FIU), PL (FIU), PT (ASF, CMVM), RO (FIU), SI (AML, AZN); CY (CMA) and PT (CMVM) are also securities regulators under ESMA's remit; IT (IVASS), LU (CAA), PT (ASF) and SI (AZN) are also insurance supervisors under EIOPA's remit.

⁹ BG (FIU), ES (SEPBLAC), MT (FIU), PL (FIU), RO (FIU); ES (SEPBLAC) is a devoted AML/CFT supervisor (and FIU) which depends functionally, for resources and staff, on a committee (CPBCIM) with AML/CFT tasks under the Ministry of Economy and Finance. The CPBCIM is presided by the Secretary of State for the Economy and Business Support (at the Ministry of Economic Affairs and Digital Transformation) and its members comprise representatives of supervisory bodies of financial institutions (BdE, CNMV, DGSFP) and of other authorities with competences in this field (law enforcement authorities, prosecutor's office, tax authorities, etc.).

¹⁰ IT (IVASS), LU (CAA), PT (ASF) SI (AZN).

¹¹ CY (CMA), PT (CMVM).

¹² BE (DGS), BG (BDIF), CY (DGS), CZ (DGS), EE (DGS), EL (MoF), ES (FGD), HR (HAOD), HU (DGS), LT (DGS), MT (DGS), NO (DGS), PT (DGS), RO (DGS).

¹³ BE (DGS), BG (BDIF), CY (DGS), CZ (DGS), EE (DGS), ES (FGD), HR (HAOD), HU (DGS), LT (DGS), MT (DGS), NO (DGS), PT (DGS), RO (DGS).

¹⁴ EL (MoF).

Figure 1. Number of CAs responsible for each supervisory sector

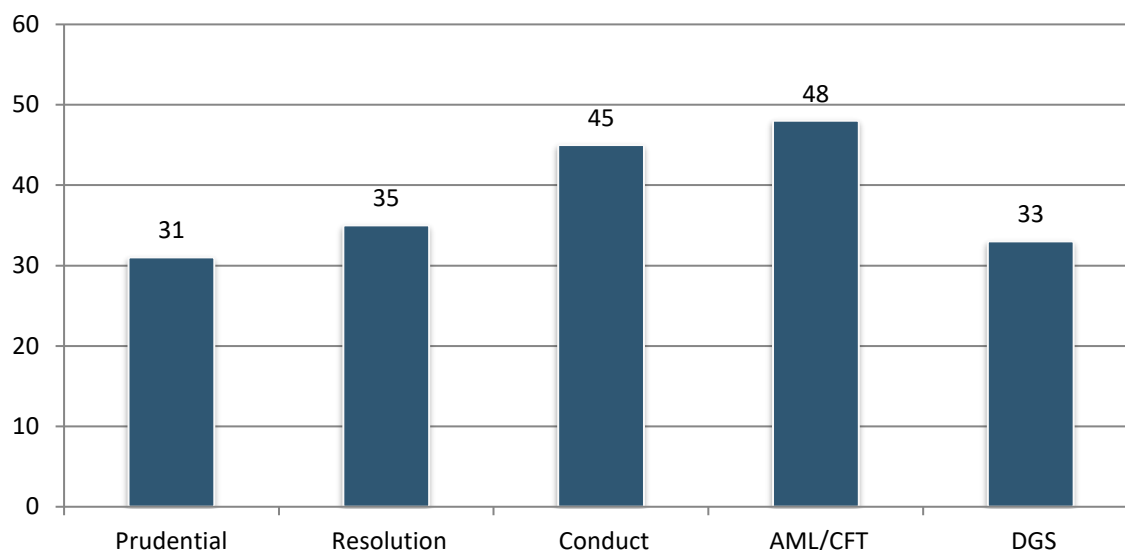
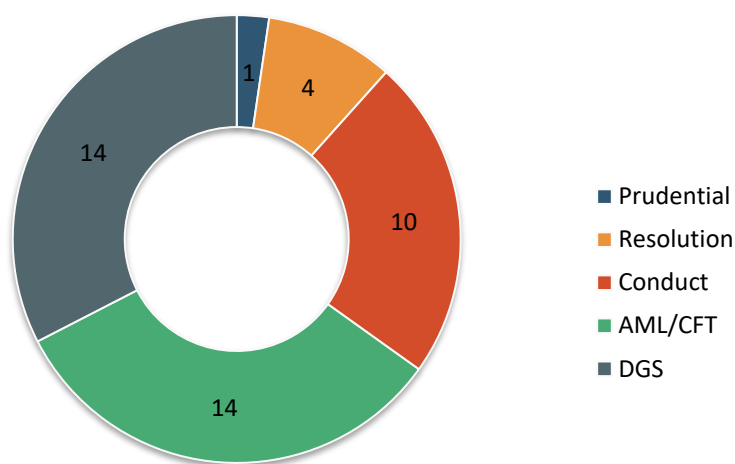


Figure 2. Number of CAs responsible for only one supervisory sector



7. Except for the ECB, all 31 CAs which are prudential banking supervisory authorities have further supervisory responsibilities within the scope of the survey: 14 CAs¹⁵ cover all five sectors; 11 CAs¹⁶ cover all sectors except DGS/DGSDA; 1 CA¹⁷ covers all sectors except AML/CFT; 1 CA¹⁸ covers all sectors except conduct; and 3 CAs¹⁹ cover prudential banking supervision, conduct

¹⁵ AT (FMA), CY (CBC), DE (BaFin), FR (ACPR), IE (CBI), IS (CBI), IT (BoI), LI (FMA), LT (BoL), LU (CSSF), LV (FCMC), NL (DNB), PT (BoP), SI (BS).

¹⁶ BE (NBB), BG (BNB), CZ (CNB), DK (FSA), EE (FSA), EL (BoG), ES (BdE), HR (HNB), HU (MNB), NO (FSA), SK (NBS).

¹⁷ MT (MFSA): for payments it has a joint remit with the Central Bank of Malta.

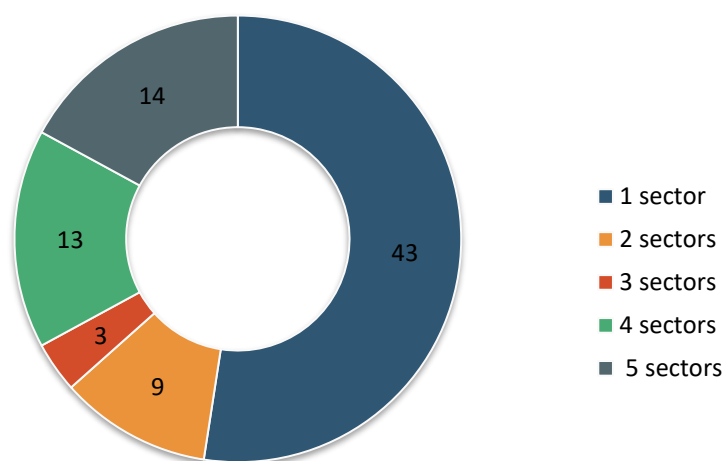
¹⁸ RO (NBR).

¹⁹ FI (FIN-FSA), PL (KNF), SE (FSA).

and AML/CFT. In summary, 14 CAs²⁰ cover all five sectors, 13 CAs²¹ cover four sectors and 3 CAs²² cover three sectors.

8. Finally, there are 9 CAs²³ covering two sectors. 4 CAs²⁴ cover the AML/CFT and conduct sector. 3 CAs²⁵ are a resolution authority and a DGS at the same time. 1 CA²⁶, that is also a securities regulator under ESMA's remit, covers the resolution and AML/CFT sectors and another CA²⁷, that is also a securities regulator under ESMA's remit, covers the resolution and the conduct sectors.

Figure 3. Number of supervisory sectors covered by CAs



1.2 Methodology

9. The survey was developed following a review of international standards relating to supervisory independence in the sectors referred to above and of requirements in Union sectoral legislation. A summary of these international standards and criteria in EU sectoral legislation is set out in Annex 3.

10. The EBA also carried out a high-level comparison with the international standards that apply in the securities and insurance sectors. Although those international standards are worded and

²⁰ AT (FMA), CY (CBC), DE (BaFin), FR (ACPR), IE (CBI), IS (CBI), IT (BoI), LI (FMA), LT (BoL), LU (CSSF), LV (FCMC), NL (DNB), PT (BoP), SI (BS).

²¹ BE (NBB), BG (BNB), CZ (CNB), DK (FSA), EE (FSA), EL (BoG), ES (BdE), HR (HNB), HU (MNB), MT (MFSA), NO (FSA), RO (DGS), SK (NBS).

²² FI (FIN-FSA), PL (KNF), SE (FSA).

²³ AT (MoE), BE (FSMA), EL (HCMC), ES (CNMV), FI (RA/DGS), LV (CRPC), NL (AFM), PL (BFG), SE (RA/DGS); EL (HCMC) and ES (CNMV) are also securities regulators under ESMA's remit.

²⁴ AT (MoE), BE (FSMA), LV (CRPC), NL (AFM).

²⁵ FI (RA/DGS), PL (BFG), SE (RA/DGS).

²⁶ EL (HCMC).

²⁷ ES (CNMV).

structured differently, the requirements were broadly consistent. The EBA therefore decided to use the survey created by IOSCO to gather information on its supervisory independence standards, which was also being used by ESMA for this purpose with its competent authorities. The survey was adapted to include additional core information such as information on structures, resources, entities under supervision and supervisory inspections. It was also adapted to include questions on topics specific to the banking sector, risk-based supervision, supervision of private sector deposit guarantee schemes and segregation of prudential supervision and resolution.

11. In reviewing the international standards, the ESAs concluded that it would be useful to categorise the standards in order to provide a clearer structure to the differing sectoral standards, to aid the analysis of the responses and hence ensure consistency across the ESAs reports. The ESAs ultimately agreed on a set of four categories of standards: operational independence, financial independence, personal independence, and accountability and transparency.

12. It was also apparent that these categories are not mutually exclusive. Some standards can be placed in more than one category, and there is particular overlap between operational and financial independence and between operational and personal independence. Nevertheless, the four categories have proved to be a useful framework on which to structure the survey and this report. The four categories are therefore described briefly below and the remainder of the report is structured around these categories. One section reports on the findings for a category of supervisory independence and sets out the relevant international standards considered.

Operational independence

13. Operational independence allows CAs to operate free from the day-to-day influence of government and industry. This is important as it allows them to carry out their supervisory mandates in a consistent and objective manner, and to ensure that decisions are not influenced by short-term political, commercial or industry interests.

14. When analysing CAs independence from the operational angle, consideration was given to the absence of interference from governments, authorities, commercial and sectoral interests, the adequacy of their legal powers and the adequacy of the resources available.

Financial independence

15. To be independent, CAs need to have adequate funding and the ability to use it to fulfil their mission. Supervisory effectiveness is dependent on financial independence to ensure that CAs have the freedom to determine their staffing, training and remuneration needs.

Personal independence

16. The independence of CAs implies personal independence which can be analysed at the level of the management bodies (e.g. their composition, appointment and removal of members,

duration of their mandate and its potential renewal) and of staff. Moreover, in order to act independently and avoid undue influence from industry, it is important that supervisors have legal protection in the bona fide execution of their roles.

Accountability and transparency

17. Accountability and transparency are an essential part of effective supervision. Having effective accountability and transparency mechanisms helps ensure that responsibility lies with CAs for their activities and decisions. If responsibility in practice lies elsewhere, such as at government level, this is likely to lead to mechanisms being established to oversee the CA, impinging on its supervisory independence.

1.3 Findings

18. The detailed analysis of the survey is set out in subsequent chapters of this report, one for each of the principles of supervisory independence. As the survey is based on a self-assessment approach, the analysis is largely a factual one, which aggregates and reports on the information provided by CAs. It identifies particular areas where there may be clear variations or limitations in the implementation of the principles, as well as potential gaps in the information available.

19. Here we set out the key findings based on the analysis, which are once again categorised under the four principles of supervisory independence.

Operational independence

20. A majority of 47 of 82 CAs confirmed the existence of legal provisions defining and pursuing operational independence from politics. For many CAs, these legal provisions are supplemented by internal rules, policies and codes of ethics.

21. In general, CAs confirmed that they are autonomous authorities, which operate independently on a day-to-day basis and are not bound by instructions from government or any other body or institution. Nevertheless, while the majority of CAs are established as independent bodies, more than 20 CAs are either a government ministry, part of a ministry or an administrative body under the authority of government ministries. There is a marked difference between sectors here: comparatively, this is primarily an observation relating to conduct supervisors but also in relation to certain CAs that exclusively or primarily act as AML/CFT supervisors or DGS(DA)s, and less commonly in relation to prudential supervisors and resolution authorities. However, that does not mean that these supervisors cannot be operationally independent from politics per se.

22. Approximately half of the CAs are required by law to consult with government in general, a ministry or other public authorities in the exercise of their regulatory powers.

23. The vast majority of participating CAs clearly stated that overall they enjoy adequate legal powers and authority, taking into account the nature of their jurisdiction's markets.

24. The vast majority of CAs stated that they have adequate operational resources to fulfil their mandates. However, staffing levels of CAs vary widely, even after taking into account the size of national banking sectors and differing financial regulatory and institutional frameworks.

25. A minority of CAs indicated restrictions from centralised government budget rules or salary scales. This can place constraints on their ability to recruit and retain experienced staff, particularly in highly specialised areas.

26. Some differences were seen in the responses received from CAs operating in different sectors. Most notably conduct and AML supervisors, as well as DGS(DA)s, tend to be under closer control of the government. Furthermore, on the aspect of the adequacy of operational resources some conduct supervisors and AML authorities highlighted the difficulties in recruiting and retaining experienced staff.

Financial independence

27. While almost all CAs reported adequate funding, a variety of funding models are used. The majority of CAs are either financed entirely by revenues received from supervised entities or by a combination of these revenues and public funding.

28. Although a substantial number of CAs reported that their budgets are approved by the board alone, this does not mean that they are fully autonomous in defining them. The budgets of most CAs require approval from parliament, the government, the finance ministry or a combination of these bodies. The overall trend suggests that funding is adequate, taking into account industry size and complexity and the types of regulatory and supervisory functions concerned.

29. The vast majority of CAs decide for themselves on the number of employees they have and when to hire new staff. A few authorities mentioned, however, that they do not have the autonomy to decide on staffing or salary levels.

30. In general, there were no significant differences in the responses received from CAs operating in different sectors, although standalone conduct authorities were more likely to note that their budget requires approval from the government or parliament, or is based on a letter of allocation from the Finance Ministry and that they do not have autonomy to decide on hiring staff or to give allowances to staff. Resolution authorities' decisions need government approval or consultation when they imply the release of public funds or have immediate financial effects or systemic implications for the financial system or the real economy.

Personal independence

31. A large majority of 72 of 82 CAs stated that their heads and governing boards are subject to mechanisms intended to protect independence, such as procedures for appointments, renewals, terms of office and criteria for removal. 9 CAs did not confirm that such mechanisms to protect independence exist, while 2 CAs did not provide any information.

32. In general, the members of the governing body are appointed by decision of either the executive branch or the Head of State; sometimes by the legislative branch or other appointing bodies. Sometimes several appointing bodies exist, each selecting a few members of the governing body, or some or all members are appointed by virtue of their affiliation to another entity. In most cases, appointments are based on requirements that include financial services expertise and/or experience, management skills, a good reputation, the highest degree of integrity, lack of criminal convictions, no history of insolvency proceedings and no conflicts of interest. Terms of appointment for members of the governing body or head of the CA vary between two and seven years with some CAs allowing for an indefinite term. The majority have a term of five years and provide for the renewal of this term.
33. Almost all CAs indicated that they have specific procedures for the removal of members of the governing body or of the head of the CA, with limited grounds for such dismissals specified by law. In most cases these grounds are that they no longer meet the conditions stipulated for the appointment, have been proven guilty of serious misconduct or there is permanent incapacity or long-lasting absence due to illness or accident.
34. A few CAs indicated that the legislation in force does not offer legal protection or that it affords only limited legal protection for staff when they discharge the CA's duties. There are also differences with regard to the type of legal protection afforded.
35. In a number of jurisdictions, liability rests solely with the CA, but most CAs will take recourse against staff or board members if they have acted or made omissions intentionally or with gross negligence. Other CAs reported protection for staff in the bona fide discharge of their duties, with third parties only able to hold staff liable in certain circumstances, such as gross negligence. Some CAs provide financial support to staff such as insurance contracts or loans/allowances to cover proceedings initiated by third parties.
36. However, a significant number of CAs did not provide details on the limitations on staff liability or indicated that staff could be liable for negligence without explaining how this achieves adequate legal protection for staff in the bona fide discharge of the CA's functions and powers.
37. About half of the participating CAs have cooling-off rules in place for board members and/or staff, through national law or internal rules. However, their scope of application and duration varies significantly. In particular, some cooling-off provisions only apply to board members, certain board members, staff or certain senior staff. In some cases, these provisions depend on a contractual agreement.
38. The duration of the cooling-off rules varies between three months and two years and may be shortened by board decision in some instances. Some CAs that do not use the concept of cooling-off after termination apply the concept of prior garden leave which may be seen as a form of 'internal cooling-off'. The majority of CAs indicated that they apply conflict of interest rules during the notice period, mostly stating that they do not have a separate set of rules that apply during notice periods but apply generic rules that cover the entire period of employment.

39. Many CAs stated that board members and staff remain bound to confidentiality provisions after the termination of their position.

40. There is a marked difference between sectors here. Whereas all prudential supervisors confirmed that mechanisms intended to protect independence exist, several conduct authorities and AML/CFT authorities and 4 out of 13 authorities which act exclusively as DGSs did not confirm the existence of any such mechanisms. Furthermore, the legislation of a comparatively large number of DGSs appears to offer no, or very limited legal protection.

Accountability and transparency

41. All CAs reported that they ensure public transparency through the publication of documents such as their annual report, budget or financial statements and, to a large extent, their strategic plans and/or objectives. Publicity for sanctions and supervisory measures is more mixed, depending also on the sectors concerned.

42. A significant number of CAs reported that they are accountable to some extent to their national governments or ministries and an even greater number of CAs are accountable to parliaments. Where accountability is through the government or another external body, particular rules on reporting or accountability mechanisms apply. Safeguards regarding the use or disclosure of confidential information vary between jurisdictions.

43. Moreover, all CAs reported that they are subject to internal and/or external audit mechanisms. CAs consider that their decision-making processes generally include sufficient procedural safeguards (with some particularities in the area of resolution), in line with general rules of administrative procedure, and review mechanisms that include judicial review.

44. Some differences were seen in the responses received from CAs operating in different sectors. Notably, resolution and AML authorities have some particularities as regards the level of disclosure of the measures they take and the administrative proceedings they follow. Some DGSs do not report the existence of accountability mechanisms and procedural safeguards (on the grounds that they do not have decision-making powers), while some AML and resolution authorities reflect a higher level of accountability to the government. Finally, CAs which are accountable to the government or an integral part of ministries also reported specificities concerning safeguards for confidential information, including references to transparency laws.

2. Operational independence

2.1 Introduction

46. The operational independence of CAs is considered taking into account (i) the absence of interference from the government, commercial and sectoral interests, (ii) the adequacy of the legal powers of CAs to perform their tasks and fulfil their responsibilities, (iii) the adequacy of their operational resources covering staffing and also their investments in IT software and hardware.

47. Operational independence allows CAs to operate free from the influence of the government and industry on a day-to-day basis. This is important to allow them to carry out their regulatory mandate in a consistent and objective manner and ensure that decisions are not influenced by short-term political, commercial or other sectoral interests.

2.2 International standards

48. The BCBS, in its *Core Principles for Effective Banking Supervision* paper, set out the minimum standard for sound prudential regulation and supervisory systems. BCBS Principle 2 includes, inter alia, the duty of the supervisor to operate independently, without external interference, maintaining its objectivity and fairness, and avoiding any deterioration of its integrity.

49. Among the essential criteria defined by the BCBS aimed at ensuring operational independence, the following should be highlighted:

- the need for operational independence of the supervisor from the government or other interests to be prescribed in legislation and publicly disclosed;
- no government or industry interference that compromises the operational independence of the supervisor;
- full discretion to take any supervisory actions or decisions on entities under its supervision;
- avoidance of conflicts of interest through appropriate structures of governing bodies;
- adequate resources for the conduct of effective supervision and oversight.

50. The *Key Attributes of Effective Resolution Regimes for Financial Institutions* set out the core elements that the FSB considers necessary for an effective resolution regime. Their implementation should allow authorities to resolve financial institutions in an orderly manner without taxpayer exposure to loss from solvency support, while maintaining the continuity of their vital economic functions. Key Attribute 2.5 states, in regard to operational independence, that the resolution authority should 'have operational independence with its statutory responsibilities [...] and adequate resources [...]. It should have the expertise, resources and the operational capacity to implement resolution measures with respect to large and complex firms.'

51. FATF has also established its own expectations in its FATF Recommendations. Recommendation 26 requires countries to ensure that financial institutions are subject to adequate regulation and supervision. The FATF's interpretation of this recommendation provides that '[...] supervisors should have sufficient operational independence and autonomy to ensure freedom from undue influence or interference.'

52. The IADI *Core Principles for Effective Deposit Insurance Systems* are intended as a framework to support effective deposit insurance practices. Principle 3 states that: 'The deposit insurer should be operationally independent, well-governed, [...] and insulated from external interference.' Among the essential criteria of Principle 3 aimed at ensuring operational independence, the following points should be highlighted.

- The deposit insurer is operationally independent. It is able to use its powers without interference from external parties to fulfil its mandate. There is no government, central bank, supervisory or industry interference that compromises the operational independence of the deposit insurer.
- The deposit insurer has the capacity and capability (e.g. human resources, operating budget and salary scales sufficient to attract and retain qualified staff) to support its operational independence and the fulfilment of its mandate.
- The institutional structure of the deposit insurer minimises the potential for real or perceived conflicts of interest.

2.3 Absence of interference

53. The ability to operate independently without interference from government, commercial or sectoral interests should take into account any requirement for: (1) consultation with government or other authorities in relation to decisions to be taken, considering the type of requests made by government and the CA's freedom not to accept such requests; and (2) the management of conflicts of interest (including internal conflicts when the CA performs different supervisory activities with potentially conflicting interests).

Consultation with government or other authorities

54. All CAs except 2²⁸ confirmed that they are independent authorities and reported that they are autonomous in the conduct of their regular operations, having the ability to operate on a day-to-day basis without external interference from political interests. The overwhelming majority of CAs noted they are not bound by any instructions, from either the government or any other body or institution. However, the information gathered in this regard shows an interesting variety of formal statuses, including on the extent of consultations that are undertaken. 1 CA²⁹ did not provide any feedback on this point.

²⁸ EL (CPA), IE (CCPC).

²⁹ IE (CCPC).

55. It is a common feature that operational independence from political interests is defined by law, which was indicated by 47 CAs³⁰, for 6 of which operational independence is also directly defined by the country's Constitution³¹ and for 2 by European Regulation³². However, for 1 CA³³ it is defined through its statutes.

56. Only 1 CA³⁴ declared that as part of a ministry, any policy measures have to be approved directly by the government and, in exceptional cases, the minister may also conduct administrative proceedings and has the power to impose penalties. 5 CAs³⁵ reported that they were independent on a day-to-day basis but explained that there are certain sensitive issues or regulatory amendments that are directly politically influenced. Another 6 CAs³⁶ noted that they follow general policy guidelines or instructions given by the government (or a dependent body), although operationally they execute them in an autonomous and independent manner. 4 more CAs³⁷ also confirmed that certain important decisions, such as the granting of authorisation to or withdrawing authorisation from financial institutions or, where applicable, credit institutions, is in the remit of the minister. This statement should be nuanced in the case of 2 CAs³⁸ from the same jurisdiction given that, with respect to granting authorisation for certain financial institutions and other professionals in the financial sector, the Minister of Finance has formally acted on the advice and prior investigation of the case by these 2 CAs. Further, the law passed on 21 July 2021 makes these 2 CAs and not the Minister of Finance directly competent for the granting or withdrawal of authorisations going forward.

57. It should be noted that 22 CAs³⁹ are either directly a government ministry, part of a ministry or an administrative body under the authority of a ministry. However, some are autonomous and independent from the ministry. Some CAs are agencies or units under the aegis of a ministry and clarified that some supervisory functions are retained by the government or certain decisions require government prior approval, such as the general plan of action or strategy to be followed or the imposition of penalties for very serious breaches.

58. In the responses received from the remaining CAs, national CAs emphasised that they are not bound by the government in the exercise of their daily supervisory duties, apart from some specific decisions on the appointment of board members, budgetary issues or other

³⁰ ECB, SRB, AT (FMA, MoE), BE (FSMA, NBB), BG (BDIF, BNB, FIU), CY (CBC, DGS), CZ (CNB, DGS), DE (BaFin), DK (FSA), EE (FSA), EL (HCMC), ES (BdE, CNMV, FGD), FI (FIN-FSA, RA/DGS), FR (ACPR), HR (DGS, FI, HNB), HU (DGS, MNB), IE (CBI), IS (CBI), IT (BoI, IVASS), LI (FMA), LT (BoL, DGS), LV (FCMC), MT (FIU, MFSA), NL (AFM), PT (ASF, BoP, CMVM), RO (NBR, FSA), SI (AML, BS), SE (DGS, FSA), SK (RA).

³¹ AT (FMA), CZ (CNB), HR (HNB), PT (BoP), SE (DGS, FSA).

³² ECB and SRB.

³³ EL (BoG).

³⁴ EL (CPA).

³⁵ BE (DGS), EL (CPA, MoF), LV (CRPC) and NL (DNB).

³⁶ ES (SEPBLAC), NL (ACM): The minister may issue general policy guidelines to be observed by ACM, such as fining guidelines, NO (CPA, FSA), SE (FSA, RA).

³⁷ HU (MNB), LU (CAA, CSSF), NO (FSA).

³⁸ LU (CAA, CSSF).

³⁹ AT (MoE), BE (FPSE), BG (FIU), CY (CPA), DK (FSA), EL (CPA, MoF), ES (SEPBLAC), FI (RA/DGS), HR (FI), LU (CSSF), LV (CRPC), MT (FIU), NO (CPA, FSA), PL (FIU), RO (CPA, FIU), SE (FSA, RA), SI (AML, CMA).

organisational aspects⁴⁰. Despite their autonomy and functional independence, certain CAs at national level are subject to legal⁴¹ or technical⁴² oversight by the government in terms of the legality or fitness of their actions.

59. Another highlight is that almost all resolution authorities stated that an exception is envisaged when it comes to the application of resolution measures that may have a direct fiscal impact or systemic implications and government approval should be obtained before implementing such decisions or actions. This reflects the provision for such arrangements in Article 3(6) of Directive 2014/59/EU. The same is true for many DGS responses stating that prior government approval will be required for decisions requiring public funding.

60. Regarding regulatory policy procedures, about half of the participating CAs stated that the exercise of rulemaking powers envisages a role for other authorities⁴³, or market participants⁴⁴ that can take different degrees of involvement. There are CAs that need to cooperate and receive advice from other supervisory authorities (including through bilateral or multilateral MoUs)⁴⁵, consult relevant stakeholders or government consultative councils or committee(s) or ministries prior to the adoption of rules⁴⁶, receive opinions or have other formal and structural involvement, including mandatory hearings or formal approval of the proposed regulation⁴⁷. In other cases such roles for other parties are not envisaged⁴⁸ or not applicable⁴⁹. 34 CAs⁵⁰ indicated that the issue of regulatory policy procedures requiring consultation or approval by the government is not applicable to them. 9⁵¹ responded that they are independent authorities that neither need nor seek consultation with government or other authorities. HU (MNB) indicated that consultation is not required by law but is a procedure voluntarily applied following long-established practices.

⁴⁰ More than 40 CAs confirmed that there are decisions regarding their organisation and structure that require the approval of the government.

⁴¹ AT (FMA), DE (BaFin), PL (BFG).

⁴² DE (BaFin).

⁴³ AT (FMA, MoE), BE (DGS, FSMA, NBB), BG (BNB), CZ (CNB, DGS), DE (BaFin), EE (FSA), EL (BoG, HCMC, MoF), ES (BdE, SEPBLAC), FI (FIN-FSA), HR (HAOD), HU (MNB), IE (CBI), IS (CPA), IT (BoI), LT (BoL, DGS), LU (CSSF), LV (FCMC), MT (FIU, MFSA), NL (ACM, DNB), NO (DGS, FSA), PL (FIU, KNF), RO (CPA, FIU), SE (RA/DGS), SI (AML), SK (NBS).

⁴⁴ LV (FCMC).

⁴⁵ BE (DGS), BG (BNB), CY (CMA), EL (BoG, CPA, HCMC, MoF), FI (FIN-FSA), LT (DGS), MT (FIU, MFSA), NL (DNB), PL (FIU), RO (CPA).

⁴⁶ AT (FMA), CY (CBC), CZ (CNB), DE (BaFin), ES (BdE, SEPBLAC), FI (FIN-FSA), HR (HANFA) when defining the format and content of yearly financial reports for regulated entities under the provisions of the Accounting Act, IE (CBI), IS (CPA), IT (BoI), LU (CAA, CSSF), LV (FCMC), PT (ASF, CMVM), SE (RA), SK (NBS).

⁴⁷ This is the case, for instance, for AT (MoE), BE (FSMA, NBB), DK (FSA), NO (FSA). DK (FSA), where, according to the respondent, another authority has the right to provide formal approval if a proposed bill could have a substantial negative impact on business. In such cases, it needs approval from the Finance Committee under the Ministry of Finance. In the case of NL (AFM), the Minister of Finance can withdraw a regulation issued by NL (AFM) if this regulation is unreasonably burdensome or contrary to the law.

⁴⁸ SRB, EE (DGS), FI (FIN-FSA), FR (ACPR), IS (CBI), LI (FMA), LT (BoL), PT (CMVM), RO (FSA), SI (BS, MIRS).

⁴⁹ BE (FPSE), ES (FGD, FROB), HR (FI), PL (BFG), SI (AZN).

⁵⁰ SRB, BG (BDIF, FIU), CY (CBC), CZ (DGS), EE (FSA), EL (MoF), ES (BdE, FGD, FROB, SEPBLAC), FI (FCCA, FIN-FSA, RA/DGS), HR (HANFA), IE (CCPC), IS (CBI, CPA), LI (FMA), LT (BoL), LV (FCMC), MT (DGS), NL (ACM), NO (CPA, FSA), PL (KNF), PT (CMVM, DGS), SI (AML, AZN, BS, MIRS).

⁵¹ ECB, CY (CMA), DK (FSA), EE (DGS), FR (ACPR), HU (DGS), PT (ASF, BoP), RO (NBR).

61. In respect of those cases where the national law requires consultation with government or other authorities, 39 CAs⁵² reported having an adequate and transparent process for regulatory policy procedures established by law. Only 6 CAs⁵³ noted that consultation is required in decision making on day-to-day technical matters. When making use of rulemaking powers, supervisors should work with the government and relevant authorities to address concerns that are outside their direct or sole jurisdiction, always with a view to preventing potential political interference.

Conflict of interest

62. The other aspect to highlight regarding the absence of interference relates to conflicts of interest.

63. All CAs except 5⁵⁴ that have multiple objectives or supervisory responsibilities⁵⁵ confirmed that they have arrangements in place to reconcile any conflicts that may arise between those objectives and their responsibilities. In addition, 7 single-function CAs⁵⁶ reported on the different arrangements and agreements they have in place to deal with any other type of conflict of interest that may arise. Among the different agreements, the vast majority of the CAs have set up internal legal provisions and specific internal organisational arrangements that ensure the separation of functions. Other CAs create dedicated working groups on controversial matters with representatives from the different departments or authorities that may be involved.

64. More specifically, regarding authorities that combine the resolution function with any other function, 28 of 31 CAs reported on the measures taken to ensure operational independence between the resolution function and the supervisory, or other, functions. Only 3 CAs⁵⁷ did not report any special actions to avoid conflicts of interest that may arise between the different functions performed.

65. On the ability to operate without commercial or sectoral interference, all CAs confirmed that there are no industry interventions that prevent them from operating independently on a day-to-day basis. However, some CAs⁵⁸ provided very little detail on that point. Some CAs⁵⁹ referred to certain industry consultation processes, such as the drafting of new financial regulation, which are carried out in a regulated manner, with the CAs being the ultimate decision-makers in relation to these consultations. 1 CA⁶⁰ holds consultations twice a year with representatives of the institutions under its supervision, thus having the opportunity to explain the policy to be

⁵² AT (FMA, MoE), BE (DGS, FPSE, FSMA), BG (BNB), CY (CPA, DGS), CZ (CNB), DE (BaFin), EL (BoG, CPA, HCMC), ES (CNMV), HR (DGS, FI, HNB), IE (CBI), IT (BoI, IVASS), LU (CAA, CSSF), LV (CRPC) MT (FIU, MFSA), NL (AFM, DNB), NO (DGS), PL (BFG, FIU), RO (CPA, DGS, FIU, FSA, NBR), SE (FSA, RA), SK (NBS, RA).

⁵³ AT (MoE), BE (DGS, FPSE), HR (HAOD), RO (CPA), SK (RA).

⁵⁴ EL (HCMC), FI (RA/DGS), NL (AFM), SE (RA), SK (NBS).

⁵⁵ A total of 38 CAs perform a variety of functions or responsibilities in different sectors.

⁵⁶ ES (SEPBLAC), HR (FI), HU (DGS), MT (FIU), NL (ACM), PT (ASF), RO (FIU).

⁵⁷ FI (RA/DGS) and SE (RA/DGS) and SK (NBS) which performs prudential, conduct, AML/CFT and resolution functions.

⁵⁸ BE (NBB), IE (CCPC), IS (CBI, CPA), LT (DGS), NL (DNB), PL (BFG), RO (CPA, FIU) and SI (AZN).

⁵⁹ CY (CBC), FR (ACPR), PT (CMVM).

⁶⁰ NL (AFM).

pursued and the results to be achieved, and gives the sector representatives the possibility to respond. Another CA⁶¹ indicated that sensitive dossiers or matters that require regulatory changes, or have a significant impact on the sector, are directly politically influenced and therefore also influenced by the sector (if the government decides to take its views into account).

66. With regard to the way in which CAs define the avoidance of conflicts of interest, it should be noted that most CAs reported that they have legal provisions, statutes, internal policies (e.g. codes of ethics) or a special internal organisation to pursue this objective. In addition, almost all CAs confirmed that their governing bodies are formally structured to avoid any real or perceived conflicts of interest. Furthermore, as an additional specific measure, 49 CAs⁶² have an internal and/or external whistleblowing mechanism in place that could eventually result in the opening of an investigation and potentially in the removal of any board member.

67. On top of the mechanisms outlined above, certain CAs also impose some restrictions or limitations on their former employees and/or board members in order to reinforce their independence and avoid potential conflicts of interest (see point 4.5 below).

2.4 Adequacy of legal powers

Adequacy of legal powers

68. The vast majority of participating CAs clearly stated that, overall, they enjoy adequate legal powers and authority, taking into account the nature of their jurisdiction's markets.

69. The survey touched on several aspects of the adequacy of legal powers. For instance, with regard to adequacy of internal procedures and policies, the vast majority of CAs⁶³ stated that they have policies and governance practices in place to regulate the process for performing their functions and exercising their powers effectively. In some cases⁶⁴, these are public and accessible on the internet. Other CAs⁶⁵ did not provide any feedback on this specific point or it was not consistent with the question; 2 CAs⁶⁶ declared that they had no such policies.

⁶¹ BE (DGS).

⁶² ECB, SRB, AT (FMA), BE (FPSE, FSMA, NBB), BG (BDIF, BNB), CY (CBC, DGS), CZ (CNB), DE (BaFin), DK (FSA), EE (FSA), EL (BoG), ES (CNMV, FROB, SEPBLAC), FI (FIN-FSA), FR (ACPR), HR (DGS, FI, HANFA, HNB), HU (DGS), IE (CBI), IS (CBI), IT (BoI), LI (FMA), LT (BoL), LU (CSSF), LV (FCMC), MT (FIU, MFSA), NL (ACM, AFM, DNB), NO (CPA, DGS, FSA), PL (BFG, KNF), PT (BoP, CMVM), RO (DGS, NBR), SE (FSA, RA/DGS), SI (BS).

⁶³ ECB, SRB, AT (FMA, MoE), BE (DGS, FPSE, FSMA, NBB), BG (BDIF, BNB, FIU), CY (CBC, CMA, CPA, DGS), CZ (CNB, DGS), DE (BaFin), DK (FSA), EE (DGS, FSA), EL (BoG, HCMC, MoF), ES (BdE, CNMV, FGD, FROB, SEPBLAC), FI (FCCA, FIN-FSA), FR (ACPR), HR (DGS, FI, HANFA, HNB), HU (DGS, MNB), IE (CBI), IS (CBI, CPA), IT (BoI, IVASS), LI (FMA), LT (BoL, DGS), LU (CAA, CSSF), LV (CRPC, FCMC), MT (DGS, FIU, MFSA), NL (ACM, AFM, DNB), NO (DGS), PL (BFG, FIU, KNF), PT (ASF, BoP, CMVM), RO (CPA, DGS, FIU, FSA, NBR), SE (FSA, RA/DGS), SI (AML, BS), SK (NBS, RA).

⁶⁴ ECB, BE (NBB), DE (BaFin), ES (BdE), HR (HAOD).

⁶⁵ IE (CCPC), PT (DGS), SI (AZN).

⁶⁶ BG (FIU), SI (MIRS).

70. Some respondents⁶⁷ explicitly mentioned a methodological framework or internal rules and procedures or bylaws or procurement protocols that the CA staff should follow when discharging their responsibilities and/or the presence of a ‘quality assurance’ unit or internal committees to implement quality control policies to continuously improve the performance of business processes and methods.

71. Powers entrusted to CAs can take different forms. One form is related to rulemaking⁶⁸, where the exercise of these powers depends on the nature of the CA considered⁶⁹ and very often involves issuing a range of regulatory products that include regulation (where legislative acts contain an explicit empowerment) and/or soft law instruments (such as notices, circulars, guidelines, guides and general communications) in the specific field of responsibility. In most cases, the rulemaking power is limited by the delegation of certain powers/provisions. In some cases, this power is not envisaged⁷⁰ or applicable⁷¹, or is limited to specific matters⁷². In some cases, the exercise of rulemaking powers includes a role for other authorities which may extend to approval of proposed regulation (see point 2.3 above).

72. Another common feature is the attribution of the power to impose supervisory or administrative measures, in some cases on both legal and natural persons⁷³. Most of the respondent CAs⁷⁴ declared that they are empowered to exercise supervisory or administrative measures of different natures and degrees of severity, depending on the specific situation⁷⁵. In practice, the exercise of this power largely depends on whether we are considering CAs involved in supervisory activities, resolution activities or activities related to deposit guarantees⁷⁶. In some instances, the exercise of supervisory powers can take the form of the power to instruct other

⁶⁷ BE (FSMA), BG (BDIF), ES (BdE), FR (ACPR), IE (CBI), IS (CBI), IT (BoI, IVASS), LU (CSSF), NL (ACM), PT (ASF).

⁶⁸ ECB, AT (FMA, MoE), BE (DGS, FPSE, FSMA, NBB), BG (BNB), CY (CBC, CMA, DGS), CZ (CNB), DE (BAFIN), DK (FSA), EE (DGS), EL (BoG, HCMC, MoF), ES (BdE, CNMV, FSA, SEPBLAC), FI (FIN-FSA), FR (ACPR), HR (DGS, HANFA, HNB), HU (MNB), IE (CBI), IS (CBI, CPA), IT (BoI, IVASS), LI (FMA), LT (BoL, DGS), LU (CAA, CSSF), LV (FCMC), MT (FIU, MFSA), NL (ACM, AFM, DNB), NO (DGS, FSA), PL (FIU), PT (ASF, BoP, CMVM), RO (CPA, FIU, FSA, NBR), SE (FSA, RA/DGS), SI (AML, AZN, BS), SK (NBS).

⁶⁹ For instance, in the case of the ECB it may adopt guidelines, recommendations and decisions. It may also adopt regulations but only to the extent necessary to organise or specify the arrangements for carrying out its task.

⁷⁰ SRB, CY (CPA), CZ (DGS), ES (FROB), FI (FCCA), LV (CRPC), PL (KNF), RO (DGS), SI (MIRS), SK (RA).

⁷¹ ES (FGD), PL (BFG).

⁷² HR (FI), EE (FSA): the rulemaking power is limited to issuing advisory guidelines (soft law) in order to explain legislation regulating the activities of the financial sector and to provide guidance to subjects of financial supervision.

⁷³ This is the case, for instance, of DE (BaFin) and IT (BoI).

⁷⁴ ECB, SRB, AT (FMA), BE (DGS, FSMA, NBB), BG (BNB, FIU), CY (CBC, CMA, CPA, DGS), CZ (CNB), DE (BaFin), DK (FSA), EE (DGS, FSA), EL (BoG, HCMC, MoF), ES (BdE, CNMV, FROB, SEPBLAC), FI (FCCA, FIN-FSA), FR (ACPR), HR (DGS, FI, HANFA, HNB), HU (DGS, MNB), IE (CBI, CCPC), IS (CBI, CPA), IT (BoI, IVASS), LI (FMA), LT (BoL), LU (CAA, CSSF), LV (CRPC, FCMC), MT (FIU), NL (AFM, DNB), NO (DGS, FSA), PL (BFG, FIU, KNF), PT (ASF, BoP, CMVM), RO (CPA, NBR), SE (FSA, RA/DGS), SI (AML, AZN, BS, MIRS), SK (NBS, RA).

⁷⁵ According to the responses provided, this includes prudential types of measures and measures related to recovery and resolution of failing banks or powers related to their role on supervising DGSs. In some cases, such as BE (FPSE), this power seems to be limited only to one possible measure.

⁷⁶ In this specific case, it is also possible that the power to impose administrative measures is exercised in conjunction with and via another administrative authority.

authorities⁷⁷. However, some respondents that are DGSs⁷⁸ declared that this power is not applicable to their specific case.

73. Also, the possibility of imposing penalties is a common feature of the powers attributed to CAs⁷⁹, although in some cases this possibility is not envisaged⁸⁰ or seems to be limited to some extent⁸¹. In this case, the available tools may differ⁸² across CAs and the severity of the sanction often varies according to the severity of the breach⁸³. In some cases,⁸⁴ respondents highlighted that due to institutional arrangements one CA has the power to either suggest or to instruct another authority to impose penalties. In other cases, the respondent authority has no such power⁸⁵.

74. The exercise of supervisory powers and the power to impose penalties is discharged in different manners and therefore the feedback provided depicts a mixed and heterogeneous situation. In fact, these powers can be exercised:

- directly⁸⁶;
- in collaboration with other authorities⁸⁷;
- under their responsibility by delegation to such authorities⁸⁸; or
- by application to the competent judicial authorities⁸⁹.

⁷⁷ AT (MoE)

⁷⁸ CZ (DGS), ES (FGD), RO (DGS).

⁷⁹ ECB, SRB, AT (FMA), BE (FSMA, NBB), BG (BNB), CY (CBC, CMA, CPA, DGS), CZ (CNB), DE (BaFin), EE (DGS, FSA), EL (BoG, HCMC), ES (BdE, CNMV, FROB, SEPBLAC), FI (FCCA, FIN-FSA), FR (ACPR), HR (DGS, FI, HNB), HU (MNB), IE (CBI), IS (CBI, CPA), IT (BoI), LI (FMA), LT (BoL), LU (CSSF) LV (CRPC, FCMC), MT (FIU), NL (ACM, AFM, DNB), NO (DGS, FSA), PL (BFG, FIU, KNF), PT (ASF, BoP, CMVM), RO (CPA, FIU, FSA, NBR), SE (FSA), SI (AML, AZN, BS), SK (NBS, RA).

⁸⁰ BG (BDIF), EL (MoF), HR (HANFA), SI (MIRS).

⁸¹ EE (FSA)

⁸² The available toolkit largely depends on the effective powers, responsibility and scope of action (prudential, financial deposit guarantee, resolution etc.) of each authority. Respondents declared that the sanctions risked by the entity include a warning, a reprimand, prohibition from conducting certain operations for a maximum period of ten years and any other restrictions on the conduct of its activity, the temporary suspension of senior managers for a maximum period of ten years, the compulsory resignation of senior managers, the partial or total withdrawal of the licence or authorisation and being struck off the list of authorised entities. Instead of, or in addition to these sanctions, financial penalties may be imposed.

⁸³ This may involve, in some cases such as DK (FSA), the possibility of reporting an individual or a bank to the police (State Prosecutor for Serious Economic and International Crime) in the event of more severe breaches of law.

⁸⁴ AT (MoE), BG (FIU), HR (HANFA), HU (DGS).

⁸⁵ CZ (DGS), RO (DGS), SE (RA/DGS).

⁸⁶ ECB, SRB, AT (FMA), BE (FSMA, NBB), BG (BNB), CY (CBC, CMA, CPA, DGS), CZ (CNB), DE (BaFin), DK (FSA), EE (FSA, DGS), EL (HCMC, MoF), ES (BdE, CNMV, FROB), FI (FCCA, FIN-FSA), FR (ACPR), HR (DGS, FI, HANFA, HNB), HU (MNB), IE (CBI), IS (CBI, CPA), IT (BoI), LI (FMA), LU (CAA, CSSF), LV (CRPC, FCMC), MT (MFSA, FIU), NL (ACM, AFM), NO (FSA), PL (BFG, FIU, KNF), PT (ASF, BoP, CMVM), RO (CPA, FIU, NBR), SE (FSA), SI (AML, AZN, BS, MIRS), SK (NBS, RA).

⁸⁷ ECB, SRB, BG (BNB, FIU), CY (DGS), DE (BaFin), EL (MoF), ES (SEPBLAC), HU (DGS), IT (BoI), LT (DGS), MT (DGS, FIU, MFSA), NL (AFM), NO (DGS), RO (NBR), SE (RA/DGS), SK (NBS, RA).

⁸⁸ AT (MoE).

⁸⁹ SRB, BG (BDIF), CY (CPA), DK (FSA) in the event of more serious breaches of law, HR (HANFA), LU (CAA) for criminal sanctions, RO (NBR).

75. It is quite common for the exercise of supervisory powers and the power to impose penalties to be carried out using all of these modalities⁹⁰ or via a combination of them⁹¹. Notably, in some cases this power is not applicable⁹².

76. Another common feature is the existence of a power to conduct on-site and off-site inspections⁹³. However, this is not always the case⁹⁴ or in some cases it is limited to certain matters⁹⁵. Depending on the nature and responsibilities of the CAs inspections may be performed in collaboration with other CAs⁹⁶. In the case of prudential supervision, it is common to adjust the supervisory intensity of inspections to the risk and the impact assessed for each financial institution. In addition to CAs that are prudential banking supervisory authorities, some AML and conduct CAs⁹⁷ also indicated that they follow a risk-based approach with regard to the intensity of inspections. The inspection may be general in scope or focused on a specific topic, and campaigns aiming at ensuring the enforcement of a specific regulation or assessing a specific risk can be conducted. When conducting an inspection, inspectors are granted the necessary powers to perform the assessment, including the right to access premises, the right to receive any information or document and the right to interview any person.

77. In conclusion, 77 of the 82 participating CAs⁹⁸ provided positive feedback on the adequacy of their legal powers and authority, taking into account the nature of their jurisdiction's markets, to meet their responsibilities.

Delegation of powers or operational functions

78. A significant division can be seen in the responses to the survey regarding the ability of CAs to delegate powers.

79. 48 of the 82 participating CAs⁹⁹ indicated that they are not able to delegate any of their powers or operational functions, either internally or externally. 23 CAs¹⁰⁰ referred to their ability to

⁹⁰ EL (BoG).

⁹¹ BE (DGS, FPSE), CY (CPA, DGS), DK (FSA), EE (FSA), HR (HANFA), IE (CCPC), IS (CBI), LI (FMA), LT (BoL), LU (CSSF), MT (MFSA), NL (DNB), RO (FSA, NBR).

⁹² CZ (DGS), ES (FGD), RO (DGS).

⁹³ ECB, AT (FMA, MoE), BE (DGS, FSMA, NBB), BG (BNB, FIU), CY (CBC, CMA, DGS), CZ (CNB), DE (BaFin), DK (FSA), EE (FSA), EL (BoG, HCMC), ES (BdE, SEPBLAC), FI (FIN-FSA), FR (ACPR), HR (FI, HANFA, HAOD, HNB), HU (MNB), IE (CBI, CCPC), IS (CBI, CPA), IT (BoI, IVASS), LI (FMA), LT (BoL, DGS), LU (CAA, CSSF), LV (FCMC), MT (FIU, MFSA), NL (ACM), NO (DGS, FSA), PL (BFG), PT (ASF, BoP, CMVM), RO (DGS, NBR), SE (FSA), SI (AML, AZN, BS).

⁹⁴ BG (BDIF), CY (CPA), ES (FGD), MT (DGS).

⁹⁵ EE (DGS), PT (ASF), SI (AZN), for instance, conducting stress test on DGS.

⁹⁶ HU (DGS).

⁹⁷ BE (FSMA), IE (CBI, CCPC), IT (IVASS), LV (CRPC), NO (CPA), PT (ASF), SI (AZN).

⁹⁸ All participating CAs except CZ (DGS), FI (FCCA), RO (DGS), which responded N/A, and IE (CCPC), IT (IVASS), which did not provide any feedback on this matter.

⁹⁹ AT (MoE, FMA), BE (DGS, FPSE, NBB), BG (BDIF, BNB, FIU), CY (CBC, CPA, DGS), CZ (CNB, DGS), DK (FSA), EE (DGS, FSA), EL (BoG, CPA, MoF), FI (FCCA, RA/DGS), FR (ACPR), HR (FI, HAOD), HU (DGS, MNB), IS (CPA), LT (DGS), LU (CSSF), LV (CRPC, FCMC), NL (ACM, AFM, DNB), NO (DGS, FSA), PL (BFG, KNF), RO (CPA, DGS, FIU, FSA), SI (AML, BS, MIRS), SK (NBS), ES (SEPBLAC), SE (RA/DGS).

¹⁰⁰ ECB, SRB, CY (CMA), EL (HCMC), ES (BdE, CNMV, DGS, FROB), FI (FIN-FSA), IE (CBI), IS (CBI), IT (BoI), LT (BoL), MT (DGS, MFSA), NO (CPA), PL (FIU), PT (ASF, BoP, CMVM, DGS), RO (NBR), SK (RA).

delegate powers internally. However, 13 CAs¹⁰¹ have the ability to delegate powers or operational functions to external entities, including 4 CAs¹⁰² that stated explicitly they can delegate both, internally and externally. 2 CAs¹⁰³ did not provide any response.

80. Internal delegations are mostly aimed at entrusting to board members, heads of directorates, or staff members responsibilities that are normally assumed by higher ups in the hierarchy, usually from the chair or board members. Regarding internal delegation in the sense of delegating decision-making powers to senior managers, the ECB stressed that the delegation framework responds to the need for efficiency in supervisory decision-making since it enables the Supervisory Board and the Governing Council to further focus on more decisive supervisory matters.

81.1 CA¹⁰⁴ indicated that, in addition to the internal delegation of powers regarding its staff from the Plenary Session to the Chair, certain tasks in a very small number of specialised areas, such as SRF, have been outsourced.

82. Out of the 13 CAs¹⁰⁵ with the ability to delegate powers or functions to external legal or natural persons, many¹⁰⁶ stated that they ‘mandate’ statutory auditors for risk-based inspections or investigations, or commission other external experts. Some CAs stressed that the decision-making remains in their hands.

83. The Governor of 1 CA¹⁰⁷ can authorise a certified auditor, audit firm or other professionally qualified persons to perform tasks related to the direct supervision of a credit institution's operations. Those persons shall have the same powers and responsibilities as employees of that CA when performing tasks related to direct supervision of the operations of a credit institution. Another CA¹⁰⁸ indicated that it cannot delegate its functions, but it can mandate auditors the task of undertaking risk-based inspections. In those cases, that CA provides the auditors with detailed audit specifications. The audit results are consequently evaluated by the CA. Depending on the results of this evaluation, it takes the necessary supervisory measures. Another CA¹⁰⁹ stated that the authority to delegate operational functions does not apply to sovereign functions that have to be carried out by the CA itself.

¹⁰¹ BE (FSMA), CY (CMA), DE (BaFin), FI (FIN-FSA), HR (HANFA, HNB), LI (FMA) does not call it delegation but ‘mandating’ (auditors), LT (BoL), LU (CAA), MT (FIU, MFSA), SI (AZN), SE (FSA).

¹⁰² CY (CMA), DE (BaFin), FI (FIN-FSA), MT (MFSA).

¹⁰³ IE (CCPC), IT (IVASS).

¹⁰⁴ SRB.

¹⁰⁵ BE (FSMA), CY (CMA), DE (BaFin), HR (HNB), LI (FMA): LI (FMA) does not call it delegation but ‘mandating’ auditors and experts to execute specific missions, MT (MFSA, FIU: ability to appoint other supervisory authorities as agents to carry out AML/CFT supervisory examinations on obliged entities falling within their regulatory remit or engage external experts in other cases where needed), SI (AZN), SE (FSA).

¹⁰⁶ CY (CMA), DE (BaFin), HR (HNB), LI (FMA), LU (CAA), MT (MFSA).

¹⁰⁷ HR (HNB).

¹⁰⁸ LI (FMA).

¹⁰⁹ BE (FSMA).

84. The legal framework of another CA¹¹⁰ allows for a special form of delegation of dispute-resolving powers to collegiate bodies formed by its Board, but which might include external members. These bodies are authorised to take decisions on disputes between consumers and financial market participants, allowing for representatives delegated by public authorities and organisations which represent supervised financial market participants to be appointed members of these bodies. However, the number of delegated members may not exceed one third of the composition of members of the collegiate body. The general rule is that only staff of the CA may be appointed members of these bodies.
85. Another CA¹¹¹ has delegated accounting supervision to the national Board of Accounting Supervision, which is a non-profit body under the Association for Good Practice in the Securities Market. That Board is responsible for the ongoing monitoring of annual and consolidated accounts as well as half-yearly reports of issuers that are subject to accounting supervision. The CA remains ultimately responsible for accounting supervision on a national level with the authority to intervene in the event of violations. The same CA has also delegated to the national Securities Market Board the power to comment on certain issues relating to takeovers.
86. As a general rule, the CA's ability to delegate externally derives from the laws in place. On the one hand, a jurisdiction's constitution or jurisprudence may require a law allowing for delegation as precondition for any delegation, or it may limit the scope of the delegation. For example, one paragraph of a CA's¹¹² establishing act reads: '[That CA] may avail itself of other persons and institutions in the performance of its functions'. Another CA¹¹³ has the power to appoint a skilled person to assist it in the fulfilment of any of its functions under its founding act or any other regulation.
87. Overall, information on the topic of delegation of powers is limited but shows a diversity of frameworks, in particular in relation to external delegation such as the use of external bodies to carry out aspects of supervision. External delegation could have a significant impact on supervisory independence depending on how it is carried out. The topic could therefore benefit from more structured information gathering to understand these frameworks, the conditions and controls under which they operate, and the extent to which they are used and relied on.

2.5 Adequacy of operational resources

88. Even with formal operational independence, a supervisory authority that does not have adequate operational resources cannot exercise this formal independence in any meaningful way. The funding of the supervisory authority should be commensurate with its tasks and the expectations of superseding bodies. CAs should be able to offer compensation sufficient to recruit and attract qualified staff.

¹¹⁰ LT (BoL).

¹¹¹ SE (FSA).

¹¹² DE (BaFin).

¹¹³ MT (MFSA).

89. Insufficient resources can undermine the effective independence of supervisors if supervisors are continuously required to ask the government for additional funding to cover operational needs.
90. Basel Core Principle 2 reads ‘the supervisor possesses operational independence, [...], budgetary processes that do not undermine autonomy and adequate resources.’ Essential criterion 6 of Basel Core Principle 2 specifies that supervisors should have adequate resources for the conduct of effective supervision, including:
- a. a budget that provides for staff in sufficient numbers and with skills commensurate with the risk profile and systemic importance of the banks and banking groups supervised;
 - b. salary scales that allow it to attract and retain qualified staff;
 - c. the ability to commission external experts with the necessary professional skills and independence, and subject to necessary confidentiality restrictions to conduct supervisory tasks;
 - d. a budget and programme for the regular training of staff;
 - e. a technology budget sufficient to equip its staff with the tools needed to supervise the banking industry and assess individual banks and banking groups; and
 - f. a travel budget that allows appropriate on-site work, effective cross-border cooperation and participation in domestic and international meetings of significant relevance (e.g. supervisory colleges).
91. It should be reiterated that FSB Key Attribute 2.5, as referred to in point 2.1 above, states in regard to operational independence that the resolution authority should ‘have [...] adequate resources [...]. It should have the expertise, resources and the operational capacity to implement resolution measures with respect to large and complex firms.’
92. The FATF’s interpretation of FATF Recommendation 26 provides that: ‘Countries should ensure that financial supervisors have adequate financial, human and technical resources. [...]’
93. Moreover, essential criterion 3 of Principle 3 of the IADI *Core Principles for Effective Deposit Insurance Systems* states: ‘The deposit insurer has the capacity and capability (e.g. human resources, operating budget, and salary scales sufficient to attract and retain qualified staff) to support its operational independence and the fulfilment of its mandate’.

Attracting and retaining experienced and skilled staff

- 94.26¹¹⁴ CAs do not have the autonomy to increase the salaries of their staff. Another CA¹¹⁵ expressed some concerns since it can increase the salary of its staff if it is within the budget and broadly respects public salary scales (both total and salary sum ceiling).

¹¹⁴ AT (MoE), BE (DGS, FPSE), CY (DGS), DE (BaFin), EL (CPA, HCMC, MoF), ES (BdE: BdE has autonomy to decide on salary levels. However, BdE has to apply measures equivalent to those generally established for personnel in the public sector, CNMV, FROB, SEPBLAC), FI (FIN-FSA), FR (ACPR), IE (CBI): The CBI has aligned to Public Service pay policies since 2010. This approach is not permanent and is subject to review by the Commission, LT (DGS), LU (CSSF), LV (CRPC), MT (DGS, FIU), PL (FIU), RO (CPA, FIU), SI (AML, MIRS), SK (RA).

¹¹⁵ DK (FSA).

95.17 CAs¹¹⁶ do not have the autonomy to decide on the number of employees they have. 1 CA¹¹⁷ expressed some concerns when it comes to recruiting staff, since it is dependent on the available budgets and the needs of the other services. Nevertheless, the head of the administration can prioritise.

96.25 CAs do not have the autonomy to give any allowances to their staff.¹¹⁸ With respect to 1 CA¹¹⁹, remuneration and expenses are based on the central banks's collective agreements or administrative instructions. Another CA¹²⁰ can grant allowances as long as they have been agreed with the Ministry as being part of the remuneration package offered to its employees. Whether an employee would qualify or otherwise for such an allowance is a matter purely for the CA to decide on.

97. Several CAs¹²¹ indicated that the level of available human resources is low due to the difficulty of recruiting and retaining qualified staff. Some CAs¹²² are required to follow public sector salary scales, which may not be competitive compared to financial sector salaries. 1 CA reported that it was able to offer higher wages than the financial sector¹²³. 2 CAs¹²⁴ reported a cumbersome and standardised recruitment process for the public sector, which makes recruiting the necessary specialised staff very difficult.

98. 1 CA¹²⁵ reported difficulties in hiring and retaining staff given that it is subject to the Public Sector Employment Offer, which is defined yearly by the State Budget Law, and it needs the approval of the Ministry of Finance to increase the salaries of its staff or the number of employees.

99. Several CAs¹²⁶ singled out particular difficulties in attracting IT and cyber specialists. In most cases, the private sector offers higher salaries and CAs may have difficulties in recruiting highly qualified financial market specialists when they need a certain profile, for the recruitment of which they must compete with other entities in the financial market sector.

¹¹⁶ BE (FPSE), CY (DGS), DE (BaFin), EL (CPA, HCMC, MoF), ES (CNMV, FROB, SEPBLAC), FI (FIN-FSA: autonomy within the approved budget), FR (ACPR), LT (DGS), LV (CRPC), PL (FIU), RO (CPA), SI (AML), SK (RA).

¹¹⁷ BE (DGS).

¹¹⁸ SRB, BE (DGS, FPSE), CY (DGS), DE (BaFin), EL (CPA, HCMC, MoF), ES (CNMV, FROB, SEPBLAC), FI (FIN-FSA), HR (FI), LT (DGS), LU (CAA) NO (CPA, FSA), PL (FIU), RO (CPA), SE (FSA, RA/DGS), SI (AML), SK (NBS, RA).

¹¹⁹ FI (FIN-FSA).

¹²⁰ MT (FIU)

¹²¹ BE (DGS), BG (BDIF), CZ (DGS), DK (FSA), EE (FSA), EL (CPA), ES (CNMV), FI (RA/DGS), IS (CPA), IT (BoI), LT (BoL), MT (MFSA), PL (BFG, KNF), PT (ASF), RO (CPA, DGS, FIU), SI (AML, AZN).

¹²² DE (BaFin): despite the public sector salary scales, extra pay may be provided in certain cases or employees may be remunerated outside of the scales subject to approval by the Administrative Council, DK (FSA), EL (HCMC, MoF), ES (BdE, CNMV), FI (RA/DGS), LU (CSSF), LV (CRPC), NO (FSA), PL (FIU).

¹²³ LV (FCMC).

¹²⁴ BE (DGS), ES (CNMV).

¹²⁵ ES (CNMV).

¹²⁶ BE (NBB), HR (HNB), IE (CBI), PT (BoP), SK (NBS).

100. When facing salary constraints, some CAs reported being able to offer alternative benefits and better opportunities for professional development than other sectors. 2 CAs¹²⁷ stated that they have established Young Professionals programmes for students who are nearing graduation or newly graduated, who are offered the opportunity to work in different departments, focusing on identifying and developing early career talent. The purpose is to provide an opportunity for young professionals to gain experience in financial supervisory tasks and monetary policy.
101. Several CAs¹²⁸ reported that they are particularly attractive for recent graduates.
102. Staffing levels vary widely across CAs and countries, reflecting differences in financial regulatory and institutional frameworks and the size and structure of domestic financial sectors. It is difficult to adjust for these differences and draw conclusions on the figures currently available.

Adequate, ongoing training

103. The increasing specialisation and increasing complexity of the regulation reinforces the need for ongoing training of supervisors, in order for them to carry out their tasks.
104. Most CAs have internal or external programmes for training new and existing staff. Many CAs have in-house training catalogues, covering relevant topics in financial supervision and general professional skills.
105. Some CAs¹²⁹ offer formal, credentialed degrees in relevant areas, in cooperation with universities. Several CAs mentioned taking advantage of training programmes offered by European/international organisations, e.g. ESAs, ECB/SSM, BIS, IMF, etc.
106. In 2020, 1 CA¹³⁰ launched the Financial Supervisors Academy, which is a nationally accredited training centre that delivers training on financial services supervision. The CA provides training in specialised areas such as international regulations, compliance matters, as well as key interpersonal skills in investigating procedures and interviewing skills.

Assessing resource needs

107. An important first step in ensuring adequate operational resources is to conduct regular stocktaking exercises to assess needs. This can be particularly important when funding depends on external approval. Regular stocktaking exercises can also contribute to awareness of the risks to financial stability that an insufficient level of resources represents. This should also be used

¹²⁷ FI (FIN-FSA), IE (CBI).

¹²⁸ CZ (CNB), FR (ACPR), IE (CBI), IT (BoI), LU (CSSF), PT (CMVM).

¹²⁹ AT (FMA), DE (BaFin), IE (CBI).

¹³⁰ MT (MFSA).

to calibrate the expectation of the supervisory authority. Therefore, essential criterion 7 of Principle 2 of the BCP states:

‘As part of their annual resource planning exercise, supervisors regularly take stock of existing skills and projected requirements over the short- and medium-term, taking into account relevant emerging supervisory practices. Supervisors review and implement measures to bridge any gaps in numbers and/or skill-sets identified.’

108. Most CAs¹³¹ perform regular stocktaking exercises to assess needs. Some authorities¹³² also conduct regular meetings with supervising bodies to discuss the level of funding and expectations of the CA. However, based on the responses provided, for many CAs the focus of stocktaking exercises seems to be to identify potential for efficiencies and cost savings. While the efficient use of scarce resources is important, most responses did not reflect the use of the stocktaking exercise as a way of identifying additional resource needs.

Risk-based supervision

109. Essential criterion 8 of Basel Core Principle 2 reads: ‘In determining supervisory programmes and allocating resources, supervisors take into account the risk profile and systemic importance of individual banks and banking groups, and the different mitigation approaches available.’ The FATF’s interpretation of FATF Recommendation 26 also refers to a risk-based approach to supervision.

110. All prudential supervisors in the survey prioritise scarce supervisory resources through a risk-based supervisory framework, meaning that the largest and riskiest institutions receive the most scrutiny. This applies mostly to other competencies covered by those CAs such as AML. In particular, most prudential supervisors stated that they follow the EBA’s guidelines for the Supervisory Review and Examination Process and (where relevant) guidelines from the SSM on less significant institutions. Both these guidelines mandate a risk-based approach.

111. In general, authorities which act exclusively as conduct CAs¹³³, such as consumer protection authorities, provided little information on risk-based supervision. 1 conduct CA¹³⁴ which does not have any prudential responsibilities, stated that it does not take the risk profile of institutions into account. Another conduct CA¹³⁵ with further AML responsibilities stated that it developed its risk matrixes based on ESAs Joint Guidelines on risk-based AML/CFT supervision. 2 CAs¹³⁶ with competence in AML/CFT have developed and use a risk profile assessment matrix for supervised entities, which is updated periodically with new information and collected data. Another CA¹³⁷

¹³¹ All participating CAs except CY (DGS): Stock-taking exercise conducted by CY (CBC), EL (CPA, HCMC, MoF), FI (RA/DGS), FR (ACPR), IE (CPA), IS (CPA), MT (DGS), PL (FIU), RO (CPA), SI (AML, MIRS), SK (RA).

¹³² CY (CMA), ES (BdE), NL (ACM, AFM).

¹³³ CY (CPA), EL (CPA), IS (CPA).

¹³⁴ RO (CPA).

¹³⁵ BE (FSMA), LV (CRPC).

¹³⁶ PT (ASF, CMVM).

¹³⁷ SI (AZN).

with AML and insurance supervision competencies performed risk-based supervision based on the internal methodology for the assessment of risks associated with the supervised entities.

112. Many DGSs¹³⁸ in the survey stated that contributions to the scheme are determined taking into account the riskiness of the institution. However, some DGSs¹³⁹ did not provide any information on risk-based supervision at all. 1 DGS¹⁴⁰ created its own risk evaluation of credit institutions and other participant profiles for inspection purposes only.

¹³⁸ BE (DGS), CY (DGS), EE (DGS), HU (DGS), LT (DGS).

¹³⁹ BG (BDIF), HR (HAOD).

¹⁴⁰ LT (DGS).

3. Financial independence

3.1 Introduction

113. When assessing the financial independence of the CAs, considerations are given to where the competence for approving the budget lies, sources of funding and the sufficiency of the funding for fulfilling the CA's responsibilities.

3.2 International standards

114. Essential criterion 6 of Basel Core Principle 2 states that 'the supervisor has adequate resources for the conduct of effective supervision and oversight. It is financed in a manner that does not undermine its autonomy or operational independence'. It is therefore as relevant to financial independence as to operational independence. Essential criterion 7 further specifies that as part of their annual resource planning exercise, supervisors shall regularly take stock of projected requirements over the short- and medium term. Moreover, as noted within point 2.5 and also relevant for financial independence, Essential Criterion 3 of Principle 3 of the IADI *Core Principles for Effective Deposit Insurance Systems* states that 'the deposit insurer has the capacity and capability (e.g. human resources, operating budget, and salary scales sufficient to attract and retain qualified staff) to support its operational independence and the fulfilment of its mandate'.

3.3 Budgetary autonomy

115. 37 CAs have their budget approved by the Ministry of Finance, the government, parliament or by a combination of these bodies. This approval does not necessarily relate to the allocation of internal resources. 12 CAs¹⁴¹ have their budget approved by parliament, including 1 CA¹⁴², which also requires approval from the Ministry of Finance. The latter is responsible for the approval of the budget of 11 CAs.¹⁴³ The budgets of 2 CAs¹⁴⁴ from the same jurisdiction have to be authorised by the Ministry of Finance and by the Ministry of Social Affairs and Employment. The budget of another CA¹⁴⁵ is proposed by the Ministry of Children, Equality and Social Inclusion and approved by parliament. 6 CAs¹⁴⁶ have their budget approved by the government and 2 CAs¹⁴⁷ have their budget approved both by the government and parliament. 3 CAs¹⁴⁸ are fully

¹⁴¹ AT (MoE), BE (DGS), DK (FSA), ES (BdE, CNMV, FROB, SEPBLAC), FI (FCCA), FR (ACPR), NO (FSA), SE (FSA).

¹⁴² NO (FSA).

¹⁴³ EL (HCMC), HR (FI), LT (DGS), LV (CRPC), MT (FIU, MFSA), NL (ACM, AFM), PL (FIU), PT (ASF), RO (FIU).

¹⁴⁴ NL (AFM, DNB).

¹⁴⁵ NO (CPA).

¹⁴⁶ BE (FPSE), CY (CMA), FI (RA/DGS), LI (FMA), RO (CPA), SE (RA/DGS), SI (MIRS).

¹⁴⁷ IS (CBI), SI (AML).

¹⁴⁸ EL (CPA, MoF), RO (CPA).

dependent on the state budget. For another CA¹⁴⁹, the amount and methods of funding are determined by a Grand Ducal regulation.

116. 43 CAs¹⁵⁰ responded that their board is responsible for the approval of the CA's budget. However, this does not mean that all those CAs are completely autonomous in the establishment of their budget. The Supervisory Board of 1 CA¹⁵¹ oversees its operations and financing and approves its budget. For 1 CA¹⁵² the Administrative Council is responsible for deciding on the budget, which has been prepared by the CA President after consultation with the other members of its executive board since 2021. 1 CA¹⁵³ responded that the board approves the budget, which is confirmed by the central bank.
117. The responses submitted by the CAs reflect a variety of financing models. The funding of some authorities is fully dependent on state budget but for the majority it depends on own revenues from fees collected directly from the supervised entities or own revenues combined with funds from the state budget.
118. CAs that are also central banks tend to have more autonomy with regard to budgets, with some exceptions:
- FR (ACPR) benefits from its own budget, which is funded through contributions from institutions under its supervision although ceilings on FTEs and funding, determined annually by parliament, apply¹⁵⁴;
 - the Central Bank of Iceland needs budget approval by parliament;
 - the Central Bank of Ireland needs approval from the MoF for any shortfall between cost of regulation and expected income through industry levies ('subvention');
 - the budget of the Bank of Spain is approved by parliament but is not consolidated with the overall budget of the public sector.
119. DGSs also tend to have more autonomy regarding budgets, as operational costs often are covered with income from the funds themselves.
120. The remaining CAs¹⁵⁵ often have less autonomy regarding funding sources and are sometimes subject to centralised government budget rules, even though expenses are covered by fees charged to supervised entities. 7 CAs¹⁵⁶ receive some funding from the state budget, in

¹⁴⁹ LU (CAA).

¹⁵⁰ ECB: no approval from a government or external bodies is required, SRB, AT (FMA), BE (NBB), BG (BDIF, BNB), CY (CBC, DGS), CZ (CNB, DGS), EE (DGS, FSA), EL (BoG, HCMC), ES (BdE, CNMV, FGD), FI (FIN-FSA), HR (HANFA, HAOD, HNB), HU (DGS, MNB), IE (CBI), IS (CPA), IT (BoI), LT (BoL), LU (CSSF), LV (FCMC), MT (DGS), NO (DGS), PL (BFG, KNF), PT (BoP, CMVM, DGS), RO (FSA, NBR), SI (AZN, BS), SK (NBS).

¹⁵¹ BE (FSMA).

¹⁵² DE (BaFin).

¹⁵³ FI (FIN-FSA).

¹⁵⁴ According to the French Monetary and Financial Code (Articles L.612-1 et seq.), the Autorité de Contrôle Prudentiel et de Résolution ('ACPR') is an administrative authority which carries out its missions independently and is financially autonomous.

¹⁵⁵ DK (FSA), NO (FSA), SE (FSA).

¹⁵⁶ AT (FMA), CY (CMA), LI (FMA), MT (FIU, MFSA), RO (CPA), SE (FSA), SI (BS).

some cases¹⁵⁷ this is a significant part of their funding. A few central banks do not collect levies from industries and their banking supervision is funded by central bank revenues¹⁵⁸. In particular, depending on the state budget may limit the independence of competent authorities.

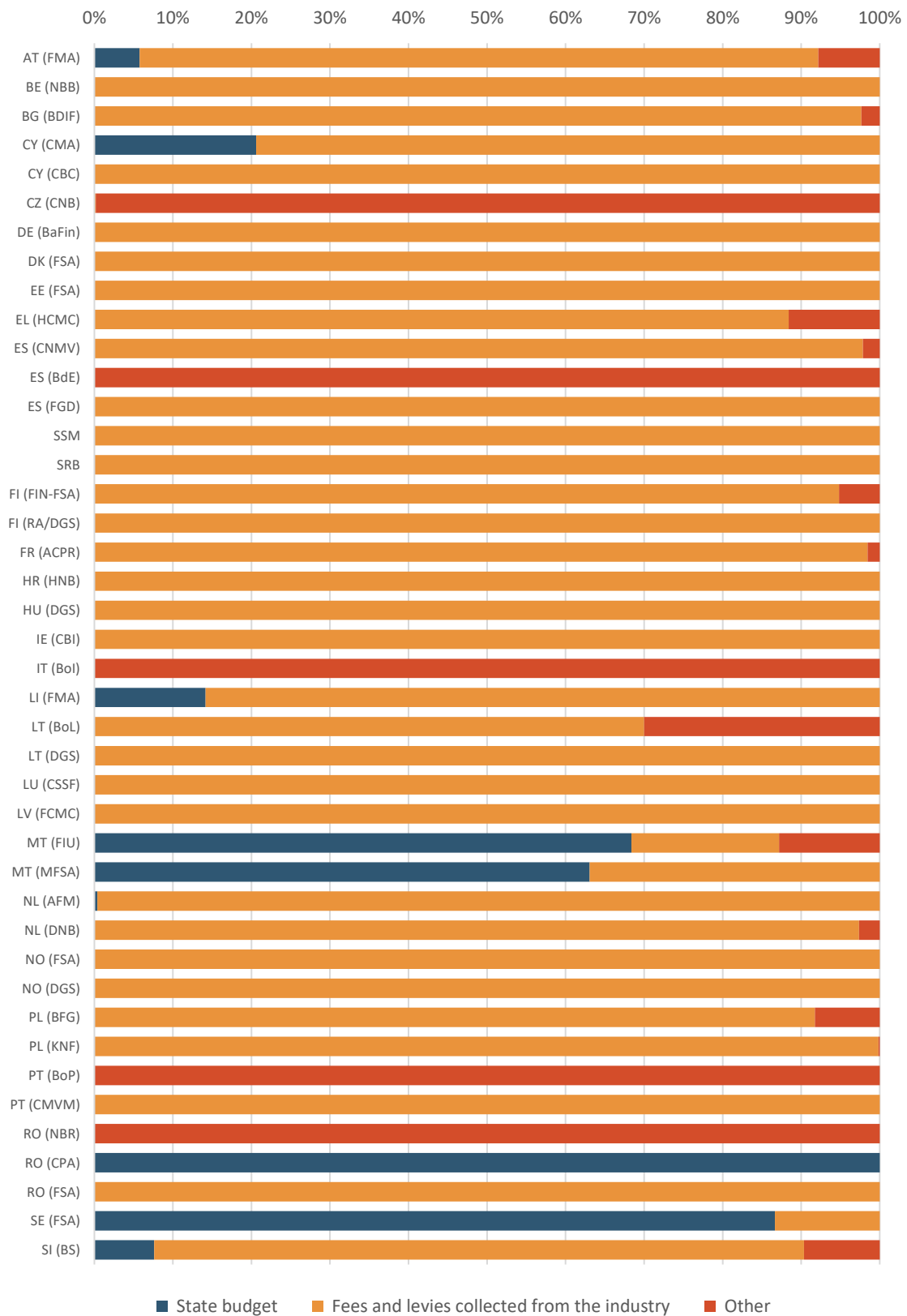
121. For 1 CA¹⁵⁹, levies on banks are defined as a percentage of REA, so that funding automatically increases with the riskiness and size of the financial sector. The funding of most CAs depends on fees and levies collected from the industry, as well as administrative penalties imposed on supervised entities.

¹⁵⁷ MT (FIU, MFSA), RO (CPA), SE (FSA).

¹⁵⁸ CZ (CNB), EL (BoG), ES (BdE), IT (BoI), PT (BoP), RO (NBR).

¹⁵⁹ HU (MNB).

Figure 4. Funding methods of CAs



Source: Survey responses. The data generally reflect the funding arrangements of the CA, but in some cases, data provided by CAs may reflect more specific funding arrangements, e.g. for supervision of credit institutions.

122. Even though being part of a central bank provides a degree of financial autonomy from the central government and frees supervisors from centralised state budget and salary constraints, CAs that are part of central banks are often still subject to budgetary influence from other central bank functions or bodies. This may produce synergies as well as conflicting objectives with its supervisory functions.

3.4 Adequacy of funding

123. Almost all CAs declared that their funding is adequate and allows them to fulfil their responsibilities in a proper manner. Only 2 CAs¹⁶⁰ expressed concerns with respect to funding. For 1 CA¹⁶¹, this is due to the increasing complexity and scope of the attributions and responsibilities of the supervisor that calls into question the sustainability of the financing mechanism.

124. All CAs, except 3, responded that they have sufficient funding to permit them to fulfil their responsibilities. 3 CAs¹⁶² expressed some concerns about funding. The budget of 1 CA¹⁶³ in recent years has been significantly lower than the authority believes to be necessary and has proposed. Another CA¹⁶⁴ expressed the view that it could use more funds to carry out its tasks properly, since the contributions from the sector do not contribute to operational costs. However, in general, that CA manages to set priorities with its limited resources. Another CA¹⁶⁵ recognised that the salaries of its employees, as part of the civil service pay system, are not attractive for experienced and skilled staff.

125. 17 CAs cannot affect the operational allocation of resources once funded or have dealt with limitations in recent years¹⁶⁶. Several of these authorities can only use the resources for the purposes specified by law and in any case, a specific need must be expressed. When the budget is approved, resources cannot be switched from one budget category to another. 1 CA¹⁶⁷ pointed out that it can influence (through its internal bodies) the distribution of funds established in the budget for the day-to-day operations of its organisation (but this does not include funds collected from contributions).

126. 24 CAs¹⁶⁸ can use fees levied on one industry for its supervision to fund a different activity. However, for some CAs, the general approach tends to be 'pay-as-supervised' per sector. With

¹⁶⁰ IS (CPA), PT (ASF).

¹⁶¹ PT (ASF).

¹⁶² BE (DGS), IS (CPA), NO (FSA).

¹⁶³ FSA (NO).

¹⁶⁴ BE (DGS).

¹⁶⁵ SI (MIRS).

¹⁶⁶ AT (FMA, MoE), BE (DGS, FPSE), CY (CBC, DGS), EL (BoG, CPA), HR (HNB), LV (CRPC), NL (DNB), PT (ASF, BoP), RO (CPA, DGS, FIU), SK (RA).

¹⁶⁷ CZ (DGS).

¹⁶⁸ CY (CMA), CZ (CNB), DK (FSA), EE (FSA), EL (HCMC), FI (FIN-FSA), FR (ACPR): The fees levied from the industries ('contribution for control costs') are fully reallocated to the ACPR budget, HR (HANFA), HU (DGS, MNB), IE (CBI), IS (CBI), LI (FMA), LT (DGS): collected fees (insurance contributions) only for the purposes of payment of insurance claims to depositors, LU (CAA, CSSF), LV (FCMC), MT (FIU, MFSA), PL (BFG, KNF), SI (BS), SK (NBS, RA).

regard to autonomy to hire new employees, only 10 CAs¹⁶⁹ cannot independently hire staff. In addition, for 1 CA¹⁷⁰, the possibility of hiring new employees depends on the available budgets and the needs of the other services.

3.5 Financial education

127. In order to raise awareness of the importance of financial literacy and encourage information campaigns, most CAs offer various initiatives and opportunities to the general public such as conferences on the topic of financial education. However, 11 CAs¹⁷¹ indicated that they do not play an active role in promoting financial education.

128. Some CAs¹⁷² offer educational programmes for students and young adults on key financial products and the risk associated with financial markets. They run awareness raising and information campaigns on key financial topics. With respect to high school students, 1 CA¹⁷³ engages every year with schools throughout the country, training the teachers and offering educational booklets for teachers and students. It participates in national and international awareness campaigns, developing new educational tools, such as educational gaming. Another CA¹⁷⁴ developed a website dedicated to financial education in order to provide consumers with reliable financial information. In addition, that CA¹⁷⁵ opened a financial education centre designed to provide financial education to high school students.

129. 6 CAs¹⁷⁶ offer training courses/seminars on the management of personal finances to the general public. 3 CAs¹⁷⁷ release information leaflets and brochures providing information on certain types of investment products and on facts investors should be aware of when investing. Unlike other CAs, the educational projects also cover information about supervision and resolution activities for 1 CA¹⁷⁸. 4 CAs¹⁷⁹ opened museums to enhance the educational programmes offered and raise awareness of the importance of financial literacy (periodic student visits, exhibitions on payments, etc.). 1 CA¹⁸⁰ is also working on the realisation of an interactive and multimedia museum dedicated to economic and financial education. Another CA¹⁸¹ is focused on the principles of responsible lending, as well as saving alternative insurance

¹⁶⁹ CY (DGS), EL (CPA, HCMC, MoF), ES (CNMV, FROB: FROB is autonomous in the selection procedure of staff but does not have autonomy in deciding the number of staff.), HR (FI), RO (CPA), SI (AML), SK (RA).

¹⁷⁰ BE (DGS).

¹⁷¹ BE (NBB), EL (HCMC), ES (FGD, FROB, SEPBLAC), HR (FI), NL (AFM), NO (FSA), SE (RA/DGS): only upon request, SI (AML), SK (RA).

¹⁷² BE (FSMA), IT (BoI, IVASS), PT (BoP), RO (NBR), SI (BS).

¹⁷³ IT (BoI).

¹⁷⁴ BE (FSMA).

¹⁷⁵ BE (FSMA).

¹⁷⁶ IT (BoI), LT (BoL), NL (DNB), PL (KNF), PT (BoP), RO (NBR).

¹⁷⁷ DE (BaFin), IT (BoI), PT (BoP).

¹⁷⁸ RO (NBR).

¹⁷⁹ EL (BoG), IT (BoI), LT (BoL), SI (BS).

¹⁸⁰ IT (BoI).

¹⁸¹ LT (BoL).

products, investment, mortgages, credit scores as well as the knowledge of successful ways to manage personal finances, including which financial instruments should be chosen at different stages in life.

130. Another CA¹⁸² noted that it provides general information to the public on monetary policy, banking supervision, etc. It does not provide financial education, e.g. on financial markets and products.

¹⁸² ECB.

4. Personal independence

4.1 Introduction

131. The independence of CAs implies personal independence that can be analysed at the level of the management bodies (e.g. their composition, appointment and removal of members, duration of their mandate and its potential renewal) and the staff. Moreover, in order to act independently and avoid undue influence from industry, it is important that supervisors have legal protection in the bona fide execution of their roles.

4.2 International standards

132. BCBS Core Principle 2 includes, inter alia, the duty of the supervisor to operate independently, without external interference, maintaining its objectivity and fairness, and avoiding any deterioration of its integrity. Furthermore, Basel Core Principle 2 states: ‘The legal framework for banking supervision includes legal protection for the supervisor’.

133. Among the essential criteria defined by the BCBS aimed at ensuring personal independence, the following should be highlighted:

- The process for the appointment and removal of the head(s) of the supervisory authority and members of its governing body is transparent.
- The head(s) of the supervisory authority is (are) appointed for a minimum term and is removed from office during his/her term only for reasons specified in law or if (s)he is not physically or mentally capable of carrying out the role or has been found guilty of misconduct. The reason(s) for removal is publicly disclosed.
- The governing body is structured to avoid any real or perceived conflicts of interest.
- The supervisor and its staff have credibility based on their professionalism and integrity. There are rules on how to avoid conflicts of interest.
- Laws provide protection to the supervisor and its staff against lawsuits for actions taken and/or omissions made while discharging their duties in good faith. The supervisor and its staff are adequately protected against the costs of defending their actions and/or omissions made while discharging their duties in good faith.

134. FSB Key Attribute 2.5 states, in regard to personal independence, that the resolution authority should ‘have the expertise [...] to implement resolution measures with respect to large and complex firms.’

135. FSB Key Attribute 2.6 reads: ‘The resolution authority and its staff should be protected against liability for actions taken and omissions made while discharging their duties in the exercise of resolution powers in good faith, including actions in support of foreign resolution proceedings.’

136. The FATF’s interpretation of Recommendation 26 provides that: ‘[...] Countries should have in place processes to ensure that the staff of these authorities maintain high professional

standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.’

137. IADI Core Principle 3 states: ‘The deposit insurer should be operationally independent, well-governed, [...] and insulated from external interference.’ Among the essential criteria of Principle 3 aimed at ensuring personal independence, the following should be highlighted.

- The institutional structure of the deposit insurer minimises the potential for real or perceived conflicts of interest.
- The composition of the governing body minimises the potential for real or perceived conflicts of interest. In order to maintain operational independence, representatives of the other financial safety-net organisations that participate in the governing body do not serve as Chair or constitute a majority.
- The governing statutes or other relevant laws and policies governing the deposit insurer specify that:
 - the governing body and management are ‘fit and proper’ persons;
 - members of the governing body and the head(s) of the deposit insurer (with the exception of ex officio appointees) is/are subject to fixed terms and the fixed terms are staggered.
- There is a transparent process for the appointment and removal of the members of the governing body and head(s) of the deposit insurer. Members of the governing body and head(s) of the deposit insurer can be removed from office during their term only for reasons specified or defined in law, internal statutes or rules of professional conduct, and not without cause.
 - Members of the governing body and employees are subject to high ethical standards and comprehensive codes of conduct to minimise the potential for real or perceived conflicts of interest.

138. Principle 11 of the IADI *Core Principles for Effective Deposit Insurance Systems* reads: ‘The deposit insurer and individuals working both currently and formerly for the deposit insurer in the discharge of its mandate must be protected from liability arising from actions, claims, lawsuits or other proceedings for their decisions, actions or omissions taken in good faith in the normal course of their duties. Legal protection should be defined in legislation’. The four essential criteria add that:

- legal protection precludes damages but also covers costs, including funding defense costs in advance;
- individuals with legal protection shall disclose real or perceived conflicts of interest and adhere to relevant codes of conduct, to ensure that they remain accountable;
- legal protections do not prevent depositors or other individual claimants or banks from making legitimate challenges to the acts or omissions of the deposit insurer in public or administrative review (e.g. civil action) procedures.

4.3 Appointment and removal of members of the governing body

139. This section focuses principally on matters relating to the appointment, renewal of term and removal of the members of the CA’s governing body responsible for day-to-day decisions, i.e. the body with more executive functions.

140. 72 CAs¹⁸³ of 82 stated that their head and governing board are subject to mechanisms intended to protect independence, such as procedures for appointment, renewal, terms of office and criteria for removal. 9 CAs¹⁸⁴ confirmed that mechanisms to protect independence do not exist. 1 CA¹⁸⁵ did not provide any information on that question. Whereas all (prudential) banking supervisory authorities confirmed that mechanisms intended to protect independence exist, several DGSs, consumer authorities and AML authorities did not confirm the existence of such mechanisms. In particular, 4 of 13 authorities which act exclusively as DGSs did not confirm the existence of such mechanisms. 1 CA¹⁸⁶ that did not confirm mechanisms to protect independence specified that the Commission for the Prevention of Money Laundering and Monetary Offences (CPBCIM) appoints and dismisses the Director of SEPBLAC.
141. Some CAs¹⁸⁷ indicated that they do not have a board. Some DGSs¹⁸⁸ pointed out that they have a supervisory board and director(s). For those authorities the following paragraphs refer to the procedures for appointment, renewal and dismissal of the head of their authority. Another DGS¹⁸⁹ indicated that it does not have a board but a Council. For the appointment and dismissal of ministers at participating CAs¹⁹⁰ that are ministries, constitutional rules apply. 2 CAs¹⁹¹ that are ministries indicated that the head of the relevant directorate is selected in the way and for the term specified by law. Similarly, the director of 1 CA¹⁹² is assigned by the chairperson of the public agency that the CA forms part of. In almost all these cases only limited information was made available through the survey on the arrangements in place.
142. Many responses indicated that legal procedures have been established for the appointment of the members of their governing body or the head of their authority where applicable.
143. In general, the members of the governing body are appointed by decision of either the executive branch or the Head of State, and sometimes by the legislative branch or other appointing bodies. In some cases, (i) several appointing bodies exist, each selecting a few members of the governing body¹⁹³, (ii) more than one body is involved in the decision¹⁹⁴ or (iii) some or all members are appointed by virtue of their affiliation to another entity (ex officio

¹⁸³ All participating CAs except CY (DGS), EL (CPA, MoF), ES (SEPBLAC), HR (FI), HU (DGS), IE (CCPC), NO (DGS), PL (BFG), RO (CPA). a mechanism that protects the independence of the management board will enter into force from 1 January 2022, RO (CPA).

¹⁸⁴ CY (DGS), EL (CPA, MoF), ES (SEPBLAC), HR (FI), HU (DGS), NO (DGS), PL (BFG), RO (CPA).

¹⁸⁵ IE (CCPC).

¹⁸⁶ ES (SEPBLAC).

¹⁸⁷ AT (MoE), BE (DGS, FPSE), BG (FIU), CY (CPA), EL (MoF), FI (FCCA, RA/DGS), IS (CPA), LV (CRPC), NO (CPA), RO (CPA, FIU), SI (FIU, MIRS).

¹⁸⁸ EE (DGS), HR (HAOD).

¹⁸⁹ LT (DGS).

¹⁹⁰ AT (MoE), EL (MoF).

¹⁹¹ EL (CPA, MoF).

¹⁹² BG (FIU).

¹⁹³ ECB, BG (BDIF), ES (BdE, FGD, FROB), FR (ACPR), HU (DGS), LT (BoL), PL (BFG), SK (RA).

¹⁹⁴ ECB, SRB, SK (NBS).

members)¹⁹⁵. Where information was provided, the appointing bodies of the CA governing bodies break down as follows:

- the executive branch (government, cabinet, council of ministers, individual ministers) for 25 CAs¹⁹⁶;
- the legislative branch for 11 CAs¹⁹⁷;
- the Head of State for 21 CAs¹⁹⁸;
- the Chairman for the other members of the board for 1 CA¹⁹⁹;
- more than one body is involved in the decision for 4 CAs²⁰⁰.

144. In addition, the procedure adopted in some countries includes either (i) the consultation of other bodies or (ii) provides for the proposals or recommendations of members to be appointed being made by another body.

145. Proposals or recommendations from another body are made by:

- the executive branch (government, cabinet, Council of Ministers, individual ministers, e.g. Minister of Finance or Economics, etc.) in 23 CAs²⁰¹;
- the Head of State in 3 CAs²⁰²;
- the supervisory board in 2 CAs²⁰³;
- the Governor or Chair in 3 CAs²⁰⁴.

146. Consultations with another body are envisaged as follows:

- consultation with the executive branch in 1 CA²⁰⁵;
- consultation with the legislative branch in 4 CAs²⁰⁶;
- consultation with the supervisory board of the respective CA in 2 CAs²⁰⁷;
- consultation with the board for the appointment of that CA director general in 1 CA²⁰⁸;

¹⁹⁵ ECB, CY (DGS), CZ (DGS), DK (FSA), ES (BdE, CNMV, FROB), FR (ACPR), IE (CBI), LT (DGS) for its Council, LV (CRPC), MT (MFSA), PL (KNF), SK (RA).

¹⁹⁶ CY (CBC: for board members except (deputy) Governor; CMA), DK (FSA), EL (HCMC): the Chair of the Board of Directors is also approved by a special parliamentary committee, ES (BdE: for board members except Governor; CNMV, FROB, SEPBLAC), FI (RA/DGS), HR (HAOD), IE (CBI) for all members except for the (Deputy) Governor(s) and the Secretary General of the Department of Finance, IS (CBI) for (deputy) Governor(s), LI (FMA), LV (CRPC), MT (FIU), NL (ACM, AFM, DNB), NO (FSA), PT (ASF, BoP, CMVM), RO (FIU), SE (FSA, RA/DGS), SK (NBS) for board members except (deputy) Governor.

¹⁹⁷ BG (BNB) for (deputy) Governor(s), FI (FIN-FSA), HR (HANFA, HNB), HU (MNB) for board members except (deputy) Governor(s), LT (BoL) for the Chairperson, LV (FCMC), RO (FSA, NBR), SI (AZN, BS).

¹⁹⁸ AT (FMA, MoE), BE (NBB, FSMA), BG (BNB) for board members except (deputy) Governor(s), CZ (CNB), DE (BaFin), ES (BdE) for the Governor, HU (MNB) for (deputy) Governor(s), IE (CBI) for Governor, IT (BoI), LT (BoL) for board members except the Chairperson, LU (CAA, CSSF), MT (MFSA), NO (CPA), PL (FIU, KNF), RO (CPA), SK (NBS) for (deputy) Governor.

¹⁹⁹ CY (DGS).

²⁰⁰ ECB, ES (FROB), IE (CBI), SK (NBS).

²⁰¹ AT (FMA, MoE), BE (FSMA), CY (CMA, DGS), DE (BaFin), ES (BdE except for the Deputy Governor, CNMV: for (vice-chair), FI (FIN-FSA), HR (HAOD), HU (MNB) for (deputy) Governor(s), IE (CBI) for Governor, IT (BoI), LU (CAA, CSSF), LV (CRPC, FCMC), NO (CPA, FSA), PL (FIU), PT (BoP), SI (AZN), SK (NBS).

²⁰² CY (CBC) for the (deputy) Governor, LT (BoL) for the Chairperson, SI (BS).

²⁰³ NL (AFM, DNB).

²⁰⁴ ES (BdE for the Deputy Governor, PL (KNF), SK (NBS) for board members except (deputy) Governor.

²⁰⁵ IT (BoI).

²⁰⁶ ES (BdE: for the Governor, FROB: for the Chair), PT (ASF, BoP).

²⁰⁷ BE (FSMA): on the advice of the supervisory board.

²⁰⁸ NO (FSA).

- consultation with another authority, e.g. the national bank or of its Chairperson/Governor in 6 CAs²⁰⁹.

147. A large majority of CAs indicated that their legislation contains appointment requirements that must be complied with for any person appointed a member of the governing body. However, some CAs²¹⁰ presented very little or no details on the appointment criteria adopted at national level.

148. In most cases, appointments are based on requirements or suitability criteria including:

- financial services expertise²¹¹ and/or experience²¹²;
- management skills²¹³;
- recognised standing/good reputation²¹⁴;
- the highest integrity²¹⁵;
- lack of criminal convictions²¹⁶;
- no history of involvement in insolvency proceedings²¹⁷;
- no (personal or financial) interest in a supervised entity²¹⁸;
- no incompatibility of functions²¹⁹;
- certain citizenship requirements²²⁰.

149. Other CAs mentioned suitability criteria such as a sense of public interest²²¹, special professional qualifications²²² or requirements such as not being excluded from the right to be elected to the national parliament²²³.

150. 1 CA²²⁴ stated that further to the above requirements of having no financial interest in a supervised entity and incompatibility of functions, the chair and vice-chair of the board may not

²⁰⁹ AT (FMA), EL (HCMC): for Board members, the BoG and the Institute of Certified Public Accountants are also consulted ES (BdE: for board members except (deputy) Governor; SEPBLAC), LT (BoL) for board members except the Chairperson, MT (FIU) for board members except (deputy) Chairman.

²¹⁰ BG (FIU), CY (CPA, DGS), LU (CAA).

²¹¹ SRB, AT (FMA), BG (BNB), CY (CBC, CMA), DK (FSA) for some board members, EE (FSA), EL (HCMC), ES (BdE, CNMV, FGD, FROB), FI (FIN-FSA, RA/DGS), FR (ACPR), HR (DGS, HANFA), HU (MNB), IE (CBI), IS (CBI), LI (FMA), MT (DGS), PL (BFG, KNF), PT (ASF, BoP, CMVM), RO (FSA), SI (MIRS), SK (NBS).

²¹² ECB, SRB, CY (CBC, CMA), CZ (CNB), EE (FSA), EL (HCMC), ES (BdE, FGD, FROB), FI (FIN-FSA, RA/DGS), HR (DGS, HANFA, HNB), HU (MNB), IS (CBI), LI (FMA), MT (DGS), PL (KNF), PT (ASF, BoP, CMVM), RO (FSA), SE (FSA), SI (MIRS), SK (NBS).

²¹³ DK (FSA) for some board members, FI (RA/DGS), MT (DGS), PL (KNF), PT (BoP).

²¹⁴ ECB, CY (CMA), CZ (CNB), EE (FSA), EL (HCMC), FR (ACPR), HR (HNB), IS (CBI), LI (FMA), PL (KNF), PT (BoP), RO (FSA), SK (NBS).

²¹⁵ BG (BNB), CY (CMA), PT (ASF, CMVM).

²¹⁶ BG (BNB), CZ (CNB), EE (FSA), IE (CBI), IS (CBI), LI (FMA), PL (BFG, KNF), RO (FSA), SK (NBS).

²¹⁷ BG (BNB), EE (FSA), IS (CBI), MT (MFSA), RO (FSA).

²¹⁸ CY (CMA), DK (FSA), ES (BdE), FR (ACPR), HR (HNB), IE (CBI), IS (CBI), MT (DGS, MFSA), PL (BFG), PT (ASF), RO (FSA, NBR), SE (FSA), SI (BS).

²¹⁹ BE (FSMA), CY (CMA), CZ (CNB), DK (FSA), ES (BdE), FR (ACPR), HR (HANFA, HNB), IE (CBI), LI (FMA) for chair, vice-chair and one other board member, PT (ASF), RO (FSA, NBR), SK (NBS).

²²⁰ BE (FSMA).

²²¹ PT (BoP).

²²² DE (BaFin), PT (ASF).

²²³ AT (FMA)

²²⁴ DK (FSA).

have worked for a financial company or have been a member of the board of a financial company during the five years preceding appointment. The CA applies the above requirements on a collective basis, so that, overall, the board members must have legal, economic and financial insight, insight into data analysis and cyber risks and insight into the prevention and combating of financial crime. Whereas for some board members legal, economic and financial expertise are required, other members must have special insight into AML/CFT and cyber risk or different managerial backgrounds.

151. Terms of appointment for members of the governing bodies or heads of CAs vary between two and seven years with some CAs²²⁵ allowing for an indefinite term. The majority have a term of five years and provide for the renewal of this term. In regard to the duration of the term the following deviations were observed:

- 2 years²²⁶;
- 3 years²²⁷;
- 4 years²²⁸;
- 5 years²²⁹;
- 6 years²³⁰;
- 7 years²³¹;
- Indefinite term²³².

152. Some of the CAs have different mandate durations, depending on the specific member of the governing body in question, in particular the duration of the term of the Governor/Director General/Chairperson²³³.

153. The answers also varied in terms of the renewal of the term. Some jurisdictions have different rules for the renewal of the mandate depending on the member of the governing body in question. The rules on mandate renewal provide for:

²²⁵ BG (FIU), MT (MFSA) for its CEO and the members of the Executive Committee.

²²⁶ DK (FSA) for board members, NO (DGS).

²²⁷ EE (DGS, FSA), FI (FIN-FSA) for the governing body, MT (DGS, FIU), PL (BFG), SE (FSA).

²²⁸ BG (BDIF), ES (CNMV, FGD), EE (FSA) for the Chairman of the management board, MT (DGS), NL (AFM), NO (FSA) for board members.

²²⁹ ECB for the Chair/Vice-chair/ECB representatives, SRB, AT (FMA), CY (CBC, CMA), CZ (DGS), DE (BaFin), EL (HCMC), FI (FIN-FSA: for the Director General, RA/DGS), FR (ACPR), IE (CBI) for members except Governor(s), IS (CBI), LI (FMA), LT (BoL) for Chairperson, LU (CSSF), LV (FCMC), MT (DGS, MFSA for the members of the Board of Governors), NL (ACM), PL (KNF), PT (BoP), RO (FSA, NBR), SI (MIRS).

²³⁰ BE (FPSE, FSMA, NBB), BG (BNB), CZ (CNB), EL (BoG), ES (BdE), HR (HANFA, HNB), HU (MNB), IT (BoI), LT (BoL) for Board members, LU (CAA), NO (CPA, FSA: for director general), PT (ASF, CMVM), SI (AZN, BS), SK (NBS).

²³¹ IE (CBI) for Governor, NL (DNB).

²³² BG (FIU), MT (MFSA) for its CEO and members of the Executive Committee.

²³³ BE (NBB): 5 years instead of 6 years, DK (FSA): 5 years for Director General with the possibility of extension for 3 years, EE (FSA): 4 years instead of 3 years, ES (FROB: 5 years; SEPBLAC: duration of mandate of the FIU head is not predetermined), FR (ACPR): 6 years instead of 5 years, LT (BoL): 5 years instead of 6 years, NL (ACM): 7 years instead of 5 years, SE (FSA): six years for Director General with the possibility of twice extensions for 3 years each time.

- renewal is allowed in 37 CAs²³⁴, of which 19²³⁵ allow for only one renewal and two CAs²³⁶ for two renewals at most;
- renewal is not allowed in 5 CAs²³⁷;
- many CAs do not provide information on mandate renewal.

154. CAs have specific procedures for the removal of members of their governing bodies.

155. The entity with the powers to dismiss or remove a member of CA's governing bodies varies depending on the country (in general, it is the same entity responsible for their appointment):

- the executive branch (government, cabinet, Council of Ministers, individual ministers, e.g. Minister of Finance or Economics, etc.) in 12 CAs²³⁸;
- the legislative branch in 6 CAs²³⁹;
- the Head of State in 11 CAs²⁴⁰;
- more than one body is involved in the dismissal process in 4 CAs²⁴¹;
- dismissal of the governing board by the supervisory board in 2 CAs²⁴²;
- dismissal of the other members of the management committee by the Chairman in 1 CA²⁴³.

156. In general, many CAs²⁴⁴ stated that the applicable laws set down the removal conditions. The responses regarding the grounds for removal are varied. 1 CA²⁴⁵ indicated that there are no specific removal criteria defined in the law.

157. Many CAs indicated that they have specific procedures for the removal of members of the governing body or of the head of the CA with limited grounds for dismissal specified by law. In most cases these are that they no longer meet the conditions stipulated for the appointment²⁴⁶,

²³⁴ AT (FMA), BE (FSMA), CY (CMA), CZ (CNB), DE (BaFin), DK (FSA), EE (FSA), EL (HCMC), ES (BdE: except for (deputy) Governor; CNMV, FGD), FI (FIN-FSA, RA/DGS), FR (ACPR), HR (HANFA), HU (MNB), IE (CBI), IS (CBI), IT (BoI), LI (FMA), LT (BoL), LU (CAA, CSSF), LV (FCMC), MT (DGS, FIU), NL (ACM, AFM, DNB), NO (CPA, DGS), PT (BoP), RO (FSA, NBR), SI (AZN, BS), SK (NBS).

²³⁵ CY (CMA), CZ (CNB), EL (HCMC), ES (BdE, CNMV), FI (RA/DGS), FR (ACPR), HU (MNB) for the Governor, IE (CBI), IS (CBI), IT (BoI), LI (FMA): the Chair's mandate may in justified cases extraordinarily be extended for an additional two years, LT (BoL) except the Chairperson whose contract can be renewed unlimited times, LV (FCMC), NL (ACM, DNB), PT (BoP), SK (NBS) for (deputy) Governor.

²³⁶ LV (FCMC), NL (AFM).

²³⁷ ECB for the Chair/Vice-chair, SRB, ES (FROB) for the Chair only, PT (ASF, CMVM).

²³⁸ AT (FMA), CY (CBC), DK (FSA), EL (HCMC), ES (BdE, FROB), FI (RA/DGS), LI (FMA), PT (ASF, BoP, CMVM), SE (FSA).

²³⁹ FI (FIN-FSA), HR (HNB), LT (BoL) for the Chairperson, LV (FCMC), RO (NBR), SI (BS).

²⁴⁰ BE (NBB, FSMA), CZ (CNB), DE (BaFin), LT (BoL) for members except the Chairperson, LU (CAA, CSSF), MT (MFSA), PL (FIU, KNF), SK (NBS) for the (deputy) Governor.

²⁴¹ SRB, DE (BaFin), IT (BoI), SK (NBS).

²⁴² EE (DGS, FSA).

²⁴³ CY (DGS).

²⁴⁴ AT (FMA), CY (CMA, DGS), CZ (CNB), EL (HCMC), ES (BdE, FGD, FROB), FI (FIN-FSA), HR (HNB, HANFA), IT (BoI, IVASS), LT (BoL), LV (CRPC, FCMC), MT (FIU), NL (AFM, DNB), NO (FSA), PT (BoP, CMVM), RO (DGS), SI (BS), SK (NBS, RA).

²⁴⁵ BE (FSMA).

²⁴⁶ ECB, SRB, AT (FMA), BE (NBB), CY (CBC), CZ (CNB), EE (FSA), HR (HNB), HU (MNB), IT (BoI), LT (BoL), LU (CSSF), LV (FCMC), NL (AFM), RO (FSA, NBR), SI (BS).

have been proven guilty of serious misconduct²⁴⁷ or there is permanent disability/incapacity or long-lasting absence due to illness, accident or infirmity²⁴⁸. Other grounds for dismissal that CAs mention are:

- if it subsequently emerges that a condition for appointment had not been fulfilled²⁴⁹,
- grounds for the incompatibility of functions arise during their term of office²⁵⁰;
- if breaches of duty have not been rectified, or have not been rectified in a lasting manner/serious lack of compliance with their obligations²⁵¹;
- conviction for intentional offence²⁵²;
- a ruling on a criminal matter enters into force involving the board member²⁵³;
- the board member violates the provisions on confidentiality and/or certain types of conflicts of interest²⁵⁴;
- a prohibition on business is applied with regard to the board member²⁵⁵;
- a bankruptcy ruling has entered into force or a prohibition on business is applied to the board member or if he or she is legally denied the right to engage in economic activity²⁵⁶; or
- good cause²⁵⁷.

158. Further grounds for dismissal are the expiry of board member's term of office, resignation of the board member accepted by the appointing authority and death of the board member.

159. Two CAs²⁵⁸ stated that the respective board member to be removed shall be heard in advance of the removal decision (prior hearing).

160. 1 CA²⁵⁹ indicated that members of its governing body can only be dismissed on limited grounds as set out in law, without further specifying these grounds.

161. 1 CA²⁶⁰ stated that a joint substantiated application from the Minister of Finance and the Council of the national central bank for an early release of a board member constitutes grounds for parliament to remove the board member from the office.

²⁴⁷ ECB, SRB, AT (FMA), BE (NBB), CY (CBC, CMA, DGS), CZ (CNB), DK (FSA), EL (HCMC), ES (CNMV), HR (HNB), HU (MNB), IE (CBI), IT (BoI), LT (BoL), LU (CAA, CSSF), LV (FCMC), MT (DGS, MFSA), NL (DNB), NO (FSA), PT (ASF, CMVM), RO (NBR), SI (BS), SK (NBS).

²⁴⁸ AT (FMA), CY (DGS), EE (FSA), ES (BdE, CNMV, FROB), IE (CBI), LU (CAA), LV (FCMC), MT (DGS, FIU, MFSA), NL (DNB), PL (KNF), PT (ASF, BoP).

²⁴⁹ AT (FMA).

²⁵⁰ CY (CMA), EL (HCMC), ES (BdE, CNMV, FROB), PT (ASF), SI (BS).

²⁵¹ AT (FMA), ES (BdE, FROB), MT (FIU), NL (AFM), NO (FSA).

²⁵² CY (CMA), ES (BdE, CNMV, FROB), LV (FCMC), PL (KNF), PT (ASF).

²⁵³ EE (DGS, FSA), PT (ASF).

²⁵⁴ EE (FSA), PT (ASF).

²⁵⁵ CY (CMA), EE (DGS), ES (BdE).

²⁵⁶ EE (DGS, FSA).

²⁵⁷ CY (DGS), DE (BaFin), LI (FMA).

²⁵⁸ DE (BaFin), ES (BdE).

²⁵⁹ NL (ACM).

²⁶⁰ LV (FCMC).

162. Two CAs²⁶¹ from the same jurisdiction stated that the government may make proposals to the Head of State regarding the dismissal of the members of the executive board if any fundamental disagreement arises between the government and the executive board concerning the policy and execution of the CA's remit. In such cases, the dismissal shall apply to the executive board as a whole.
163. 1 CA²⁶² that did not confirm it had mechanisms intended to protect independence in place stated that any member of the management board of that CA, including the president or deputy, may be removed from his or her position by the Council of the CA at any time. Pursuant to the provisions amending the Public Finance Act, from 1 January 2022, a mechanism to protect the independence of the management board will enter into force that limits the possibility of recalling the functions performed to the cases exhaustively indicated.

4.4 Legal protection of staff

Legal protection of staff in the exercise of their functions.

164. The legal protection of supervisory authorities and their staff and board members will strengthen their independence when making decisions.
165. Out of 82 participating CAs a huge majority of 72²⁶³ stated that their CA, the head and members of their governing body and their staff are accorded adequate legal protection for the bona fide discharge of their governmental, regulatory and administrative functions and powers. 9 CAs²⁶⁴ indicated that the legislation in force does not offer legal protection or that it affords only limited legal protection. 1 CA²⁶⁵ did not reply to this question. A closer look at this initial observation shows that (only) two prudential banking supervisory authorities²⁶⁶ out of 31 CAs did not confirm adequate legal protection for their authority and staff, but 3 DGSs²⁶⁷ out of 13 authorities which act exclusively as DGSs did not confirm adequate legal protection. Thus, in relative terms, the legal protection of the authorities which act exclusively as DGSs and their staff seems to be less established than the legal protection for other types of supervisory authorities. The legal protections of DGSs and their staff should be reviewed, and improved where applicable.
166. Out of 9 CAs that did not confirm adequate legal protection 1 CA²⁶⁸ claimed that the question on adequate legal protection was incomprehensible. Another CA²⁶⁹ stated that the

²⁶¹ LU (CAA, CSSF).

²⁶² PL (BFG).

²⁶³ All participating CAs are accorded adequate legal protection except EL (CPA), HU (DGS), IE (CCPC), IS (CBI), LT (DGS), NO (DGS), PL (FIU, KNF), PT (ASF), RO (FSA).

²⁶⁴ EL (CPA), HU (DGS), IS (CBI), LT (DGS), NO (DGS), PL (FIU, KNF), PT (ASF), RO (FSA).

²⁶⁵ IE (CCPC).

²⁶⁶ IS (CBI), PL (KNF).

²⁶⁷ HU (DGS), LT (DGS), NO (DGS).

²⁶⁸ PL (FIU).

²⁶⁹ EL (CPA).

general provisions regarding the liability of public service employees apply, so that it can be assumed that some legal protections do exist for the staff of that CA. Only 1²⁷⁰ of the 3 DGSs that do not have adequate legal protection in place stated that staff are subject to limited liability due to lower statutory employee liability, and that management liability insurance is available and has been purchased to mitigate the unlimited civil liability of the head and members of that DGS.

167. It should also be highlighted that 1 prudential banking supervisory authority²⁷¹ (with further responsibilities) explicitly stated that there are no legal provisions that grant the regulator, the head and members of the governing body or its staff protection from legal action for the discharge of the CA's administrative functions and powers. This is notable in view of Basel Core Principle 2 and essential criterion 9. Furthermore, the CA's liability rule provides that the CA is, as a general rule, liable for loss or damages caused by its employees in the course of their employment. However, any person who seeks financial compensation for an alleged infringement caused by the bank's employees is not barred from bringing a legal action personally against the CA's employees. In neither situation can the CA's employees file a claim against the CA for financial support for legal defence in court or payment of compensation.
168. The other prudential banking supervisory authority²⁷² (with further responsibilities) that did not confirm adequate legal protection stated that legal protection for its (deputy) chairs and staff exists but is very limited. Another CA²⁷³ (out of 9) indicated that according to recently adopted legislation the costs incurred by legal proceedings against board members or staff are supported by the CA if the judicial bodies find that the fulfilment or omission of fulfilment took place in good faith and without negligence in any act relating to the lawful exercise of supervision and control.
169. Of the 71 CAs that reported that adequate legal protection for the bona fide discharge of the authority's functions and powers are afforded, differences emerge with regard to the type of legal protection, and to whom and in which cases they apply. In principle, both parties can be held liable, the CA itself and its board members and staff. Not all responses draw a clear distinction between the liability of the CA and the liability of its board members and staff and, on the whole, many responses lack substance on the issue of adequate legal protection. 17 CAs²⁷⁴ reported that the principle of official liability is applied, meaning that only the CA itself or the government can be held liable by an injured party, and where applicable the CA will seek recourse from its staff in a second step, in most cases only if board members or staff acted with gross negligence or intent. Focus will be on the issue of personal liability for civil damages caused to an injured party, be it direct liability with the injured party or the staff's CA that seeks recourse with its staff after being sued by the injured party.

²⁷⁰ HU (DGS).

²⁷¹ IS (CBI).

²⁷² PL (KNF).

²⁷³ RO (FSA).

²⁷⁴ ECB, AT (FMA), CZ (CNB), DE (BaFin), DK (FSA), EE (FSA), ES (BdE, FGD, FROB), FR (ACPR), LU (CAA), NO (CPA, FSA), PT (BoP), SE (FSA, RA/DGS), SI (MIRS).

170. 47 CAs²⁷⁵ provided responses clearly specifying that legal protection for the bona fide discharge of duties exist. Most CAs stated that members of staff are only liable in the event of gross, utter or serious negligence²⁷⁶, gross misconduct²⁷⁷, bad faith²⁷⁸, if the act or omission is not bona fide²⁷⁹, if the staff act intentionally or wilfully²⁸⁰, in cases of wilful misconduct²⁸¹, or in cases of fraud²⁸². Other CAs indicated that staff cannot be held liable if they act with due diligence, due care or in good faith²⁸³ or that personal liability only applies if the staff members have significantly violated their official duties²⁸⁴.
171. 1 CA²⁸⁵ stated that its board members and staff bear no personal responsibility for their actions or omissions during the exercise of their duties, unless there are exceptional cases such as breach of secrecy or market manipulation. The same CA pointed out that its staff as well as its board members are obliged to observe high professional standards, including standards relating to confidentiality and the avoidance of conflicts of interest.
172. 2 CAs²⁸⁶ from the same jurisdiction indicated that they can only be held responsible for damages caused to entities or persons due to official actions if gross negligence in the choice and application of the means used to fulfil their duties is proved. Legal protection for staff members against lawsuits for actions taken and omissions made during their service is provided by the fact that the boards representing the CAs is exclusively responsible for these actions. If a member of the CAs who has the status of civil servant or employee is personally sued for damages caused while discharging their duties, the member can issue an indictment of the State and thus devolve a part of their responsibility onto the State.
173. 1 CA²⁸⁷ indicated that its bodies and staff are liable to the CA for slight negligence. However, liability depends on additional circumstances to be taken into account. Excusable failures do not imply liability for staff of that CA.

²⁷⁵ ECB, BE (DGS, FPSE, FSMA, NBB), BG (BDIF, BNB, FIU), CY (CBC, CMA, DGS), CZ (CNB), DE (BaFin), DK (FSA), EE (DGS, FSA), EL (BoG, HCMC), ES (BdE, CNMV, FGD, FROB, SEPBLAC), FI (FIN-FSA), FR (ACPR), HR (DGS, FI, HANFA, HNB), IE (CBI), IT (BoI), LI (FMA), LT (BoL), LU (CAA, CSSF), LV (FCMC), MT (MFSA), NL (AFM), PL (BFG), PT (BoP, CMVM), RO (DGS, NBR), SE (RA/DGS), SI (MIRS), SK (RA).

²⁷⁶ ECB, BE (NBB, FSMA), CY (CBC, DGS), CZ (CNB), DE (BaFin), EE (FSA), ES (BdE, FGD, FROB), HR (DGS, FI, HANFA, HNB), IT (BoI), LT (BoL), NL (AFM), PT (ASF, BoP, CMVM), RO (DGS), SI (MIRS).

²⁷⁷ BE (DGS, FPSE), CZ (CNB).

²⁷⁸ BE (DGS, FPSE), CZ (CNB), IE (CBI), MT (FIU), RO (DGS).

²⁷⁹ BG (FIU), CY (CBC, DGS), CZ (CNB), EE (DGS), EL (BoG, HCMC).

²⁸⁰ BG (BNB), CZ (CNB), DE (BaFin), EE (FSA), FI (FIN-FSA), HR (DGS, FI, HANFA, HNB), IT (BoI), LT (BoL), NL (AFM), SI (MIRS).

²⁸¹ ECB, CZ (CNB), EL (BoG), ES (BdE, FGD, FROB), LU (CSSF), MT (MFSA), PT (ASF, BoP, CMVM).

²⁸² BE (NBB, FSMA), CY (CBC), CZ (CNB).

²⁸³ CZ (CNB), ES (CNMV), PL (BFG), RO (NBR), SE (RA/DGS), SK (RA).

²⁸⁴ CZ (CNB), LI (FMA).

²⁸⁵ CY (CMA).

²⁸⁶ LU (CAA, CSSF).

²⁸⁷ AT (FMA).

174. Limited information on the costs of legal protection was provided. Only 7²⁸⁸ of the 65 CAs that confirmed they have adequate legal protection explicitly stated that reimbursements of legal costs and advance payments or loans can be claimed by staff from the CA. The CA²⁸⁹ which can grant loans to its staff will, depending on the outcome of the official liability lawsuit, decide later whether it considers the loan an allowance or whether it will demand repayment. 1 CA²⁹⁰ indicated that it can insure legal protection of its board members and staff. Another CA²⁹¹ stated that insurance contracts have been arranged to cover the personal financial risks of supervisors.
175. 1 CA²⁹² stated that there is room for improvement in the area of adequate legal protection. In this case, a member of the management board is required to compensate the State for any damage caused by an intentional or gross negligent breach of his or her duties. The compensation, however, is capped at six times the monthly remuneration paid to the member of the management board.
176. A significant number of CAs²⁹³ stating that adequate legal protections for the bona fide discharge of their governmental, regulatory and administrative functions and powers exist did not provide comprehensible and substantive explanations of these legal protections. For instance, two CAs²⁹⁴ claimed that personal liability for particular civil servants is in practice non-existent without further specifying this statement. Other CAs did not provide any details or only stated that civil liability exists in case of negligence, without specifying why liability for slight negligence constitutes adequate legal protection for the CA and staff for the bona fide discharge of their duties. However, 1 of these CAs²⁹⁵ mentioned at least that the costs for defending staff are reimbursed if the employee has no responsibility.
177. Furthermore, some CAs²⁹⁶ mentioned and described legal protection for members of their governing bodies and staff against dismissal, by means of limited grounds for dismissal and/or mechanisms for the legal review of any such dismissals. 2 CAs²⁹⁷ noted that the chairperson/governor of the board has the right to refer to the Court of Justice of the European Union decisions regarding their dismissal on the grounds that the decision is in breach of the Treaty on the Functioning of the European Union or any other related legal provision. Other members of the board may file an administrative appeal against a decision on removal from office before a competent administrative court.

²⁸⁸ CZ (CNB), DE (BaFin), ES (BdE), IT (BoI), LT (BoL), MT (MFSA), RO (NBR).

²⁸⁹ DE (BaFin).

²⁹⁰ EL (HCMC).

²⁹¹ AT (FMA).

²⁹² EE (FSA).

²⁹³ SRB, AT (MoE), CY (CPA), CZ (CNB, DGS), EL (MoF), FI (FCCA, RA/DGS), HU (MNB), IS (CPA), LV (CRPC), MT (DGS, FIU), NO (CPA, FSA), RO (CPA, FIU), SE (FSA), SI (FIU, AZN, BS), SK (NBS).

²⁹⁴ NO (CPA, FSA).

²⁹⁵ IT (IVASS).

²⁹⁶ CZ (CNB), EL (BoG), ES (BdE), HR (HNB), LT (BoL), PT (ASF, BoP), RO (NBR), SI (BS).

²⁹⁷ CZ (CNB), LT (BoL).

178. Finally, 8 CAs²⁹⁸ provided information on legal protection from criminal liability for their board members and staff. In this context, 1 CA²⁹⁹ stated that any criminal proceedings against its board members or its staff for a criminal offence committed in violation of the provisions of the law, can only be commenced by the Attorney General or with their consent. Another CA³⁰⁰ indicated that the CA must pay compensation to its current or former staff equal to the expenses they incur due to the criminal case brought or proceedings concerning an administrative offence initiated against them, or due to other actions taken by law enforcement bodies in relation to such acts or omissions. Most CAs³⁰¹ did not provide any information on legal protection from criminal liability for their board members and staff.
179. 1 CA³⁰² indicated that criminal sanctions may be imposed on the employee for actions beyond the usual and proper exercise of their profession. Another CA³⁰³ pointed out that intentional or negligent misconduct is punishable by the criminal code, and that the duty to compensate applies only to intentional misconduct.

4.5 Cooling-off provisions

180. A variety of approaches to cooling-off periods in relation to both the notice period and the period after leaving the service was observed. Cooling-off rules exist in application of national law or further to own initiatives. Their scope of application and duration varies significantly.

Conflict of interest rules during the notice period

181. 11 CAs³⁰⁴ indicated that they apply conflict of interest rules during the notice period for their staff and/or members of their governing body (when they are not part of staff). 3 CAs³⁰⁵ pointed out that in negotiations on possible future business activities employees must conduct themselves with fairness and discretion and notify their relevant manager about these negotiations or when they accept a job with a future employer where this could cause a conflict of interest or lead to the misuse of their position within the CA, or could appear to do so.
182. 16 CAs³⁰⁶ indicated that while they do not have a separate set of rules on notice periods, they apply generic rules on conflicts of interest that cover the entire period of employment.

²⁹⁸ AT (MoE), CY (CMA), ES (BdE, CNMV, FGD), LT (BoL), RO (DGS, NBR).

²⁹⁹ CY (CMA).

³⁰⁰ LT (BoL).

³⁰¹ SRB, AT (FMA), BE (DGS, FPSE, FSMA, NBB), BG (BDIF, BNB, FIU), CY (CPA, DGS), CZ (CNB, DGS), DE (BaFin), EE (DGS, FSA), EL (BoG, CPA, HCMC, MoF), FI (FCCA, RA/DGS), FR (ACPR), HR (DGS, FI, HANFA, HNB), HU (MNB), IE (CBI), IS (CPA), IT (BoI, IVASS), LI (FMA), LU (CAA), LV (FCMC), MT (MFSA), NL (DNB), NO (CPA, FSA), PL (BFG), RO (CPA, FIU), SE (FSA, RA/DGS), SI (FIU, AZN, BS, MIRS), SK (NBS, RA).

³⁰² DK (FSA).

³⁰³ FI (FIN-FSA).

³⁰⁴ ECB, AT (FMA), ES (BdE), HR (HNB), HU (MNB), LT (DGS) for staff, NL (AFM), NO (FSA), PT (BoP), SE (FSA), SI (BS).

³⁰⁵ BE (NBB), HR (HNB), PT (BoP).

³⁰⁶ BG (BNB), CZ (CNB), EE (FSA), EL (BoG), ES (CNMV), FI (FIN-FSA), HR (FI), IE (CBI), IT (BoI), LT (BoL), LU (CSSF), MT (FIU, MFSA), NL (ACM), PL (BFG, KNF).

1 CA³⁰⁷ stated that possible ad hoc conflict of interest measures during the notice period before the staff member leaves their position may - depending on the circumstances – involve restricting their right to access certain information or to handle certain files.

183. 41 CAs³⁰⁸ indicated that they had not applied any special conflict of interest rules during the notice period in the past five years. However, 1 CA³⁰⁹ pointed out that, in practice, movements of personnel between the supervised entities and the CA are carried out in harmony. The staff members concerned agree with their hierarchy on the measures to be applied until their departure, so that they are no longer involved in matters that directly or indirectly relate to their (potential) future employer.

184. 14 CAs³¹⁰ had imposed restrictions during a notice period for leaving staff and/or members of the governing bodies in the past five years. Some CAs³¹¹ specified that staff members were allocated to different and non-conflicting functions or given specific tasks to be performed until their departure. Staff are obliged to inform their CAs of any job offer received. 1 of these CAs³¹² pointed out that individuals had been placed on garden leave when it was deemed appropriate. Other CAs³¹³ said that their measures focused on limiting access to confidential data and information.

185. 10 CAs³¹⁴ did not provide a substantial response.

Cooling-off period

186. 36 CAs³¹⁵ impose restrictions on their former staff and/or members of the governing body (when they are not staff members) after they have left their position. The duration of these cooling-off periods varies and is mostly between three months and two years. Whereas many CAs only apply cooling-off periods to their board members or certain board members, some CAs also apply those restrictions to staff or certain senior staff. Some CAs³¹⁶ apply cooling-off restrictions to staff where it is contractually agreed beforehand. 1 CA³¹⁷ indicated that cooling-

³⁰⁷ ES (CNMV).

³⁰⁸ AT (MoE), BE (DGS, FSMA, NBB), BG (FIU), CY (CMA, DGS), CZ (CNB, DGS), DE (BaFin), DK (FSA), EE (DGS), EL (HCMC, MoF), ES (BdE; FGD; SEPBLAC whose AML/CFT staff are employees of BdE and fall under BdE's internal rules on ethical standards), FI (FIN-FSA), FR (ACPR), HR (HAOD), HU (DGS), IS (CBI, CPA), IT (BoI), LU (CAA), LV (CRPC, FCMC), NO (CPA, DGS), PL (FIU), PT (ASF, CMVM), RO (DGS, FIU, FSA, NBR), SE (RA/DGS), SI (AZN, MIRS), SK (NBS, RA).

³⁰⁹ BE (NBB).

³¹⁰ SRB, AT (FMA), EE (FSA), ES (BdE), HR (HANFA, HNB), IE (CBI), LI (FMA), LU (CSSF), NL (AFM, DNB), PT (BoP), SE (FSA), SI (BS).

³¹¹ HR (HNB), IE (CBI), NO (FSA), PT (BoP), SI (BS).

³¹² IE (CBI).

³¹³ FI (FIN-FSA), NL (AFM), SI (BS).

³¹⁴ BE (FPSE), BG (BDIF), CY (CPA), EL (CPA), FI (FCCA, RA/DGS), MT (DGS, FIU), RO (CPA), SI (AML).

³¹⁵ ECB, AT (FMA), BE (NBB, FSMA), BG (BNB), CY (CBC, CMA), DE (BaFin), DK (FSA), EE (DGS, FSA), ES (BdE; CNMV; FROB; SEPBLAC whose AML/CFT staff are employees of BdE and fall under BdE's internal rules on ethical standards), FI (FIN-FSA: relating to roles at ECB-SB; RA/DGS), FR (ACPR), HR (DGS; HANFA, HNB: for board members), IT (BoI, IVASS), LT (BoL), LU (CSSF), LV (CRPC, FCMC), MT (FIU, MFSA), NL (AFM, DNB), PT (ASF; BoP: staff only where agreed; CMVM), RO (DGS), SK (NBS).

³¹⁶ CZ (CNB), DK (FSA), PT (BoP), SK (NBS).

³¹⁷ BE (NBB).

off periods for staff are not legally feasible under national employment legislation and case law and possible cooling-off periods running during the notice period could be easily circumvented through terminations with immediate effect. Another CA³¹⁸ stated that on rare occasions restrictions had been imposed on its former staff.

187. 1 CA³¹⁹ indicated that an independent special authority has been established to assess applications and decide whether the applicant can undertake the private sector work in question, with or without restrictions or conditions. Another CA³²⁰ indicated that after leaving office board members need to submit an annual declaration of gainful occupational activities and remuneration received during their two-year notification period. Given the possibility of being selected for annual compliance checks for private financial transactions undertaken when in active service for that CA³²¹, both staff and board members have an obligation to keep relevant financial records until the end of the calendar year following the year in which their employment or term has ended. Another CA³²² stated that during the cooling-off period of 12 months after leaving office, board members must report notice of any gainful occupation.
188. Many CAs do not apply cooling-off periods after active service for their employees but do for board members and senior management. 1 CA³²³ stated that it is established practice that executive board members, for whom a notice period of six months applies, are released with immediate effect in cases of ordinary termination where they hand in their notice to pursue new employment in a supervised entity.
189. 33 CAs³²⁴ indicated that they do not apply any restrictions such as cooling-off periods or similar. However, in the context of restrictions on members of the governing board or staff after leaving the service of an authority some CAs³²⁵ pointed out that the obligation of confidentiality and professional secrecy will oblige former staff not to disclose information obtained during the exercise of their duties. Some CAs³²⁶ stressed that the obligation to act ethically remains after members of the governing board or staff stop working for that CA and/or to abstain from any activity that might engender a conflict of interest.
190. 7 CAs³²⁷ did not provide a substantial response.

³¹⁸ NO (CPA).

³¹⁹ CY (CMA).

³²⁰ ECB.

³²¹ ECB.

³²² DE (BaFin).

³²³ LI (FMA).

³²⁴ AT (MoE), BE (DGS), BG (FIU), CY (CPA, DGS), CZ (DGS), EL (BoG, HCMC, MoF), ES (FGD), FI (FIN-FSA) for staff and board members except those with roles at ECB-SB, HU (DGS), IE (CBI), IS (CBI, CPA), LT (DGS), LU (CAA), NL (ACM), NO (CPA, DGS, FSA), PL (BFG, FIU, KNF), RO (FIU, FSA, NBR), SE (FSA, RA/DGS), SI (AML, AZN), SK (RA).

³²⁵ ECB, BE (NBB), BG (FIU), CY (DGS), CZ (CNB), DE (BaFin), EE (FSA), EL (BoG, HCMC), ES (BdE, FROB, SEPBLAC), FI (FIN-FSA), HR (FI, HNB), IE (CBI), LI (FMA), LU (CAA), MT (FIU): the confidentiality obligations in the case of the FIAU's Board Members would be in addition to the cooling-off period which is also applicable to Board Members, NO (CPA), PL (BFG, FIU, KNF), PT (BoP), RO (FIU, NBR), SE (RA/DGS).

³²⁶ EL (BoG), PT (BoP).

³²⁷ BE (FPSE), BG (BDIF), EL (CPA), FI (FCCA), MT (DGS), RO (CPA), SI (MIRS).

191. 9 CAs³²⁸ confirmed that board members and/or staff will receive compensation during a cooling-off period. In most cases this monetary compensation amounts to about 50% of the board or staff member's last average monthly earnings. 1 CA³²⁹ stated that there is no monetary compensation, neither for board members, nor for staff members. Most CAs³³⁰ that apply cooling-off periods did not provide any information on monetary compensation.
192. The rules on conflicts of interest, including cooling-off periods, derive from a Code of Conduct/Ethics at 12 CAs³³¹, legislative requirements at 5 CAs³³² and from both at 9 CAs³³³.

³²⁸ ECB, DE (BaFin) for board members, if occupation is prohibited, ES (BdE, CNMV), HR (HNB) for board members, PT (ASF; BoP; CMVM: for board members), SK (NBS).

³²⁹ FR (ACPR).

³³⁰ AT (FMA), BE (NBB), EE (FSA), ES (FROB), HR (HAOD), NL (AFM, DNB), RO (DGS).

³³¹ ECB, SRB, DE (BaFin), EE (FSA), ES (BdE) for staff, IE (CBI), LV (FCMC), NL (AFM), PL (KNF), PT (ASF, BoP), SI (BS).

³³² CY (CBC), CZ (CNB), ES (BdE) for board members and directors, HU (MNB), PT (ASF).

³³³ BE (NBB), DE (BaFin), FR (ACPR), HR (HNB), IT (BoI), LT (DGS), LU (CSSF), MT (FIU, MFSA), SK (NBS).

5. Accountability and transparency

5.1 Introduction

193. Accountability and transparency are an essential part of effective supervision. Having effective accountability and proportional transparency mechanisms helps ensure that responsibility lies with CAs for their activities and decisions. If responsibility in practice lies elsewhere, such as at government level, this is likely to lead to mechanisms being established to oversee the CA, impinging on supervisory independence.

5.2 International standards

194. Basel Core Principle 2 states that ‘the supervisor possesses [...] transparent processes, sound governance [...] and is accountable for the discharge of its duties and use of its resources.’ Among the essential criteria defined by the BCBS aimed at ensuring accountability and transparency, the following should be highlighted:

- accountability is prescribed in legislation and publicly disclosed;
- the process for the appointment and removal of the head of the supervisory authority and members of its governing body is transparent;
- the reason(s) for removal is(are) publicly disclosed;
- the supervisor publishes its objectives and is accountable through a transparent framework for the discharge of its duties in relation to those objectives.

195. FSB Key Attribute 2.5 states in regard to accountability and transparency that the resolution authority should ‘have transparent processes, sound governance and adequate resources and be subject to rigorous evaluation and accountability mechanisms to assess the effectiveness of any resolution measures.’

196. IADI Core Principle 3 states that: ‘The deposit insurer should be operationally independent, well-governed, transparent, accountable, and insulated from external interference.’ Among the essential criteria of Principle 3 aimed at ensuring accountability and transparency, the following should be highlighted.

- The deposit insurer is well-governed and subject to sound governance practices, including appropriate accountability, internal controls, transparency and disclosure regimes.
- The deposit insurer operates in a transparent and responsible manner. It discloses and publishes appropriate information for stakeholders on a regular basis.
- There is a transparent process for the appointment and removal of the members of the governing body.
- The deposit insurer is regularly assessed on the extent to which it meets its mandate, and the deposit insurer is subject to regular internal and external audits.

5.3 Public transparency

197. Transparency can reinforce accountability. CAs should publish their objectives and be accountable through a transparency framework for the discharge of their duties in relation to those objectives.

Annual report

198. Almost all CAs responded that they ensure public transparency through the publication of certain documents such as an annual report, budget or financial statements. Two CAs³³⁴ mentioned the publication of an additional performance statement of regulatory activities. In contrast, 3 CAs³³⁵ confirmed that they do not publish any annual reports. However, 1³³⁶ of the 3 CAs explained that information about DGS operations is included in the published annual report of that CA. Another CA³³⁷ referred to the annual report published by the Court of Auditors.

199. The most common practice reflected in the responses received from the CAs is the publication of an annual report on their website. 4 CAs³³⁸ reported that the annual report is also published in an Official Journal and/or on their official websites. In the case of 1 CA³³⁹, the annual report is published in the Public Information Bulletin on the website of the office providing services to the Public Finance Minister. Moreover, a significant number of CAs³⁴⁰ indicated or implied that their annual report is also published in English while 15 CAs³⁴¹ confirmed or implied that they do not publish their annual report in English.

200. Some CAs³⁴² entrusted with resolution functions highlighted the fact that (annual) reports are also published on resolution activities. Finally, 1 CA (a DGSDA supervising a private DGS) explained that the DGS submits its annual report (which is published on the DGS's website) to the CA for approval, together with the auditor's report.

³³⁴ IE (CBI), IS (CBI).

³³⁵ CY (DGS), EL (CPA), HR (FI).

³³⁶ CY (DGS).

³³⁷ EL (MoF).

³³⁸ AT (FMA), FR (ACPR), PT (BoP), RO (FSA).

³³⁹ PL (FIU).

³⁴⁰ ECB, SRB, AT (FMA), BE (NBB, FSMA), BG (BNB, FIU), CY (CBC), CZ (CNB, DGS), DE (BaFin), EE (FSA), EL (HCMC), ES (BdE, CNMV, FROB, SEPBLAC), FI (FIN-FSA, RA/DGS), HR (HANFA), IE (CBI), IS (CBI), LI (FMA), LT (BoL), LU (CSSF), LV (FCMC), MT (FIU, MFSA), NL (DNB), NO (FSA), PL (KNF), PT (BoP), RO (NBR), SI (AZN, BS), SK (NBS).

³⁴¹ BE (DGS, FPSE), DK (FSA), EE (DGS), EL (BoG), LU (CAA), LV (FCMC), NO (DGS), PL (FIU), PT (ASF), RO (CPA, DGS, FIU), SE (FSA), SI (MIRS).

³⁴² BG (BNB), DE (BaFin), EE (FSA), ES (FROB), FR (ACPR), IE (CBI).

Transparency on the use of resources (financial statements/budget)

201. Other good practices identified among at least 35 CAs³⁴³ were to ensure the transparency of the financial statements and/or the budget published on their websites, usually as part of their annual reports, or separately. Other CAs³⁴⁴ referred to the application of general administrative law or to the fact that the budget is approved by parliament. Some CAs³⁴⁵ also referred to the transparency of board members and/or staff salaries, in some cases on request. 1 CA³⁴⁶ specifically reported that the annual report provides concise information on its resources. 3 CAs³⁴⁷ stated that the annual financial report includes information on the wages/fees of the CA's Board. 1 CA³⁴⁸ explained that its financial statements have to be tabled in parliament. Another CA³⁴⁹ explained that the annual report includes a statement of the costs paid in the financial year, by area of supervision. Finally, 1 CA (an RA and DGSDA)³⁵⁰ specifically indicated that separate financial statements are prepared for the authority and the operation of the Fund (both the Resolution Fund and the Deposit Guarantee Fund). In contrast, 1 CA³⁵¹ stated that information on the use of resources is available only on request.

Publication of strategic plans/objectives

202. Moreover, a significant number of CAs³⁵² make public their strategic plans and/or objectives, and some of them also publish in English³⁵³. In two cases³⁵⁴ the publications are shown on the government's website. In contrast, at least 3 CAs³⁵⁵ confirmed that their strategic plans and/or objectives are not public documents. In the same vein, another CA³⁵⁶ explained that it provides the Ministry of Finance a confidential report on its performance and achievements within each of the operational goals set in the strategy and in the operations work plan for the year.

³⁴³ AT (FMA), BE (DGS, FSMA, NBB), CZ (CNB, DGS), DE (BaFin), DK (FSA), EE (DGS, FSA), EL (BoG, HCMC), ES (BdE, FROB), FI (FCCA, FIN-FSA, RA/DGS), HR (HANFA), IE (CBI), LV (FCMC), LT (BoL), MT (DGS, MFSA), NL (DNB), NO (FSA), PL (KNF), PT (ASF, BoP, DGS), RO (FSA, NBR), SE (FSA), SI (AZN).

³⁴⁴ AT (MoE), EL (CPA).

³⁴⁵ HR (HNB), PT (ASF).

³⁴⁶ LI (FMA).

³⁴⁷ CZ (CNB), IE (CBI), SE (FSA).

³⁴⁸ MT (FIU).

³⁴⁹ PL (KNF).

³⁵⁰ SRB, FI (RA/DGS).

³⁵¹ SI (MIRS).

³⁵² ECB, SRB, AT (FMA), BE (FPSE), CZ (CNB), DE (BaFin), DK (FSA), EE (FSA), EL (MoF), ES (BdE, CNMV), FI (FCCA, FIN-FSA), HR (HANFA), IE (CBI), IT (BoI), LI (FMA), LT (BoL), LV (FCMC), MT (MFSA), NL (DNB), NO (DGS, FSA), PT (ASF), RO (FIU, FSA), SE (FSA), SI (BS).

³⁵³ ECB, SRB, AT (FMA), CZ (CNB), DE (BaFin), EE (FSA), ES (BdE), FI (FCCA, FIN-FSA), IE (CBI), IT (BoI), LI (FMA), LT (BoL), LV (FCMC), MT (MFSA), NL (DNB), NO (FSA), RO (FSA), SI (BS).

³⁵⁴ EL (MoF), HR (HAOD).

³⁵⁵ BE (FSMA), FR (ACPR), RO (DGS).

³⁵⁶ NO (FSA).

Disclosure of sanctions/measures taken

203. A significant number of CAs³⁵⁷ disclose on their websites (and in some cases also in an official gazette) the sanctions or measures that affect users of the market and regulated entities. However, there are some exceptions, such as when the publication could cause disproportionate damage to the sanctioned entities or individuals, or subject to the protection of confidential or commercial sensitive information and depending on the sector. Where the publication of information on applied sanctions is likely to negatively affect the stability of financial market, the pending pre-trial investigation or inflict disproportionate damage to natural or legal persons, the publication of such information is postponed until these circumstances are resolved, or the information will be published without disclosing the identity of the person who committed the infringement. 2 CAs³⁵⁸ must ensure that the published information is accessible for five years after its publication date. 1 CA³⁵⁹ acknowledged that its decisions may be published without grounds. Another CA³⁶⁰ reported that resolutions of the management board are not public information if not stated otherwise in sectoral legislation. 1 CA³⁶¹ distinguishes between corrective measures, which are in principle not made public, and sanctions (administrative fines) which are made public with some exceptions. 1 CA³⁶² is obliged to issue a yearly publication describing relevant developments in its supervisory practice. This publication does not contain confidential or commercially sensitive information. It is intended to make the CA's most relevant supervisory actions transparent. Another CA³⁶³ (AML authority) stated that it is legally allowed to publicly disclose data, documents and information provided that the disclosure is made effective in an aggregate form for statistical purposes and in such a way that individuals involved cannot be identified. Finally, 1 CA³⁶⁴ stated that it also publishes the outcome of its core activities, such as the aggregate results of SREP, Pillar 2 requirements, stress tests and comprehensive assessment results and sanctions decisions.

Information on the regulations adopted

204. Some CAs³⁶⁵ also explicitly stated that they publish on their website or in the Official Gazette information on the regulations they adopt, guidance or guidelines, interpretative documents or decisions where an indeterminate number of persons are addressed. At least

³⁵⁷ ECB, SRB, AT (FMA), BE (FPSE, FSMA, NBB), BG (BNB, FIU), CZ (CNB), DE (BaFin), DK (FSA), EE (FSA), EL (HCMC, MoF), ES (BdE, CNMV, FROB), FI (FIN-FSA), FR (ACPR), HR (FI), IE (CBI), IS (CBI), IT (BoI), LU (CAA, CSSF), LV (FCMC), MT (FIU), PL (KNF), PT (ASF), RO (FSA), SI (BS), SE (FSA).

³⁵⁸ LT (BoL), SI (BS).

³⁵⁹ PL (BFG).

³⁶⁰ EE (FSA).

³⁶¹ BE (NBB).

³⁶² LI (FMA).

³⁶³ ES (SEPBLAC).

³⁶⁴ ECB.

³⁶⁵ AT (FMA), CZ (CNB), DE (BaFin), EE (FSA), EL (HCMC), ES (BdE, CNMV, FROB), FI (FIN-FSA), FR (ACPR), IT (BoI), PT (ASF), SE (FSA), LT (BoL), LU (CSSF), LV (FCMC), SI (BS).

8 CAs³⁶⁶ mentioned that they publish public consultations (and/or the analysis of the results) in which the views of citizens and market participants are sought.

Other publications

205. 2 CAs³⁶⁷ reported that they are obliged to publish any internal delegation of powers on their websites. 1³⁶⁸ of the 2 CAs stated that it publishes in the Gazette a full list of all department contracts awarded for a value exceeding EUR 5 000. 3 CAs³⁶⁹ underlined the publication of a risk prevention plan related to corruption and associated infractions. Finally, another CA³⁷⁰ added that it also makes public information about notifications of suspected criminal offences submitted to law enforcement authorities.

5.4 Accountability to government or other authorities

206. A high level of supervisory independence should be accompanied by commensurate levels of accountability for the discharge of their duties and use of their resources. It should be clear which arm of government and/or parliament the CA is formally accountable to.

Accountability to governments and/or national parliaments

207. In general, CAs have a duty to report on their activities to one or more political institutions (government, an individual minister and/or parliament). This reporting takes frequently the form of an annual, bi-annual or quarterly report that is later submitted to one or more members of government and/or presented to parliament.

208. The publication of an annual report is the most common way of reporting to other authorities and of informing the public about the activities carried out by the CA during the previous year. The annual report is submitted to, acknowledged or approved by the President or ministry (except when the CA is itself an integral part of the ministry) or the government (Council/Commission in the case of the EU agencies/institutions) for at least 31 CAs³⁷¹ (and for some DGSDAs and securities regulators with AML responsibilities) and/or presented to the national parliament (and/or the EU Parliament in the case of the EU agencies/institutions) for 34 CAs³⁷², and is available on the CAs' websites.

³⁶⁶ ECB, AT (FMA), BE (FSMA), DE (BaFin), IE (CBI), IT (IVASS), PT (ASF), SE (FSA).

³⁶⁷ IT (BoI), MT (MFSA).

³⁶⁸ MT (MFSA).

³⁶⁹ PT (ASF, BoP, DGS).

³⁷⁰ PL (KNF).

³⁷¹ ECB, SRB, AT (FMA), CY (CBC, CPA, DGS), CZ (CNB), DK (FSA), ES (CNMV, FROB), FI (FCCA, RA/DGS), FR (ACPR), IE (CBI), IT (IVASS), LI (FMA), LU (CSSF), LV (FCMC), NL (DNB), NO (DGS, FSA), PL (FIU, KNF), PT (ASF, BoP), SE (FSA), SI (AZN, MIRS).

³⁷² ECB, SRB, AT (FMA), BE (NBB, FSMA), BG (BNB), CY (CBC, DGS), CZ (CNB), EE (FSA), EL (BoG, HCMC), ES (BdE, CNMV, FROB), FI (FIN-FSA), FR (ACPR), HR (HANFA), IT (IVASS), LI (FMA), LT (BoL), LV (FCMC), MT (FIU, MFSA), NL (DNB), PT (ASF, BoP), RO (FSA, NBR), SI (AZN, BS), SK (NBS).

209. It should be noted that two CAs³⁷³ consider they are not accountable to the legislature or any other government body.
210. Some CAs³⁷⁴ submit to the Prime Minister or relevant ministry ad hoc reports such as a public yearly statement on financial market supervision. 1 CA³⁷⁵ explained that goals and priorities (mainly qualitative outcome goals for institutions and markets under supervision) are set out in a letter of allocation from the Ministry of Finance. That CA further explained that each year it prepares a plan of operations, whose implementation is subject to a separate report submitted to the Ministry of Finance. It also reports on the number of inspections and examinations undertaken during the year compared to the work plan. Another CA³⁷⁶ (AML authority) reported that it is organically and functionally attached to a collegial body presided by the Secretary of State of Economy. In other cases, CAs³⁷⁷ reported regular meetings with the government or the submission of reports, work plans or other information more frequently, which are usually non-public. In another case³⁷⁸, an annual performance agreement is negotiated with the Ministry of Finance. 2 CAs³⁷⁹ further indicated that they are accountable to one or several ministries that exercise legal and technical oversight/supervision. Finally, 1 CA³⁸⁰ (a DGSDA) reported that, in addition to the Ministry of Finance, the annual report is submitted to the central bank and the FSA. For another CA³⁸¹, the annual report is approved by the central bank.
211. In some cases³⁸², the CA's annual budget, financial statements and/or reports on resource spending are also submitted, sometimes for approval or a statement, to parliament, government or a ministry. Some CAs³⁸³ also reported that their financial statements and/or annual budget are submitted to the central bank for confirmation and/or approval.
212. Regarding accountability to national parliaments, 40 CAs³⁸⁴ mentioned that they are accountable to national parliaments (and/or the EU Parliament in the case of EU agencies/institutions), even if not on an on-going basis – including hearings of the Chairperson or members of the governing bodies in some cases³⁸⁵, or replying to written questions by MPs³⁸⁶.

³⁷³ EE (DGS), MT (DGS).

³⁷⁴ IS (CBI), NO (FSA), PL (KNF).

³⁷⁵ NO (FSA).

³⁷⁶ ES (SEPBLAC).

³⁷⁷ BE (NBB), ES (FROB), SE (FSA).

³⁷⁸ FI (RA/DGS).

³⁷⁹ DE (BaFin), FI (FCCA).

³⁸⁰ NO (DGS).

³⁸¹ RO (DGS).

³⁸² CY (DGS), EL (HCMC), ES (FROB), FI (RA/DGS), IE (CBI), LI (FMA), MT (MFSA), NO (FSA), PT (ASF, BoP), RO (FIU).

³⁸³ FI (FIN-FSA), RO (DGS).

³⁸⁴ ECB, SRB, AT (FMA, MoE), BE (DGS, NBB, FSMA), BG (BNB), CY (CBC, DGS), CZ (CNB), EE (FSA), EL (BoG, HCMC, MoF), ES (BdE, CNMV, FROB), FI (FIN-FSA, RA/DGS), FR (ACPR), HR (HANFA), HU (MNB), IE (CBI), IS (CBI), IT (BoI, IVASS), LT (BoL), LV (FCMC), MT (FIU, MFSA), PT (ASF, BoP), RO (FSA, NBR), SE (FSA, RA/DGS), SI (AZN, BS).

³⁸⁵ ECB, SRB, AT (FMA), BE (NBB, FSMA), EE (FSA), EL (BoG, HCMC), ES (BdE, CNMV, FROB), FR (ACPR), HU (MNB), IE (CBI), IS (CBI), IT (BoI, IVASS), LT (BoL), PT (ASF, BoP), SE (RA/DGS).

³⁸⁶ ECB, SRB, AT (MoE), CY (DGS), IE (CBI), IT (BoI).

Moreover, 8 CAs³⁸⁷ reported the existence or the possibility of setting up a specialised committee, commission or council within parliament in charge of the verification or oversight of the CA's activities. Some CAs³⁸⁸ indicated that the financial report, budget or the performance agreement have to be approved or confirmed by parliament. Moreover, 1 CA³⁸⁹ stated that it is also subject to supervision by the parliamentary ombudsman. Finally, the ECB reported that practical aspects of the exercise of accountability are covered by an interinstitutional agreement with the EP and a MoU with the EU Council.

Audit mechanisms

213. In any event, an internal oversight body within the CA or an effective external audit mechanism also contribute to effective accountability.

214. Some CAs³⁹⁰ explicitly mentioned that their annual accounts, budget or annual report are approved by an independent supervisory body or indicate that their activities and/or budget are monitored by or subject to the conformity of a supervisory body or committee, administrative council, internal budgetary control (in the case of CAs that are an integral part of ministries), internal control body or system, audit committee or internal audit unit.

215. Most CAs³⁹¹ reported that their annual accounts are (or may be) accompanied by a statement from or subject to review by an independent external auditor (in one case³⁹², selected by the Prime Minister) and/or, in some cases³⁹³ verified or audited by the central government General Controller, the General Accounting Office, the Auditor General, a ministry, the General Secretariat in the case of ministerial departments, or the central bank. 1 CA³⁹⁴ indicated that its financial statements have to be reviewed by two auditors who have to be approved by the Chamber of Commerce or be public administration or public finance auditors.

216. In the vast majority of CAs³⁹⁵, the annual accounts are subject to the control of the national (or European in the case of EU agencies/institutions) court of auditors. The ECB further reported that it has concluded an MoU with the European Court of Auditors on the sharing of information regarding audits on the ECB's supervisory tasks. 1 CA³⁹⁶ mentioned that the budget plan is

³⁸⁷ SRB, AT (MoE), EL (HCMC), ES (CNMV), FI (FIN-FSA), IT (BoI), LV (FCMC), RO (FSA).

³⁸⁸ AT (MoE), CZ (CNB), ES (BdE), FI (RA/DGS).

³⁸⁹ FI (FCCA).

³⁹⁰ ECB, AT (FMA), BE (DGS, FPSE, FSMA), DE (BaFin), EL (BoG), ES (CNMV, FGD), HR (FI), IS (CBI), MT (MFSA), PT (ASF, BoP).

³⁹¹ ECB, SRB, BE (NBB, FSMA), CZ (CNB, DGS), DE (BaFin), EE (FSA), EL (BoG, HCMC), ES (FGD, FROB), HR (HANFA), IE (CBI), IT (BoI, IVASS), LU (CAA), LV (FCMC), LT (BoL), MT (FIU, MFSA), NL (DNB), NO (DGS), PL (KNF), PT (ASF, BoP), RO (DGS, FSA), SE (FSA, RA/DGS), SI (AZN, BS), SK (NBS).

³⁹² PL (KNF).

³⁹³ CY (CPA, DGS), EL (MoF), ES (BdE, CNMV, SEPBLAC), HR (FI), IE (CBI), SI (MIRS).

³⁹⁴ FI (RA/DGS).

³⁹⁵ ECB, SRB, AT (FMA, MoE), BE (DGS, FPSE), BG (BNB), CY (CBC), CZ (CNB), DE (BaFin), EE (FSA), EL (HCMC, MoF), ES (BdE, CNMV, FGD, FROB), FR (ACPR), HR (HNB), HU (MNB), IE (CBI), IS (CBI), IT (IVASS), LI (FMA), LT (BoL), LU (CAA, CSSF), LV (FCMC), MT (MFSA), NL (AFM, DNB), NO (FSA), PL (FIU), PT (ASF), RO (FIU, FSA, NBR), SE (FSA, RA/DGS), SI (BS).

³⁹⁶ PL (KNF).

reviewed by the national court of auditors. Another CA³⁹⁷ (which is part of a ministry) considered that the question on the receipt or use of funds subject to review or audit was not applicable to it.

Safeguards to prevent inappropriate use or disclosure of confidential information

217. Some CAs³⁹⁸ explicitly indicated that the government does not have access to confidential information in the field of their supervisory or resolution functions, that they³⁹⁹ are not accountable to the government or any other external agency or that they⁴⁰⁰ do not have decision-making powers and therefore the question is not relevant/applicable to them. In this regard, 1 CA⁴⁰¹ stated that confidential information is generally not disclosed to the government or to any external agency for accountability purposes. Another CA⁴⁰² reported that information it acquires in its capacity as CA may only be shared with the central bank in its supervisory capacity.

218. In other cases where CAs are accountable to the government or other public entities (or EU actors in the case of EU agencies/institutions), or where information is otherwise disclosed to them, those CAs⁴⁰³ (including cases where the CA is an integral part of a ministry) indicated that there are appropriate safeguards for confidential information, that these governmental authorities or entities (or their agents) are bound by professional secrecy or that the question is not applicable to them. 1 CA⁴⁰⁴ specifically indicated that it is prohibited to disclose commercially sensitive information if it may harm the entity the information refers to. 2 CAs⁴⁰⁵ also explicitly stated that in the scope of their accountability to parliament and when the Chairman appears before the special parliamentary committee, he or she is bound by professional secrecy rules. Another CA⁴⁰⁶ explained that rules for the disclosure of information in the possession of state agencies are set out in the Act on Openness of Government Activities.

5.5 Independent review of competent authorities' decisions

219. Finally, appropriate scrutiny and review, such as those enabling the administrative or judicial review of licensing, authorisation or enforcement related to the CAs' final decisions, are also examples of the authority's accountability. The detailed information shown below should be used as to compare the information provided by the different participating CAs, without

³⁹⁷ EL (CPA).

³⁹⁸ CZ (CNB), EL (HCMC), ES (BdE), IS (CBI), IT (BoI), NL (DNB).

³⁹⁹ ECB, CZ (CNB), EE (DGS, FSA), ES (FGD, SEPBLAC), LV (FCMC), MT (MFSA), RO (NBR).

⁴⁰⁰ CZ (DGS).

⁴⁰¹ LI (FMA).

⁴⁰² BE (DGS).

⁴⁰³ SRB, AT (MoE), BE (FPSE, FSMA, NBB), BG (BNB), DE (BaFin), EL (BoG, CPA, MoF), ES (FROB), FI (FIN-FSA, RA/DGS), HR (FI), LU (CSSF), MT (DGS), NO (DGS, FSA), PL (KNF), PT (ASF, BoP), RO (CPA, FIU, FSA), SE (RA/DGS), SI (AZN, MIRS), SK (NBS).

⁴⁰⁴ SE (FSA).

⁴⁰⁵ BE (NBB), EL (HCMC).

⁴⁰⁶ FI (FCCA).

prejudice to the factual and legal/constitutional status of the different jurisdictions which have de jure mechanisms and structures that are more developed and complex than those referred to below.

Procedural safeguards

220. Accountability structures should ensure that persons affected by CAs' decisions are entitled to be heard by the authority prior to the decision being taken.
221. CAs' decision-making processes generally include sufficient procedural safeguards. Almost all CAs indicated that they allow the parties involved to make representations before the CA takes a decision, with some exceptions, such as the risks involved in the delay or where the authority wishes to issue similar administrative acts in considerable numbers. 1 CA⁴⁰⁷ added that this is applicable to enforcement actions, authorisations, inspections, investigations and supervisory activities. In the area of resolution, 1 CA⁴⁰⁸ stated that the person affected is entitled to make their own representations in the court when contesting a resolution decision. Another CA⁴⁰⁹ (an AML authority) explained that the supervised entities have the right to file a complaint about the minutes of the Financial Inspection services. Representations can be made through formal allegations formulated against the minutes in writing.
222. The vast majority of CAs also mentioned other procedural safeguards, in line with general rules of administrative procedure. These include the CAs' duty to state written reasons for their material decisions, the principle of proportionality and the right of the affected natural or legal persons to be notified of the content of the decision and/or all material of significance to the decision, to access the case file or to appeal. In this regard, 1 CA⁴¹⁰ mentioned that before the measures and/or sanctions are adopted, a conciliation meeting takes place between the supervised entity and the inspection team. Some CAs indicated that the resolution process is a specific administrative proceeding and therefore certain stages of a normal administrative proceeding, such as the right/to be heard process, are exempted⁴¹¹ or that in the event that the resolution decision is challenged in a court, at the court's request, the decision has to be motivated⁴¹². Another CA⁴¹³ stated that it has to provide material reasons in the context of parliamentary control. In the area of AML, 1 CA⁴¹⁴ (an AML authority) explained that at the end of the control procedure, a record is made of all the findings resulting from the verification performed, the recommendations regarding the remediation of the irregularities found and the remediation terms.

⁴⁰⁷ ES (CNMV).

⁴⁰⁸ RO (NBR).

⁴⁰⁹ HR (FI).

⁴¹⁰ RO (FSA).

⁴¹¹ ES (FROB).

⁴¹² RO (NBR).

⁴¹³ EL (MoF).

⁴¹⁴ RO (FIU).

223. It should be noted that some CAs⁴¹⁵ stated that since they do not have decision-making powers, questions on procedural safeguards are not applicable to them.
224. In relation to some decisions, such as administrative fines or breaches of legal provisions, some CAs⁴¹⁶ explained that there is a legally required separation between the body in charge of the investigatory phase and the body responsible for preparing the decision or the imposition of an administrative fine (enforcement phase).
225. Finally, 5 CAs⁴¹⁷ clarified that their decisions are immediately enforceable and that any contest in court is not cause for their suspension.

Judicial review

226. In all jurisdictions, national regulations require CAs' decisions to be subject to judicial review. Almost all CAs indicated that decisions taken by them are subject to judicial procedures before the competent courts, as appropriate. However, some CAs⁴¹⁸ considered that the question about their decisions being subject to an independent review process, ultimately comprising judicial review, is not applicable to them, in some cases because they do not have decision-making powers.
227. More specifically, most CAs⁴¹⁹ reported that their decisions can be appealed before the administrative courts (in some cases specialised courts).
228. Other CAs⁴²⁰ stated that their decisions could generally be challenged before the competent judicial authorities (including the European Court of Justice in the case of EU agencies/institutions) and some CAs mentioned civil proceedings for the judicial review of an authority's decision. Moreover, some CAs indicated in their responses that under certain circumstances the matter could fall under the remit of criminal courts.
229. Some CAs also underlined that, if the institution or the CA disagrees with the decision of the court, it/they may appeal to a higher court⁴²¹ or even a higher court of appeal⁴²² such as a federal or supreme administrative court, cassation court or constitutional court.

⁴¹⁵ CZ (DGS), ES (SEPBLAC), RO (DGS).

⁴¹⁶ BE (NBB), DE (BaFin), MT (MFSA), NL (DNB).

⁴¹⁷ DE (BaFin), IS (CBI), IT (IVASS), LT (BoL) except statutory fines, RO (NBR).

⁴¹⁸ CZ (DGS), EL (MoF), ES (SEPBLAC), MT (DGS), RO (DGS).

⁴¹⁹ AT (FMA, MoE), BG (BNB), CZ (CNB), DE (BaFin), EL (BoG, CPA, HCMC), ES (FROB), FI (FIN-FSA), HR (FI, HANFA), LI (FMA), LT (BoL), LU (CAA, CSSF), LV (FCMC), MT (FIU, MFSA), NL (DNB), PL (KNF), PT (BoP), SE (FSA, RA/DGS), SI (BS), SK (NBS).

⁴²⁰ ECB, SRB, BE (DGS, NBB, FSMA), BG (FIU), CY (CBC, CPA, DGS), EE (DGS), ES (BdE, CNMV), FI (FCCA, RA/DGS), IT (IVASS), NO (DGS, FSA), PL (FIU), PT (ASF), RO (CPA, FIU, FSA, NBR), SI (AZN, MIRS).

⁴²¹ AT (FMA), DE (BaFin), ES (BdE), HR (FI), LV (FCMC), MT (MFSA), NL (DNB), SE (FSA).

⁴²² CZ (CNB), DE (BaFin), ES (FROB), LI (FA) LT (BoL), LV (FCMC), PL (FIU).

Internal administrative review

230. Moreover, for many CAs⁴²³, in addition to the possibility of appealing to an administrative court directly, their decisions may be challenged before the same authority or another (quasi-) administrative body (such as the Minister of Finance, the Council of State, an independent panel or a dedicated board of appeal or review) and subject to internal administrative review.

⁴²³ ECB, SRB, BE (NBB, FSMA), CY (CPA), CZ (CNB), DE (BaFin), EE (FSA), EL (HCMC), ES (BdE, FROB), IT (BoI), LI (FMA), LU (CSSF), NL (DNB), NO (FSA), PL (FIU, KNF), RO (FSA, NBR).

Annex 1

Competent authorities

| State/EU | Competent Authority | Abbreviation | Sectors covered | | | | |
|----------|---|--------------|----------------------|------------|-------------------|---------|-----|
| | | | Prudential (banking) | Resolution | Conduct (banking) | AML/CFT | DGS |
| AT | Financial Market Authority | FMA | • | • | • | • | • |
| | Federal Ministry for Digitalisation and Economic Affairs | MoE | | | • | • | |
| BE | Deposit Guarantee Scheme | DGS | | | | | • |
| | Federal Public Service of Economy | FPSE | | | • | | |
| | Financial Services and Markets Authority | FSMA | | | • | • | |
| | National Bank of Belgium | NBB | • | • | • | • | |
| BG | Deposit Insurance Fund | BDIF | | | | | • |
| | Bulgarian National Bank | BNB | • | • | • | • | |
| | Financial Intelligence Directorate of the State Agency for National Security (FID-SANS) | FIU | | | | • | |
| HR | Croatian Deposit Insurance Agency | HAOD | | | | | • |

| | | | Sectors covered | | | | |
|----|--|---------|------------------------|---|---|---|---|
| | Croatian Financial Services Supervisory Agency | HANFA | | | | | • |
| | Croatian National Bank | HNB | • | • | • | • | • |
| | Ministry of Finance - Financial Inspectorate | FI | | | | | • |
| | Central Bank of Cyprus | CBC | • | • | • | • | • |
| | Securities and Exchange Commission | CMA | | | | | • |
| CY | Deposit Guarantee and Resolution of Credit and Other Institutions Scheme | DGS | | | | | • |
| | Consumer Protection Service | CPA | | | | • | |
| | Czech National Bank | CNB | • | • | • | • | |
| CZ | Financial Market Guarantee System | DGS | | | | | • |
| DK | Financial Supervisory Authority | FSA | • | • | • | • | |
| | Guarantee Fund | DGS | | | | | • |
| EE | Financial Supervision and Resolution Authority | FSA | • | • | • | • | |
| | European Central Bank - Banking Supervision - Single Supervisory Mechanism (SSM) | ECB | • | | | | |
| | Single Resolution Board | SRB | | • | | | |
| | Competition and Consumer Authority/Consumer Ombudsman | FCCA | | | | • | |
| FI | Financial Supervisory Authority | FIN-FSA | • | | | • | • |

| | | | Sectors covered | | | | |
|----|--|--------|-----------------|---|---|---|---|
| | Financial Stability Authority | RA/DGS | | • | | | • |
| FR | The Supervision and Resolution Authority | ACPR | • | • | • | • | • |
| DE | Federal Financial Supervisory Authority | BaFin | • | • | • | • | • |
| | Bank of Greece | BoG | • | • | • | • | |
| | Ministry of Development and Investments – General Director for Consumer Protection | CPA | | | • | | |
| EL | Hellenic Capital Market Commission | HCMC | | • | | • | |
| | Ministry of Finance | MoF | | | | | • |
| | Board of Directors of the National Deposit Insurance Fund | DGS | | | | | • |
| HU | Central Bank of Hungary | MNB | • | • | • | • | |
| | Central Bank of Iceland | CBI | • | • | • | • | • |
| IS | Consumer Agency | CPA | | | • | | |
| | Central Bank of Ireland | CBI | • | • | • | • | • |
| IE | Competition and Consumer Protection Commission | CCPC | | | • | | |
| | Bank of Italy | Bol | • | • | • | • | • |
| IT | Institute for the Supervision of Insurance | IVASS | | | | • | |
| | Consumer Rights Protection Centre | CRPC | | | • | • | |
| LV | Financial and Capital Market Commission | FCMC | • | • | • | • | • |

| | | | Sectors covered | | | | |
|----|---|------|-----------------|---|---|---|---|
| LI | Financial Market Authority Liechtenstein | FMA | • | • | • | • | • |
| LT | Bank of Lithuania | BoL | • | • | • | • | • |
| | Deposit and Investment Insurance | DGS | | | | | • |
| LU | Commissariat aux Assurances | CAA | | | | • | |
| | CSSF | CSSF | • | • | • | • | • |
| MT | Depositor and Investor Compensation Schemes | DGS | | | | | • |
| | Financial Intelligence Analysis Unit | FIU | | | | • | |
| | Financial Services Authority | MFSA | • | • | • | | • |
| NL | Authority for Consumers and Markets | ACM | | | • | | |
| | Authority for Financial Markets | AFM | | | • | • | |
| | Dutch Central Bank | DNB | • | • | • | • | • |
| NO | Norwegian The Consumer Authority | CPA | | | • | | |
| | The Norwegian Banks' Guarantee Fund | DGS | | | | | • |
| | The Financial Supervisory Authority of Norway | FSA | • | • | • | • | |
| PL | Bank Guarantee Fund | BFG | | • | | | • |
| | General Inspector of Financial Information (FIU) | FIU | | | | • | |
| | The KNF Board | KNF | • | | • | • | |

| | | | Sectors covered | | | | | |
|----|---|------|-----------------|---|---|---|---|---|
| PT | Insurance and Pension Funds' Supervision Authority | ASF | | | | | • | |
| | Bank of Portugal | BoP | • | • | • | | • | • |
| | CMVM - Portuguese Securities and Market Commission | CMVM | | | | | • | |
| | Deposit Guarantee Fund | DGS | | | | | | • |
| RO | National Authority for Consumer Protection | CPA | | | | • | | |
| | Bank Deposit Guarantee Fund Scheme | DGS | | | | | | • |
| | National Office for Prevention and Control of Money Laundering | FIU | | | | | • | |
| | Financial Supervisory Authority | FSA | | | • | | | |
| SK | National Bank of Romania | NBR | • | • | | | • | • |
| | National Bank of Slovakia | NBS | • | • | • | | • | |
| | The Resolution Council | RA | | | • | | | |
| SI | Office of the Republic of Slovenia for the Prevention of Money Laundering | AML | | | | | • | |
| | Insurance Supervision Agency | AZN | | | | | • | |
| | Bank of Slovenia | BS | • | • | • | | • | • |
| | Market Inspectorate of the Republic of Slovenia (hereinafter: MIRS) | MIRS | | | | • | | |
| ES | Bank of Spain | BdE | • | • | • | | • | |

| | | | Sectors covered | | | |
|----|---|---------|------------------------|---|---|---|
| | National Securities Market Commission | CNMV | • | • | | |
| | Deposit Guarantee Fund of Credit Institutions | FGD | | | | • |
| | FROB Executive Resolution Authority | FROB | • | | | |
| | Sepblac in cooperation with Banco de España, CNMV and DGSFP | SEPBLAC | | | • | |
| | Financial Supervisory Authority | FSA | • | | • | • |
| SE | The Swedish National Debt Office | RA/DGS | | • | | • |

Annex 2

Supervisory independence questionnaire

Operational independence

1. Please explain the administrative status of your authority:

2. Please describe the organisation of your authority (files may be uploaded), in particular:

- key elements to understand CA's organisation
- decision making bodies/key bodies
- organisation chart of your CA and brief description of each relevant function/department, with the attributed resources

3. Entities under supervision

Please, provide an overview of supervised entities on 1st January 2021.

Please, use the column 'entities under remit' only for specifying other entities. You can leave it blank for the entities already specified like credit institutions, payment service providers, investment firms, etc.

| Entities under remit | Entities under remit, please specify 'other' in this column | Number of entities under supervision on 1st January 2021 |
|---|---|--|
| Credit institutions | | |
| Payment service providers | | |
| Investment firms | | |
| Non-credit institution creditors | | |
| Obligated entities | | |
| other entity (please specify): | | |

4. Mission

Please describe the missions and functions your CA fulfil

- market integrity/safety and soundness of financial institutions
- protect consumers/users
- maintaining financial stability reducing financial crime
- financial literacy/education
- promoting financial competitiveness
- promoting financial service providers
- other missions/functions (please specify below)

5. Where the competent authority has multiple objectives or supervisory responsibilities, does your CA have arrangements in place to reconcile any conflicts that may arise between those objectives and responsibilities? What are those arrangements?

6. Where the competent authority is a resolution authority, how does your authority ensure that there is operational independence between the resolution function and the supervisory or other functions of your authority?

7. Is there any decision regarding your CA's organisation and structure and/or its supervisory activities that requires approval of the government?

Please, explain your response further:

8. (a) Does your CA have the ability to operate on a day-to-day basis without external political interference?

Please explain your response below, noting how political independence is achieved and/or any sources of political influence:

8. (b) Does your CA have the ability to operate on a day-to-day basis without interference from commercial or other sectoral interests?

Please explain any links with commercial or other sectoral interests, and how interference is avoided:

9. Where particular matters of regulatory policy require consultation with, or even approval by, a government minister or other authority:

(a) Is the consultation process established by law?

Please explain your response below:

(b) Do the circumstances, in which consultation is required, exclude decision making on day-to-day technical matters?

Please explain your response below:

(c) Are the circumstances in which such consultation or approval is required or permitted clear and the process sufficiently transparent, and the failure to observe procedures and the regulatory decision or outcome subject to sufficient review, to safeguard its integrity?

Please explain your response below:

10. Does your CA have policies and governance practices to perform its functions and exercise its powers effectively?

Please explain any relevant policies and governance practices:

11. (a) What rulemaking powers does your CA have?

11. (b) What is the role of other authorities when adopting these rules?

12. (a) What supervisory / administrative measures can your CA adopt?

12. (b) What administrative penalties can your CA adopt?

12. (c) How does your CA exercise its supervisory powers and its powers to impose penalties?

- i) directly
- ii) in collaboration with other authorities
- iii) under their responsibility by delegation to such authorities
- iv) by application to the competent judicial authorities
- v) not applicable

Where your answer is ii), iii) or iv), please provide further details:

13. Inspection, investigation and enforcement

Please, fill the table with the number of inspections, reviews, etc. of 2019 and 2020 and provide further specifications where necessary.

Please use the second column 'please specify further' to provide information on the sector of the inspection / of the review like 'prudential' or 'AML/CFT'. If your (integrated) authority is a CA with a wide range of tasks, you may want to fill several rows with information on the number of on-site inspections and off-site reviews, in other cases you will fill in less rows.

You may use the last four rows to provide information on other inspections, investigations or enforcement actions than the pre-specified ones.

| please specify further | In 2019 | In 2020 |
|---|---------|---------|
| On-site inspections undertaken | | |
| On-site inspections undertaken | | |
| On-site inspections undertaken | | |
| On-site inspections undertaken | | |
| On-site inspections undertaken | | |
| Off-site reviews undertaken | | |
| Off-site reviews undertaken | | |
| Off-site reviews undertaken | | |
| Off-site reviews undertaken | | |
| Off-site reviews undertaken | | |
| Sanctions given | | |
| Settlements | | |
| Cases referred to criminal authorities | | |
| other (please specify) | | |
| other (please specify) | | |
| other (please specify) | | |
| other (please specify) | | |

13. Please provide further information and describe the inspection and investigation remit and power of your CA:

14. Are your CA's powers and authorities sufficient, taking into account the nature of its jurisdiction's markets, to meet its responsibilities?

Please explain your response below:

15. How does your CA take into account the risk profile, the systemic importance of supervised entities and the different mitigation approaches available when determining supervisory programmes and allocating resources?

16. Is your CA, the head and members of the governing body as well as its staff, accorded adequate legal protection for the bona fide discharge of their governmental, regulatory and administrative functions and powers?

Please explain the legal protections in place:

Financial independence

17. Budget and Human resources

(a) Please, provide an overview of resources, to the extent possible stick to the table below.

Please, use the column 'please specify (where relevant)' in particular for specifying other categories than the pre-specified ones.

You can leave it blank for the categories already specified like total number of employees, regulation and cooperation, supervision of credit institutions, supervision of investment firms, etc.

No other administrative support functions than the pre-specified ones need to be added to the table.

| | Please specify (where relevant) | Numbers of FTEs as of [date/preferably January 2021] |
|---|---------------------------------|--|
| Total number of employees | | |
| Regulation and cooperation | | |
| Supervision of credit institutions | | |
| Supervision of investment firms | | |

| | Please specify (where relevant) | Numbers of FTEs as of [date/preferably January 2021] |
|---|---------------------------------|--|
| Supervision of payment service providers | | |
| Supervision of obliged entities | | |
| Other supervision | | |
| Enforcement | | |
| Legal support | | |
| Out of court dispute resolution | | |
| IT and resources | | |
| Other (please specify) | | |
| Other (please specify) | | |
| Other (please specify) | | |
| Other (please specify) | | |
| Other (please specify) | | |

You may want to add further information regarding the table above (where relevant):

(a) Please provide information on the annual accounts of your CA where available (in millions of euros)

(b) Please, use the column 'please specify (where relevant)' in particular for specifying other categories than the pre-specified ones where exceptionally necessary.

| Please specify (where relevant) | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|---------------------------------|------|------|------|------|------|------|
| Revenue | | | | | | |
| Expenditure | | | | | | |
| Balance | | | | | | |
| Other (please specify) | | | | | | |
| Other (please specify) | | | | | | |

You may want to add further information re the table above (where relevant):

18. Does your funding require approval of the government or other bodies?

Please explain any approval requirements:

19. Does your CA have a stable and continuous source of funding sufficient to meet its regulatory and operational needs?

Please provide an overview of your funding (where available):

Please, use the column 'please specify (where relevant)' in particular for specifying other categories than the pre-specified ones. You can leave it blank for the categories already specified like state budget and fees and levies collected from the industry.

| Please specify (where relevant) | 2018 | 2019 | 2020 | 2021 | 2022 | 2023 |
|--|------|------|------|------|------|------|
| State budget | | | | | | |
| Fees and levies collected from the industry | | | | | | |
| Other (please specify) | | | | | | |
| Other (please specify) | | | | | | |
| Other (please specify) | | | | | | |

Please explain the sources of funding, their stability and continuity:

20. With regard to funding:

(a) Is your CA's funding adequate to allow it to fulfil its responsibilities, taking into account the size, complexity and types of functions subject to its regulation, supervision or oversight?

Please explain how the adequacy of funding is assured:

(b) Can your CA affect the operational allocation of resources once funded?

Please explain your response below:

(c) Can you use the fees levy from one industry to fund another activity than this industry's supervision?

Please explain your response as appropriate:

21. Does the level of resources recognise the difficulty of attracting and retaining experienced and skilled staff?

Please explain your response below:

22. (a) Does your CA have autonomy to hire new employees?

Please explain your response below:

22. (b) Does your CA have autonomy to increase the salary of its staff?

Please explain your response below:

22. (c) Does your CA have autonomy to decide on the number of employees?

Please explain your response below:

22. (d) Does your CA have autonomy to give any allowance to its staff?

Please explain your response below:

23. How does your CA ensure that its staff receives adequate ongoing training?

24. Does your CA play an active role in promoting financial education?

Please explain the role played by the CA:

25. Does your CA perform a periodic stocktaking exercise to assess its needs?

How is the stocktaking exercise structured? What does it comprise? Please provide details of any periodical assessment(s) especially in relation to audit, resource planning and supervisory practices review.

26. Is there any restriction to the use of the funds available to your CA and/or the requirement to obtain the approval of the government e.g. to hire staff, to invest in equipment, in IT tools?

Please explain any applicable restrictions:

Personal independence

27. (a) Are your CA's head and governing board subject to mechanisms intended to protect independence, such as procedures for appointment, renewal, terms of office, and criteria for removal?

Please explain the mechanisms in place:

27. (b) Is there a prescribed structure of the board (e.g. internal/external/independent board member, minimum/maximum number)? Does the board include members representing particular stakeholders, e.g. government, industry, consumers?

27. (c) Does your CA foresee any restrictions on its former staff members and/or Board Members (when they are not part of staff) after they have left their position?

27. (d) Has your CA imposed conflict of interests rules during a notice period for departing Board Members/staff members in the past five years? Please provide (non-confidential) details:

28. (a) What mechanisms has the CA put in place in order to tackle any real or perceived conflicts of interest? How does it effectively handle/avert the latter type from materialising further?

28. (b) Is there any whistleblowing mechanism in place both internally and externally that could eventually result in the opening of an investigation and potentially to the removal of any board member?

Please provide details:

29. Does your CA have the authority to delegate any function(s) and/or the power to take decision to delegate?

Please provide details:

Accountability and transparency

30. With reference to the system of accountability for your CA's use of its powers and resources:

(a) Is your CA accountable to the legislature or another government body on an ongoing basis?

Please explain the accountability arrangements / means towards these bodies (hearing at Parliament, annual report, etc.):

(b) Is your CA required to be transparent in its way of operating and use of resources and to make public its actions that affect users of the market and regulated entities, excluding confidential or commercially sensitive information?

Please explain the applicable transparency requirements:

(c) Is your CA's receipt and use of funds subject to review or audit?

Please explain the review and/or audit arrangements:

31. Does your CA prepare (multi-)annual priorities / strategic plan?

If published, please provide link:

32. Does your CA publish an annual report?

If published, please provide link:

33. Are there means for natural or legal persons adversely affected by your CA's decisions or exercise of administrative authority ultimately to seek review in a court, specifically:

(a) Does your CA have to provide written reasons for its material decisions?

Please explain the review arrangements:

(b) Does the decision-making process of your CA for such decisions include sufficient procedural protections to be meaningful?

Please explain the procedural protections in place:

(c) Are affected persons permitted to make representations prior to such a decision being taken by your CA in appropriate cases?

Please explain the arrangements for making representations:

(d) Are all such decisions taken by the former subject to a sufficient, independent review process, ultimately comprising judicial review?

Please explain the independent review process:

34. Where accountability is through the government or some other external agency, is confidential and commercially sensitive information subject to appropriate safeguards to prevent inappropriate use or disclosure?

Please explain the circumstances in which such information may be disclosed and the safeguards in place:

Additional questions

35. Please, provide links to any findings from external reviews (e.g. IMF/FATF) of the supervisory independence of your Competent Authority.

36. Please use this space to provide any additional information relating to supervisory independence that has not been covered elsewhere:

37. Where public authorities supervising private companies administering the operation of deposit guarantee schemes (DGSDAs) fill in the survey: How does your authority monitor the independence of these private companies administering the operation of deposit guarantee schemes (see IADI *Core Principles for Effective Deposit Insurance Systems*, Principles 3 and 11)?

38. Please provide any additional information relating to the questions above or relating to supervisory independence in general that is confidential (not subject to access to information / a possible publication of the responses / a report without prior discussion with the CA, see introductory note above):

Annex 3

Supervisory independence in Union law and international standards

EU standards

1. The EBA Regulation (Regulation (EU) No 1093/2010) does not set out what is meant by ‘supervisory independence’ and does not set any standards. Article 81(1)(a)(i) of the EBA Regulation does, however, refer to ‘standards equivalent to corporate governance’ in the context of the Commission’s evaluation of independence of competent authorities.
2. The sectoral legislation provides limited additional guidance:

| Act | Provision | Text |
|------|-----------------------|--|
| AMLD | Article 48(2) and (3) | <p>2. Member States shall ensure that the competent authorities have adequate powers, including the power to compel the production of any information that is relevant to monitoring compliance and perform checks, and have adequate financial, human and technical resources to perform their functions. Member States shall ensure that staff of those authorities are of high integrity and appropriately skilled, and maintain high professional standards, including standards of confidentiality, data protection and standards addressing conflicts of interest.</p> <p>3. In the case of credit institutions, financial institutions, and providers of gambling services, competent authorities shall have enhanced supervisory powers.</p> |
| BRRD | Recital (17) | <p>In order to ensure the required speed of action, to guarantee independence from economic actors and to avoid conflicts of interest, Member States should appoint public administrative authorities or authorities entrusted with public administrative powers to perform the functions and tasks in relation to resolution pursuant to this Directive. Member States should ensure that appropriate resources are allocated to those resolution authorities. (...) Where a Member State designates the authority responsible for the prudential supervision of institutions (competent authority) as a resolution authority, adequate structural arrangements should be put in place to separate the supervisory and resolution functions.</p> |
| | Article 3(3) | <p>(...) Adequate structural arrangements shall be in place to ensure operational independence and avoid conflicts of interest between the</p> |

| Act | Provision | Text |
|------|-----------------------|--|
| | | functions of supervision (...) or the other functions of the relevant authority and the functions of resolution authorities pursuant to this Directive (...). In particular, Member States shall ensure that, within the competent authorities, national central banks, competent ministries or other authorities there is operational independence between the resolution function and the supervisory or other functions of the relevant authority . |
| CRD | Article 4(4) | Member States shall ensure that the competent authorities have the expertise, resources, operational capacity, powers and independence necessary to carry out the functions relating to prudential supervision, investigations and penalties set out in this Directive and in Regulation (EU) No 575/2013. |
| MCD | Article 5(1) and (6) | 1.(...) they are granted investigation and enforcement powers and adequate resources necessary for the efficient and effective performance of their duties. (...) 6. Where there is more than one competent authority on their territory, Member States shall ensure that their respective duties are clearly defined and that those authorities collaborate closely so that they can discharge their respective duties effectively. |
| PAD | Article 21(1) and (6) | 1.(...) they are granted investigation and enforcement powers and adequate resources necessary for the efficient and effective performance of their duties. (...) 6. Where there is more than one competent authority on their territory, Member States shall ensure that their respective duties are clearly defined and that those authorities collaborate closely so that they can discharge their respective duties effectively. |
| PSD2 | Recital (99) | (...) In view of ensuring effective compliance with this Directive, Member States should designate competent authorities which meet the conditions laid down in Regulation (EU) No 1093/2010 and which act independently from the payment service providers . (...) |
| | Article 22 | 1. (...) The competent authorities shall guarantee independence from economic bodies and avoid conflicts of interest . (...) |

3. On the other hand, the Union legislation establishing the SSM and the SRB is much more specific since it needs to implement the principles set out above, as happens at national level for Member States' competent authorities.

International standards

4. The BCBS's Core principles on effective banking supervision (BCP)¹ stipulate, under Principle 2 'Independence, accountability and legal protection for supervisors', that *'the supervisor possesses operational independence, transparent processes, sound governance, budgetary processes that do not undermine autonomy and adequate resources, and is accountable for the discharge of its duties and use of its resources. The legal framework for banking supervision includes legal protection for the supervisor.'*
5. CAs are assessed against these principles as part of IMF and World Bank reviews in the context of the Financial Sector Assessment Program (FSAP). For the purposes of such assessments, the BCP Assessment Methodology provides 'essential criteria' for assessing Principle 2 which concern:
 - operational independence, accountability and governance;
 - process for the appointment and removal of the head(s) of the supervisory authority and members of its governing body;
 - transparency of supervisory objectives and discharge of its duties in relation to those objectives;
 - internal governance and communication processes, including conflicts of interest;
 - professionalism and integrity of the supervisor's staff, including use of information and conflicts of interest;
 - supervisor's resources and financing;
 - stocktaking of existing skills and projected requirements in the annual resource planning exercise;
 - risk-based supervisory planning and resource allocation;
 - legal protection of the supervisor and the supervisor's staff when acting in good faith.
6. FATF has also established its own expectations in its FATF Recommendations². Recommendation 26 requires countries to ensure that financial institutions are subject to adequate regulation and supervision. The FATF's interpretation of this recommendation provides that: *'Countries should ensure that financial supervisors have adequate financial, human and technical resources. These supervisors should have sufficient operational independence and autonomy to ensure freedom from undue influence or interference. Countries should have in place processes to ensure that the staff of these authorities maintain high professional standards, including standards concerning confidentiality, and should be of high integrity and be appropriately skilled.'*³
7. Recommendation 26 also cross-refers to the BCP, providing that in respect of financial institutions which are subject to the BCP, the regulatory and supervisory measures that apply for prudential purposes and which are relevant to ML/TF should apply in a similar manner for AML/CFT purposes.

8. The Financial Stability Board (FSB) has also issued features of an effective resolution regime which include elements relevant to the independence of the resolution authority which are similar to those set out in the BCP⁴, including:
- clearly defined mandates, roles and responsibilities
 - operational independence
 - transparent processes
 - sound governance
 - adequate resources
 - rigorous evaluation and accountability mechanisms
 - expertise, resources and operational capacity
 - protection against liability when acting in good faith.
9. The International Association of Deposit Insurers' (IADI) Principles for Effective Deposit Insurance Systems⁵ stipulates, under Principles 2 'Governance' and 11 'Legal Protection', that *'the deposit insurer should be operationally independent, well-governed, transparent, accountable, and insulated from external interference' and that 'the deposit insurer and individuals working both currently and formerly for the deposit insurer in the discharge of its mandate must be protected from liability arising from actions, claims, lawsuits or other proceedings for their decisions, actions or omissions taken in good faith in the normal course of their duties'*.
10. It should be noted that these principles are aimed at prudential and AML/CFT supervisors, resolution authorities and deposit guarantee schemes (and not specifically DGSDAs), and are not directly applicable to conduct supervisors. Nevertheless, the high-level nature of the requirements, and their broad consistency with international principles in the securities and insurance sectors, make them a suitable starting point for supervisors in the banking sector generally.
11. OECD Corporate Governance⁶ principles also offer useful guidance, in particular Section I on ensuring the basis for an effective corporate governance framework contains provisions concerning clear articulation of the division of responsibilities among different authorities, delegation to non-public bodies, authority, integrity and resources.

Annex 4

Competent authorities self-assessment overview

This table summarises the responses to survey questions that had yes/no answers. Empty cells reflect no response, including where the question is not applicable to the CA concerned. See excel file attached.



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