EFAMA
European Fund and Asset Management Association

RESPONSE

Brussels, 30 June 2025

EFAMA'S COMMENTS ON IESBA'S PUBLIC CONSULTATION ON AUDITORS' INDEPENDENCE IN COLLECTIVE INVESTMENT VEHICLES AND PENSION FUNDS AUDITS

Initial remarks and background information

The International Ethics Standards Board for Accountants (**IESBA**) **launched this consultation to solicit feedback** from stakeholders **regarding auditor independence considerations for audits of Collective Investment Vehicles (CIVs) and Pension Funds (also referred to as "Investment Schemes" or "Schemes" in the consultation paper).**[1]

EFAMA is pleased to engage with the IESBA in this consultation, **which aims to assess whether revisions to the International Code of Ethics for Professional Accountants** (the Code) **are warranted to ensure the Code is robust and fit for purpose in addressing auditor independence** in the context of CIVs and Pension Funds.

Auditors' independence is key to ensuring the integrity of financial reporting and safeguarding investors' and other stakeholders' interests and trust in Public Interest Entities (PIEs)' financial condition. There are two key definitions in the Code of particular relevance to access CIVs auditors' independence:

a) R400.22 – **PIEs** [2]
b) R400.27 – **Related Entities**[3]

In the CP document we can read the following ideas that should be highlighted to understand the concerns IESBA is trying to address before delivering EFAMA's comments to this consultation.

In 2021, **IESBA removed CIVs from the mandatory PIE categories because including them would impose a disproportionate burden on local regulators and standard setters**.

[1] The consultation paper (CP) is available here
[2] That can fall into one of the following categories: a) A publicly traded entity; b) An entity one of whose main functions is to take deposits from the public; c) An entity one of whose main functions is to provide insurance to public; or d) An entity specified as such by law, regulation or professional standards to meet the purpose described in paragraph 400.15 (meet the expectations regarding the independence of the audit firm when performing an audit for a entity with significant public interest in its financial condition, enhancing stakeholders' confidence in the entity's financial statements when assessing that condition).
[3] An audit client that is a publicly traded entity, treated as a PIE, includes all its related entities to ensure threats to independence are evaluated and addressed by the audit teams.

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However, with the concurrence of the Public Interest Oversight Board (PIOB), **the IESBA committed to undertake a holistic review of CIVs**, PEBs and investment company complexes (ICCs) **from an auditor independence perspective, given questions being raised regarding the application of the "related entity" concept in the Code to such investment vehicles or structures**. This is the focus of the present consultation.

Investment Schemes frequently engage other third parties to perform roles like those managed by in-house teams in a conventional corporate structure. Although **the Project Team has not identified any Investment Scheme financial failure** in which an auditor's lack of independence was a contributing factor, it has **noted stakeholders' interest arising from the substantial amount of public funds invested in them** and, therefore, the need to ensure that the necessary independence provisions apply.

The primary objective of the consultation is to allow IESBA to gain a comprehensive understanding of the relationships between investment schemes and their trustees, managers, and advisors.

Regarding the PIEs, and before replying to the questionnaire, it is important to set the scene and explain that the **definition from the IESBA Code was not adopted in the EU because the EU markets follow the definition of PIE in the Audit Directive (Directive 2014/56/EU amending Directive 2006/43/EC)** transposed by EU Member States into their national legislations, with national rules taking precedence over the Code.[4] [5] [6]

According to **Article 2 (13) of the Audit Directive**, the 'public-interest entities' definition **covers**:

a) *Entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC;*
b) *Credit institutions as defined in point 1 of Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council ([1]), other than those referred to in Article 2 of that Directive;*
c) *Insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC; or*
d) *Entities designated by Member States as public-interest entities, for instance, undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees;*

In line with Paragraph 400.23 A2 of the Code, but **with the flexibility allowed by the Audit Directive, at the level of the EU**, **the local categories of PIEs can vary from Member State to Member State** depending on the circumstances. More detail is provided below in our comments to question 6.

The EU followed this approach to allow flexibility in the definition of PIEs across Member **States for several reasons**, namely to:

i. ensure the definition can be tailored to fit the specific circumstances and needs of each country;
ii. avoid unnecessary regulatory burdens and ensure that the rules are effective and relevant in each jurisdiction;
iii. maintain the competitiveness of EU markets by preventing a one-size-fits-all approach that might not be suitable for all Member States;
iv. ensure consistency with existing robust regulatory regulations (e.g. UCITS regulations), by allowing Member States to integrate new requirements with existing ones, avoiding regulatory fragmentation and ensuring coherence.

[4] To learn more about Member State national transpositions, please follow this link
[5] An overview of PIE definitions across Europe from 2022 is also available here
[6] A recent analysis from CEPS is available here.

When implementing the EU Audit Directive, **Member States ensured their domestic legislation respected the proportionality principle of the EU framework and aimed to prevent excessive regulatory burden on investment funds already subject to strong investor protection and transparency rules under the sectoral regulatory regime** (e.g. Portugal).[7] [8]

EFAMA supports maintaining the flexibility afforded by the EU Audit Directive, which allows each Member State to apply the PIE designation according to national market realities and risk profiles (and unlisted funds should not be automatically deemed PIEs), and that reinforces the value of a risk-based, jurisdiction-specific application of auditor independence requirements.

As a general remark, **for EFAMA, there is no rationale for imposing a greater regulatory and compliance burden on investment funds** (e.g. CIVs), as these are already subject to existing regulatory requirements (i.e. UCITS Regulations), which have substantial investor protections and disclosure requirements to investors currently in place.

Any amendments to the PIE regime, including these funds within the PIE definition, **would unlikely add value to these entities' investors**. As a bloc, EU Member States and the EU must remain competitive in the European and global capital markets landscape, especially when the European Commission is working on its Savings and Investment Union (SIU) Action Plan. Inconsistency and misalignment with other jurisdictions should be avoided where possible.

For EFAMA, the Audit Directive and existing flexibility should be maintained, and no amendments should be made to the Code.

When deciding if the Code is to amended as proposed in the Consultation Paper, the IESBA should also be aware of the unintended consequences for the European Investment Management industry that are to be avoided (e.g. the potential for anti-competitive outcomes, reducing choice in selection of auditors and thereby potentially increased costs to investors through higher total expense ratios).

More in detail, EFAMA is raising awareness on the following consequences/concerns:

- **Anti-Competitive Concerns:** The amendments proposed in the Consultation Paper could limit the choice of audit firms for the Collective Investment Vehicles (CIVs) and Pension Funds, potentially leading to monopolies, lower quality and higher audit costs.

- **Operational complexity, increased costs, decreased quality of audit services and negative impact on investors:** There is a potential that under regulatory and compliance requirements in certain jurisdictions requires different auditors for CIVs and Pension Funds and Connected Persons (third-party service providers such as asset managers, fund accountants, depositaries, custodians) and this could disrupt current practices and add to complexity, reducing choice of auditors and risking the quality of audit services. Increased costs could negatively affect key performance metrics like ongoing charges, NAVs, and TERs, potentially deterring investors. Rotation and changes to auditors at Connected Persons would lead to a forced change of auditors at CIVs and Pension Funds.

[7] Portugal initially took a broad approach: under the original version of Law No. 148/2015 (Audit Supervision Legal Framework – RJSA), collective investment undertakings were explicitly classified as Public Interest Entities (PIEs). However, this provision was later removed (2021), following a reassessment to ensure alignment with the said principal proportionality principle, as funds were already subject to strong investor protection and transparency rules under the sectoral regulatory regime (Regime Geral dos Organismos de Investimento Coletivo at the time, replaced in 2023 by Regime de Gestão de Ativos) and the supervision of the Portuguese Securities Market Commission (CMVM).

[8] So, in Portugal today only CIVs with listed units are generally considered PIEs under Portuguese law. Unlisted UCITS and other non-publicly traded investment funds are not classified as PIEs, reflecting the assessment that their public interest relevance does not justify such designation. This position is consistent with the objective of preserving proportionality, supervisory focus, and regulatory efficiency. Furthermore, we are not aware of any current policy discussions in Portugal aimed at expanding the PIE definition to cover unlisted funds.

- **Current Effectiveness in Europe:** From a European perspective, the current ethical standards and regulations effectively ensure auditor independence without requiring these proposed amendments in the Consultation Paper. The IESBA's concerns may be more relevant to other regions, where the relationship between auditors and investment managers is different (but even to address concerns arising from other regions, the Code should not be amended). European and local regulators and professional bodies are already ensuring the effectiveness of the Code's principles regarding auditor independence.

EFAMA recommends that the IESBA reconsider proceeding with the changes to the Code proposed in the consultation paper to avoid these unintended consequences and the risk of harming investors and the market by increasing costs and reducing the quality of audit services.

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EFAMA's response to the IESBA's questionnaire

Please find below our comments on the targeted questions raised by the IESBA in the consultation paper (including the reasons for our responses).

Question 1 - Does the Code's definition of related entity capture all relevant parties that need to be included in the auditor's independence assessment when auditing CIVs/pension funds?

Yes. For EFAMA, the Audit Directive and existing flexibility should be maintained, with no amendments to the definition of related entity. To the best of our knowledge, the current definition of "related entity" in the IESBA Code, when applied through the conceptual framework, should be adequate to capture the relevant parties that should be considered in the assessment of auditor's independence for audits of CIVs an Pension Funds. At the level of the EU, Member States' regulatory framework, enforced by local authorities responsible for securities markets (under the authority and supervision of ESMA), already ensures the roles of fund managers, depositaries, investment advisors, and other service providers are clearly regulated and supervised.[9]

These third parties are commonly involved in the structure and governance of investment schemes and are appropriately identified as relevant in the context of independence assessments. It should also be mentioned that some markets reflect a model in which investment schemes delegate key functions to external parties, which reinforces the need to apply a principles-based assessment of independence, as foreseen in the IESBA Code.

In practice, auditors already assess relationships and risks involving all materially influential parties. We therefore believe that the current framework of the Code, supported by national regulation and professional standards, is sufficiently robust and flexible to address the independence considerations involving all relevant parties in the audit of investment funds and pension schemes.

The questions in this Section pertain to an audit of a CIV/pension fund where a Connected Party to the Scheme meets the criteria set out in paragraph 35, i.e., the Connected Party is: (a) Responsible for its decision making and operations; (b) Able to substantially affect its financial performance; or (c) In a position to exert significant influence over the preparation of its accounting records or financial statements.

[9] In Portugal, these are regulated under the Regime da Gestão de Ativos (RGA), established by Decree-Law No. 27/2023, and enforced by the Portuguese Securities Market Commission (CMVM),

Question 2 - Do you believe the criteria set out above are appropriate and sufficient to capture Connected Parties that should be considered in relation to the assessment of auditor independence with respect to the audit of a CIV/pension fund?

Yes. For EFAMA, the new criteria or application material to capture Connected Parties should not be added because we believe the Conceptual Framework and the existing framework is sufficient in guiding the auditors to identify, evaluate and address threats to independence created by professional services, interests and relationships with Connected Parties and therefore we do not believe the criteria set out in the Consultation Paper are necessary for assessing auditor independence with respect to audits of CIVs and Pension Funds.

Question 3 - Where there are such Connected Parties, do you believe that the application of the conceptual framework in Section 120 of the Code is sufficiently clear as to how to identify, evaluate and address threats to independence resulting from interests, relationships, or circumstances between the auditor of the CIV/pension fund and the Connected Parties? If not, do you believe the application of the conceptual framework in the Code as applicable to Connected Parties associated with Investment Schemes warrants additional clarification?

Yes. For EFAMA, we believe the Conceptual Framework and the existing framework is sufficient in guiding the auditors to identify, evaluate and address threats to independence created by professional services, interests and relationships with Connected Parties and therefore we do not believe the criteria set out in the Consultation Paper are necessary for assessing auditor independence with respect to audits of CIVs and Pension Funds. Also, we believe due to the significant variation globally in how CIVs and Pension Funds are governed, structured, operated and managed, along with the different local jurisdictional regulation of CIVs and Pension Funds, it will be difficult for the IESBA to develop requirements and definitions that are can be consistently applied and fit for purpose for a global standard.

Question 4 - Do you believe that the conceptual framework in Section 120 of the Code is consistently applied in practice with respect to the assessment of auditor independence in relation to Connected Parties when auditing a CIV/pension fund?

Yes. For EFAMA, as noted in responses to Questions 2 and 3 above, the application of the existing framework has not raised any consistency concerns. We believe that the Conceptual Framework set out in Section 120 of the IESBA Code is applied consistently in practice when assessing auditor independence in relation to connected parties in the context of CIVs and Pension Funds. The auditors are required to assess self review/self interest threats under the current ethical standards which is considered sufficient. In general, auditors are required to apply a risk-based and principles-driven approach, in line with that section of the Code, and we trust that, to the extent of possible, that is being reinforced by the training and guidance provided by the professional organisations for auditors. Local public audit oversight authorities also review and monitors independence issues during audit quality review inspections and other supervisory activities on auditors.

Question 5 - Are there certain interests, relationships, or circumstances between the auditor of a CIV/pension fund and its Connected Parties that should be addressed?

As noted in responses above, we believe the Conceptual Framework and the existing framework is sufficient in guiding the auditors to identify, evaluate and address threats to independence created by professional services, interests and relationships with Connected Parties and therefore EFAMA is not aware of any interest, relationships or circumstances that deserve to be specifically addressed.

Question 6 - Does your jurisdiction have requirements or guidance specific to audits of CIVs/pension funds from an auditor independence perspective? If yes, are those requirements included in audit-specific or CIV-specific regulation? Please provide details.

As mentioned above, at the EU level, the local categories of CIVs and Pension Funds can vary from Member State to Member State depending on the circumstances, in particular how they are governed, structured, operated and managed, along with the different local jurisdictional regulations. As the IESBA team has identified in preparing for this public consultation, certain Investment Scheme frameworks, e.g., Ireland and Luxembourg, ensure that no single third-party service provider "controls" the Investment Scheme.[10]

Without being exhaustive, but **to provide some detail to this response, EFAMA can share the following examples.**

In Luxembourg, investment funds whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point (21) of Article 4(1) of Directive 2014/65/EC) are considered as PIEs. However, unlisted ones, such as UCITS, are not deemed PIEs.[11]

In Portugal, there are no auditor independence rules that apply exclusively to audits of CIVs or pension funds. However, auditor independence is ensured through a robust framework combining general audit regulation with sector-specific supervision. All statutory auditors must comply with the IESBA Code of Ethics. OROC is responsible for assessing audit quality of auditors of non-PIE and CMVM, as public audit oversight authority, is responsible for supervising auditors of PIEs. Although RGA regime does not contain audit-specific provisions, it provides the structure for understanding relationships and roles that may impact independence. In this context, auditor independence in the audits of CIVs and pension funds is effectively safeguarded through the joint role of the OROC and the CMVM, applying the IESBA Code within a strong national legal and supervisory framework.

[10] Please refer to IESBA Meeting (June 2024) Agenda Item 3-A that is available here.

[11] In Luxembourg, under Article 1 (20) of the Law of 23 July 2016 concerning the audit profession, "public-interest entities" means "(…) *a) **entities** governed by the law of a Member State **whose transferable securities are admitted to trading on a regulated market of any Member State** within the meaning of point (21) of Article 4(1) of Directive 2014/65/EC; (…)"*

ABOUT EFAMA

EFAMA is the voice of the European investment management industry, which manages EUR 28.5 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors. Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities. EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the EFAMA Fact Book.

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