



European Securities and
Markets Authority

Final Report

Guidelines on the management body of market operators and data reporting service providers

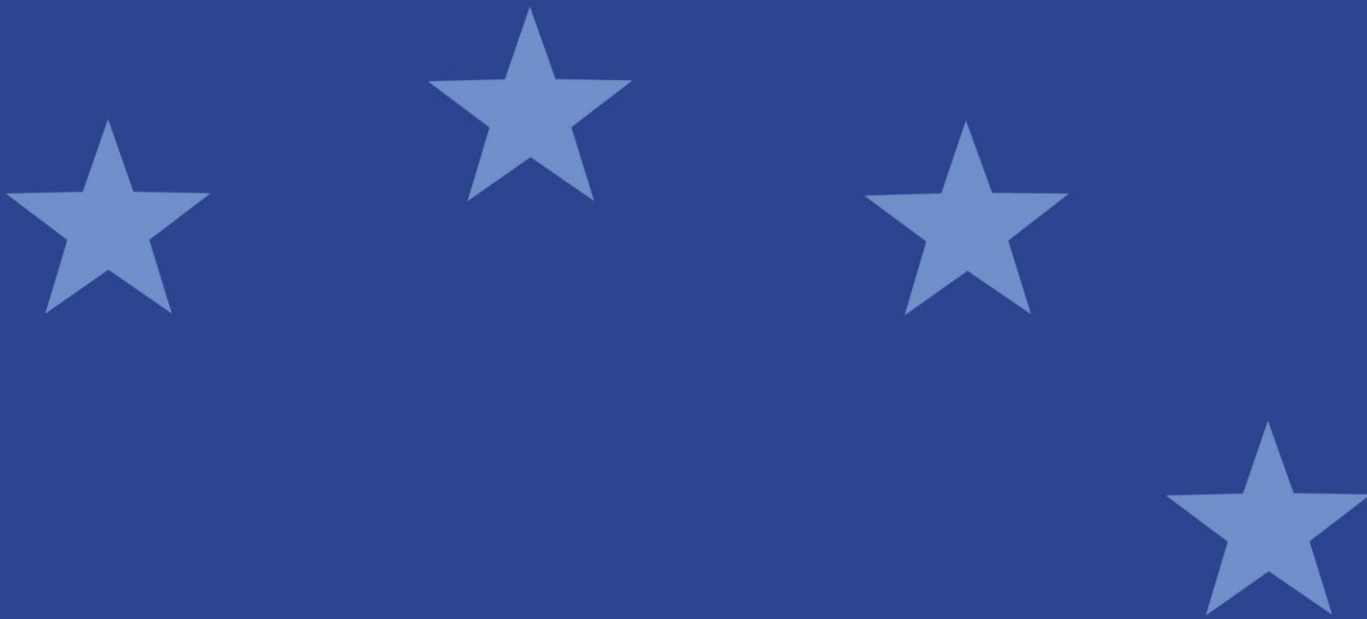


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Acronyms used

CP	Consultation Paper on Guidelines on specific notions under MiFID II related to the management body of market operators and data reporting services providers (ESMA/2016/1437)
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
MiFID or MiFID I	Markets in Financial Instruments Directive – Directive 2004/39/EC of the European Parliament and the Council
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012
NCA	National Competent Authority
RTS	Regulatory Technical Standards
DRSP	Data Reporting Service Provider
EBA/ESMA GL	Joint ESMA and EBA Guidelines on the assessment of the suitability of members of the management body and key function holders under Directive 2013/36/EU and Directive 2014/65/EU

1 Executive Summary

Reasons for publication

Article 45(2)(a) to (c) of MiFID II requires that all members of the management body of any market operator (a) shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience to perform their duties, (b) shall commit sufficient time to perform their functions in the market operator and (c) shall act with honesty, integrity and independence of mind. Article 45 also prescribes that market operators shall not only promote diversity, but also devote adequate human and financial resources to the induction and training of the members of their management body.

Article 63 of MiFID II and recital (53) of MiFID II establishes similar requirements with respect to the management body of Data Reporting Services Providers (DRSPs), with the exception of the allocation of resources for the induction and training of the management body and the promotion of diversity.

Article 45(9) of MiFID II mandates ESMA to issue guidelines on the notions of “sufficient time commitment”, “adequate collective knowledge, skills and experience”, “honesty, integrity and independence of mind”, “adequate human and financial resources allocated to the induction and training of members” and “diversity” in the context of the management body of a market operator as specified above.

Article 63(2) of MiFID II determines that ESMA shall develop guidelines for the assessment of the suitability of the members of the management body of DRSPs as described in Article 63(1).

Contents

This final report sets out the feedback statement to the consultation paper (CP) on Guidelines on the management body of market operators and DRSPs (ESMA/2016/1437). It describes how the responses to the consultation were taken into consideration when drafting the final Guidelines. It describes any material changes to the Guidelines and explains the reasons for this in light of the feedback received.

This final report does not include general background information which was already provided in the consultation paper (ESMA/2016/1437). It is therefore recommended to read the two papers together.

2 Feedback statement

1. ESMA received six responses to the CP. Responses were received from exchanges (four responses from regulated markets, multilateral trading facilities or related associations), one asset management company and one advisory committee.
2. This section provides a summary of the responses to the CP and ESMA's view on those responses.

General issues

3. One stakeholder requested ESMA to clarify that the term 'management body' covers both management and supervisory functions and that it may designate individuals that belong to a college or are appointed with a specific role in the entity, noting in particular that the Chief Executive Officers (CEOs) are usually not members of the board. With respect to the first element, ESMA notes that the second paragraph of Article 4(1)(36) of MiFID II is sufficiently clear in this respect. Regarding how CEOs should be considered, ESMA notes that Article 4(36) of Directive 2014/65/EU determines that the management body consists of the governing body or bodies of the institution, appointed in accordance with national law, and in addition the persons who effectively direct the business of the institution. For the purposes of these Guidelines, any reference to the management body should be understood as applying also to the Executive Committee and/or to the CEO, even if he or she has not been proposed or appointed as a formal member of the institutions' governance body or bodies under national law. Likewise, any reference to the management body should be understood as including the CEO and/or the Executive Committee.
4. Two respondents considered it necessary to clarify the meaning of "significant in terms of size, internal organisation and the nature, scale and complexity of their activities" as a preliminary step to discuss the limitations in terms of number of positions. In that respect one trading venue proposed a set of parameters to be considered by ESMA (operations of more than five regulated markets; authorised as well as a credit institution or insurance company; more than 5,000 employees; more than 500 direct subsidiaries). Whereas ESMA agrees that market participants may benefit from further clarity in this respect, based on the limited feedback received at this stage ESMA refrains from providing a more specific interpretation of this concept.

Sufficient time commitment: general

5. ESMA proposed to apply the general Guidelines for sufficient time commitment to both trading venues and DRSPs, after noting the specific obligations for trading venues considered as significant in terms of size, internal organisation and the nature, scale and complexity of their activities. There were no reactions in the responses received to this proposal which is maintained in the final Guidelines.

6. In the CP, ESMA proposed that the responsibilities of the management body should be set out in a comprehensive job description which included the anticipated time commitment required for the role. Whilst some respondents agreed with this proposal, other respondents highlighted that they did not believe that there should be a job description for becoming a member of the management board or that where there is a job description that is comprehensive, it would need to be regularly updated. ESMA remains of the view that regardless of the type of activity to be performed by the management body, there should be a job description including the time commitment expected. However, ESMA agrees that the description of the duties should be adapted to the type of activity undertaken.
7. With regard to the anticipated time commitment outlined in the job description, some respondents highlighted that this should be based on established governance practices, taking into account particularly whether it is an executive or non-executive position, the particular committees that the individual will serve on and the obligations of the market operator or DRSP in accordance with best practice and regulatory obligations. Whereas ESMA agrees with the suggestions made, it is noted that the proposed Guidelines require having the expected time commitment included in the job description, where the role to be assumed by the prospective member of the management board should be taken into account.
8. One of the respondents highlighted that the proposal that the members of the management body should notify the market operator or DRSP of any change in the information provided could be an unnecessary administrative burden as this would include non-material changes. ESMA understands this concern and has clarified that only material changes that may have an impact on the member's time commitment in the post should be notified.
9. With respect to the parameters to be considered for the ex-post review of the time commitment shown by the members of the management body, it was mentioned in the feedback that the attendance at meetings should be just one of a number of indicators to be considered for that purpose.
10. ESMA does not disagree with this feedback but notes that the wording used in the original proposal was "as an indication of time commitment" (emphasis added). Nonetheless, the Guidelines have been amended to clarify that point.
11. Another response indicated that the participation in the management body of other companies on behalf of the market operator (for instance in the board of key clients or service providers) should be considered as part of the time commitment in the management body of the market operator, not as external commitments. ESMA understands that such interpretation can only be applicable in case the market operator possesses a qualifying holding in those other firms. Otherwise, the participation in the management body of other companies should be counted separately from the activity within the group of the market or in undertakings where the market operator owns a qualifying holding.

12. ESMA would like to remind stakeholders that the members of the management body of market operators which are not significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities remain under the general obligation in the first paragraph of Article 45(2)(a) of MiFID II to commit sufficient time to perform their functions.
13. While ESMA has not proposed a procedure to count directorates, NCAs should ensure that the members of the management body of market operators below the significant size and DRSPs commit sufficient time in light of their circumstances and the nature, scale and complexity of the activities.

Sufficient time commitment: calculation of the number of directorships

14. The members of the management body of a market operator that is significant in terms of size, internal organisation and the nature, scale and complexity of its activities are subject to additional limitations in terms of the maximum number of directorships that they can assume simultaneously. ESMA proposed Guidelines to clarify the interpretation of Article 45(2)(a) of MiFID II in that respect.
15. Two respondents challenged the interpretation of Article 45(2)(a) of MiFID II with respect to undertakings within the same group or where the market operator owns qualifying holdings. In their opinion, all directorships held within the same group and in undertakings where the market operator holds qualifying holdings should count just as one single directorship.
16. ESMA agrees that all the directorships held within the same group should be counted jointly as just one directorship and has amended the Guidelines accordingly.
17. However, ESMA remains of the view that the text of Article 45(2)(a) of MiFID II differentiates between directorships held within the same group and directorships held in undertakings where the market operator owns a qualifying holding. As a consequence, those should be counted as two different directorships.
18. ESMA reminds stakeholders that the wording of MiFID II establishes a general overarching principle whereby members of the management body of a market operator should ensure that they have enough time to undertake all of their duties.
19. Another stakeholder proposed including directorships held in other financial or non-financial companies, including when acting on behalf of a legal person or as an alternate as non-countable directorships. ESMA reiterates that such interpretation can only be applicable in case the market operator holds a qualifying holding in those other firms. Otherwise, the participation in the management body of other companies should be counted separately from the activity within the group of the market or in undertakings where the market operator owns a qualifying holding.

20. One respondent requested expanding the list of potential organisations that would not count for these purposes. ESMA notes that the list originally included is open-ended, but wishes to insist that any other non-for-profit activity should nonetheless be considered for the purpose of assessing the time commitment of the concerned member.
21. Finally, the same respondent requested ESMA to clarify that group executive and non-executive directors and employees can be members of the management bodies of the market operator. Whilst ESMA does not see any contradiction in this respect with the level 1 text, it is noted that the assessment of the time commitment of the concerned member has to take into account all the functions and professional activities within and outside the financial sector which are relevant in terms of time commitment.

Knowledge, skills and experience

22. Article 45(2)(b) of MiFID II establishes that the management body of a market operator shall possess adequate collective knowledge, skills and experience to be able to understand the market operator's activities, including the main risks. Article 63(1) of MiFID II requires that all the members of the management body of DRSPs possess "sufficient knowledge, skills and experience (...) to perform their duties". Recital (53) of MiFID II clarifies that market operators and DRSPs should in particular have adequate collective knowledge, skills and experience to be able to understand the firm's activities including the main risks.
23. These concepts should be assessed by having regard to the size of the relevant business and its associated management body. Small firms with a limited number of persons on their management body have natural limitations when it comes to covering all the areas described for the knowledge, skills and experience required at collective level.
24. Feedback received to the CP highlighted that the skills and knowledge required from executive and non-executive directors is different. ESMA understands this view but does not intend to specify those differences. It is for the market operator or DRSP to determine the appropriate skills and knowledge relevant to the posts and to ensure that those skills and knowledge are represented in the management body.
25. CP respondents also stated that there is no specific educational or management experience for a position on the management body and that members are particularly valuable when they have experience in trading the type products that are relevant to the market operator or DRSP. ESMA agrees that persons who have traded the products would be valuable on the board but would also like to re-state that the board members as a whole need to have the skills, education and management experience required so each individual member does not need to have the same level of education or management experience.
26. In the Annex of the CP, ESMA had prepared a matrix that would be available for the market operators and DRSPs to use, should they wish to do so. The matrix awards scores to members and prospective members of the management body for different types of knowledge, skills and experience which are supplemented with explanatory notes. On the

basis of the scores awarded individual strengths and weaknesses of the management body are identified and compared to each other.

27. Respondents to the CP highlighted that these should not be mandatory. ESMA would like to reassure the respondents that these are optional and that market operators and DRSPs may use other tools when making the assessment. So as to avoid any confusion in this respect, ESMA has extracted the matrix from the Guidelines and included it as an Annex to this Final Report as a tool to be used by market operators and DRSPs in case they wish to use it to assess and communicate the collective suitability of their management body.
28. Respondents further highlighted the concern with confidentiality as the matrix includes a line for the member to be named. As this tool is intended to assist the market operator or DRSP with regard to identifying skill gaps across the management body, ESMA sees the value in being able to distinguish between the different members of the management body. ESMA has also reviewed the matrix on the basis of the responses given.

Honesty and integrity

29. In the CP, ESMA cross-referred to the documents required under Article 4 of the Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, organisational requirements and the publication of transactions for DRSPs taking in particular into account a number of situations specifically mentioned there to assess the honesty and integrity of members and prospective members. Respondents raised the issue that this could be interpreted as members being periodically assessed for their honesty and integrity which is seen by those respondents to be burdensome. ESMA agrees that the periodic assessment of members could be burdensome particularly where the circumstances for those members may not have changed. ESMA has amended the Guidelines accordingly and added a requirement that the member should notify the relevant person in the market operator or DRSP should any of the member's circumstances in relation to this issue change.
30. Respondents to the CP argued that there should be a time barrier to consider criminal or administrative records. ESMA reiterates that only 'relevant criminal or administrative records maintained under national law should be taken into account' therefore only those records that have not expired at the time of the assessment should be considered.
31. Two responses proposed disregarding the proposals in letters a) to e) of paragraph 50 of the CP as they might not be related to the behaviour of the member or prospective member of the market operator or DRSP. As a consequence, these stakeholders proposed taking into account only whether the member or prospective member had been sanctioned in relation to a fraud, embezzlement or in connection with the provision of financial or data services or disqualified or dismissed as a consequence of misconduct or malpractice.
32. ESMA remains of the view that the records included in the original proposal should be considered for the assessment of the honesty and integrity of the member or prospective

member of the management body. ESMA notes as well that whereas that information listed from letters a) to g) has to be provided and analysed, the provision of those records might not necessarily disqualify a member or potential member, for instance in case that an insolvency or liquidation was not related to the activity of the person under scrutiny.

33. Another response proposed to disregard completely all those records. For this respondent it is sufficient to only have a self-declaration of adherence to the market operator's code of conduct. ESMA remains of the view that the documents listed in paragraph 50 of the CP should be provided for the assessment of prospective members and for the reassessment, where appropriate, of the members of the management body.
34. Respondents were in favour of the CP proposal that the market operators and DRSPs should check the information that the prospective member gives to them, stating that this is normal practice in the finance industry. ESMA has now included this expectation in the Guidelines.

Independence of mind

35. The requirement to have independence of mind under Article 45(2)(c) of MiFID II refers to the capacity of the members of the management body of a market operator to perform their duties independently and objectively without undue influence. ESMA addressed this issue by identifying a number of circumstances that potentially could create a conflict of interest that should be reported for the assessment of the member or prospective member.
36. The respondents to the CP highlighted that the presence of the factors that could indicate a conflict of interest does not necessarily mean that the member is conflicted and that the experiences that the member may have had which may fall within the criteria suggested may add to their ability to perform the role. Although ESMA agrees that the sole presence of the factors described does not mean that the person is conflicted and therefore not independent, ESMA remains of the view that the member or prospective member needs to be transparent with the market operator or DRSP when potential conflicts of interest are present.
37. In particular, one stakeholder requested distinguishing between executive and non-executive directors. For this respondent being an employee of the market operator or being an officer of the market operator's group is a common situation for executive directors. Again, ESMA agrees that the sole presence of the factors described does not mean that the person is conflicted and, therefore, not independent. However ESMA remains of the view that the member or prospective member needs to be transparent with the market operator or DRSP when at least the non-exhaustive list of circumstances described in the Guidelines exist, regardless the executive or non-executive nature of the past functions. ESMA notes as well that such information would be relevant for the assessment of independent members of the management body where the market operator has to or is willing to appoint that type of members to the management body.

38. More specifically, ESMA proposed that any member or prospective member of the management body of a market operator or DRSP should disclose any links with shareholders whose individual participation reaches or exceeds 5% of voting rights of the market operator or DRSP, taking as a reference the disclosure obligations included in Article 9(1) of the Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (the Transparency Directive) and not the definition of “qualifying holding” contained in Article 4(1)(31) of MiFID II that determined the obligation to report links above 10%.
39. The feedback received on the proposal outlined above was split. ESMA has maintained the original approach given that, as previously indicated in the CP, the Guidelines only deal with the report of links with a significant shareholder that might affect the individual acting as a member of the management body of a market operator or a DRSP and not the authorisation of the institution as a whole. As a consequence, the existence of such a link does not automatically prevent the member or prospective member of the management body from acting.
40. Finally, ESMA has clarified the disclosure obligations of market operators and DRSPs in line with the original proposal.

Adequate human and financial resources devoted to the induction and training of members of the management body of market operators

41. The respondents broadly agreed with the proposal. One respondent disagreed with the approach noting that regular training is already part of the daily practice of most market operators, without any need for detailed regulation in this regard. ESMA agrees that the proposal is in line with current best practice. ESMA wishes to underline that the proposal permits market operators to adapt their induction and training policies to their specific needs.
42. One respondent challenged the proposal that market operators should offer individually tailored training programmes, as appropriate, as overly prescriptive and burdensome. ESMA reminds stakeholders that its proposal considered that such individually tailored training programmes should only be proposed where “appropriate” and therefore, still regards this to be a legitimate measure to ensure that each member has the required knowledge for their role.
43. In line with the feedback received, ESMA has maintained the original proposal.

Diversity

44. The respondents to the CP broadly agreed with the proposal.
45. One response raised the concern that the proposed Guidelines may lead to the appointment of persons based on diversity objectives rather than on their expertise and

that the proposal to justify the selection of a person not meeting the diversity objectives in writing may increase litigation.

46. Other respondents mentioned that a degree of proportionality should be applied to market operators as well. ESMA agrees that proportionality should be considered by market operators in the determination and implementation of their diversity policy and has adapted the Guidelines accordingly. However, ESMA reminds stakeholders that the notion of proportionality should not be used to restrict the reasonable efforts that are expected of market operators to meet the targets set.
47. Another criticism of the diversity requirement is that the “geographical provenance” requirement is not relevant for small market operators. ESMA acknowledges this comment and has clarified that this parameter is only relevant for market operators that are active internationally and is to be applied without prejudice to the applicable national law.

Record-keeping

48. The majority of those who responded to the record keeping question were in favour of the requirements. However, concerns were raised regarding the compatibility of the record keeping guidance and EU and national data privacy rules. ESMA has clarified that the guidance is without prejudice to the applicable data protection legislation.

Cost-benefit analysis

49. With respect to the preliminary cost and benefit analysis presented in annex of the CP, only two comments were received, one agreeing with the original proposal.
50. The other respondent noted that market operators should not have to undertake periodic checks. The Guidelines have been revised with respect to the honesty and integrity of the members of the management body to further clarify that the burden to report any new circumstance is with the members and not the market operator/DRSP.
51. ESMA considers that the changes introduced in the final Guidelines and which are described in more details above should address the main concerns raised with respect to the cost of implementing the Guidelines. In this context, and consistently with Article 16 of the ESMA Regulation which stipulates that the cost and benefit should be “proportionate in relation to the scope, nature and impact of the Guidelines”, ESMA does not consider it necessary to develop a more detailed analysis based on quantitative data for these Guidelines.
52. ESMA would like to stress that, in accordance with Article 16 of the ESMA Regulation, it has requested an opinion from the ESMA Securities and Markets Stakeholder Group which provided comments orally and did not raise any other issues beyond those summarised in this report.

3 Annexes

3.1 Annex I: Questions

Q1: Do you agree with ESMA's view regarding sufficient time commitment?

Q2: Do you agree with ESMA's view regarding the calculation of directorships?

Q3: Is there any other element in the calculation of the number directorships that should be clarified?

Q4: Do you agree with ESMA's view regarding the adequate knowledge, skills and experience at collective and individual levels?

Q5: Do you agree with ESMA's view regarding honesty and integrity?

Q6: Is there any other parameter that should be considered in these Guidelines with respect to the honesty and integrity required to the members of the management body of market operators/DRSPs?

Q7: Should market operators/DRSPs check the accuracy of the data provided by a member/prospective member of the management body? If yes, how should this be done?

Q8: Do you agree with ESMA's view regarding the independence of mind of a member of a management body?

Q9: In particular, do you agree with requiring a member or prospective member to identify whether it is or has been a shareholder whose participation reached or exceeded 5% of voting rights of a market operator/DRSP or an officer of, or otherwise associated directly with, a shareholder whose participation reaches or exceeds 5% of voting rights of a market operator/DRSP?

Q10: Do you agree with ESMA's view with induction and training of members of the management body of market operators?

Q11: Do you agree with ESMA's view regarding diversity?

Q12: Do you agree with ESMA's view regarding record-keeping?

Q13: Is there any additional element that should be considered for the purpose of these Guidelines that has not been mentioned before?

Q14: Please provide any views with respect to the costs and benefits identified in the relevant annex.

3.2 Annex II: MiFID II mandate to issue Guidelines

Article 45 of MiFID II - Requirements for the management body of a market operator

1. Member States shall require that all members of the management body of any market operator shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience to perform their duties. The overall composition of the management body shall reflect an adequately broad range of experience.

2. Members of the management body shall, in particular, fulfil the following requirements:

(a) All members of the management body shall commit sufficient time to perform their functions in the market operator. The number of directorships a member of the management body can hold, in any legal entity, at the same time shall take into account the individual circumstances and the nature, scale and complexity of the market operator's activities.

Unless representing the Member State, members of the management body of market operators that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall not at the same time hold positions exceeding more than one of the following combinations:

(i) one executive directorship with two non-executive directorships;

(ii) four non-executive directorships.

Executive or non-executive directorships held within the same group or undertakings where the market operator owns a qualifying holding shall be considered to be one single directorship.

Competent authorities may authorise members of the management body to hold one additional non-executive directorship. Competent authorities shall regularly inform ESMA of such authorisations.

Directorships in organisations which do not pursue predominantly commercial objectives shall be exempt from the limitation on the number of directorships a member of a management body can hold.

(b) The management body shall possess adequate collective knowledge, skills and experience to be able to understand the market operator's activities, including the main risks.

(c) Each member of the management body shall act with honesty, integrity and independence of mind to effectively assess and challenge the decisions of the senior management where necessary and to effectively oversee and monitor decision-making.

Market operators shall devote adequate human and financial resources to the induction and training of members of the management body.

4. Member States shall ensure that market operators which are significant in terms of their size, internal organisation and the nature, scope and complexity of their activities establish a nomination committee composed of members of the management body who do not perform any executive function in the market operator concerned.

The nomination committee shall carry out the following actions:

(a) identify and recommend, for the approval of the management body or for approval of the general meeting, candidates to fill management body vacancies. In doing so, the nomination committee shall evaluate the balance of knowledge, skills, diversity and experience of the management body. Further, the committee shall prepare a description of the roles and capabilities for a particular appointment, and assess the time commitment expected. Furthermore, the nomination committee shall decide on a target for the representation of the underrepresented gender in the management body and prepare a policy on how to increase the number of the underrepresented gender in the management body in order to meet that target;

(b) periodically, and at least annually, assess the structure, size, composition and performance of the management body, and make recommendations to the management body with regard to any changes;

(c) periodically, and at least annually, assess the knowledge, skills and experience of individual members of the management body and of the management body collectively, and report to the management body accordingly;

(d) periodically review the policy of the management body for selection and appointment of senior management and make recommendations to the management body.

In performing its duties, the nomination committee shall, to the extent possible and on an ongoing basis, take account of the need to ensure that the management body's decision making is not dominated by any one individual or small group of individuals in a manner that is detrimental to the interests of the market operator as a whole.

In performing its duties, the nomination committee shall be able to use any forms of resources it deems appropriate, including external advice.

Where, under national law, the management body does not have any competence in the process of selection and appointment of any of its members, this paragraph shall not apply.

5. Member States or competent authorities shall require market operators and their respective nomination committees to engage a broad set of qualities and competences when recruiting members to the management body and for that purpose to put in place a policy promoting diversity on the management body.

6. Member States shall ensure that the management body of a market operator defines and oversees the implementation of the governance arrangements that ensures effective and prudent management of an organisation, including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market.

Member States shall ensure that the management body monitors and periodically assesses the effectiveness of the market operator's governance arrangements and takes appropriate steps to address any deficiencies.

Members of the management body shall have adequate access to information and documents which are needed to oversee and monitor management decision-making.

7. The competent authority shall refuse authorisation if it is not satisfied that the members of the management body of the market operator are of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their functions, or if there are objective and demonstrable grounds for believing that the management body of the market operator may pose a threat to its effective, sound and prudent management and to the adequate consideration of the integrity of the market.

Member States shall ensure that, in the process of authorisation of a regulated market, the person or persons who effectively direct the business and the operations of an already authorised regulated market in accordance with this Directive are deemed to comply with the requirements laid down in paragraph 1.

8. Member States shall require the market operator to notify the competent authority of the identity of all members of its management body and of any changes to its membership, along with all information needed to assess whether the market operator complies with paragraphs 1 to 5.

9. ESMA shall issue guidelines on the following:

(a) the notion of sufficient time commitment of a member of the management body to perform that member's functions, in relation to the individual circumstances and the nature, scale and complexity of activities of the market operator;

(b) the notion of adequate collective knowledge, skills and experience of the management body as referred to in point (b) of paragraph 2;

(c) the notions of honesty, integrity and independence of mind of a member of the management body as referred to in point (c) of paragraph 2;

(d) the notion of adequate human and financial resources devoted to the induction and training of members of the management body as referred to in paragraph 3;

(e) the notion of diversity to be taken into account for the selection of members of the management body as referred to in paragraph 5.

ESMA shall issue those guidelines by 3 January 2016.

Article 63 - Requirements for the management body of a data reporting services provider

1. Member States shall require that all members of the management body of a data reporting services provider shall at all times be of sufficiently good repute, possess sufficient knowledge, skills and experience and commit sufficient time to perform their duties.

The management body shall possess adequate collective knowledge, skills and experience to be able to understand the activities of the data reporting services provider. Each member of the management body shall act with honesty, integrity and independence of mind to effectively challenge the decisions of the senior management where necessary and to effectively oversee and monitor management decision-making where necessary.

Where a market operator seeks authorisation to operate an APA, a CTP or an ARM and the members of the management body of the APA, the CTP or the ARM are the same as the members of the management body of the regulated market, those persons are deemed to comply with the requirement laid down in the first subparagraph.

2. ESMA shall, by 3 January 2016, develop guidelines for the assessment of the suitability of the members of the management body described in paragraph 1, taking into account different roles and functions carried out by them and the need to avoid conflicts of interest between members of the management body and users of the APA, CTP or ARM.

3. Member States shall require the data reporting services provider to notify the competent authority of all members of its management body and of any changes to its membership, along with all information needed to assess whether the entity complies with paragraph 1.

4. Member States shall ensure that the management body of a data reporting services provider defines and oversees the implementation of the governance arrangements that ensure effective and prudent management of an organisation including the segregation of duties in the organisation and the prevention of conflicts of interest, and in a manner that promotes the integrity of the market and the interest of its clients.

5. The competent authority shall refuse authorisation if it is not satisfied that the person or the persons who shall effectively direct the business of the data reporting services provider are of sufficiently good repute, or if there are objective and demonstrable grounds for believing that proposed changes to the management of the provider pose a threat to its sound and prudent management and to the adequate consideration of the interest of its clients and the integrity of the market.

3.3 Annex III: Cost-benefit analysis

Article 16 of the ESMA Regulation requires ESMA, where appropriate, to analyse the potential costs and benefits relating to proposed Guidelines. It also states that cost-benefit analyses must be proportionate in relation to the scope, nature and impact of the proposed Guidelines.

Article 45 of MiFID II requires that all members of the management body of any market operator shall at all times be of sufficiently good reputation, possess sufficient knowledge, skills and experience to perform their duties, shall commit sufficient time to perform their functions in the market operator, shall act with honesty, integrity and independence of mind, shall devote adequate resources to the induction and training of the management body and promote diversity.

Article 63 of MiFID II and recital (53) of MiFID II establishes similar requirements with respect to the management body of DRSPs, with the exception of the devotion of resources for the induction and training of the management body.

Article 45(9) of MiFID II mandates ESMA to issue Guidelines on the notions of “sufficient time commitment”, “adequate collective knowledge, skills and experience”, “honesty, integrity and independence of mind”, “adequate human and financial resources devoted to the induction and training of members” and “diversity” in the context of the management body of a market operator.

Article 63 of MiFID II determines that ESMA shall develop Guidelines for the assessment of the suitability of the members of the management body of DRSPs.

	Description
<i>Benefits</i>	The Guidelines are aimed at providing clarity on a number of concepts in MiFID II. They should provide clarity to national competent authorities, members and potential members of the management body of market operators and DRSPs about the requirements that should be met according to Articles 45 and 63 of MiFID II.
<i>Compliance costs</i>	Most of the concepts that these Guidelines aim at clarifying were already in existence under MiFID I and the vast majority of national regulatory frameworks. Therefore, the clarification provided in the Guidelines of the notions of concepts such as “sufficient time commitment”, “collective knowledge, skills and experience” and “honesty, integrity and independence of mind” is in line with the current national regulations and supervisory practice throughout the EU.
- <i>One-off</i>	
- <i>Ongoing</i>	

	<p>MiFID II introduces two new elements that were not in the pre-existing framework (the notions of “diversity” and the “devotion of resources for the induction and training of the members of the management body”) and therefore ESMA considers the eventual costs of national competent authorities, market operators and DRSPs as driven by Level 1.</p> <p>A survey undertaken by ESMA about the content of these Guidelines demonstrated that a number of EU countries had already introduced the assessment of diversity and the induction of training of members of the management body of market operators (see for instance, the Spanish Unified Governance Code; the Italian Corporate Governance Code and the Dutch Corporate Governance Code).</p>
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3.4 Annex IV: Template for a matrix to assess the collective competence of members of the management body

The suitability matrix is a tool for a market operator/DRSP to evaluate periodically or annually the collective suitability of the members of the management body. By assessing the knowledge, skills and experience of the individual members of the management body, strengths and weaknesses in the management body can be identified and hence the collective knowledge, skills and experience can be assessed. The outcome of the suitability matrix identifies training needs and should be used to determine the profile of a new candidate.

This matrix is designed to provide a collective assessment of the knowledge, skills and experience of the management body as a whole. A low score attributed to certain items under analysis does not necessarily impact the individual assessment of a member. It is expected that in a collegiate body there are candidates with different characteristics, including different levels of knowledge, and different professional experiences.

The matrix could also be used as a tool for the supervision of the collective suitability of the management body.

The matrix should thus be aligned with the specific characteristics of the market operator/DRSP regarding the business model and strategy and activities; risk appetite, risk strategy and actual risk profile; and outsourcing arrangements. Moreover, national regulations can require additional knowledge, skills or expertise not yet covered in the matrix. Therefore market operator/DRSPs should determine whether it is necessary to add criteria before using the template provided.

Explanation of scores in matrix

The matrix will result in scores that could be an indication of the collective suitability of the management body. The underlying motivation for the individual scores can also be important, especially when used for supervisory assessment. For example, there may be a specific reason to have certain people on the management body because of knowledge needed for specific activities. The explanation of the scores in the matrix can also be annexed separately.

Different structures

Each area of knowledge or expertise has to be covered by member(s) of the management body. The market operator/DRSP should determine how the overview of the collective suitability is best achieved.

General Information on <name market operator/DRSP>

Management body in its <management / supervisory> function

Part of group?	If yes, provide name and describe the position of the market operator/DRSP within the group (holding, parent, subsidiary)
Structure	<one-tier, two-tier, or other>

A. Governance												
<i>This section maps how the responsibilities are divided within the management body in its management function or in its supervisory function. This section can be tailored to the responsibilities within the organisation.</i>												
Please fill in a score for each member with an L ¹ , M ² or H ³ :	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name
Administrative organisation and internal controls.												
Compliance function												
Internal audit function												
Risk management function												
Remuneration policy, including using incentives to influence behaviours.												
Outsourcing policy												
The safeguarding of client interests												
Succession planning.												

¹An 'L' should be assigned where the person has minimum (low) awareness of the subject

²An 'M' should be assigned where the person has a good (medium) understanding of the subject but is not expert

³An 'H' should be assigned where the person has a high understanding and can make a balanced independent expert-level judgement on the subject

Human Resources.												
Other relevant responsibilities and roles (if applicable)												
*												

B. Competence of risk management, compliance and audit												
Please fill in a score for each member with an L, M or H.												
	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name
Strategy and risk appetite.												
Strategy and business models.												
Risk management and corresponding procedures												
Relevant laws and regulations												
Audit plan												

C. Managerial competence

Please fill in a score for each member with an L, M or H	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name
Knowledge and experience of managing processes, tasks and providing direction and guidance to others												
Ability to set tone from the top												
Social, ethical and professional standards												
Has experience of complying with applicable regulations, governance, codes of conduct codes, and internal rules												
Engaging external stakeholders												
Communication of the strategy, policies and objectives both internally and externally												

Other relevant knowledge and areas of experience required												
*												

D. Products, services and markets within the market operator/DRSPs scope of activities												
Please fill in with a L, M or H.	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name
Knowledge and experience of relevant market(s)												
Knowledge and experience of the company's products and services												
Has insight into the internal expertise of the company (eg the management body and internal audit)												
Identifies the long-term interests of the company in assessing relevant products, services and markets												

Has knowledge of other relevant business areas and/or activities													
*													
E. Sectoral and Financial Competence													
Please fill in with a L, M or a H	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name
Knowledge and experience with financial markets													
Knowledge and experience with finance/accounting													
Knowledge and experience of the operation of trading venues.													
Knowledge and experience of data services.													
Has knowledge of other relevant business areas and/or activities of the market operator/DRSP, (e.g. clearing and settlement, asset management, securities administration): <i>To be completed and, if relevant, to</i>													
*													

F. Balanced and consistent decision-making.

Please fill in with a L, M or H	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name	Name
Knowledge of the internal decision-making process												
Knows when to ask for information (internally or externally) to inform decision making												
Ensures that sufficient alternatives are being weighed in a decision-making process												
Acts with independence of mind, providing constructive and robust challenge of proposals and decisions												
Weighs up the interest of all stakeholders in the decision-making process												

Knowledge and experience with managing conflicts of interest.												
Assesses whether decisions have been taken in line with the company strategy.												
Knows how to carefully make decisions												
Other relevant knowledge and areas of experience												
*												

G. Overall picture of the collective suitability of the management body	
What are the strengths of the management function or of the supervisory function?	
What are the weaknesses of the executives / management function or of the non-executives / supervisory function? How will these be managed or mitigated?	
Considerations regarding the overall composition of the management body. Explain why the market operator/DRSP assumes this composition of the executives / management function and of the non-executives / supervisory functions and why this is composition is considered adequate and effective <ul style="list-style-type: none"> - How is the collaboration between members? - What roles do the various people have; and - What characteristics do members have that add to the collective suitability 	