

OVERVIEW

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ESMA – European Securities and Markets Authority

Standard designation

Guidelines on some aspects of MiFID II remuneration requirements

Title of Standard 

Guidelines on certain aspects of the MiFID II remuneration requirements

Abbreviation (standard)

Short Title 

Abbreviation (standard)

ESMA35-43-3565

Abbreviation 

ESMA35-43-3565

Implementation status of the standard

published

Industry relevance

Banking industry

category

02. Capital Markets Law

Document type

Guideline

Management Summary

These guidelines on certain aspects of the remuneration requirements under the *Directive 2014/65/EU (MiFID II, dataset 615)* the existing *Guidelines on Remuneration Principles and Procedures (MIFID) (Dataset 812)* revised and replaced. They set out requirements for the remuneration of employees who provide investment and ancillary services and activities or are involved in the sale of structured deposits to clients or in advising on them, and are aimed in particular at investor protection.

The guidelines build on existing guidelines and take into account the requirements reformulated over time by MiFID II. Content that is now part of the directive has been deleted and details have been added on certain aspects. Furthermore, the supervisory experience of the competent authorities has been incorporated into the revision.

Management Summary

These guidelines on certain aspects of the remuneration requirements under *Directive 2014/65/EU (MiFID II, dataset 615)* revise and replace the existing *Guidelines on remuneration policies and practices (MiFID) (data set 812)*. They set out requirements for the remuneration of staff providing investment and ancillary services and activities or selling or advising on structured deposits to clients and aim in particular at investor protection.

The build on the existing guidelines and take into account the new requirements formulated over time by MiFID II. Contents that are now part of the directive are removed and certain aspects are supplemented guidelines in detail. Furthermore, the supervisory experience of the competent authorities is incorporated into the revision.

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B. Essential content

These guidelines largely adopt the *Guidelines on Remuneration Principles and Procedures (MiFID) (Dataset 812)*. Therefore, only the changes to these guidelines are presented below. The guidelines are contained in Annex V, Section V of the source.

I. Design of remuneration principles and procedures (Guideline 1)

The general requirements regarding remuneration principles and procedures are no longer applicable.

1. The requirement to establish appropriate criteria when designing remuneration principles and procedures in order to align the interests of the relevant individuals and the company with those of customers is no longer limited to variable remuneration.

2. The qualitative criteria used in the remuneration policies and procedures should be sufficiently and clearly defined and documented to avoid indirect introduction of quantitative commercial criteria and resulting conflicts of interest (e.g. by determining the data used to measure customer satisfaction as a qualitative criterion) (see source for details).

3. Quantitative criteria should not create conflicts of interest or incentives to pursue one's own interests

or prioritizing the company's interests to the potential detriment of a customer. Existing conflicts of interest should be reduced by applying additional criteria (see source for details).

4. The weighting of the criteria should also be balanced and should not lead to, for example, quantitative commercial criteria becoming too prominent.

5. When it comes to variable compensation, companies should not set performance targets that serve as an incentive for short-term target achievement, such as thresholds, which could create conflicts of interest. Instead, the variable component of compensation should be calculated and granted on a linear basis or depend on multiple performance targets (see source for details).

6. When designing and implementing their remuneration policies, undertakings should also consider potential conflicts of interest or the risk of harm to customer interests arising from cross-selling objectives imposed on relevant persons.

7. Remuneration policies and procedures should also ensure that the criteria for assessing salary increases and promotions comply with the remuneration requirements of MiFID II. Career development systems, for example, should not result in the indirect use of quantitative commercial criteria (see source for details).

8. Criteria for the retroactive adjustment of variable compensation should be included in compensation policies and procedures to prevent client interests from being disregarded in favor of short-term target achievement. This should also allow for the punishment of misconduct discovered subsequently. Appropriate ex-post adjustment mechanisms, such as the application of penalties and clawbacks, should be considered (see source for details).

9. Ex-post adjustment mechanisms should be triggered by relevant events and should consider not only supervisory measures, fines, or sanctions, but also confirmed failures or violations. Adjustment mechanisms should be applied to the individuals directly involved in the misconduct. Furthermore, companies should consider whether application to a larger group (e.g., individuals responsible for the area in question) is appropriate. (See source for details).

When applying ex post adjustment mechanisms, the seriousness of any omissions or misconduct should also be taken into account.

10. In order for the ex-post adjustment mechanisms to be meaningful, variable remuneration should be paid partly in advance and partly ex-post, according to an appropriate payout plan.

11. In addition, appropriate measures should be in place to determine whether the relevant person has not acted in the best interests of the customer.

12. The design of the remuneration principles and procedures for the control functions (risk management and internal audit), the management body, and the executive board should not compromise their objectivity and independence. The remuneration of employees in the control functions should be based on function-specific objectives. Any variable remuneration component should not be tied to the quantitative economic performance of the controlled persons. If remuneration is partly linked to the company's performance, conflicts of interest should be reduced through appropriate measures. Even when combining internal control functions with operational functions, the MiFID II requirements on conflicts of interest and good conduct must be observed. The remuneration principles and practices should

the effectiveness of internal control functions is not undermined even in such cases (see source for details).

13. The remuneration structure for members of the management body and senior management should also not create conflicts of interest or incentives to the potential detriment of a customer.

14. Remuneration policies and practices for persons who are not employees of the firm but who fall within the scope of the MiFID II remuneration requirements should also comply with the MiFID II remuneration requirements and these Guidelines. This includes tied agents and other natural persons within the meaning of Article 2(1)(c) and (d) of the *Delegated Regulation (EU) 2017/565 (dataset 2005)* (see source for details).

15. In the examples of good practice, the issues regarding the subsequent payment of remuneration and qualitative criteria adopted in Guideline 1 have been deleted. Furthermore, the examples linking variable remuneration to the investment term or the volume of products sold and the effective return for the client have been deleted (see source for details).

16. The following point is added to the examples of bad practices (see source for details):

- Violations of MiFID II are identified by the competent supervisory authority but are not subject to financial sanctions, and the measure is not taken into account when determining the annual remuneration of the members of the management body.

II. Governance (Guideline 2)

1. The written compensation policies should also be reviewed whenever there is a relevant and significant change in the company's business operations or structure. If the review reveals deficiencies in the procedures, the compensation policy must be amended promptly and efficiently.

2. Proper documentation of the remuneration policy, decision-making processes and approval procedures should be clear and transparent and made available to the management body, senior management and other relevant control functions.

3. It should be ensured that the compliance function has access to all relevant documents and information relating to the remuneration of members of the management body and senior management in order to discharge its responsibilities in an appropriate and independent manner.

4. It should also be ensured that the management body approves any material changes to the remuneration principles after consulting the compliance function.

5. Depending on the size of the company and the nature and complexity of its business model, the review of the remuneration policy may also require the involvement of other control functions (such as risk management and/or internal audit) to ensure that appropriate performance and risk adjustment criteria are used.

6. Management is responsible for the day-to-day implementation of the remuneration policy and the monitoring of related compliance risks and should retain ultimate responsibility for it.

7. The requirements for appropriate and transparent reporting channels are taken from the previous Guideline 2 on risk control (see source for details).

III. Controlling risks related to remuneration policies and procedures (Guideline 3)

1. To effectively and risk-basedly implement appropriate controls to ensure compliance with compensation policies and procedures, companies should utilize a broad range of information on quality monitoring and sales patterns, including trend and root cause analysis. This can identify areas of increased risk and support a risk-based approach to sales monitoring, with a particular focus on high-performing relevant individuals.

2. Companies should ensure that the results of such analyses and controls are clearly documented and communicated to senior management, along with suggested remedial measures where appropriate. The compliance function should also support senior management in effectively monitoring compliance risks related to the company's remuneration policy.

3. When outsourcing, overly complex outsourcing or distribution structures should be avoided, as their remuneration procedures make compliance with these guidelines difficult (see source for details).

4. Companies should also regularly check whether the information management tools they use adequately capture the qualitative data required to determine variable remuneration.

5. The examples of good practices are shortened to include the case studies on sales monitoring and information management.

6. In the examples of poor practices, the case study on inadequate risk monitoring has been deleted, as this would now constitute a violation of MiFID II. Furthermore, an example of a multi-tiered distribution structure and the resulting difficulty in monitoring has been added (see source for details).

The guidelines for the supervision and enforcement of remuneration principles and practices by competent authorities are no longer applicable.

CATEGORIZATION

Keywords

Remuneration, variable remuneration, remuneration principle, remuneration requirements, remuneration policy, remuneration practice, qualitative criterion, quantitative criterion, conflict of interest, client interest, incentive, relevant person, ex-post adjustment mechanism, good practice, bad practice, compliance function, control function, management body, management, reporting line, investment service, information management tool, outsourcing, outsourcing,

Remuneration procedure, ancillary service, structured deposit, investor protection, risk control, sanction, distribution structure, tied agent

Legal and information bases

- Delegated Regulation (EU) 2017/565 (dataset 2005)
- Guidelines on Remuneration Principles and Practices (MIFID) (Dataset 812)
- Directive 2014/65/EU (MiFID II) (Dataset 615)
- Regulation (EU) No. 575/2013 (CRR Part I) (Dataset 558)

Related Standards

- Guidelines on remuneration policies and practices (MiFID) (data set 812)
- Directive 2014/65/EU (MiFID II) (Dataset 615)
- Regulation (EU) No 575/2013 (CRR - Part I) (Dataset 558)

Target group – credit institutions

Yes

Target group – financial services institutions

Yes

Target group – Other companies in the financial sector

Yes

Target group – payment institutions

No

Target group – insurance companies

No

Target group – supplement

These guidelines apply to competent authorities and investment firms within the meaning of Article 4(1)(1) of Directive 2014/65/EU (MiFID II, dataset 615) and credit institutions within the meaning of Article 4(1)(1) of Regulation (EU) No. 575/2013 (CRR, dataset 558) that offer investment and ancillary services and activities within the meaning of MiFID II or sell or advise clients on structured deposits, as well as UCITS management companies and external alternative investment fund managers (AIFMs) that carry out corresponding activities.

Comments

These guidelines apply to competent authorities and investment firms as defined in Art. 4(1)(1) of Directive 2014/65/EU (MiFID II, dataset 615) and credit institutions as defined in Art. 4(1)(1) of Regulation (EU) No 575/2013 (CRR, dataset 558) providing investment and ancillary services and activities within the meaning of MiFID II or selling or advising clients on structured deposits, as well as UCITS management companies and external Alternative Investment Fund Managers (AIFMs) providing these services.

Statement by (date)

Implementation status Explanation

Status – Further Details 

Date of entry into force/publication

03.04.2023

Entry into force estimated?

No

Date of first application

October 3, 2023

Application appreciated?

No

Date Standard repealed

Remark (Entry into force/Publication)

The Guidelines on Remuneration Principles and Practices (MIFID) (Dataset 812) will be repealed upon entry into force of these Guidelines.

Within two months of the date of publication of the Guidelines on ESMA's website in all official EU languages, the competent authorities to which these Guidelines apply must inform ESMA of the application of the Guidelines (comply-or-explain).

The guidelines shall be applicable six months after publication (publication on 3 April 2023) on the ESMA website in all official EU languages.

Comments 

The publication of the final guidelines is expected for the first quarter in 2022.

The Guidelines on remuneration policies and practices (MiFID) (Dataset 812) are repealed with the entry into force of the present guidelines.

Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA about the application of the guidelines (comply or explain).

These guidelines apply from six months of the date of publication (publication on 3 April 2023) of the guidelines on ESMA's website in all EU official languages.

Sources

The sources are not shown in this working paper.