Decision of the Board of Supervisors

Withdrawal of guidelines on the MiFID II/ MiFIR obligations on market data

The Board of Supervisors

Having regard to 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 [1] (the "Regulation" and "ESMA"), and in particular Article 16, Article 43(2) and Article 44(1) thereof

Whereas:

(1) Article 16 of the Regulation empowers ESMA, with a view to establishing consistent, efficient and effective supervisory practices within the European System of Financial Supervision, and to ensuring the common, uniform and consistent application of Union law, to issue guidelines and recommendations addressed to competent authorities or financial market participants.

(2) The Board of Supervisors of ESMA has adopted guidelines on the MiFID II/ MiFIR obligations on market data (hereafter "the guidelines") on 18 August 2021. The guidelines were to ensure a common, uniform and consistent application of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ("MiFID II") and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ("MiFIR") with regard to the obligations on market data, and notably Article 13 of MiFIR on the "obligation to make pre-trade and post-trade data available on a reasonable commercial basis".

(3) The guidelines should be withdrawn, as the clarifications on the subject matter which they covered have been incorporated into Commission Delegated Regulation (EU) 2025/1156 of 12 June 2025 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the obligation to make market data available to the public on a reasonable commercial basis ("RTS on RCB"), as mandated by the revised Article 13 of Regulation (EU) 2024/791 of the European Parliament and of the Council of 28 February 2024 amending Regulation (EU) No 600/2014 as regards enhancing data transparency, removing obstacles to the emergence of consolidated tapes, optimising the trading obligations and prohibiting receiving payment for order flow ("2024 MiFIR Review").

[1] OJ L 331, 15.12.2010, p. 84.

Has adopted this decision:

Article 1

The guidelines in the Annex to this Decision shall be withdrawn.

Article 2

This decision will take effect on the date of its adoption. It shall be published on ESMA's website.

Done at Paris on 17 February 2026

[signed]

Verena Ross
Chair
For the Board of Supervisors

Annex

Clear and easily accessible market data policies

Guideline 1 clarifies Article 13 of MiFIR, Articles 64(1), 65(1) and 65(2) of MiFID II, as further specified in Articles 84 to 89 of Commission Delegated Regulation (EU) No 2017/565 and Articles 6 to 11 of Delegated Regulation (EU) No 2017/567.

Guideline 1: Market data providers should publish their market data policy in an easily accessible format which is user-friendly on their website. Where the market data policy consists of more than one document, market data providers should clearly indicate this and make all documents of the market data policy accessible via a single location on their website.

The market data policy should present in clear and unambiguous terms all relevant market data information, including the price list for market data offerings as well as any indirect services necessary for accessing and utilising the market data offerings, to enable customers to understand the fees and the terms and conditions applicable to them. In this respect, market data providers should be ready to further explain their market data policy, where needed.

Provision of market data on the basis of cost

Guidelines 2 and 3 clarify Article 85 of Delegated Regulation (EU) No 2017/565 and Article 7 of Delegated Regulation (EU) No 2017/567.

Guideline 2: Market data providers should have clear and documented cost accounting methodologies for setting the price of market data. The methodologies should include both direct market data offerings (i.e. market data fees) as well as indirect services necessary for accessing market data offerings, such as connectivity fees or necessary soft- or hardware required to use and access the market data. The methodologies should be reviewed on a regular basis (e.g. annually). Market data providers may need to adjust their methodologies over time and account for changes in marginal costs. For example, if a market data provider allocates a portion of investments in IT infrastructure to the cost of production and dissemination of market data, the market data provider is expected to consider the amortisation of the investments when allocating these costs.

Market data providers should explain in their methodologies whether a margin is included and how that margin has been determined.

The cost accounting methodologies should demonstrate how the price for market data is based on the costs of the production and dissemination of market data. To this end, each methodology should also identify the costs that are solely attributable to the production and dissemination of market data (i.e. direct costs) and the costs that are shared with other services, such as joint costs. Where relevant, further distinction should be made between variable costs and fixed costs.

Direct costs should be understood as costs that are solely attributable to the production and dissemination of market data such as dedicated staff working on the production and/or dissemination of market data or the costs for performing audits. Joint costs should be understood as costs that occur when the processing of a single input resource results simultaneously in two or more different products, e.g. trade execution and the production and dissemination of market data.

Costs that are shared with other services should be apportioned on the basis of appropriate allocation keys. Variable costs should be costs incurred for the production and the dissemination of one additional unit of market data and fixed costs should be costs that do not vary with the volume of market data produced and disseminated.

In order to ensure that the allocation of costs of producing and disseminating market data reflects the actual costs of producing and disseminating market data, and ultimately the fees charged to customers, the methodologies should include a justification for which costs are included in the fees for market data and in particular a justification on the appropriateness of the allocation principles and keys for costs that are shared with other services. For example, for the allocation costs that are shared with other services, such as joint costs, market data providers should not use the revenues generated by the different services and activities of their company as an allocation principle because this practice is contradictory to the obligation to set market data fees (i.e. revenues of the market data business) based on the costs of producing and disseminating market data.

Furthermore, not every market data provider is likely to encounter joint costs. For instance, the licensed activity of APAs and CTPs is limited to the collection and dissemination of market data (and in the case of the CTP, the aggregation of such data) and does not automatically result in the production of a second product. In consequence, no joint costs are incurred.

Guideline 3: Market data providers should only apply penalty clauses in compliance with the principle of charging on a reasonable commercial basis. In particular, market data providers should not impose any unjustified or overly onerous penalty clauses.

To ensure penalties are justified, market data providers should impose penalties only where an infringement of the market data licence agreement has been demonstrated, for instance as a result of an audit which established that customers have not complied with the terms of the market data licence agreement.

The level of penalties in case of non-compliance with the terms of the market data licence agreement should generally be based on the recovery of revenues which would have been generated in case of compliance with the license.

Overly onerous practices that result in the generation of additional revenues on the basis of non-compliance or the inability by the customer to prove compliance with the terms and condition of the license should be excluded. For example, such practices would be excessive interest charging or extensive retroactivity.

In addition, market data providers should ensure that audit practices do not create unnecessary costs to data users, for example by enlarging the scope of the audit beyond what is strictly necessary to detect the occurred breaches with market data licence agreements.

In order to gather the necessary information to assess potential breaches with market data licence agreements, market data providers may, for this purpose only, seek information from customers to provide information on the use of the data.

Obligation to provide market data on a non-discriminatory basis

Guidelines 4 to 7 clarify Article 86 of Delegated Regulation (EU) No 2017/565 and Article 8 of Delegated Regulation (EU) No 2017/567.

Guideline 4: Market data providers should describe in their market data policy the categories of customers and how the use of data is taken into consideration to set up the categories of customers. The criteria used should be:

(i) based on factual elements, easily verifiable and sufficiently general to pertain to more than one customer;

(ii) explained in such a manner that customers are enabled to understand the category they belong to.

Market data providers should explain in their market data policy the applicable fees and terms and conditions for each use. They should justify any differentiation of fees and terms and conditions pertaining to each category of customers.

In addition, market data providers should justify any amendment to their market data policy resulting in a change of the classification of customers on objective reasons.

Guideline 5: Along with the description of the different customer categories, market data providers should clarify in their market data policy how fees are applied when a customer potentially belongs to more than one customer category, for instance, when the customer makes different simultaneous uses of the data. In such a case, market data providers should charge for the provision of data only once by applying one customer category only. As an exception, market data providers may add a proportionate increment of the relevant fee, where there are multiple and significant different uses made by the customers of the data.

Market data providers should clearly display in their market data policies the amount of the increment, its cases of application, and provide an explanation of its compliance with the principle of the price of market data being based on the cost of producing and disseminating data, with inclusion of a reasonable margin.

Guideline 6: Market data providers should offer to customers who fall within the same category the same set of options with respect to technical arrangements. Market data providers should ensure that technical arrangements, including latency and connectivity, neither discriminate nor create any unfair advantage. Market data providers should justify any divergence in the final solution adopted on the basis of valid technical constraints.

Guideline 7: When market data providers disclose discount policies, they should describe clearly the scope of application of the discount, the conditions for applications, and the terms of application (e.g. duration of the discount).

The conditions for the discount applications should be:

(i) based on factual elements, easily verifiable and sufficiently general to pertain to more than one customer;

(ii) explained in such a manner that customers are able to understand whether and when the discount is applicable to them.

In compliance with the principle to provide market data on a non-discriminatory basis, the application of a discount should not be used to create additional categories of customers or data use cases. Similarly, in respect of the obligation to make data available without being bundled, the discount for bundled services should not exceed the price of a service offered separately. (see also Guideline 11)

Per user fees

Guidelines 8 to 10 clarify Article 87 of Delegated Regulation (EU) No 2017/565 and Article 9 of Delegated Regulation (EU) No 2017/567.

Guideline 8: The per user basis should be understood as a model of charging fees for display data which enables customers to avoid multiple billing in case market data has been sourced through multiple data providers or subscriptions. Market data providers should use for display data the unit of count of the active user, that enables customers to pay according to the number of active users accessing the data, rather than per device or data product.

Guideline 9: Market data providers should ensure that the conditions to be qualified as eligible for the per user basis require only what is necessary to make the per user basis feasible. In particular, eligibility conditions should mean i) the customer is able to identify correctly the number of active users who will have access to the data within the organisation and ii) the customer reports to the market data provider the number of active users. Market data providers may additionally seek an initial check *ex ante* to validate the number of users and/or the eligibility of the customer.

Guideline 10: When market data providers consider the per user basis as disproportionate to the cost of making the data available and are not able to offer it to customers, they should disclose the reasons by clearly indicating the specific features of their business model which make the adoption of the per user basis disproportionate and why these make the adoption of the model unfeasible. When impeding factors entail excessive administrative costs, market data providers should include in their explanation on disproportionality a high level and provisional indication of the costs foreseen for the implementation of the per user basis.

Obligation to keep data unbundled

Guideline 11 clarifies Article 88 of Delegated Regulation 2017/565 and Article 10 of Delegated Regulation (EU) No 2017/567.

Guideline 11: Market data providers should always inform customers that the purchase of market data is available separately from additional services ('data unbundling'). Such additional services should be understood to include the provision of data other than pre- and post-trade transparency data (e.g. ESG data, data analytics). Market data providers should not condition the purchase of market data upon additional services.

Prices for bundled and unbundled data should be clearly disclosed in the market data policy.

Transparency obligations

Guidelines 12 to 16 clarify Article 89 of Delegated Regulation (EU) No 2017/565 and Article 11 of Delegated Regulation (EU) No 2017/567

Standardised key terminology

Guideline 12: Market data providers should adopt the terminology in Annex I of the Guidelines in their market data policy and price list. When market data providers use other terms, they should provide a clear definition of these terms in the market data policy or price list.

Standardised unit of count

Guideline 13: To facilitate price comparison, market data providers should display the price of display data by number of active users in their market data policy and in the template.

Market data providers should always make available to the customer the option to measure access to display data by the number of active users. In addition, they may set forth in their market data policy an alternative unit of count for display data (e.g. the number of display applications granted to the customer to access the data as desktop applications, mobile devices, wallboards). In such a case they should explain in their market data policy how the fees are applied by using a unit of count other than the number of active users and the circumstance in which this option is available. Market data providers should always enable the customers to choose freely the unit of count according to their preference.

Market data providers should also clearly indicate in their market data policies the unit of count for non-display data, its application and an explanation on why the method chosen is considered to be the most suitable to count the provision of non-display data to customers considering the data distribution system used (e.g. devices, servers, IT or cloud applications). The unit of count used by a market data provider for non-display data should be unique, meaning two or more units of count cannot be combined to count the extent of access.

Standardised publication format

Guideline 14: Market data providers should publish the information required by Article 89 of Delegated Regulation (EU) No 2017/565 and Article 11 of Delegated Regulation (EU) No 2017/567 by using the template provided in Annex II.

Market data providers should provide the information in a consistent manner in terms of granularity to make the disclosure meaningful for customers to compare between offers (e.g. per asset class and on an annual basis). Where relevant, information should be provided separately for pre- and post-trade data.

Additional information that is outside the scope of the transparency obligation should not be provided in the template. However, market data providers should ensure that the additional information is easily accessible by customers (e.g. by inserting a reference to the relevant publication containing information and justification for additional criteria used to distinguish data product and licenses or set customer categories as indicated in Guidelines 4 to 7).

Cost disclosure

Guideline 15: Market data providers should publish a summary, by using the template provided in Annex II, of how the price was set and a more detailed explanation of the cost accounting methodology used in order to comply with Article 11(e) of Delegated Regulation (EU) No 2017/567 or Article 89(2)(e) of Delegated Regulation (EU) No 2017/565.

The explanation should provide, inter alia, the list of all the cost types included in the fees of market data with examples of such costs as well as the allocation principles and allocation keys for joint costs or other costs that are shared with other services. Market data providers should disclose whether they include a margin in the fees of market data and explain how it is ensured that the margins are reasonable.

Market data providers are not required to disclose the actual costs for producing or disseminating market data or the actual level of the margin, however the explanatory information provided on costs and margins should enable users to understand how the price for market data was set and compare the methodologies of different market data providers.

Auditing practices

Guideline 16: Market data providers should provide all the terms and conditions of their auditing practices in the market data licence agreement (frequency, lookback period, notice period, data confidentiality etc). The market data licence agreement should be explicit as to whether the market data fees can be applied retroactively. It should also clearly explain how customers are expected to prepare for an audit (which information needs to be stored and for what period of time etc.). Any audit should be carried out having in mind the need for collaboration between market data providers and users.

Obligation to make market data available free of charge 15 minutes after publication

Guidelines 17 to 19 clarify Articles 64 and 65 of MiFID II and Article 13 of MiFIR

Data access and content

Guideline 17: The free access to delayed data should be provided to any customer, including professional customers. Market data providers may require a simple registration for the purpose of monitoring who has access to the delayed data, provided that the data remains easily accessible to any user.

The delayed data publications should cover all the trading systems operated by the trading venues. The post-trade data should contain all the relevant fields for the purpose of post-trade transparency, including flags, as specified in RTS 1 and 2. For pre-trade delayed data, given the operational challenges resulting from high volumes of pre-trade data on one hand, and the requirements of data users on the other hand, it is considered sufficient to only include the first current best bid and offer prices available and the depth of trading interest at those prices.

Data format and availability

Guideline 18: The delayed data should be provided in a format adapted to the users' needs, and available for a sufficient period of time.

Pursuant to Article 14 of the Delegated Regulation (EU) No 2017/571, in case of delayed post-trade data, the data should be provided in a machine-readable format and available in commonly used programs. It should be possible for a user to automatize the data extraction. The data should be available for all instruments traded combined (or a class of instruments), but not on a single instrument basis only. In order to ensure that the data can be easily consolidated as per MiFID II / MiFIR objectives, it is necessary that all market data providers provide data in a machine-readable format. The data should be available at least until midnight of the following business day to initiate the data extraction by a user.

The pre-trade delayed data should be made available in a machine-readable format. Given that the data is not provided for the purpose of consolidation, it should be available until the next more recent quote is available (i.e. a snapshot view, without historical information), or in case of lack of such update, until midnight of the following business day.

Data redistribution and value-added services

Guideline 19: Without prejudice to the legal provisions prohibiting market data providers to charge for the use of delayed data, there may be limited instances where data providers may impose a charge. One such instance is where a delayed data user re-distributes the delayed data for a fee (including a general fee for accessing its services), then a charge to that user may apply. Likewise, where a delayed data user creates value-added services using that data which are then sold for a fee to third parties, trading venues, APAs and CTPs may charge that user.

In this context, data redistribution should be understood as a business model of selling the delayed data in unchanged form to third parties, either directly by charging when giving access to that data, or via a general access fee. Where a delayed data user publishes delayed data on its website, but does not charge for that access, it should not be considered as data redistribution for the purpose of this guideline, including where the data user generates indirect revenue (for example via advertisement). Any charges from the data provider with relation to data redistribution can only apply where the data user generates a direct economic benefit via the selling of that data.

Value-added service should be understood as the creation of a product made on a basis of raw delayed data, e.g. through aggregating data sets across different sources or creating historical series, or combining it with other information, and offering it as a product to third parties. Only those value-added services which are sold as a product for a fee to third parties should be considered a value-added service and subject to charges from the data provider.

In both the context of data redistribution and the creation of value added services, where a company distributes delayed data internally[2] or makes use of delayed data for its internal purposes, including but not limited to value its portfolio, provide information to its clients on the basis of delayed data free of charge, pre- and post-trade analyses, risk management or research, it should not be subject to any charges for the purpose of this guideline.

[2] Internal distribution in this context should be understood as data being shared, either enhanced or in its raw format, within the same institution or group, for any purpose other than creating and subsequently selling data products.