

# Response to Consultation Paper on Supervisory expectations for the management body

## 1. General information

REGIS-TR S.A. (the “Company” or “REGIS-TR”) is a limited liability company (“Société anonyme”) organised and existing under the laws of Luxembourg.

The registered office of the Company is 15, rue Léon Laval, L-3372 Leudelange, Grand Duchy of Luxembourg, and is registered at the commercial register in Luxembourg under number B 157 650.

The Company was created with the objective of simplifying regulatory reporting obligations by providing a consolidated service to comply with the full range of EU and European financial reporting requirements.

REGIS-TR is a European Trade Repository (TR) for reporting trades and transactions across multiple product classes and jurisdictions. The TR is open to financial and non-financial institutions, and services the major regulatory reporting obligations in Europe, namely EMIR, FinfraG and SFTR.

REGIS-TR collects and administers details of derivative trades and securities financing transactions reported by its customers (market participants) to give its customers and regulators an aggregated view of positions in compliance with the relevant regulations.

In addition, REGIS-TR provides services to support its sister company REGIS-TR UK Limited, as a result of BREXIT.

The Company is primarily consolidated within the financial statements of Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A. Unipersonal (“Iberclear”), which is a subsidiary fully owned by SIX Group AG (“SIX”).

## 2. Introduction

### The Management body concept

#### Proposed approach to the management body concept

(...)

Management body is a generic term that refers to the most senior governing bodies within an organization. **A management body is composed of a supervisory function and a management function and as such includes the non-executive directors of a firm and its most senior executive managers. The management function has responsibility for the day-to-day management of the firm whereas the supervisory function is charged with overseeing the firm and its executive management.**

(...)

REGIS-TR emphasizes throughout this document that the firms under the proposed scope of this “Guidelines” are registered under different regulations, which establish mandatory provisions with regard to the concrete responsibilities of the management body, the composition of this body and the roles in this body.

Considering that, as recognised in paragraph 6 of the consultation paper, *“requirements stipulated in primary and secondary legislation will prevail any supervisory expectation set out in this document”*, the inclusion in these expectations of “rules” on the composition of the management bodies will only lead to legal uncertainty and additional complexity.

That is the reason why the bolded part of the approach to the management body concept should be eliminated from the expectations, as it includes confusion.

It is a common understanding that the term “management body” refers to the “most senior governance body of a company” and this concept “is agnostic to unitary or two-tier governance structures”.

The description of the composition includes confusion as, in different regulations across the EU jurisdictions, the management board may not include in its composition the most executive managers of the company (for example under the Spanish regulation, with a unitary management body -Board of Directors- they may not be members of the Board of Directors).

### 3. Questions

***Q1: Do you agree with the proposed scope of application of these supervisory expectations? If not, please explain.***

While ESMA's objective to have common regulatory expectations on the functioning of the management bodies of all companies directly supervised by them is understood, the same expectations cannot be set for ESMA supervised entities that are very different one from each other. Moreover, due to the fact that these guidelines could serve as a reference for future entities under ESMA's supervision.

It is not only that these firms *"have a wide range of backgrounds, historical approaches and experience of being subject to regulation"* (paragraph 8 of the consultation paper), but also that the respective management bodies are regulated by the national regulation of their respective registered office (EU and even non-EU) as well as potentially and to a given extent by rules and regulations applicable to the corporate group a TR may belong to, which can settle different roles, responsibilities and compositions for the management bodies, and even more relevant, the absolute diversity of activities carried out by companies within the scope of the ESMA supervision and the risks of these activities and their respective impact on the proper functioning of financial markets.

This wide diversity of activities, risks, etc. does not seem the most appropriate basis for establishing the same recommendations for the functioning of the management bodies of these companies, notably when one of the main roles is to *"set the strategy, objectives and overall direction"* and *"should also be responsible for setting and overseeing the entity's overall risk management framework, including its risk appetite."*

In addition, we believe it would be essential that ESMA clearly defines the nature and effects of these expectations, and the way ESMA intends to monitor their application and effectiveness. Provided that "expectations" are not meant to be mandatory, we understand they cannot create new obligations for the supervised entities different from those set out in the legal and regulatory framework binding on them in their relevant jurisdiction.

The statement: *"Where there is a case of conflict, requirements stipulated in primary or secondary legislation will prevail over any supervisory expectation set out in this documents"* may create the confusion that these expectations are somehow binding, so that there's a need to set out a rule of prevalence in case of conflict. Clarification in this respect would be essential. The prevalence rule should be deleted.

Given the aforementioned points, we believe that these guidelines should only be applied as principles rather than binding rules. This approach would allow for their adoption by a diverse range of entities while ensuring that the regulations established by the corresponding national laws prevail.

***Q2: Do you agree with the proposed approach to proportional application?***

In the case that, irrespective of what was stated in response to question 1, ESMA considers that the governance expectations should be the same for all firms under its supervisory remit, proportional application is essential.

The proposed approach to the proportional application equalizes all the criteria for the application of the proportionality approach, as it includes the **nature of the activities** at the same level as the scale and complexity, when this factor should be prioritised as it the most relevant differentiating element between the companies under the ESMA supervisions' remit.

On the other hand, the application of the proportionality approach is also very limited for the firms, as it will only imply that *"for entities of smaller sizes and with lower levels of complexity, it will be appropriate to adhere to ESMA's expectations by designing processes which are applied with lower frequency and/or intensity."*

That means that all entities shall follow each of ESMA's recommendations , but just in a less intense form.

This limited application does not lessen the pressure on the firms and remains too burdensome for the **"small" companies**, that should design the same processes as the "big" companies and as a consequence they are not benefiting at all from the proportional application. The more appropriate proportion would be to tailor the applicable expectations according to the "size" of the company, i.e. "small" entities would not need to follow all recommendations, "big" entities need to.

The application of the proportional approach will give the firms the opportunity to assess, validate and take an informed decision on the non-compliance of all of some of the recommendations, and be able, if needed, to explain the supervisor their reasons and, if any, the alternative procedures that they have chosen.

***Q3: Do you agree with the expectations regarding the role and responsibility of the management body? If not, please explain.***

The response to this question shall be analysed following the same approach of the consultation paper:

**1. Role of the management body:**

In general terms, we refer to our initial comment in the Introduction, considering that the management and supervisory functions of the management body, either unitary or two-tier, are clearly stated in both (the national regulation applicable to the company and the respective EU regulation governing the activity carried out by the company). There is no need to define in any other document the duties and responsibilities of the management other the supervisory function.

Therefore, paragraph 16 of the proposed expectations is redundant and unnecessary, as multiple definitions could jeopardize a clear understanding.

## **2. Accountability and delegation.**

We agree.

## **3. Overseeing strategy setting and implementation.**

While we generally agree with the views and expectations expressed, we would like to clarify the situation where the entity is a subsidiary of a group and the group's business strategy may largely determine the subsidiary's strategy. Whereby we agree that the management body should maintain sufficient level of independence from the group to define, represent and defend the entity's interests, it is also crucial to ensure – especially by the supervisory function of the management body – that those interests, principles and initiatives are aligned with the group's strategic objectives and goals. This alignment is essential for the effective and efficient integration of the entity into that group, recognizing that the benefits of belonging to a corporate group can only be achieved based on this principle. Nevertheless, this alignment shall ensure compliance with the regulatory requirements and regulations applicable to the entity.

## **4. Overseeing risks.**

We do agree with the described functions, obligations and responsibilities of the management body in this aspect. However, it is unclear how these are “distributed” between the two roles described under bullet 1. Specially, it is not clear which responsibilities should be covered by the non-executive supervisory part and which by the executive management part. For example and as described as the management body role, if the supervisory function should effectively challenge and monitor decisions, while also approving and regularly reviewing the entity's risk appetite and risk tolerance levels under the risk overseeing approach, we do observe a potential inconsistency in processes and/or the desired set-up.

## **5. Tone from the top.**

This approach is more confusing compared to the previous aspects of expectations as it introduces additional responsibilities attributable to the “executive senior management” of the company, alongside those of the management body. This addition hinders clear definitions, especially considering that the management body, as described, should also encompass an executive management component. Moreover, by not considering the executive senior management layer under the previous aspects (accountability, strategy and risk oversight) the attributions and interactions for these aspects become unprecise.

Now, we do recognize that it is, in fact, the “executive senior management” —rather than the management body — that leads to the day-to-day management of the company, who is setting the “permanent” tone from the top, actively and continuously engaging with all employees throughout the entity.

Regarding the content, we understand that this concept establishes a series of professional, ethical and cultural expectations. From our perspective, this expectations will most likely be necessary, helpful and/or expected to be implemented but do not/cannot fall under the scope of a supervisory function of a Regulator and, consequently, cannot be defined as such in this context.

Nevertheless, from a corporate perspective, we acknowledge the importance of this aspect for a proper and save functioning of any company, whether regulated or not. Therefore, it might be considered as appropriate to demand from an entity the implementation of a specific “Code of Conduct”, clearly prescribed in binding regulations.

In addition, it should be noted that the management body of a company often includes in its composition external or independent members—an arrangement actively encourage by the corporate supervising environment—who have no direct connection to the company’s employees. The appropriate transmission of a “tone” from this part of the top, as well as the representation of the corporate culture with the desired focus and scope, will most likely be suboptimal.

Furthermore, we do not believe that the involvement of the management body in remuneration matters should be part of the expectations formulated to the management body. While we fully agree that *“an entity’s approach to remuneration is a vital part of its incentive structure”* we think the involvement of the management body should be very limited due to the desired relative disconnect of its members from day-to-day activities. Moreover, the competences of the management body on the remuneration of the employees of a company are ruled by the national regulation applicable to the company.

***Q4: Do you expect that adherence to the expectations set out in this section would be overly burdensome or otherwise difficult for your entity? If so, please explain.***

While most of the expectations outlined in this section would be manageable for REGIS-TR SA, assuming our observations are considered to reduce the burden or provide clarification, we anticipate that these expectations could pose significant challenges for other companies, including entities within the BME-SIX group.

***Q5: Do you agree with the expectations regarding operation of the management body? If not, please explain.***

While we agree with these expectations, we would like to reiterate—consistent with our response to bullet 3 (“Strategy setting”) of question 3—that the management body shall balance that all interests, principles, and initiatives under the “concept of independence of mind” are aligned with the strategic objectives and goals of the group to which the entity belongs. This alignment is crucial for the necessary integration of the entity into the group.

***Q6: Do you agree with the expectations regarding the role of the chair? If not, please explain.***

We do agree except for the following two references:

- ***As a result, the role of the chair is non-executive with sufficient distance and independence from the day-to-day management of the regulated entity.***

The inclusion as an expectation of the obligation to appoint a non-executive Chair of the Board of Directors cannot be assumed. None of the EU Regulations in force include such an obligation

(CSDR, MiFID, EMIR) only refer to the need to include in the composition of the Board of Directors independent members, but do not limit their autonomy to organise to Board of Directors in the manner they consider fits the company.

The capacity of appointing an executive as Chair of the Board, as it is not limited in the EU regulation in force, will depend exclusively on the national regulation applicable to the company and, if so, to the corporate governance regulations.

- ***The chair should have responsibility for ensuring the composition and collective skillset of the management body remains appropriate given the nature, scale, and complexity of the business.***

The composition of the management body of the Company is not under the scope of the competences of the Chair, he/she is just one of the members of the management body that has been appointed as Chair, but has no capacity to appoint or cease the rest of its members.

With the specificities of the national law applicable to each company, the appointment of its members is competence of its shareholders, with no intervention of the Chair of the Board of Directors, who accordingly could not be attributed with this responsibility.

***Q7: Do you expect that adherence to the expectations set out in this section would be overly burdensome or otherwise difficult for your entity? If so, please explain.***

Considering that REGIS-TR has already established most of the relevant processes, bodies, functions, and roles, and has implemented the necessary framework around these structures, the expectations outlined in this section should be manageable for REGIS-TR. However, the two references mentioned in our response to question 6 may present challenges.

***Q8: Do you agree with the expectations regarding the effectiveness and composition of the management body? If not, please explain.***

Composition: We agree with most aspects of the described expectations regarding the composition of the management body. However, we do not find it possible or appropriate to include succession and recruitment planning as part of the regular review of the management body's effectiveness."

Effectiveness: We agree.

Training and Recruitment: We agree with the outlined expectations, understanding that the exception of establishing training plans does not fall under the responsibility of the management body but of the organ, which is entitled to take decision over this management body, i.e. the shareholders meeting and its respective representatives.

***Q9: Do you expect that adherence to the expectations set out in this section would be overly burdensome or otherwise difficult for your entity? If so, please explain***

No, we do not expect this for most of the aspects but we anticipate that the adherence to the expectations regarding a succession and recruitment planning would be particularly challenging for our entity,

***Q10: Are there any topics or areas that you would have expected to be covered or covered in more detail? If so, please explain***

None.