

DECISION OF THE BOARD OF SUPERVISORS

Adopting a Policy on Independence and Decision-Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff

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/EC¹, as amended by Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019² (the “Regulation” and “ESMA”)), and in particular Articles 42, 46 and 70 thereof;

Having regard to Regulation (EU) 2019/2099 of the European Parliament and of the Council of 23 October 2019 amending Regulation (EU) No 648/2012 as regards the procedures and authorities involved for the authorisation of CCPs and requirements for the recognition of third-country CCPs;

Having regard to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, and in particular Article 16 thereof;

Having regard to the Decision of the Management Board Adopting a Policy on Independence and Decision-Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff (ESMA/2014/MB/60).

Whereas:

- (1) Independence and high standards of professional conduct by all those involved in the activities of ESMA are crucial for ESMA’s excellence and reputation;

¹ OJ L 331, 15.12.2010, p. 84.

² Regulation (EU) 2019/2175 of the European Parliament and of the Council of 18 December 2019 amending Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Regulation (EU) No 600/2014 on markets in financial instruments, Regulation (EU) 2016/1011 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds, and Regulation (EU) 2015/847 on information accompanying transfers of funds, OJ L 334, 27.12.2019, p. 1–145

- (2) Transparency and openness are essential to ensure public confidence;
- (3) The responsibility for declaring any interest that might be considered prejudicial to their independence can only be placed on the concerned persons themselves;
- (4) High quality of expertise is by nature based on prior experience and knowledge acquired in the relevant domain.
- (5) Some of those interests may however conflict with ESMA's objectives and responsibilities;
- (6) Some interests that are considered to cause a conflict of interests in particular in the context of ESMA's direct supervision should be defined and accordingly prohibited;
- (7) Other interests that might cause conflict of interests should be defined in order to provide guidance to the concerned persons when filling the declarations under this Decision;
- (8) Any conflict of interests should be promptly identified, handled and mitigated without delay. To this end, a system of declaration of interests and their subsequent screening and evaluation is required;
- (9) To ensure consistent reporting and evaluation, a set of comprehensive declaration forms should be used;
- (10) A transparent procedure should be followed by establishing inter alia the following aspects:
 - a) Guidelines to the Chair, Management Board and ESMA's Ethics Officer performing the screening and evaluation of declarations of interest;
 - b) Transparent consequences linked to the interests declared;
- (11) The Regulation requires ESMA to establish and maintain an efficient and fruitful cooperation with bodies active within the European System of Financial Supervision (ESFS). Without prejudice to the responsibility of each competent authority for the appointment of their representatives, including in relation to preventing conflict of interests, it is therefore appropriate to establish a dedicated set of rules enabling ESMA to foster strong and independent decision making as well as a real and effective network of organisations active within its remit.

Has adopted this decision:

TITLE I - GENERAL PRINCIPLES AND INTERESTS TO BE DECLARED

SECTION I - GENERAL PRINCIPLES

Article 1 – Scope and definitions

- (1) The present decision is applicable to:
- (a) The Voting Members of the Board of Supervisors, the Members of the Management Board and their officially nominated Alternates³;
 - (b) The non-Voting Members of the Board of Supervisors and their officially nominated Alternates and any representatives of national competent authorities referred to in Article 40(4) and (40(7) of the Regulation;
 - (c) The Observers participating in the Board of Supervisors in accordance with Article 40(6) of the Regulation or by a Decision by the Board of Supervisors pursuant to Article 75 of the Regulation; and
 - (d) The Members of the CCP Supervisory Committee, their officially nominated Alternates established in line with Regulation (EU) 2019/2099 and observers participating in the CCP Supervisory Committee.

The Conflict of Interest Policy for ESMA Staff (ESMA/2014/ED/31) is applicable to the ESMA Chair, to the Executive Director of ESMA, to the Chair of the CCP Supervisory Committee and to the Independent Members of the CCP Supervisory Committee. However, Title III of this Decision is applicable to all of them save for the Executive Director.

- (2) For the purposes of this decision:
- (a) **interest** means the relation of being objectively concerned in something, e.g. by having a right or title thereto, a claim thereupon, or a share therein, falling within fields of competence of ESMA that creates or have the potential to create a conflict of interest;
 - (b) **interests of close family members** means interests (as defined above) held by partners or persons dependent on persons subject to this Decision (spouse/partner/dependent family member);
 - (c) **conflict of interest** (Col) means a conflict between the public duty of ESMA and any interests of an individual, interests of his/her close family members or of his/her employer, which could improperly influence the performance of his/her official duties and responsibilities, including the duty to act in the sole interest of the Union as a whole, or could compromise his/her impartiality, objectivity or independence.

³ Ad-hoc Alternates are not covered

- (d) **forum** means any type of participation in ESMA's Management Board's, Board of Supervisors and CCP Supervisory Committee' activities (meetings, written procedure, ...).
 - (e) **financial market participant falling under ESMA's scope of action** means any financial market participant as defined in Art 4(1) of the Regulation.
- (3) For the purposes of this Decision, the following interests shall always be considered as creating a Col and are thus strictly prohibited:
- (a) The holding of any financial instrument relating to financial market participants that are subject to ESMA's direct supervision.
 - (b) Membership of a managing body or equivalent structure meaning any participation in an internal decision-making body (e.g. board membership, directorship) of a financial market participant directly supervised by ESMA, or a trade association of such persons.
 - (c) Employment or consultancy, meaning any form of regular, occasional or ad hoc occupation or business, part-time or full-time, paid or unpaid, including self-employment, in or to any financial market participant directly supervised by ESMA, or a trade association of such persons. This includes also services provided on an honorary basis (i.e. for free or without the payment of fees or emoluments) and any advice related to products, their development and/or assessment methods thereof.
- (4) For the purposes of this Decision and notwithstanding paragraph 3, the following interests may create a Col (non-exhaustive list):
- (a) Economic interest meaning any economic stake or share in a body, in particular in any (not directly supervised) financial market participant, carrying out any of the activities falling under ESMA's scope of action (as defined in Article 1(2) and (3) of the Regulation, including the stocks, equities or bonds thereof, or of one of its subsidiaries or of a company in which it has a holding. This does not include personal insurance policies, collective investment funds or deposits contracted as a regular customer;
 - (b) Member of a managing body or equivalent structure, meaning any participation in an internal decision-making body (e.g. board membership, directorship) of a public or private entity, carrying out any of the activities falling under ESMA's scope of action (as defined in Article 1(2) and (3) of the Regulation), or a trade association of such persons;
 - (c) Employment or consultancy, meaning any form of regular, occasional or ad hoc occupation or business, part-time or full-time, paid or unpaid, including self-

employment, in or to any legal or natural person carrying out any of the activities falling under ESMA's scope of action (as defined in Art 1(2) and (3) of the Regulation), or a trade association of such persons. This includes also services provided on an honorary basis (i.e. for free or without the payment of fees or emoluments) and any advice related to products, their development and/or assessment methods thereof;

- (d) Intellectual property rights meaning rights on the subject matter granted to creators and owners of works that are the result of human intellectual creativity and may lead to a financial gain;
 - (e) Other memberships or affiliations meaning any membership or affiliation not falling under the definitions provided above and relevant for the purposes of the present decision, to anybody carrying out any of the activities on which ESMA's outputs impact, including professional organisations.
- (5) For the purposes of this Decision, any decision or measure addressed to an individual national competent authority, such as the ones adopted in line with Articles 16 (recommendations), 17 (Breach of Union Law), 18 (action in emergency situations) and 19 (mediation) of the Regulation creates a Col for the representatives of the competent authority in the context of the adoption of such decision, which needs to be addressed according to Title III. The adoption of a peer review report specific to an individual competent authority creates a Col for the representative of the concerned competent authority, which needs to be addressed according to Title III. There would however be no Col in the context of the adoption of a general peer review report and of recommendations addressed to a large number of NCAs.

Article 2 – General principles of declarations and assessment of interests

- (1) ESMA applies the principle that persons subject to this Decision are informed of their obligations vis-à-vis the declarations to be submitted in accordance with this Decision and the risks attached to non-compliance with such obligations. ESMA will ensure individual awareness through adequate information on the subject of Col.
- (2) A person subject to this Decision shall declare a personal interest or an interest of close family member that creates a Col as defined in Article 1(2)(c) (in accordance with Article 1(3) and taking into account Article 1(4)) to ESMA which will assess the related risk.
- (3) The following general principles shall be applicable to all persons subject to this Decision:

- (a) The responsibility for a complete and truthful declaration shall lie exclusively with the person completing the declaration.
- (b) The identification and handling of Col as defined in Article 1(2)(c) shall be based on the evaluation of the following declarations submitted by the concerned persons as specified in the present decision:
 - The general declaration on confidentiality and commitment whereby the person declares having read the present document, and confirms his/her awareness of his/her obligations (Declaration of Intention; Annex I);
 - The Declaration of Interests or DoI (Annex II);
- (c) Only interests from the two years preceding the submission of the declaration shall be declared.

SECTION II - DECLARATIONS

Article 3 – Declaration of Intention

- (1) Upon their appointment the persons identified in Article 1(1) shall make a declaration in writing concerning commitment and confidentiality in accordance with the template provided in Annex I to the present Decision.
- (2) The declarations of the persons identified in Article 1(1)(a) shall be made public via ESMA's website.
- (3) Persons subject to this Decision shall continue to be bound by the terms of their declaration after the end of their involvement in ESMA's activities.
- (4) Declarations shall be submitted to ESMA's Ethics Officer.

Article 4 – Declaration of Interests (DoI)

- (1) The persons identified in Article 1(1) shall declare on the basis of the DoI (Annex II) any interest that creates a Col as defined in Article 1(2)(c) with respect to all activities in which such persons are involved or have been involved during the two years preceding the submission of the DoI and which fall under ESMA's scope of action (as defined in Article 1(2) and (3) of the Regulation).
- (2) The persons identified in Article 1(1) shall indicate whether interests declared are Current (when interests currently exist) or they refer to a Past period (when they stopped existing during the two years preceding the submission of the DoI).

- (3) Details on the name of body or organisation of relevance for each declared interest shall be given. This is to be interpreted as meaning the full name, location of the seat (town and country) and nature (private or public).
- (4) Details on the subject matter of each declared interest shall be given, indicating the domain in which the activity is, or was, carried out and clarifying the interest and role of the concerned body or organisation in the matter and the role of the concerned person.
- (5) DoI shall be submitted to ESMA's Ethics Officer.
- (6) DoI shall be made public via ESMA's website.
- (7) The Ethics Officer may invite the persons identified in Article 1(1) for an annual declaration to be provided within a specified time frame.

Article 5 – Ad-hoc declaration of interest

- (1) Where a situation of a Col, not covered by a DoI already submitted, arises, other than in the context of a meeting or written procedure, the persons identified in Article 1(1) shall inform ESMA's Ethics Officer immediately.
- (2) In relation to meetings of the Board of Supervisors, the Management Board, the CCP Supervisory Committee ESMA shall provide means for systematically receiving declarations of the existence of any conflict of interest to any item on the agenda in accordance with Title III.
- (3) Any ad-hoc declaration shall be recorded by ESMA's Ethics Officer, together with the specific mitigating measures imposed. In addition, the DoI already submitted might be updated and submitted to ESMA's Ethics Officer.

Article 6 – Declaration of prospective employment

- (1) The persons identified in Article 1(1)(a) (except the Alternates) are requested to inform ESMA on their employment for two years following departure from ESMA's Boards.
- (2) Declarations shall be submitted in written form to the Chair.

TITLE II – GENERAL PROCEDURE FOR IDENTIFYING AND HANDLING POTENTIAL CONFLICT OF INTEREST

SECTION I – SCREENING PROCESS

Article 7 – Screening of the Declarations of Interest

- (1) Upon receipt, the Ethics Officer shall screen the declaration in order to assess a Col arising in any of the categories described in Article 1(3) and (4). The screening shall be performed according to the criteria specified under Article 8.
- (2) The Ethics Officer shall inform the Chair on the outcome of the screening, including a proposal for a preventive measure in case of an identified Col.

Article 8 – Criteria for the screening of declarations

- (1) The Ethics Officer or in case of Article 6 the Chair in consultation with the Ethics Officer, shall screen the declarations according to the following criteria:
 - (a) Interests can only be assessed by considering whether the specific interests declared by a person are compatible with ESMA's activities and interests;
 - (b) In the case of an ad-hoc declaration, the assessment should take into account the context in which the declaration is made, including the items on the agenda of a meeting in which the person participates, and the role and function that he or she is required to take on or perform in that context.

SECTION II - DECISION ON THE ASSESSMENT OF THE DECLARATION

Article 9 – Process for addressing declared Col of persons identified under Article 1(1)

- (1) Upon being informed of a Col for a person identified under Article 1(1) by ESMA's Ethics Officer, the Chair shall take his decision within the shortest possible delay.
- (2) The decision on the outcome of the screening rests with the Chair, who shall take a decision containing appropriate measures/action to remove or adequately mitigate an identified actual or potential Col.
- (3) Upon being informed of a prospective employment by a person identified in Article 1(1)(a) (except the Alternates), under Article 6(1) the Chair shall, with the shortest possible delay, take a position whether or not the prospective employment is seen as a Col from ESMA's perspective. The relevant National Competent Authority, current employer of the declaring person, shall, where possible, be informed about the position of the Chair prior to taking its decision on the clearance of the prospective employment.
- (4) The Chair may on his own decision submit the complete file for decision to the Management Board if he/she deems this appropriate.
- (5) Any preventive measure taken to address potential Col shall be recorded by the Ethics Officer.

Article 10 – Process regarding omissions of declarations

- (1) In case ESMA is aware, or is made aware, of some information that is not consistent with, or that is missing from, the declaration of a person subject to this Decision and that a preliminary assessment suggests that it concerns a declarable interest, ESMA's Ethics Officer shall seek additional information from the concerned person with regard to the omission. At the same time, the concerned person shall be requested to update the missing details of the DoI.
- (2) Upon completion of the update, the DoI shall be processed and screened in accordance with the present Decision.
- (3) The Chair may take any appropriate preventive action regarding the individual's participation in ESMA's activities.

Article 11 – Process regarding breaches of ESMA's rules on Declarations of Interest

- (1) In case the assessment of the DoI results in the identification of a breach of ESMA's rules on Col, ESMA's Ethics Officer shall inform the Chair.
- (2) The Chair shall perform a review of the draft instruments adopted by the forum in which that person participated. The Chair shall clarify whether, and if appropriate the extent to which, that individual influenced the outputs adopted by ESMA. The Chair shall take all the appropriate measures to address these findings.

Article 12 – Review of the decisions of the Chair

- (1) In the case of a specific complaint filed by the concerned individual on a decision on Col taken by the Chair, the Chair shall submit the complete file to the Management Board for its review and decision.
- (2) In the case of a specific complaint filed by the concerned individual on a decision on Col taken by the Management Board pursuant to Article 9(3), the Management Board shall submit the complete file to the Board of Supervisors for review and decision.

TITLE III – SPECIFIC PROCEDURE FOR IDENTIFYING AND HANDLING POTENTIAL CONFLICT OF INTERESTS AT THE BOARD OF SUPERVISORS, THE MANAGEMENT BOARD AND CCP SUPERVISORY COMMITTEE

- (1) Before any meeting or after the launch of a written procedure, Members, their alternates, non-voting participants as well as Observers participating in the Board of Supervisors, the Management Board and CCP Supervisory Committee meeting and any representative from a relevant national authority shall declare the existence of any interest which might be considered prejudicial to their independence in relation to any item of the agenda.

- (2) The Chair of the meeting will ask participants to confirm the absence or existence of conflict of interest at the start of the meeting. The declarations of absence or existence of any interest will be recorded in the summary of conclusions, together with any mitigating measures taken, and will be shared for recording purposes with the Ethics Officer.
- (3) In case of existence of any conflict of interest in relation to any item of the agenda, the individual concerned shall abstain from participating in the discussion of and the voting upon that item.
- (4) This shall not affect the right to be heard of a competent authority pursuant to Article 39(2) of the ESMA Regulation before the item is tabled for decision.
- (5) In addition, the position of the concerned competent authority may be presented orally in relation to any agenda item for which a conflict of interest arises provided that the presentation takes place prior to, and is separate from, the discussion and the voting on that agenda item. Board Members can ask questions, in particular to the representative of the concerned competent authority, before the discussion and the voting on the agenda item.
- (6) The representatives of the concerned competent authority may remain present during the discussion and voting for this agenda item unless Board Members decide otherwise by simple majority in a secret ballot. Any Board Member can request that such a vote takes place.

TITLE IV - COMMON PROVISIONS

Article 13 – Publication and protection of personal data

- (1) Without prejudice to Regulation (EU) 2019/2175 of the European Parliament and of the Council amending Regulation (EU) No 1095/2010, ESMA shall process all DoI pursuant to Regulation (EU) No 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC.
- (2) The purpose of the data processing is to safeguard the independence of ESMA and its constituent bodies.
- (3) The recipients of the DoI are the persons and bodies identified in the present Decision. Furthermore, DoI may be transferred to bodies in charge of a monitoring or inspection task

in conformity with Union Law, including the European Court of Auditors, the Internal Audit Service, OLAF, the European Ombudsman and the European Data Protection Supervisor.

- (4) The conservation period of DoI shall be two years after the discharge for the budgetary year to which the DoI relates.
- (5) Data subjects with active ESMA involvements have a right to access their DoI and to update or correct it at any time.
- (6) Data subjects also are entitled to have recourse at any time to ESMA's Data Protection Officer (dpo@esma.europa.eu) and/or to the European Data Protection Supervisor (<http://www.edps.europa.eu>).

Article 14 – Entry into force and transitional measures

- (1) The present decision shall take effect on the day following its adoption.

Done at Paris on 29 January 2020

Steven Maijoor
Chair
For the Board of Supervisors

Overview of declarations

	To completed by:	To be published on the ESMA website:
Declarations of intention	<ol style="list-style-type: none"> 1. BoS Voting Members 2. BoS Alternates (excluding ad-hoc Alternates) 3. MB Members 4. MB Alternates (excluding ad-hoc Alternates) 5. BoS Non-Voting Members 6. BoS Observers 7. Representatives of national competent authorities referred to in Article 40(4) and 40(7) of Regulation (EU) No 1095/2010 8. CCP Supervisory Committee Members 9. CCP Supervisory Committee alternates 	<ol style="list-style-type: none"> 1. BoS Voting Members 2. BoS Alternates (excluding ad-hoc Alternates) 3. MB Members 4. MB Alternates (excluding ad-hoc Alternates) 5. CCP Supervisory Committee Members 6. CCP Supervisory Committee alternates (excluding ad-hoc Alternates)
Declarations of Interests	<ol style="list-style-type: none"> 1. BoS Voting Members 2. BoS Alternates (excluding ad-hoc Alternates) 3. MB Members 4. MB Alternates (excluding ad-hoc Alternates) 5. BoS Observers 6. BoS Non-Voting Members 7. Representatives of national competent authorities referred to in Article 40(4) and 40(7) of Regulation (EU) No 1095/2010 	<ol style="list-style-type: none"> 1. BoS Voting Members 2. BoS Alternates (excluding ad-hoc Alternates) 3. MB Members 4. MB Alternates (excluding ad-hoc Alternates) 5. BoS Observers 6. BoS Non-Voting Members 7. Representatives of national competent authorities referred to in Article 40(4) and 40(7) of Regulation (EU) No 1095/2010
Declaration of prospective employment	<ol style="list-style-type: none"> 1. BoS Voting Members 2. MB Members 	None



Annex I

Declaration of Intention

First Name	
Surname	
Authority/ MS	
Current ESMA involvement	

I declare that I have read the Decision Adopting a Policy on Independence and Decision-Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff and that I am aware of my obligations.

I hereby agree and acknowledge as follows:

1. I am subject to ESMA Management Board Decision on Professional Secrecy and Confidentiality (ESMA/2011/MB/4) of 11 January 2011 (applicable only to the persons identified in Article 1(1)(a) of the Conflict of Interest Policy).
2. “ESMA Activities” includes (but is not limited to) activities related to my role and responsibilities at ESMA, including any attendance at any meeting whether or not with attendees who are not staff of ESMA; and the production or review of any documents.
3. “Confidential Information” means all information, facts, data and any other matters of which I acquire knowledge, either directly or indirectly, as a result of my ESMA activities whether or not contained in a document of any kind (electronic or on paper or any other medium).
4. “Third party” means any legal or natural person other than ESMA, its staff and the parties of the ESFS⁴.
5. I will treat all Confidential Information as information subjected to professional secrecy.
6. I will not disclose (or permit any other person to disclose) in any way to any third party any Confidential Information without ESMA’s prior written consent.

⁴ Defined in Article 2(2) of ESMA Regulation

7. I will not use (or permit any other person to use) any Confidential Information other than for the purposes of my work in connection with ESMA activities.
8. This undertaking shall not apply to any information that I can reasonably prove was known to me before the date of this undertaking or which becomes public knowledge otherwise than as a result of a breach of any of the above undertakings.
9. I acknowledge that improper disclosure of Confidential Information may constitute serious misconduct and I may be subject to disciplinary measures and may be required to make good, in whole or in part, any damage suffered by the Union as a result of such disclosure.
10. I shall continue to be bound by the terms of my declaration after the end of my involvement in ESMA's activities.
11. I acknowledge that, where improper disclosure of information is a criminal offence, I may be prosecuted for such disclosure before a court with relevant jurisdiction, which may include the court of a Member State of the Union.

I have read and understood this undertaking and agree to its terms.

Date:	Signature:
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Please send a signed copy of this form to ESMA's Ethics Officer.

Annex II

Declaration of Interests (DoI)

First Name	
Surname	
Authority/ MS	
Current ESMA involvement	

I declare that I have read the Decision Adopting a Policy on Independence and Decision-Making Processes for avoiding Conflicts of Interest (Conflict of Interest Policy) for Non-Staff and that I am aware of my obligations.

I do hereby declare on my honour that, to the best of my knowledge, the only interests⁵ that create a Conflict of Interest⁶ as defined in Article 1(2)(c) in respect of my activities which fall under ESMA's scope of action are those listed in the annex.

Whenever I have a Conflict of Interest I will alert ESMA.

Date:	Signature:
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Please send a signed copy of this form to ESMA's Ethics Officer [specially designated email address may be included]

⁵ as defined in Article 1(2)(a) and (b)

⁶ conflict of interest means a conflict between the public duty of ESMA and private interests of an individual or interests of his/her close family members, in which an individual has private-capacity interests which could improperly influence the performance of his/her official duties and responsibilities or could compromise his/her impartiality, objectivity or independence

Annex to Declaration of Interests

In all cases, please provide as many details as possible (in the case of a body or employer, full name, location, private or public nature and your role, if interest of close family member, whether interest is current or was in the past 2 years).

Interests to be declared in accordance with Art 1(3) of the Conflict of Interest Policy

Nature of interests	Period (from /till)	Organisation	Subject matter/ Reasons why my independence is impaired
I. Holding of Financial Instrument	1. 2.		
II. Membership a managing body or equivalent structure or a trade association	1. 2.		
III. Employment or Consultancy	1. 2.		

Interests to be declared in accordance with Art 1(4) of the Conflict of Interest Policy

Nature of interests	Period (from /till)	Organisation	Subject matter/ Reasons why my independence may be impaired
IV. Economic Interest	1. 2.		
V. Membership a managing body	1.		

or equivalent structure or a trade association	2.		
VI. Employment or Consultancy	1. 2.		
VII. Intellectual Property Rights	1. 2.		
VIII. Other	1. 2.		