



European Securities and  
Markets Authority

# Final report

**Technical advice to EC on simplification and harmonisation of fees to TRs under EMIR and SFTR**







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## **Executive Summary**

### **Reasons for publication**

On 14 July 2020 ESMA received a formal request from the European Commission to provide technical advice (see Annex II to this final report) to review the Commission delegated regulations on fees for trade repositories (TRs) under EMIR and SFTR. In particular, the European Commission indicated that it “considers it appropriate that ESMA delivers the advice based on its experience with the use of the delegated acts on fees as well as the observations made by the IAS and the ECA through their reviews on ESMA’s revenue collection processes. The technical advice should facilitate consistency and harmonisation across all fee delegated regulations relevant for ESMA.”

### **Contents**

The present final report contains ten sections. ESMA details its proposals regarding the simplification and harmonisation of fees to TRs under EMIR and SFTR. Following a description of the background of the proposals and the relevant ESMA’s budgeting models and costs, ESMA outlines in Section 4 the general approach to fee determination. In the context of the registration fees, ESMA is assessing two alternatives on the simplification of fees, one keeping two layers of TRs and another one with a single fixed fee. Furthermore, ESMA is also proposing a simplification of the way to determine the turnover of TRs for the purposes of calculation of the annual supervisory fees by including only revenues and excluding activity figures. In addition, ESMA has specifically defined the calculation of lower fees in the case of extension of registration under SFTR or in the case of concurrent application under both regimes. ESMA has also proposed a simplification of the calculation of fees for recognition of third-country TRs and the different payment conditions by setting a single deadline for payment by 31 March. Finally, Section 10 includes the Commission’s mandate to ESMA.

### **Next Steps**

ESMA is submitting this final report with its technical advice to the European Commission and it expects the European Commission to amend the Delegated Regulations on fees for TRs, in line with the Commission’s request for a technical advice.

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# 1 Background

1. The objective of this final report is to assess the feedback received to the consultation paper on the simplification and harmonisation of the ESMA's fee regulations applicable to trade repositories (TRs) and to detail the relevant ESMA proposals.
2. ESMA has been responsible for the registration, supervision and recognition of TRs since the entry into force of Regulation No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR).<sup>1</sup> Later, following the entry into force of Regulation 2015/2365 on transparency of securities financing transactions and of reuse (SFTR)<sup>2</sup>, ESMA became responsible also for the registration, supervision and recognition of TRs under SFTR.
3. Since the outset of both regulations, ESMA was mandated to charge fees to the TRs to cover ESMA's supervisory costs.
4. In particular, in accordance with Article 72(1) of EMIR: "1. ESMA shall charge fees to the trade repositories in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 3. Those fees shall fully cover ESMA's necessary expenditure relating to the registration and supervision of trade repositories and the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to this Regulation in particular as a result of any delegation of tasks in accordance with Article 74." Article 72(2) was amended by Regulation 2019/834 (EMIR REFIT<sup>3</sup>) and provides that: "The amount of any fee charged to a trade repository shall cover all reasonable administrative costs incurred by ESMA in relation to its registration and ESMA's supervisory activities and shall be proportionate to the turnover of the trade repository concerned and the type of registration and supervision exercised by ESMA.". The fees applicable to TRs under EMIR are included in Commission Delegated Regulation 1003/2013 (CDR 1003/2013).<sup>4</sup>
5. Furthermore, Article 11(1) SFTR specifies that: "1. ESMA shall charge the trade repositories fees in accordance with this Regulation and in accordance with the delegated acts adopted pursuant to paragraph 2 of this Article. Those fees shall be proportionate to the turnover of the trade repository concerned and fully cover ESMA's necessary expenditure relating to the registration, recognition and supervision of trade repositories as well as the reimbursement of any costs that the competent authorities may incur as a result of any delegation of tasks pursuant to Article 9(1) of this Regulation. In so far as Article 9(1) of this Regulation refers to Article 74 of Regulation (EU) No 648/2012, references to Article 72(3) of that Regulation shall be construed as references to paragraph 2 of this

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<sup>1</sup> OJ L 201, 27.7.2012, p.1.

<sup>2</sup> OJ L 337, 23.12.2015, p.1.

<sup>3</sup> OJ L 141, 28.5.2019, p.42.

<sup>4</sup> OJ L 279, 19.10.2013, p.4.

Article.” The fees applicable to TRs under SFTR are included in Commission Delegated Regulation 2019/360 (CDR 2019/360).<sup>5</sup>

6. During the direct application of the fees regulations, ESMA identified several areas of improvement of the relevant fee regulations. This was further confirmed also by the Internal Audit Service of the European Commission (IAS) and by the European Court of Auditors (ECA). In 2018, the IAS concluded that the lack of harmonisation between the different legislative acts on fees raises the risk that ESMA’s resources are utilised ineffectively and that there is a misunderstanding between stakeholders and ESMA. According to the IAS, the differences in the fees delegated acts generate unnecessary complexity and workload for ESMA and the supervised entities. IAS recommended that ESMA prepares a comprehensive technical advice for the European Commission proposing changes to the current legislation and for future drafting of fees-related legislative acts.
7. It is worth mentioning that already in 2017, when ESMA delivered its technical advice on fees under SFTR, following the experience gained in supervising TRs under EMIR, ESMA included several suggestions for amendments of the fee delegated act under EMIR to simplify those fees and to ensure a level-playing field with the fees under SFTR. Those suggestions were at that time disregarded by the European Commission.
8. On 14 July 2020, ESMA received a formal request from the European Commission to provide technical advice (see Annex II to this final report) to review the following Commission Delegated Regulations:
  - a. Commission Delegated Regulation (EU) 272/2012 of 7 February 2012 (related to credit rating agencies)<sup>6</sup>;
  - b. Commission Delegated Regulation (EU) 1003/2013 of 12 July 2013 (related to trade repositories under EMIR); and
  - c. Commission Delegated Regulation (EU) 2019/360 of 13 December 2018 (related to trade repositories under SFTR).
9. In particular, the European Commission indicated that it “considers it appropriate that ESMA delivers the advice based on its experience with the use of the delegated acts on fees as well as the observations made by the IAS and the ECA through their reviews on ESMA’s revenue collection processes. The technical advice should facilitate consistency and harmonisation across all fee delegated regulations relevant for ESMA.”
10. The general approach as well as the relevant costs used to determine the fees under this proposal are based on the current EU landscape of reporting which has evolved also in the context of the withdrawal of the United Kingdom from the Union.

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<sup>5</sup> OJ L 81, 22.3.2019, p.58.

<sup>6</sup> ESMA has provided a separate response to the European Commission on proposed amendments to this delegated regulation.



11. Finally, the suggested amendments are also based on the existing requirements and empowerments for ESMA with regards to the recognition of third-country TRs. Should those empowerments change, the fee framework would need to be adjusted accordingly.
12. The public consultation took place between 24 March and 24 April 2021. A total of two public and two confidential answers were received.

## **2 ESMA's budgeting model**

13. In order to enable ESMA to conduct its tasks related to TRs effectively as well as to ensure an efficient use of ESMA's budget, it is necessary that TRs, private sector entities with a profit-making objective, cover all costs of doing business, including the costs related to ESMA's registration, supervision and recognition of TRs.
14. ESMA applies a universal budgeting approach, which means that income from fees is treated as general revenue. This is in line with the standard practice of other partially funded EU agencies, as recommended by DG Budget of the European Commission.
15. ESMA's budget is managed on the basis of an activity-based management methodology. ESMA prepares its annual budget aiming at balancing income through fees with the incurred expenditure, understanding that deficits or surpluses are to be balanced by the rest of ESMA's income sources.
16. In case of deficits (ESMA collecting less than incurred), ESMA does not recover the deficit from the supervised entities. If the deficit is recurrent or significant, ESMA should analyse the reasons why this happened, drawing up lessons for the next budgeting period. For surpluses (ESMA collecting more than incurred), the same reasoning should be followed. Hence, no excess of fees is paid back to the supervised entities. This mechanism is already in place at ESMA for CRAs, TRs, third-country CCPs and securitisation repositories (ESMA fee regulations).
17. Through the existing mechanisms in place (EU budgetary procedure, annual reporting, single programming document), the ESMA Management Board and Board of Supervisors, of which the European Commission is a permanent member, remain fully in control of the fees' collection and expenditure levels.
18. On a yearly basis, ECA checks the correct implementation of ESMA's budget, in particular of the fee-funded budget, versus the EU Financial Regulation. ECA communicates its final audit report to the European Parliament and Council.
19. The total amount of the estimated costs of year N is presented together with the annual work plan in September of the year N-1, and the approved budget is published on ESMA's website in January of the year N.
20. In addition, IAS has requested ESMA to further simplify and harmonise, to the extent feasible, its fee models. Therefore, ESMA's proposals are in line with this general objective.

21. Furthermore, ESMA aims to collect fees in one instalment in the first three months of the calendar year, and by no later than 31 March of the year for which they are due so as to ensure that ESMA has the necessary funds to carry out its planned supervisory activities for the year ahead. Moreover, this approach will ensure that TRs have sufficient time to submit audited financial statements to ESMA, as the national requirements may be different across the Member States. The approach would also be compatible in case a TR follows a financial year cycle different from the calendar year.
22. The determination of fees needs to be based on the latest available information. More detailed information on the payment and reimbursement conditions is specified in Section 8.
23. Finally, Article 9(2) of the CDR 1003/2013 and Article 8(2) of the CDR 2019/360 provide that any late payments of fees to ESMA will incur a daily penalty equal to 0,1% of the amount due. This is not in line with the provisions on default interest set out in Article 99 of the EU Financial Regulation as adopted under ESMA's other supervisory mandates and therefore should be aligned in order to ensure consistency and efficiency in ESMA's late fee management.

ESMA establishes a harmonised framework for dealing with surpluses and deficits and for treating the annual fees for TRs under EMIR and SFTR as general revenue as follows:

- a. In case of deficits (ESMA collects less than incurred), ESMA does not recover the deficit from supervised TRs.
- b. In case of surpluses (ESMA collects more than incurred), ESMA does not pay back the surplus to supervised TRs.
- c. Fees are to be paid by the end of the third month of the calendar year for which fees are due to ensure availability of resources for the performance of ESMA's tasks.

Fees charged for ESMA's activities related to supervised TRs should be set at a level such as to avoid a significant and recurrent accumulation of deficit or surplus.

As a result, Articles 4(2), 4(3), 7(2)(b) of the CDR 1003/2013 should be deleted and the relevant references in CDR 1003/2013 to those articles should be amended in accordance with the new rules on budgeting to ensure a consistent implementation of the above framework.

Article 9(2) of the CDR 1003/2013 and Article 8(2) of the CDR 2019/360 should be amended to state that any late payment shall bear interest at the rate set in accordance with the EU Financial Regulation.



### 3 ESMA's expected costs

24. It is expected that the registration of TRs under SFTR has a lot in common with the registration of TRs under EMIR. As explained in the final report on technical standards under SFTR and on certain amendments to regulatory technical standards under EMIR (SFTR FR<sup>7</sup>), the conditions for registration under SFTR are the same as the amended ones for registration under EMIR.
25. As further explained, where a registered TR applies for an extension of its registration under SFTR, while a simplified process refers to the documentation to be provided, Articles 5(6) and 7(1) of SFTR foresee the same timespan for registration as the one for extension of registration. i.e. 20 working days for assessment of completeness of an application and 40 working days for assessment of compliance.
26. Similarly, in the final report on EMIR REFIT<sup>8</sup>, ESMA has proposed the inclusion of the relevant mirroring requirements for extension of registration under EMIR for those TRs already registered under SFTR (see Section 7.2).
27. As explained in Section 2, ESMA's budget is managed on the basis of an activity-based methodology. Financial and staff resources are allocated per activity, rather than per functional cost or per internal management hierarchy. This methodology is used both for budget planning (i.e. calculation of the estimated costs generated per activity, including the relevant overheads) and for budget costing (i.e. calculation of ESMA's actual costs per activity). This is reflected in ESMA's 2021 annual work programme.<sup>9</sup> According to the work programme, the sub-activity budget in 2021 for TRs under EMIR is almost EUR 2.4 million and under SFTR is EUR 643,000. ESMA's internal analysis suggests that each FTE carries a total cost of EUR 195,000 when both direct and indirect costs are taken into account. These indirect costs cover items such as logistics, IT, communications, and other shared services.

#### 3.1 TR registration and extension of registration costs

##### 3.1.1 Costs of TR registration

28. An application for registration as a TR requires around 0.5 FTE (full-time equivalent) to be processed.

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<sup>7</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-82\\_2017\\_sftr\\_final\\_report\\_and\\_cba.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-82_2017_sftr_final_report_and_cba.pdf)

<sup>8</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-publishes-draft-technical-standards-under-emir-refit>

<sup>9</sup> [https://www.esma.europa.eu/sites/default/files/library/esma20-95-1273\\_2021\\_annual\\_work\\_programme.pdf](https://www.esma.europa.eu/sites/default/files/library/esma20-95-1273_2021_annual_work_programme.pdf)

### 3.1.2 Cost of extension of TR registration

29. When assessing the costs of extension of registration, the estimated cost is around half the cost of an assessment of an application for a new registration, i.e. approximately 0.33 FTE.

## 3.2 TR supervision costs

30. In order to estimate the cost of one FTE working for TR supervision in the most updated and precise way, ESMA took into account ESMA's 2021 annual work programme which contains a detailed description of ESMA's budget per different activities.

31. ESMA allocates to TR supervisory costs the relevant expenditure budgeted for the supervision of the compliance with the SFTR requirements, however, this cost would need to be separated from the one under EMIR so that entities providing repository services under only one of the two regimes can be accurately charged supervisory fees.

## 3.3 TR recognition costs

32. Until now, ESMA has not processed any application for recognition of third-country TRs, therefore, there is no historical information to rely on.

33. In addition to the submission of an application by a third-country TR, the following steps are envisaged under each regulation for the recognition of TRs:

- a. EMIR: (i) the European Commission determines the equivalence of the relevant third-country jurisdiction; (ii) the Council concludes an international agreement with the third-country jurisdiction; and (iii) ESMA concludes a co-operation agreement with the relevant third-country authority.
- b. SFTR: (i) the European Commission determines the equivalence of the relevant third-country jurisdiction; (ii) ESMA concludes a co-operation agreement with the relevant third-country authority. Where TRs authorised in a third country are not subject to a legally binding and enforceable obligation under the law of that third country to give direct and immediate access to the data to the authorities referred to in Article 12(2) SFTR, the European Commission shall submit recommendations to the Council for the negotiation of international agreements with that third country regarding mutual access to, and exchange of, information on SFTs held in trade repositories which are established in that third country, in order to ensure that all of the entities referred to in Article 12(2) SFTR have direct and immediate access to all of the information needed for the exercise of their duties.

34. Though slightly different from the recognition process envisaged under Articles 75 and 77 EMIR, the recognition process under Article 19 SFTR is expected to require similar level of supervisory effort, thus cost, from ESMA.

35. When defining the recognition fees for TRs under EMIR, ESMA indicated in paragraph 70 of the report on staffing and resources that ESMA expects around 0.1 FTE to process each application. Furthermore, in line with the practical experience in the case of the recognition of third-country CCPs, ESMA expects that there will be a one-off cost (i) to assess the equivalence of a jurisdiction and (ii) to establish a cooperation arrangement with the relevant authority, of a total of 0.2 FTE per jurisdiction. The total cost is thus around 0.3 FTE.
36. The ongoing supervisory cost of recognised third-country TRs is considered below 0.1 FTE per TR.

## 4 General approach on fees determination under EMIR and SFTR

37. One of the key aspects of harmonisation and simplification on which ESMA is providing advice to the European Commission is on the types of fees to be levied by ESMA.
38. Based on the experience with CDR 1003/2013 and CDR 2019/360, ESMA proposed in the consultation paper the alignment of the currently existing mixed system, levying specific administrative fees for (i) the registration of the TRs; (ii) the extension of registration; (iii) the initial recognition as well as (iv) the on-going supervision of third-country TRs (fixed fee); and (v) the on-going supervision proportionate to the turnover of the registered TRs (annual fee). Respondents supported this alignment.
39. Furthermore, and in order to cover ESMA's fixed costs relating to supervision, ESMA proposed to retain the currently applicable minimum annual supervisory fee. Respondents supported this proposal. The following sections of this final report describe how this mixed system will work in practice.
40. In addition, one of the respondents emphasised the need to relate the fees to the revenues and to ensure an increased transparency and predictability of the fees. ESMA agrees with these aspects.

Under EMIR and SFTR, ESMA proposes to put in place the following system:

A. Specific administrative fees related to:

- (i) fixed registration fees
- (ii) fixed fees for extension of registration
- (iii) fixed initial recognition fees for third-country TRs

B. Annual supervisory fee for registered TRs proportionate to their turnover

## 5 Fees for registration or extension of registration

41. As mentioned in paragraphs 4 and 5, ESMA's fees need to be proportionate to the turnover of the TRs and to fully cover the administrative costs related to the registration, supervision and recognition of TRs.

### 5.1 Fees for registration and extension of registration under EMIR and SFTR

42. In the consultation paper, ESMA proposed to align the structure for the fees for registration and extension of registration under EMIR to the fees for registration and extension of registration under SFTR.

43. Since all the provisions of the RTS 150/2013 on registration under EMIR formed the basis for the RTS 359/2019 on registration or extension of registration under SFTR, it follows that the registration process under EMIR is very similar to the registration process under SFTR, in terms of requirements to be checked by ESMA.

44. In addition, under the EMIR REFIT, as indicated under paragraph 26, ESMA has developed technical standards to align with the existing provisions under SFTR. Specifically, EMIR REFIT amended Article 56(1) and (3) EMIR to include provisions mirroring the ones in Article 5(5)(b) and 5(7)(c) SFTR with regards to the extension of registration under EMIR for the TRs registered under SFTR. In that context, ESMA has defined in its final report the details of the simplified application for the extension of registration. It is worth noting that the process and timelines for a new registration and for an extension of registration are the same under EMIR and SFTR.

45. When defining in ESMA's fees under SFTR the types of TRs for the purposes of estimating (i) the workload, i.e. the relevant administrative costs, and (ii) the expected turnover of the TRs, ESMA suggested using the provision of services ancillary to SFTR as an indicator for high expected turnover. From that perspective, the TRs were classified as being higher or lower expected turnover TRs.

46. As mentioned above, ESMA spent on average 0.5 FTE for the assessment of each application for registration received since 2013. All the TRs registered so far have been classified as TRs with high expected turnover.

47. ESMA presented two alternatives for further simplification of the registration fees.



## 5.1.1 Classification of TRs

### 5.1.1.1 Alternative A: Expected turnover

48. In order to classify the TRs under EMIR, ESMA proposed to switch to an approach similar to the one used in SFTR by simplifying the categories into lower and higher expected turnover TRs.
49. ESMA appreciates that the indicator of the derivatives asset classes is no more relevant as a criterion for determining the expected turnover of a TR as the reporting of asset classes has been harmonised across the TR industry (i.e. all TRs provide services for all derivatives asset classes).
50. ESMA, therefore, understands that the provision of services ancillary to EMIR, similar to the provision of services ancillary to SFTR, could be the only indicator for high expected turnover.
51. For the purpose of defining the expected turnover of TRs under EMIR, an ancillary service would be any service the provision of which is directly or indirectly related to the provision of EMIR services. The rationale for this approach is that if a TR provides ancillary services (i) it would have a more complete commercial offering towards the entities subject to the reporting obligation under Article 9 EMIR, hence generate higher revenues, and (ii) it would require greater supervisory effort by ESMA to assess its application for registration under EMIR, in view of its higher complexity and possible impacts or interdependency of ancillary services and the core services.
52. Similar to the approach taken under SFTR, ESMA also proposed that the provision of ancillary service is considered to take place in the following instances: (i) direct provision by the TR; (ii) indirect provision by a company within the TR's group; or (iii) provision by a third entity with which the TR has concluded a material agreement to cooperate in the provision of services in the context of the trading or post-trading chain.
53. Consequently, ESMA proposed that the TRs be classified as follows:
- a. in case a TR meets the criterion included in paragraph 50, it would be deemed to be higher expected turnover TR.
  - b. in case a TR does not meet the criterion included in paragraph 50, it would be deemed to be lower expected turnover TR.
54. Furthermore, ESMA proposed to retain what is already established in both CDR 1003/2013 and CDR 2019/360 whereby in case a material change to the conditions of registration of a TR under EMIR takes place and affects the criterion used to estimate the level of turnover of that TR (i.e. a TR starts offering ancillary services), the registration fees should be appropriately adjusted according to the above-mentioned classification on the basis of expected turnover. This will further align ESMA's necessary expenditure regarding a registered TR with the fees charged based on its expected turnover.



55. ESMA proposed no changes to the structure of the fees for registration and extension of registration under SFTR.

56. Finally, for consistency and legal certainty, ESMA proposed to align the legal text of Article 6 of CDR 1003/2013 on registration fee and extension of registration fee with that of Article 5 of CDR 2019/360.

#### 5.1.1.2 Alternative B. Single category

57. In the interest of efficiency and simplification, ESMA proposed to introduce a single fixed fee for all applicants disregarding whether TRs will provide ancillary services or not. A single fixed fee will require less administrative efforts from ESMA in determining and processing the registration fee without any further adjustments in case of material changes.

58. Furthermore, a single fixed fee will facilitate predictability for new applicants as well as for ESMA who needs to plan its budget well in advance.

59. The proposed single fixed fee would be also in line with the fees that were actually paid by all the TRs registered by ESMA up until now, as the supervisory regime of TRs is running since 2013. Even if the current applicable regulation has foreseen different registration fees depending on the expected TR's turnover, in the past all registered TRs were charged the same level of registration fees.

60. Moreover, a single fixed fee will eliminate any room for interpretation with regards to the concept of ancillary services – which may not yet be clear at the time of the application – the moment when the registration fee is due. At the same time, it will not create any incentives for TRs to artificially separate the ancillary services from the applying entity in order to reduce the registration fee.

61. Introducing a single fixed fee for all applicants will be also in line with the changes on CRA supervisory fees ESMA is currently consulting on<sup>10</sup> promoting further harmonisation across ESMA's various supervisory mandates. However, ESMA is mindful of the possibility that this alternative may discourage applicants with simple business models (i.e. TRs with lower expected turnover not intending to provide ancillary services) and potentially create barrier to market entry.

#### 5.1.1.3 Conclusion and way forward

62. ESMA received feedback supporting Alternative B, therefore, ESMA proposes the introduction of a single fixed fee for all applicants.

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<sup>10</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-consults-changes-cra-supervisory-fees>

ESMA proposes a single category both under EMIR and SFTR.

Article 6(1) of CDR 1003/2013 should be amended to provide for a single fixed fee for registration; paragraphs (2) to (7) should be deleted.

Articles 5(1) and 5(5) of CDR 2019/360 should be amended to provide for a single fixed fee for registration and for extension of registration; paragraphs (2) to (4) and (7) should be deleted.

## 5.1.2 Amounts of registration fees under EMIR and SFTR

### 5.1.2.1 Alternative A. Expected turnover

63. In the consultation paper, ESMA proposed no changes to the amounts of fees for the registration and extension of registration under SFTR. ESMA also proposed to match the amounts of fees for the registration and extension of registration under EMIR with those of SFTR.

64. The current structure of the registration fees under EMIR detailed in CDR 1003/2013 envisages three categories: (i) EUR 45,000 for TRs with low expected turnover; (ii) EUR 65,000 for TRs with medium expected turnover; and (iii) EUR 100,000 for TRs with high expected turnover.

65. The TRs registered until now by ESMA have all been classified in the third category (i.e. TRs with high expected turnover). Such classification has allowed ESMA to cover the costs and workload related to the registration of TRs. Considering the adjustment of the criteria and categories described in Section 5.1.1, ESMA outlined the relevant fee amounts.

66. While using the cost estimates included in Section 3.1.1, ESMA noted that the cost of assessment of an application by a TR with high expected turnover under EMIR is 0.5 FTE per application and that the average ESMA cost (including e.g. overheads, office space) of one FTE dedicated to TR supervision (including registration and recognition) is EUR 195,000. On that basis, the registration fee for an applicant TR with higher expected turnover results to be EUR 100,000. ESMA considers that the expected supervisory effort for a lower expected turnover TR under EMIR is the same as the one for a lower expected turnover TR under SFTR, i.e. equivalent to EUR 65,000.

### 5.1.2.2 Alternative B. Single category

67. In the case of a single fixed fee, ESMA proposed the amount of EUR 100,000 as the relevant amount that each applicant should pay since the cost of registration is around EUR 100,000.



### 5.1.2.3 Conclusion and way forward

68. Based on the positive feedback received regarding the introduction of a single fixed fee, ESMA retains its proposal also in relation to the amount of registration fees under EMIR and SFTR.

ESMA proposes to establish the registration fees for TRs under EMIR and SFTR at the level of EUR 100,000.

### 5.1.3 Fees for extension of registration

#### 5.1.3.1 Alternative A. Expected turnover

69. As mentioned in Section 5 of the consultation paper, EMIR, as amended by EMIR REFIT, provides the possibility for the TRs registered under SFTR to apply for an extension of registration under EMIR. In that context, ESMA defined in its final report the details of the simplified application for the extension of the registration. It is worth noting that the process and timelines for a new registration and for an extension of registration are the same under EMIR and SFTR.

70. According to the explanation included in Section 3.1.2 of the consultation paper, ESMA estimates that the extension of registration would require half of the time required for the original registration of a TR.

71. Following the structure of the registration fees proposed above, if an application for extension of registration does not include the provision of ancillary services under EMIR, the TR will be required to pay EUR 32,500 and if it includes the provision of ancillary services under EMIR, the TR should pay EUR 50,000.

#### 5.1.3.2 Alternative B. Single category

72. In the case of a single fixed fee, the relevant amount that each applicant should pay will be EUR 50,000.

#### 5.1.3.3 Conclusion and way forward

73. Based on the positive feedback received regarding the introduction of a single fee, ESMA retains its proposal also in relation to the amount of fees for extension of registration under EMIR and SFTR.

ESMA proposes to establish the fees for extension of registration under EMIR and SFTR at the level of EUR 50,000.





## 5.2 Concurrent applications under EMIR and SFTR

74. The current regulatory framework implies that a new TR willing to apply for registration both under EMIR and SFTR or under SFTR before being registered under EMIR, should send two separate applications. This will imply that a given TR will pay up to EUR 50,000 more (depending on the classification) than in the situation where it is first registered under EMIR and then applies for an extension under SFTR.
75. In the consultation paper, to avoid such a misalignment, ESMA proposed that if a TR applies at the same time for a registration under EMIR and SFTR or it has concurrent applications, the TR should pay (i) the full EMIR fee and (ii) the relevant fee for extension of the registration under SFTR, instead of the full SFTR fee.
76. This reduction of fees will be justified by the synergies that ESMA would experience, such as reviewing only once the type of documents not required to be re-submitted in the case of extension (e.g. organisational chart, ownership charts). Furthermore, in the case of concurrent applications those documents will be referring to the same information at the same point in time.
77. In fact, this is the approach followed by ESMA in concurrent applications under EMIR and SFTR recently received. ESMA received no feedback, thus, going forward ESMA considers its current practice appropriate.

ESMA proposes that if a TR applies at the same time for a registration under EMIR and SFTR or it has concurrent applications on which ESMA has not yet issued a formal decision, the TR should pay (i) the full EMIR fee and (ii) the relevant fee for extension of the registration under SFTR, instead of the full SFTR fee.

A new paragraph should be added to Article 6 of CDR 1003/2013 to mirror the provisions set out in Article 5(6) of CDR 2019/360.

<b>Extension of registration</b>	EUR 50,000
<b>New registration</b>	EUR 100,000
<b>Concurrent application under EMIR and SFTR</b>	EUR 150,000

## 6 Supervisory fees

### 6.1 Determination of total annual supervisory fees for EMIR and SFTR

78. CDR 1003/2013 provides that the relevant amount for the calculation of the annual supervisory fee charged to a supervised TR under EMIR for a given year is based on the estimate of expenditure relating to the supervision of TRs under EMIR as included in ESMA's budget for that year set out and approved in accordance with Article 63 of Regulation (EU) No 1095/2010<sup>11</sup>, decreased by: (i) recognition fees charged to third-country TRs under EMIR; (ii) registration fees and annual supervisory fees under EMIR paid by new TRs or by already registered TRs in case a material change to their registration takes place; and (iii) surplus of annual supervisory fees under EMIR from the previous year; and increased by the deficit of annual supervisory fees under EMIR from the previous year.
79. However, for the reasons included in Section 2 of the consultation paper, ESMA pointed out that the aforementioned approach under EMIR needs to be aligned with that of SFTR to establish a consistent framework across ESMA's direct supervisory mandates.
80. Therefore, under EMIR the annual supervisory fees would be determined in accordance with the ESMA budgeting procedure, which would take into account all the activities that would result in supervisory effort related to each of the regulations.
81. Once the relevant amount is determined, ESMA proposed that the annual supervisory fees paid by each TR are calculated as the proportion of the relevant expenditure amount which corresponds to the ratio of the TR's specific turnover to the total turnover of all registered TRs.

ESMA proposes that the annual supervisory fees under EMIR are determined in accordance with the ESMA budgeting procedure, taking into account the activities that would result in supervisory effort.

As indicated above, Article 7(2)(b) of CDR 1003/2013 should be deleted.

### 6.2 Amendments to the calculation of applicable turnover under EMIR

82. When providing its technical advice to the European Commission on the EMIR fees in 2013, ESMA flagged the following aspects regarding the TR industry: (i) formed on the basis of a new service arising partly as a consequence of regulatory development; (ii) an

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<sup>11</sup> OJ L 331, 15.12.2010, p.84

emergence of new suppliers and new customers, appearance of different business models and variety of additional/ancillary products and services; (iii) uncertainty regarding the demand for the TR product and the growth potential; (iv) limited track record and the market conditions of the companies and the industry itself were still largely unknown; (v) potential for different commercial and business practices; and (vi) cross sector spill-overs, since TRs may use already existing technology and know-how from other market infrastructures, such as CSDs or IT solutions providers.

83. ESMA further indicated that it would not be unlikely that TRs: (i) face different cost structures and, therefore, apply pricing policies that vary significantly between them, causing significant revenue variability; (ii) lack previous financial track records or these are based on very short periods; and (iii) produce financial estimates and business plans that are either over-conservative or overambitious.
84. Now, seven years after the start of the reporting under EMIR, ESMA has understood that many of the potential difficulties regarding the establishment of the industry, the initial business practices and the potential cost structures of the TRs are overcome. In addition, ESMA and the TRs are in possession of historical financial track record on the performance of TRs. Moreover, the relevant business plans have been reviewed and adjusted to the reality of the TR market. All this reduces the need to establish a more complex system for the calculation of the applicable turnover.
85. Pursuant to CDR 1003/2013, the applicable turnover of TRs is based on three elements: (i) core revenues of TR obtained in the reference period; (ii) number of trades reported to TR during the reference period; and (iii) number of outstanding trades at a TR at the end of the reference period.
86. So far, ESMA has not experienced any material difficulties to determine the first component of the applicable turnover, which is the core revenues of a TR. TRs are obliged by national legislation to prepare their financial statements and they regularly submit their financial statements to ESMA as periodic information. The profit and loss account and the respective notes of the financial statements usually contain the breakdown of the revenues, which enables to identify what part of revenues relate to core services under EMIR. As required by CDR 1003/2013, this information is certified by auditors, therefore, the risk that ESMA uses for the fee calculation inaccurate figures is very low.
87. ESMA indicated, however, certain difficulties to ensure consistency and comparability of aggregate data across all TRs.
88. To that extent, for the purpose of calculating the applicable turnover under EMIR, ESMA proposed that the core revenues for centrally collecting and maintaining the records of derivatives should be taken into account. The revenue figures for the purpose of calculation of the annual supervisory fees under EMIR should be taken from the TR's audited accounts. In case the audited accounts are not available at the moment of calculation of the relevant instalment, the annual accounts of the previous year should be used.

$$\frac{\textit{Turnover TR}_i}{\sum \textit{Turnover}} = \frac{\textit{EMIR revenue TR}_i}{\sum \textit{EMIR revenues TR}}$$

89. Based on its supervisory experience, ESMA noted that supervisory fees charged taking into account core revenues and ancillary services are proportionate to the supervisory effort.
90. ESMA, therefore, proposed to calculate the turnover of the TRs based on the revenues from the relevant core repository and ancillary services provided by the TR. In this context, ancillary services should be understood in the same way as they are described in paragraph 51, i.e. as any service the provision of which is directly or indirectly related to the provision of the core repository services under EMIR. However, for the purpose of supervisory fees, only the ancillary services provided by the TR should be considered.
91. To that extent, in their financial accounts the TRs would need to present separately the different streams of revenues as per the following categorisation:
- a. EMIR core services of centrally collecting and maintaining records of derivatives
  - b. EMIR ancillary services such as credit event servicing, portfolio reconciliation or portfolio compression
  - c. SFTR core services of centrally collecting and maintaining records of SFTs
  - d. SFTR ancillary services such as agent lending or collateral management
  - e. EMIR and SFTR ancillary services such as trade matching, trade confirmation/affirmation, third party reporting or collateral valuation
  - f. Non-EMIR and non-SFTR services, such as custody or safekeeping activities, REMIT or MIFIR reporting. In general, this category would include all those services provided under regulations other than EMIR and SFTR.
92. ESMA understood that splitting the revenues per the six categories should not be a problem for the TRs as under Article 20 of CDR150/2013 they are required to have unbundled prices and fees for the repository and the ancillary services provided under EMIR.
93. Where ancillary services are provided in relation with both EMIR and SFTR altogether, i.e. the situation described in letter e of paragraph 91, a portion of those revenues would be assigned to the turnover calculation for annual supervisory fees under EMIR and SFTR in proportionate terms to the revenues from core services under each regulation. Where one of these services described in letter e of paragraph 91 is provided by a TR which is registered only under EMIR or SFTR, then it will be used in full for the purposes of the turnover calculation for that TR with regards to the regulation under which it is registered.
94. A couple of respondents stressed that TRs do not have information related to the base amount that ESMA needs to recover from TRs in the following calendar year, and, thus,

face problems to accurately and timely budget the expected annual supervisory fees. Those respondents would welcome ESMA's guidance on how to estimate forthcoming annual supervisory fees, particularly by indicating the criteria used by ESMA to calculate the budget.

95. ESMA would like to reiterate that, as indicated in paragraph 19 of this final report, ESMA indicates its total estimated costs for the year N in its annual work plan published in September of year N-1.<sup>12</sup> The work plan can serve as a preliminary indication of ESMA's expected revenue in the coming year. Therefore, total fees to be collected from all TRs in year N can be estimated by end-September of year N-1. The fee share of each TR will depend on the applicable turnover of each of them, similar to the current fee framework.
96. Another response had to do with the case of a TR winding down its business during a given year. The respondent cautioned that the wind-down should not affect the ratio of the expenditure to be distributed to the remaining TRs in the following year and recommended that ESMA charge the leaving TR a supervisory fee, either fixed or with a variable element depending on its volume. ESMA would like to stress that the supervisory fees reflect ESMA's supervisory effort and that it would not be appropriate to charge fees to a de-registered TR. On the contrary, ESMA's supervisory effort regarding remaining TRs will most likely increase as those TRs will be porting-in clients of the leaving TR (hence, the wind-down will in fact affect the ratio of the ESMA expenditure to be distributed).
97. Another respondent indicated that an increased or decreased turnover may not necessarily lead to proportionately higher or lower fees and called for ESMA to consider preparing a benchmark of fees to be charged based on historical data.<sup>13</sup> ESMA does not consider this case as applicable; all ESMA's costs are fixed and such approach goes against the objective of simplifying and ensuring the stability of the fees.
98. Finally, one respondent suggested that the revenue generated by ancillary services should not be taken into account when establishing the fees applicable to TRs in order to preserve the level playing field, since such ancillary services are also offered by non-regulated entities that are competing directly with TRs and are not subject to regulatory fees. In light of this suggestion, ESMA reiterates that the supervisory fees charged based on core revenues and ancillary services are proportionate to its supervisory effort. This effort includes ESMA's monitoring of TRs' ability to comply with their regulatory obligation to maintain operationally separate the core TR business from any other ancillary services, as well as to assess the risks posed by those ancillary services to the core TR business.
99. Apart from the above comments and suggestions, ESMA did not receive feedback challenging the present proposal; ESMA, therefore, maintains its proposal.
100. Furthermore, when assessing an application for registration or extension of registration or in the course of the on-going supervisory activities, the TRs would provide ESMA with

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<sup>12</sup> [https://www.esma.europa.eu/sites/default/files/library/esma20-95-1273\\_2021\\_annual\\_work\\_programme.pdf](https://www.esma.europa.eu/sites/default/files/library/esma20-95-1273_2021_annual_work_programme.pdf); see page 54.

<sup>13</sup> As an example, EUR 500k additional revenue in the current year would lead to a x% increase in the following year's fees; EUR 1m additional revenue would lead to a y% increase in the supervisory fee in the following year.

the necessary information to assess and assign the services directly provided by the TRs to one of the above categories.

101. Where a TR provides its audited accounts in a currency other than Euro, ESMA usually converts the amounts into Euro using the average EUR foreign exchange rate for the period during which the revenues were recorded as published by the European Central Bank. ESMA proposed to reflect this in the Fees Delegated Regulation, since it is relevant to the fees collection process followed in respect of some non-Euro area TRs or TRs reporting in the currency of their holding.

For the purposes of calculating ESMA's fees for supervision of EMIR activities, the relevant revenues resulting from core and ancillary services related to EMIR should be taken into account.

To ensure correct calculation of the applicable turnover, a TR should include the following breakdown as applicable:

- a. EMIR core services
- b. SFTR core services
- c. Ancillary services to EMIR activity
- d. Ancillary services to SFTR activity
- e. EMIR and SFTR ancillary services such as trade matching, trade confirmation/affirmation, third party reporting or collateral valuation
- f. Non-EMIR and non-SFTR services, such as custody or safekeeping activities, REMIT or MIFIR reporting.

Where the revenue from an ancillary service cannot be explicitly allocated between EMIR and SFTR, it will be taken into account for both calculations in proportionate terms to the revenues received from the core services under each of the two regulations. The revenues from non-EMIR and non-SFTR services will not be taken into account for calculating the turnover of a TR.

$$\frac{EMIR\ Turnover\ TR_i}{\sum EMIR\ Turnover\ TR} = \frac{EMIR\ revenue\ TR_i}{\sum EMIR\ revenues\ TR}, \text{ where}$$

$$EMIR\ revenue\ TR_i = Revenue\ Core\ EMIR\ services\ TR_i + Revenue\ Ancillary\ EMIR\ services\ TR_i$$

Moreover, it should be stated that audited accounts provided in currencies other than Euro will be converted by ESMA by using the average EUR rate applied by the European Central Bank for the period covered by the accounts.

In case the audited accounts are not available at the moment of calculation of the relevant instalment, the annual accounts of the previous year should be used.

Article 3 of CDR 1003/2013 should be amended in line with the provisions set out in Article 2 of CDR 2019/360.

### 6.3 Minimum supervisory fees under EMIR and SFTR

102. The supervision of TRs requires the performance of certain activities towards all TRs. These activities stem from ESMA's supervision workplan. ESMA adopts a risk-based approach to supervision and prioritises the supervisory actions that it will take each year in accordance with its objectives of promoting financial stability and orderly markets, and enhancing investor protection.<sup>14</sup> While the supervisory actions may vary per TR, to be able to perform its tasks, ESMA always needs to undertake a minimum level of supervisory activities.
103. ESMA will continue to apply the risk-based approach for supervision of TRs under EMIR and SFTR and proposed no changes to the minimum supervisory fee of EUR 30,000.
104. For the avoidance of doubt, in case a TR is subject to minimum supervisory fees under both EMIR and SFTR, it would be required to pay two minimum supervisory fees, one under each regulation, totalling EUR 60,000.
105. In the opinion of one respondent, the minimum level of ESMA's supervisory effort vis-à-vis an entity that operates under both EMIR and SFTR generates lower costs than the minimum supervisory effort devoted to two separate entities, each operating under either EMIR or SFTR. This is because e.g. for an entity that operates under both EMIR and SFTR a significant part of the periodic information/documentation requires a one-off assessment.
106. In this respect, ESMA would like to stress that its TR supervision involves several monitoring activities, including among others ongoing monitoring of TR data collection and availability, ad-hoc investigations and thematic reviews, ongoing cooperation with NCAs, and enforcement.
107. ESMA would also like to remind that the registration fee of EUR 100,000 would comprise the overall cost of approx. 0,5 FTE which is equal to either two staff members working for one quarter or one staff member working for six months. It follows that the minimum supervisory fee of EUR 30,000 is already set at a low level equal to approx. 0,15 FTE (and this has been the case since the reporting start date back in 2014).

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<sup>14</sup> Link to the latest one can be found here [https://www.esma.europa.eu/sites/default/files/library/2016-234\\_esma\\_2015\\_annual\\_report\\_on\\_supervision\\_and\\_2016\\_work\\_plan.pdf](https://www.esma.europa.eu/sites/default/files/library/2016-234_esma_2015_annual_report_on_supervision_and_2016_work_plan.pdf)

108. ESMA will, thus, retain its proposal mindful of the possibility that going forward it may even be necessary to consider the increase of the minimum supervisory fees.

No changes are proposed.

## 6.4 First-year fee following registration under EMIR and SFTR

109. ESMA's experience with the registration and supervision of TRs has shown that the supervision of a TR in the first months following its registration requires an effort similar to the one required during registration and, more importantly, the supervisory effort is not related to the actual level of activity of the TR, but is quite similar across all TRs.
110. Furthermore, it is unusual that a registration would take place on the last day of a calendar year and enter into force on the first day of the following calendar year. Normally, administrative decisions take place during the calendar year. This requires that the costs until the end of a given year are covered by fees which are not the registration fees.
111. ESMA is of the view that the first-year supervisory fee should be calculated using a formula to calculate it as a percentage of the registration fee. The percentage should be related to the period of time during which the TR is supervised in its first year of operations under EMIR or SFTR. This period of time should, of course, be linked to the period of time under which the TR operates in the first year.

*TR first-year supervisory fee in year 1 = Min (TR registration or extension of registration fee, TR registration fee or extension of registration fee\* coefficient)*

$$\text{Coefficient} = \frac{\text{Number of calendar days between the date of registration or extension of registration and 31 December}}{\text{Number of calendar days in year (n)}}$$

112. Furthermore, in case a TR is authorised during the month of December, ESMA proposed that it should not pay a first-year supervisory fee, as the administrative cost linked to such fee is not proportionate to the fee itself.
113. For the avoidance of doubt, in case a TR is subject to first-year supervisory fees under both EMIR and SFTR, it would be required to pay two first-year supervisory fees, one under each regulation and calculated on the basis of the formula described above.
114. ESMA has already proposed that this approach should be followed for the first-year fee calculation regarding other entities under its current or future direct supervision, namely credit rating agencies, critical benchmarks, and data reporting services providers. ESMA believes that this is the most proportionate approach and the one ensuring greater alignment with other types of fees in line with the harmonisation and simplification





principles across fees charged by ESMA. ESMA received no response against its proposal and, therefore, will proceed on this basis.

ESMA proposes the following formula for the calculation of the first-year fee for TRs under EMIR and SFTR:

*TR first-year supervisory fee in year 1 = Min (TR registration or extension of registration fee, TR registration fee or extension of registration fee\**

$$\text{Coefficient} = \frac{\text{Number of calendar days between registration or extension of registration and 31 December}}{\text{Number of calendar days in year (n)}}$$

By way of derogation, where a TR is authorised during the month of December, it shall not pay a first-year supervisory fee.

Article 7(4) of CDR 1003/2013 should be amended.

A new paragraph should be included in Article 6 of CDR 2019/360 to provide for the above proposal.

## 7 Recognition fees under EMIR and SFTR

115. As explained in ESMA's technical advice to the European Commission on both CDR 1003/2013 and CDR 2019/360, the supervisory effort towards third-country entities is somehow reduced compared to that for the EU-based ones. Given the similarities of the recognition process under EMIR and under SFTR, in particular the required effort, the current framework provides for the same level of fees, which is structured in the following way: (i) EUR 20,000 for the processing of the application for recognition; and (ii) the amount resulting from dividing the costs for equivalence assessment and cooperation arrangement (estimated at EUR 35,000 EUR) by the total number of TRs that are either recognised or applying for recognition from that jurisdiction, including the concerned applicant.

116. ESMA has noted that this structure is too complex and would imply additional costs for the allocation of fees across multiple applicants from the same third-country jurisdiction. ESMA proposed to simplify the fee structure by charging a single fee to each and every third-country TR that applies for recognition under EMIR or under SFTR. ESMA also considered that this approach provides increased transparency to prospect third-country applicants.

117. As mentioned in the consultation paper, ESMA does not expect to receive more than one application for recognition from a given third-country jurisdiction. ESMA, therefore, proposed to set the amount for the initial recognition fee under EMIR or under SFTR at EUR 55,000 (i.e. equal to the amount already set in the current fee framework).
118. For the same reasons explained in Section 5.2 of the consultation paper, ESMA also proposed that in case a third-country TR applies at the same time for recognition under EMIR and SFTR or it has concurrent applications, then the TR should pay an additional amount of EUR 10,000, thus, in total the amount of EUR 65,000.
119. ESMA will rely heavily to the third-country competent authorities for the supervision of recognised TRs. For this reason, ESMA confirmed that the on-going recognition fee for TRs recognised under EMIR or SFTR is kept at EUR 5,000. No first-year recognition fee is proposed. For the avoidance of doubt, in case an entity is recognised under both regimes, it will pay a total annual recognition fee of EUR 10,000.
120. One respondent did not agree with the proposal. According to that response, it would make more sense to adopt an approach similar to the fees proposed for the concurrent application for registration under EMIR and SFTR, i.e. in the case of an application for recognition under EMIR only, the third-country TR should pay EUR 55,000. In case the third-country TR applies at the same time for recognition under EMIR and SFTR, the third-country TR should pay 50% of the EMIR recognition fees, i.e. an additional amount of EUR 22,500, thus, in total the amount of EUR 77,500.
121. ESMA confirms that under its proposed approach this principle is respected and actually the additional increase of recognition fee is only EUR 10,000, thus totalling EUR 65,000 when a third-country entity applies for recognition under both regimes.
122. Furthermore, and under the current legal framework, ESMA would like to highlight that the supervisory effort to recognise a third-country TR at the same time under EMIR and under SFTR (or during concurrent applications) will be significantly lower compared to the effort needed to register an EU-based TR. In light of this, ESMA will retain its proposal.

ESMA proposes the following fees under EMIR and SFTR:

In the case of application for recognition under EMIR or SFTR, the third-country TR should pay EUR 55,000.

In case the third-country TR applies at the same time for recognition under EMIR and SFTR or it has concurrent applications, it should pay EUR 65,000.

Article 8 of CDR 1003/2013 and Article 7 of CDR 2019/360 should be amended.

## **8 Payment and reimbursement conditions under EMIR and SFTR**

### **8.1 Fees for registration, extension of registration and initial recognition**

123. Similar to the established practice under other fee regulations, ESMA understands that the fees for registration, extension of registration and recognition are due at the time of application for registration, extension of registration and initial recognition and should be paid by TRs upon the initiation of the administrative process.
124. ESMA received feedback that an extended period of 45 to 60 days from the date of issuance of the relevant debit note would facilitate internal approval processes, especially if the payment will be done in one go and not in the current practice of two instalments. In response to this concern, ESMA would like to clarify that fees due for application for registration, extension of registration and initial recognition is the consequence of an internally approved decision to apply, therefore, TRs can foresee them in advance. Moreover, under the revised proposal, the amounts can be easily predicted. ESMA does not see any reasons for extending the fee payment to more than 30 days.
125. In the interest of simplifying and harmonising the fees charged under its various direct supervisory mandates, ESMA will retain the proposal set out in the consultation paper.

ESMA proposes that the fees for registration, extension of registration and initial recognition under EMIR and SFTR are paid upon the application by the TR and within 30 days from the date of issuance of ESMA's relevant debit note.

### **8.2 No reimbursement of fees in case of withdrawal of application by a TR before ESMA's registration**

126. Neither CDR 1003/2013 nor CDR 2019/360 envisage reimbursement to applicant TRs in case of withdrawal of application prior to the registration of the entity under EMIR and SFTR respectively.
127. One respondent was not aligned with ESMA's respective proposal in the consultation paper not to reimburse fees in case of withdrawal of application prior to the registration of the entity. On the basis of a cost-related approach, the respondent recommended that for applications withdrawn during the completeness assessment phase, ESMA should reimburse 50% of the registration fees while no reimbursement of fees should occur, once the compliance assessment phase has started.

128. As indicated in the previous consultations relating to TRs, ESMA would like to stress that the proposed approach is followed for the main reasons below:

- a. It discourages spurious applications;
- b. ESMA sustains the costs of analysing all the application dossiers submitted and any follow-up action required until the withdrawal;
- c. ESMA has to concentrate the limited resources available on the application dossiers by applicants that carry a true intention of becoming a registered TR.

129. Therefore, ESMA will retain this approach which was proposed to be followed also for ESMA's other supervised entities to allow for harmonisation across fees charged by ESMA.

### **8.3 Annual supervisory and on-going recognition fees**

130. In line with ESMA's budgeting approach outlined in Section 2 of the consultation paper, ESMA proposed that the annual supervisory and recognition fees are paid in a single instalment and they are not reimbursed.

131. To fully support its activities vis-à-vis TRs, ESMA proposed to receive their annual supervisory and recognition fees at the start of the calendar year and no later than 31 March.

132. ESMA received feedback that an extended period of 45 to 60 days from the date of issuance of the relevant debit note would facilitate internal approval processes, especially if the payment will be done in one go and not in the current practice of two instalments.

133. In response to the above, ESMA would like to clarify that under the new proposal 30 days is a minimum term that ESMA would grant to TRs in order to pay their annual supervisory and recognition fees. As these fees are expected to be paid by 31 March the latest, the earlier ESMA sends the debit notes, the more time TRs will have for the internal approval processes in order to make the respective payments. The timing of the distribution of the debit notes will depend on the date when ESMA's budget is approved (expected around end-January each year) as well as on the timely submission (by end-September of the previous year) of the financial audited statements by all TRs in line with the requirements defined in the amended regulation (containing the relevant revenue breakdowns).

134. Another concern raised by the respondent was regarding the timing of the annual supervisory fee. The respondent noted that the annual accounts for year N are generally not available until the end of May of year N+1; only interim accounts without a revenue breakdown between EMIR, SFTR, ancillary services and other services are available by 31<sup>st</sup> January. The respondent believes that the current approach could potentially lead to discrepancies and proposed that the annual supervisory fee should be charged to all TRs in July of year N, based upon and only after the submission of the annual accounts of all TRs for year N-1.

135. With regards to the above, ESMA wishes to clarify that under its proposal all TRs will have up to nine months to prepare and provide to ESMA their financial audited statements containing the relevant breakdowns for year N, as the submission deadline is set at end-September of year N+1. Therefore, ESMA will calculate the annual supervisory fees on equal basis for all TRs.
136. In the interest of simplifying and harmonising the fees charged under its various direct supervisory mandates, ESMA will retain the proposal set out in the consultation paper, namely use the annual accounts approved in year N-1 for the fees in year N.
137. As mentioned in Section 2 of the consultation paper, and under the one instalment model, ESMA would like to confirm that, in case of deficit, ESMA does not recover that deficit from the supervised entities nor excess of fees is paid back to the supervised entities in cases of surplus.

ESMA proposes that TRs pay their annual supervisory and on-going recognition fees to ESMA in the first three months of the calendar year and at the latest on 31 March of the year for which they are due.

The fees should be calculated on the basis of the latest available information for annual fees. The annual supervisory and recognition fees paid are not reimbursed.

Article 11 of CDR 1003/2013 and Article 10 of CDR 2019/360 should be amended.



## 9 Annex – EC request to ESMA for technical advice



Director General

EUROPEAN COMMISSION

Directorate-General for Financial Stability, Financial Services and Capital Markets Union

Brussels,

FISMA

A1/JGR/ng/(2020)4264267

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**RE: Harmonisation and simplification of the delegated acts on fees charged by ESMA, following IAS and ECA recommendations (ESMA63-46-714).**

Dear Mr Maijoor, dear Steven,

Thank you for your letter of 26 May 2020 regarding the harmonisation and simplification of the delegated acts on fees charged by ESMA, following the Internal Audit Service (IAS) and the European Court of Auditors (ECA) recommendations.

I am pleased to accept your suggestion to provide ESMA's technical advice on the review of the following Commission delegated regulations:

- Commission delegated regulation (EU) 272/2012 of 7 February 2012 (related to credit rating agencies);
- Commission delegated regulation (EU) 1003/2013 of 12 July 2013 (related to trade repositories under EMIR); and
- Commission delegated regulation (EU) 2019/360 of 13 December 2018 (related to trade repositories under SFTR).

DG FISMA considers it appropriate that ESMA delivers the advice based on its experience with the use of the delegated acts on fees as well as the observations made by the IAS and the ECA through their reviews on ESMA's revenue collection processes. The technical advice should facilitate consistency and harmonisation across all fee delegated regulations relevant for ESMA.



In terms of the timeline, we would welcome the delivery of the technical advice before 31 January 2021 to align it with the deadline for the Delegated Acts to collect fees for the new supervisory activities related to benchmark administrators and data reporting service providers mentioned in your letter of 5 May (ESMA41-137-1283).

The technical advice should not prejudice the Commission's final decision and should take into account the general principles for technical advice referred to in my letter of 17 June<sup>15</sup>.

Finally, we share the need to adopt as soon as possible the Delegated Acts on fees under the Securitisation Regulation<sup>16</sup> and EMIR 2.2<sup>17</sup>. Regarding the DA on fees based on EMIR 2.2, the public feedback is open until 11 July 2020 and the entry into force of the delegated act is expected in Q3 2020. We are working with the Legal Service to address the comments received in the Inter Service Consultation for the DA on fees based on the Securitization Regulation and the entry into force is expected in Q4 2020.

Should you need any further information or clarifications, please do not hesitate to contact my team.

Yours sincerely,

(e-signed)

John BERRIGAN

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<sup>15</sup> Ref. Ares(2020)3140202 - 17/06/2020

<sup>16</sup> Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 on securitisation (OJ L347, 28.12.2017, p.35)

<sup>17</sup> 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 (OJ L322, 12.12.2019, p.1)

Electronically signed on 14/07/2020 19:18 (UTC+02) in accordance with article 4.2 (Validity of electronic documents) of Commission Decision 2004/563