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| Response Form to the Consultation Paper |
| ESMA fees for DRSP |

**Responding to this paper**

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

1. respond to the question stated;
2. indicate the specific question to which the comment relates;
3. contain a clear rationale; and
4. describe any alternatives ESMA should consider.

ESMA will consider all comments received by **4 January 2021.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_CP\_DRFE\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_DRFE\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_ DRFE \_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open Consultations” 🡪 “ Public Consultation on fees for data reporting service providers (DRSP)”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publicly disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper?**

This consultation is looking for feedback from data reporting services providers, market participants and authorities.

**General information about respondent**

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| --- | --- |
| Name of the company / organisation | BME |
| Activity | Regulated markets/Exchanges/Trading Systems |
| Are you representing an association? |  |
| Country/Region | Spain |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_CP\_DRFE\_1>

Bolsas y Mercados Españoles (BME) is the operator of all stock Markets and financial systems in Spain. BME has been a listed company from 2006 to 2020 and is a SIX Group Company. In the last years it has become a reference in the sector. One of the strengths of the Group resides in its diversification, apparent on the company structure that represents a broad and varied range of products and services.

BME is committed to contribute decisively to a transparent, safe and efficient functioning of the markets to support the economic growth of our companies, creating value for our shareholders.

In this sense, BME welcomes the consultation of ESMA on fees for DRSPs and seeks to provide with the best possible information from the industry to help improve the DRSP environment, thus contributing to the overarching objectives of CMU, integrity, transparency and resilience for the financial markets.

After careful consideration of the content of the consultation, BME would like to share some thoughts on the repercussions of the measures envisaged in ESMA proposal.

Firstly, there is a strong need for assessing the reality of the DRSP businesses in terms of revenue and profit. BME believes the minimum fees proposed by ESMA (as per pages 12 and 13 of the CP) are outstandingly high when compared to the current fees levied by the National Competent Authorities. Moreover, BME is concerned that these proposed fees will likely increase as they are envisaged as a floor only, which would undermine the current financial viability of DRSPs in Europe.

In this sense, we want to convey our understanding that the rationale of market operators for entering into the DRSP services responds to the will of providing their clients with a full range of tools that allow them to undergo the compliance obligations stemming from MiFIR in the most smooth and seamless possible way, and not necessarily bring positive results to a balance sheet. In some cases, players were prompted to register as DRSP and implement DRSP projects, with an associated high amount of investment and dedicated resources, even though it was already clear that DRSP would not bring positive financial results; in financial terms, most DRSPs in Europe function under a nearly breakeven basis.

This fact paired with the investment and resources dedicated to the establishment of DRSP infrastructures places the proposed fees as a risk for the continuity of operation of many DRSPs. Indeed, in 2020, two of the major DRSPs have announced their closing, and a ripple effect triggered by the high fees could create a concentration of services contrary to the spirit of MiFID II and MiFIR. From BME we consider this possibility would reshape the DRSP landscape in Europe in the form of an oligopolistic industry; considering the intended high level of fees proposed for application and authorisation of DRSP (i.e, EUR 100,000 and EUR 50,000 for the first and second services respectively) the entry of new players would be even more difficult as the fees of application and authorization of new DRSPs could only be met by those with an already outstanding size prior to their entry into activity.

It would be paradoxical that brand new supervisory fees can significantly affect the business case and the financial viability of businesses as DRSP that were born with much effort to meet MiFID 2 and MiFIR requirements when entering into force in January 2018, under very different conditions, to reinforce the integrity and transparency of the internal market.

Indeed, the decision to set up DRSPs starting operations in January 2018 was made in the absence of the supervisory fees approach that is being presented in the CP.

On a second note, the nature of the DRSPs and their operative scheme at nearly breakeven point as described above could trigger a raise in the fees imposed to their clients as one of the very few mechanisms DRSPs can resort to in order to keep business continuity, especially considering that the DRSP industry pool of clients is limited by regulation (i,e; investment firms).

In terms of features of the proposed fees, BME considers that the unpredictability of fees from one year to another places additional difficulties for the financial planning of DRSPs, already constrained, and provides no elements that fall under the scope of control of DRSPs to buffer the potential impact.

BME considers the unpredictability of fees an effect of the methodology proposed by ESMA, that combines three elements that are unknown ex-ante and that are subject to changes:

* ESMA annual budget for DRSP supervision. This item is not related to the specific activity of a given DRSP nor is impacted by DRSP activity. Thus, any change in supervisory fees could not be explained by the activity inherent to DRSP remit.
* Number of DRSP supervised by ESMA. It can change from one year to another and, considering the above, it is likely that the number of DRSPs decreases over time. Such a reduction would increase fee pressure on the remaining DRSPs. This item is not influenced by DRSP activity, and thus any change in supervisory fees could not be explained by the activity inherent to DRSP remit.
* Weighting of each DRSP revenues over the total turnover for a given DRS. Although more linked to the DRSP activity than the other criteria, the share of turnover that the revenues of one DRSP represents over the total amount is also detached from the individual DRSP activity and escapes its reasonable area of influence.

We would like to draw attention to the fact that the turnover is considered a parameter for the allocation of fees. Again, DRSPs operate at very low margins, close to the breakeven point, and overlooking this fact would display a wrong reality of the DRSP industry in terms of financial viability.

As an alternative approach, BME considers much more appropriate and fairer to analyse parameters such as the operating profit, EBIT or EBITDA and applying a supervisory rate in the form of percentage to determine the fees on DRSPs. This approach would ensure that no DRSP sees its financial viability affected by supervisory fees.

Furthermore, from BME we would like to draw attention to the mention on the consultation paper to the fact that the preparatory works undertaken by ESMA would be recovered through the additional fees during the first three years of supervision; we would appreciate ESMA to reconsider this approach, especially when considering the above mentioned unpredictability of fees and the fact that preparatory works are inherent to the tasks assigned by ESMA; we understand that without those preparatory works ESMA could not undertake direct supervision and, consequently, could not impose supervisory fees.

Finally, from BME we recognise an interlinkage with the CP on ESMA advice on the criteria for DRSP derogation as the fee scheme proposed by ESMA in the CP is the consequence of the direct supervision of DRSPs assigned to ESMA starting January 2022. Such a direct supervision will be triggered as a result of the assessment of the criteria proposed by ESMA on its CP on ESMA advice on the criteria for DRSP derogation (ESMA74-362-932) The assessment of those criteria on an individual DRSP basis makes very unlikely that direct supervision for DRSPs by ESMA gets derogated, except for those DRSPs of truly small size or whose scope of activity in terms of instruments, assets or jurisdictions is highly limited.

ESMA direct supervision would only be halted with the fulfilment of all of the criteria proposed in the CP (i.e., provision of services to investment firms authorised in one Member State only; number and volumes of trade reports published by APAs and number and volumes of transactions reports made by ARMs; not being part of a group of financial market participants that operate cross-border; and the additional criterion outlined in section 2.4 of the CP). This last criterion makes even harder for ARMs to remain supervised at a national level.

BME understands that ESMA proposal for the revision of fees needs a careful and deep consideration to serve most useful to the industry needs and to determine the most adequate framework for the continuity of DRSP services. BME is committed to working closely with ESMA in ascertaining the best actions for the capital markets ecosystem.

<ESMA\_COMMENT\_CP\_DRFE\_1>

**Questions**

1. : Do you agree with the proposed approach for DRSP fees? Please elaborate in detail the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_1>

In principle and regardless of any consideration on the fees level, the fee scheme structure itself seems reasonable. However, the level of fees levied on each DRSP should be very carefully assessed against the risks an excessive level of fees could imply. A reasonable framework would not serve its purpose if it is disproportionate. From a financial perspective, most DRSPs are hardly break-even businesses and thus any supervisory fees disproportionate to DRSPs profits would become a difficult to overcome hurdle for many of them prompting a number, still unknown, of DRSPs to close business down. This would consequently move the ESMA fees even higher for the DRSPs that are able to remain active.

Another relevant concern stemming from the proposed approach is the unpredictability of the precise amount of supervisory fees to be levied each year on each DRSP, which makes financial planning very difficult and adds up to the financial viability of DRSPs. The unpredictability of each year fees level is due to the proposed methodology for the determination of the supervisory fees, which combines three elements that are unknown ex-ante and subject to changes:

* ESMA annual budget for DRSP supervision: This item is not related to the specific activity of a given DRSP nor is impacted by DRSP activity. Thus, any change in supervisory fees could not be explained by the activity inherent to the DRSP remit.
* Number of DRSP supervised by ESMA: It can change from one year to another and, considering the above, it is likely that the number of DRSPs decreases over time. Such a reduction would increase fee pressure on the remaining DRSPs. This item is not influenced by DRSP activity, and thus any change in supervisory fees could not be explained by the activity inherent to DRSP remit.

The weighting of each DRSP revenues over the total turnover for a given DRS: Although more linked to the DRSP activity than the other criteria, the share of turnover that the revenues of one DRSP represent over the total amount is also detached from the individual DRSP activity and escapes its reasonable area of influence.

<ESMA\_QUESTION\_DRFE\_1>

1. : Do you agree with the proposed application fee for ARMs and APAs? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_2>

The proposed level of fees seems disproportionate compared with the fees that NCAs currently charge for this purpose (see examples on pages 12 and 13 of the consultation paper). The intended high level of fees proposed for application and authorisation of DRSP (i.e, EUR 100,000 and EUR 50,000 for the first and second services respectively) makes very unlikely that new players arise in this market unless they have an outstanding size prior to their entry into activity.

This would lead to a decrease in the number of players in the DRSP arena. A marked decrease in competition that would deviate from the MiFID II/MiFIR spirit as well as from that of the regulatory framework for financial services since MiFID I.

<ESMA\_QUESTION\_DRFE\_2>

1. : Do you agree with the proposed authorisation fee for ARMs and APAs? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_3>

See our answer to the previous question.

<ESMA\_QUESTION\_DRFE\_3>

1. : Do you agree with the reduced additional application and authorisation fee for each additional DRSP type in the case of a simultaneous application? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_4>

Yes, as it comes as a sort of incentive for industry players to widen and enrich the offering of data reporting services, adding to the competitiveness and choice for potential clients as it is the case with the rest of MiFID-regulated fields. However, any reductions for the application or authorisation for additional services would be non-significant if the level of the fees is set as high as proposed in the consultation paper as it would impose a strong entry barrier for most of DRSP candidates.

<ESMA\_QUESTION\_DRFE\_4>

1. : Do you agree with the proposed application and authorisation fee for CTP? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_5>

It should be noted that the use case, business case, and thus, financial viability of the CTP remains uncertain. Any level of fees that may be put on top of the weak financials of an eventual CTP would undermine even further its viability. The proposed level of supervisory fees for CTP seems a relevant entry barrier for any industry player considering to become a CTP. Such a high-level approach would not be perceived as an incentive to the promotion and willingness to offer CTP services.

<ESMA\_QUESTION\_DRFE\_5>

1. : Do you agree with the proposed approach to calculate first-year fees for DRSPs authorised by ESMA under MiFIR? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_6>

An approach for fee calculation proportional to the time between authorisation and the end of the year seems reasonable. However, there is a concern beyond this approach regarding the level of fees, which seems disproportionate when compared with the financial results of most DRSPs.

<ESMA\_QUESTION\_DRFE\_6>

1. : Do you agree with the proposed approach for the calculation of annual fees for DRSPs supervised by ESMA? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_7>

From a theoretical perspective, the proposed approach seems reasonable. However, it seems to obviate the financial reality of most DRSP businesses and provides for a level of fees high enough to put at significant risk the already weak financial viability of most DRSP.

<ESMA\_QUESTION\_DRFE\_7>

1. : Do you agree with the use of revenues for the purposes of calculation of the applicable turnover? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_8>

We do not agree. The consultation paper proposes DRSP turnover as a parameter to allocate supervisory fees. DRSPs operate typically at very low margins and the turnover could show a distorted picture of the relevance or financial capacity of a DRSP. When comparing different DRSPs, a higher turnover does not necessarily imply a better financial situation or higher profits. If the proportional allocation of fees is to be kept, a reference to the operating profit, EBIT or EBITDA would seem fairer.

<ESMA\_QUESTION\_DRFE\_8>

1. : With regards to the revenues, do you agree with including both revenues form core and ancillary services? How complex is to identify and report the revenues from ancillary services attributable to each data reporting service separately? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_9>

We do not agree. We believe that only the core services parameter should be considered. It would prove difficult to provide with a clear-cut delineation of what is considered as ancillary services to core data reporting services. Should ancillary services be considered, only those adding value to clients of core services in the provision of those core services should be taken into account.

<ESMA\_QUESTION\_DRFE\_9>

1. : In those cases, where ancillary services cannot be directly allocated to each data reporting service, do you agree with allocating them in accordance with the revenues from the respective core services? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_10>

As explained in our answer to Q9, we believe that only the core services parameter should be considered and revenues from ancillary services should be excluded. Should ancillary services be considered, only those adding value to clients of core services in the provision of those core services should be taken into account. Their revenue or profit should be easy to be directly allocated to core services. If they cannot be directly allocated, they should not be taken into account.

<ESMA\_QUESTION\_DRFE\_10>

1. : Do you agree with the proposed level of minimum supervisory fee? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_11>

We do not agree. The proposed minimum level supervisory fee (EUR 30,000 per year per service) is in itself a much higher figure than most of the fees currently levied by NCAs and does not take into account the financial situation of a DRSP. As a result, such fees could end up being an impediment for DRSPs to keep servicing their clients, which would be a paradox in itself. This goes even further when considering that such amount of fees is only a floor and from the consultation paper it can be easily ascertained that final fees will be higher than the minimum for most of the DRSPs, on top of which an additional portion of fees will be assigned for ESMA to recover the costs incurred during the preparatory works.

<ESMA\_QUESTION\_DRFE\_11>

1. : Do you agree with the proposed level of minimum supervisory fees in case more than one data reporting service is provided? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_12>

We do not agree. See our answer to the previous question.

<ESMA\_QUESTION\_DRFE\_12>

1. : Do you agree with the approach for determining the fees in 2022 for already authorised DRSPs? Are there any difficulties in identifying the revenues from data reporting services provided in 2020? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_13>

N/A

<ESMA\_QUESTION\_DRFE\_13>

1. : Do you agree with the proposed approach for the supervisory fees related to preparatory work? Please elaborate.

<ESMA\_QUESTION\_DRFE\_14>

We do not agree. The consultation paper states that costs incurred for the preparatory works will amount up to around EUR 4.2 million and those proposed to be recovered through additional fees levied from DRSPs in the first three years of supervision (EUR 1.4 million in 2022, 2022, and 2024 respectively). We would appreciate that ESMA reconsiders this approach and discards the shift of this amount onto DRSPS, for two main reasons:

* The additional fees, so far unpredictable, will add to the financial viability and risk of DRSPs, as explained above.
* Preparatory works are inherent to the task assigned to ESMA; without those preparatory works, ESMA could not undertake direct supervision nor, as a consequence, impose supervisory fees. We believe that the preparatory cost should not be passed onto the DRSPs.

<ESMA\_QUESTION\_DRFE\_14>

1. : Do you agree with the proposal for the payment conditions by DRSPs of the fees for application, authorisation or extension of authorisation under MIFIR? Please elaborate on the reasons for your answer.

<ESMA\_QUESTION\_DRFE\_15>

N/A

<ESMA\_QUESTION\_DRFE\_15>

1. : Do you agree with the proposal to not reimburse DRSPs in case they decide to withdraw their application for authorisation or extension of authorisation before authorisation is granted? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_16>

N/A

<ESMA\_QUESTION\_DRFE\_16>

1. : Do you agree with the proposal that DRSPs pay their annual fees by 31 March of the year for which the fees are due? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_17>

N/A

<ESMA\_QUESTION\_DRFE\_17>

1. : Do you agree with the proposal for the timing of payment of the 2022 fees? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_DRFE\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRFE\_18>