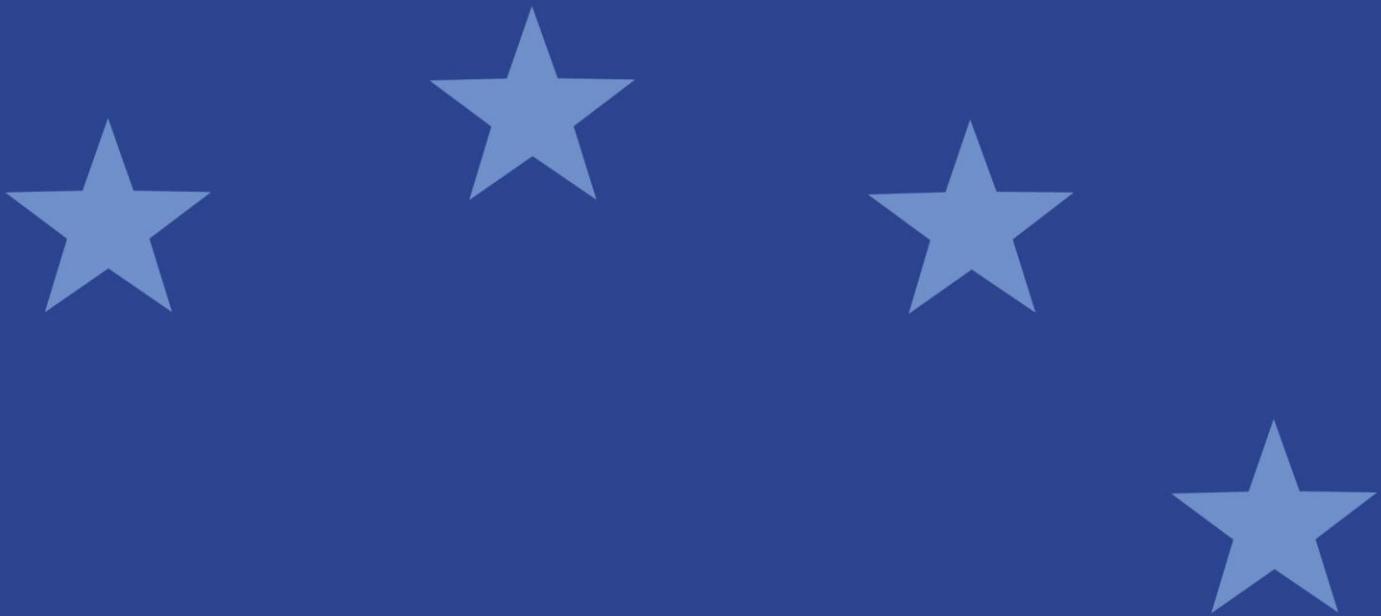




European Securities and  
Markets Authority

# Report

**To the European Parliament, the Council and the Commission in  
accordance with Article 52(13) of MiFIR**





European Securities and  
Markets Authority

27 January 2021  
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## Table of Contents

1	Executive Summary .....	4
2	Background.....	5
3	ESMA's role in the revised MiFIR third-country regime .....	6
4	Assessment of ESMA's staffing and resources needs.....	9
5	Annexes.....	11
5.1	IFR – MIFIR Third country regime – Expected ESMA resources – Scenario 1 .....	11
5.1.1	Estimation of ESMA staffing and resources needs.....	11
5.1.2	Detailed explanations on calculations on costs and FTEs.....	12
5.2	IFR – MIFIR Third country regime – Expected ESMA resources – Scenario 2 .....	15
5.2.1	Estimation of ESMA staffing and resources needs.....	16
5.2.2	Detailed explanations on calculations on costs and FTEs.....	17

# 1 Executive Summary

## Reasons for publication

The Investment Firms Regulation (EU) No 2019/2033 (IFR) introduced changes to the MiFIR regime for the provision of investment services and activities in the Union by third-country firms. These changes include strengthened registration requirements for third-country firms and new reporting requirements from third-country firms to ESMA on an annual basis, new powers and tasks for ESMA, and some changes to the process for the declaration of equivalence of third country regulatory and supervisory frameworks by the European Commission.

The IFR introduced also paragraph 13 to Article 52 of MiFIR and requested ESMA to assess by 31 December 2020 the staffing and resources needs arising from the assumption of its powers and duties in accordance with the new MiFIR regime for third-country firms and submit a report on that assessment to the European Parliament, to the Council and to the Commission.

In the absence of equivalence declarations to date, ESMA has elaborated two possible scenarios on the basis of which the staffing and resources needs have been estimated.

This report illustrates the assumptions made by ESMA elaborating these two possible scenarios and the conclusions in terms of estimated recourses and staff needed.

## Contents

Sections 2 and 3 deal with the new powers and tasks established for ESMA under the new MiFIR third-country regime. Section 4 assesses the ESMA staff and resources needs and Section 5 illustrates in details the assumptions and the calculations made with reference to the two scenarios.

## Next Steps

The Report is sent to the European Parliament, the Council and the Commission in accordance with Article 52(13) of MiFIR.

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## 2 Background

1. Article 46 of Regulation (EU) No 600/2014 (MiFIR) allows third-country firms to provide investment services and activities to eligible counterparties and *per se* professional clients (within the meaning of Section I of Annex II of Directive 2014/65/EU, MiFID II) across the Union if, *inter alia*, the regulatory and supervisory frameworks of the third country where the firm is established is declared equivalent by the European Commission and if these firms are registered in the register of third-country firms held by ESMA in accordance with Article 48 of MiFIR (the “ESMA register”)<sup>1</sup>.
2. In the absence of an equivalence decision by the Commission under Article 47(1) of MiFIR, the MiFIR third-country regime has, so far, not been triggered.
3. In November 2019 a new Regulation (Regulation (EU) 2019/2033, IFR<sup>2</sup>) and a new Directive (Directive (EU) 2019/2034, IFD<sup>3</sup>) amending the prudential framework for investment firms were published on the EU Official Journal. This new legislative package aimed at introducing more proportionate and risk-sensitive rules for the prudential requirements of investment firms.
4. The IFR and IFD also introduced significant changes to the regime provided under MiFIR for third-country firms providing investment services and activities to eligible counterparties and *per se* professional<sup>4</sup> clients and under MiFID II for branches of third-country firms providing investment services to retail and professional clients on request<sup>5</sup>, notably by entrusting ESMA with new responsibilities and powers.
5. With regard to the new MiFIR regime (Articles 46 to 49 of MiFIR), the IFR has introduced changes to the requirements for third-country firms and to the process for the equivalence decision on which such regime is based. New tasks and powers are assigned to ESMA in this new regime. In addition, the new equivalence regime under Article 47 of MiFIR gives ESMA a strengthened role in the monitoring of the equivalence conditions.
6. In order to have a clearer picture of the impact of such legislative changes to the MiFIR third country firms regime on ESMA, the IFR has introduced paragraph 13 to Article 52

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<sup>1</sup> According to Article 46(2) of MiFIR, a third-country firm applying for the provision of investment services or activities throughout the Union under Article 46 of MiFIR shall be registered in the ESMA register where certain conditions are met:

- a) a decision of the European Commission declares the third country where the firm is established as equivalent (in accordance with Article 47(1) of MiFIR);
- b) the third-country firm is authorised in the jurisdiction where its head office is established to provide the investment services or activities to be provided in the Union and it is subject to effective supervision and enforcement ensuring a full compliance with the requirements applicable in that third-country;
- c) cooperation arrangements have been established between ESMA and the relevant third-country competent authorities (pursuant to Article 47(2) of MiFIR).

<sup>2</sup> Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014 (OJ L 314, 5.12.2019, p. 1-63).

<sup>3</sup> Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU and 2014/65/EU (OJ L 314, 5.12.2019, p. 64–114).

<sup>4</sup> Professional client within the meaning of Section I of Annex II to MiFID II.

<sup>5</sup> Professional client within the meaning of Section II of Annex II to MiFID II.

of MiFIR which requires ESMA to assess, by 31 December 2020, the staffing and resources needs arising from the assumption of its powers and duties in accordance with the amendments implemented by IFR and to submit a report on that assessment to the European Parliament, to the Council and to the Commission.

7. The IFR (Article 60, paragraph 2) also requires the Commission to submit to the European Parliament and to the Council, by 31 December 2021, a report on the resources needs arising from the assumption of new powers and duties by ESMA. This report shall also assess the possibility for ESMA to levy registration fees on third-country firms registered by ESMA in accordance with the MiFIR regime for third-country firms.
8. As it will be explained in the following chapters, ESMA will need to carefully analyse the implication of the new framework for its internal organisation. One key issue in this assessment will lie in the uncertainty as to the additional resources that may be allocated by the co-legislators and the scope of the additional workload for ESMA both of which depend on the number and size of the third country/countries that will receive an equivalence decision.

### **3 ESMA's role in the revised MiFIR third-country regime**

#### *ESMA's role vis-à-vis third-country firms*

9. The revised MiFIR regime for third-country firms includes strengthened registration requirements and a significant reporting flow from third-country firms to ESMA, on an annual basis, and it gives ESMA additional powers to request information as well as to temporarily restrict or prohibit the provision of investment services or activities in the Union by a third-country firm.
10. Indeed, third-country firms providing investment services and activities in the Union in accordance with Article 46 of MiFIR will be required to report, on an annual basis, granular information to ESMA on their activities in the Union such as: information about the scale and scope of such activities, specific figures regarding their dealing on own account and underwriting and placing activities, the turnover and aggregated value of the assets corresponding to their activities in the Union, their investor protection and risk management arrangements, their governance arrangements and any other information necessary to enable ESMA or the competent authorities to carry out their tasks in accordance with MiFIR<sup>6</sup>.
11. ESMA will have to communicate the information annually received from third-country firms to the NCAs of the Member States where a third-country firm provides investment services or performs investment activities.

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<sup>6</sup> See ESMA Final Report on draft technical standards on the provision of investment services and activities in the Union by third-country firms under MiFID II and MiFIR (ESMA35-43-2424) of 28 September 2020 available at [https://www.esma.europa.eu/sites/default/files/library/esma35-43-2424\\_draft\\_ts\\_on\\_provision\\_of\\_services\\_by\\_tcfs.pdf](https://www.esma.europa.eu/sites/default/files/library/esma35-43-2424_draft_ts_on_provision_of_services_by_tcfs.pdf).

12. In addition, Article 46(6b) of MiFIR enables NCAs to request information to ESMA about third-country firms.

13. The IFR also gives ESMA the power to:

- a) ask third-country firms registered in the ESMA register to provide (i) any further information in respect of their operations (where necessary for the accomplishment of the tasks of ESMA or the competent authorities in accordance with MiFIR) (last sub-paragraph of Article 46(6a) of MiFIR) and (ii) data relating to all orders and all transactions in the Union, whether on own account or on behalf of a client, for a period of five years (Article 46(6b) of MiFIR);
- b) conduct on-site inspections (Article 47(2) of MiFIR).

14. In addition to the existing ESMA's power to withdraw the registration of a third-country firm in the ESMA register (in accordance with Article 46(6c) and Article 49(2) of MiFIR), the revised MiFIR third-country regime gives ESMA the power to temporarily prohibit or restrict the provision of investment services or activities in the Union by a third-country firm under Article 46 of MiFIR where:

- a) the third-country firm has failed to comply with product intervention measures taken by ESMA or the EBA or the competent authorities of a Member State under Articles 40 to 42 of MiFIR; or
- b) the third-country firm has failed to comply with its annual reporting obligations to ESMA under Article 46(6a) of MiFIR or with a request for information from ESMA under Article 46(6a) or (6b); or
- c) the third-country firm has not cooperated with an investigation or an on-site inspection carried out by ESMA in accordance with Article 47(2) of MiFIR.

15. Finally, Article 49 of MiFIR gives ESMA the power to withdraw the registration of a third-country firm in circumstances in which one of the following conditions applies:

- a) ESMA has well-founded reasons to believe that, in the provision of investment services and activities in the Union, the third-country firm is acting in a manner which is clearly prejudicial to the interests of investors or the orderly functioning of markets;
- b) ESMA has well-founded reasons to believe that, in the provision of investment services and activities in the Union, the third-country firm has seriously infringed the provisions applicable to it in the third country and on the basis of which the Commission has adopted the equivalence;

and ESMA has referred the matter to the competent authority of the third country, and that competent authority has not taken the appropriate measures needed to protect investors or the proper functioning of the markets in the Union, or has failed to demonstrate that the third-country firm concerned complies with the requirements applicable to it in the third country or with the conditions under which the equivalence decision has been adopted.

#### *Equivalence assessment of the European Commission and ESMA's strengthened role*

16. The IFR amends the MiFIR equivalence process by (i) including equivalence between the third-country's prudential regime and the IFR/IFD as a condition for the delivery of an equivalence decision and (ii) allowing the Commission to adopt equivalence

decisions limited to specific services and activities or categories of services and activities listed under MiFID II.

17. The IFR also strengthens the aspects that the Commission will be required to assess in order to adopt the equivalence decision in relation to the legal and supervisory arrangements of a third country.
18. In particular, a more granular assessment of those requirements will have to be done where the scale and the scope of services and activities carried out by third-country firms in the Union are likely to be of systemic importance for the Union. In this case, the Commission may attach specific operational conditions to an equivalence decision. This should ensure that ESMA and NCAs have the necessary tools to prevent regulatory arbitrage and monitor the activities of third-country firms in the Union by ensuring that third-country firms, “for services provided in the Union that are of systemic importance for the Union, comply with requirements which have an equivalent effect” to the requirements on post-trade disclosure, transaction reporting and on the trading obligations for shares and derivatives.
19. ESMA is also requested to monitor, on an on-going basis, the regulatory and supervisory developments, the enforcement practices and other relevant market developments in third countries for which equivalence decisions have been adopted by the Commission in order to verify whether the conditions on the basis of which those decisions have been taken are still fulfilled<sup>7</sup>. ESMA is due to submit a confidential report on its findings to the Commission on an annual basis (Article 47(5) of MiFIR).
20. This ESMA annual report to the Commission shall also reflect the trends observed on the basis of the data that third-country firms have to annually report to ESMA in accordance with Article 46(6a) of MiFIR (in particular as regards firms providing services or performing the activities referred to in points (3)<sup>8</sup> and (6)<sup>9</sup> of Section A of Annex I of MiFID II).
21. The new MiFIR regime assigns an important role to this annual report that ESMA has to provide to the Commission. Indeed, on the basis of such report, the Commission has in turn to submit a report to the European Parliament and to the Council at least on an annual basis (Article 46(6) of MiFIR). The report shall include a list of the equivalence decisions taken or withdrawn by the Commission in the reporting year, as well as any measures taken by ESMA pursuant to Article 49 of MiFIR and provide the rationale for those decisions and measures. The Commission report shall include information on the monitoring of the regulatory and supervisory developments, the enforcement practices and other relevant market developments in third countries for which equivalence decisions have been adopted. It shall also take stock of how the cross-border provision of investment services by third-country firms has evolved in

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<sup>7</sup> This ESMA monitoring role also mirrors the new role given to ESMA in the new ESMA regulation as amended in the context of the ESAs review (Regulation (EU) No 2019/2175).

<sup>8</sup> Dealing on own account.

<sup>9</sup> Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis.



general and in particular as regards the services and activities referred to in points (3) and (6) of Section A of Annex I to MiFID II.

## 4 Assessment of ESMA's staffing and resources needs

22. As said above, by 31 December 2020, ESMA shall assess the staffing and resources needs arising from the assumption of its powers and duties in accordance with the new MiFIR regime for third-country firms as amended by MiFIR and submit a report on that assessment to the European Parliament, to the Council and to the Commission.
23. In order to properly prepare the aforementioned report, ESMA carefully analysed the implication of the new powers and duties for its internal organisation. One key issue in this assessment concerns the uncertainty concerning the scope of the additional workload for ESMA which depends on the number of equivalence decisions adopted by the Commission *vis-à-vis* third countries and the subsequent number, size and type of third-country firms that will apply for registration with ESMA.
24. If, on one side, it is worth noting that no equivalence decisions have been adopted by the Commission to date, on the other hand it should be mentioned that ESMA will have to be prepared to use the new powers as soon as any such equivalence decision is adopted, which therefore makes it necessary to plan and devote dedicated resources to this activity in order to deal with their expected impact on ESMA.
25. Indeed, the IFR strengthens the third-country regime under MiFIR and gives ESMA a number of new tasks and responsibilities that impose a significant additional burden to ESMA in terms of (human and financial) resources and organisation, including the IT implications of many of these tasks (such as getting data from third-country firms, exchange of data with NCAs and with third-country authorities, standardisation of regular information flows also in order to facilitate analysis to comply with monitoring responsibilities). Furthermore, the design of the MiFIR third-country regime, which enables third-country firms to provide services and activities from third countries on the basis of the regulatory framework in place in jurisdiction where they are established makes it very likely that a significant number of third country firms with links with the EU would apply for registration in the ESMA register once an equivalence declaration has been adopted in relation to their jurisdiction.
26. ESMA estimates the staffing and resources implications of the new MiFIR regime taking into account one or more hypothetical equivalence decisions adopted in relation to third countries. Building on figures concerning firms active in the United Kingdom, ESMA is considering two possible scenarios: one in which **880 firms** apply for registration in the ESMA register and another scenario in which a lower number of firms (**550**) apply for registration. Such figures may need to be further refined should the Commission decide to undertake an equivalence assessment of any third country (e.g. the United States, Switzerland, Japan, Singapore, etc).

### *Resources and budget implication for ESMA*

27. In light of the above, the analysis of the resource implications of the new MiFIR regime for third-country firms for ESMA takes into account:

- a) the organisational measures and processes, including the necessary IT infrastructures and processes (e.g., to gather and process the data from third-country firms, to exchange data with NCAs and with third-country authorities, to standardise the regular information flows also in order to facilitate analysis to comply with monitoring responsibilities and the requirement to report annually to the Commission) that ESMA has to put in place in order to be ready in case an equivalence decision is adopted by the Commission;
- b) the significant additional resource and staffing needs once the Commission takes its first equivalence decision.

28. In short, the resource and staffing needs estimated in the two above scenarios consist of:

- A total cost of €8.7M per year for **47 FTEs monitoring 880 firms** (Scenario 1). In terms of annual fees to be paid by TC firms, this would mean **EUR 9,800** / per annum per firm on average (8.7M€ / 880 firms).
- A total cost of €5.9M per year for **30 FTEs monitoring 550 firms** (Scenario 2). In terms of annual fees to be paid by TC firms, this would mean **EUR 10,700** / per annum per firm on average (5.9M€ / 550 firms). The slightly higher amount of the average fee versus the first scenario is mainly explained by the €1M cost for the development of an IT system which remains largely unchanged regardless the number of firms to be monitored.

29. The details of the assumptions and the estimation of the ESMA's needs are provided in Annex 5.1 (Scenario 1) and 5.2 (Scenario 2) to this Report.

## 5 Annexes

### 5.1 IFR – MIFIR Third country regime – Expected ESMA resources – Scenario 1

*The analysis is based on a hypothetical equivalence decision adopted by the Commission in relation to the UK and considers a first scenario in which 880 third-country firms apply for registration in the ESMA register and have to be monitored by ESMA.*

#### 5.1.1 Estimation of ESMA staffing and resources needs

1. In order to provide the EU Institutions with an estimation of the ESMA monitoring activities arising from the new regime and facilitate the assessment by the EU Institutions, it should be mentioned that around 3500 firms held a MiFID authorisation in the UK. From data collected in the Brexit context, around 2200 UK firms notified their intention to provide services in free provision (without branches) in the other 27 Member States in 2017.
2. This number can be the basis for an initial estimation of the number of TC firms that might request registration with ESMA (most of the below estimation only concerns the UK). In particular, we can assume that: (i) part of the above 2200 UK firms notified their passports due to the easiness of the MiFID process but they didn't actually use them; (ii) a few active UK firms decided to relocate to the EU27 in order to continue their business directly in the EU27 through subsidiaries; (iii) some firms will not be able to benefit from the MiFIR TC regime because they provide services to retail clients only.
3. With this in mind, we estimate that 40% of the 2200 UK firms passported in the 27 Member States will actually register under the new MiFIR regime. This would set an initial estimation of 880 UK firms interested in benefiting from the new MiFIR regime if the EC recognises the equivalence of the UK. This number would progressively increase based on the application by additional UK firms and on the application by firms from other jurisdictions that could be deemed equivalent by the EC. It is therefore worth emphasising that the staff estimation below concerns 880 firms from one single jurisdiction and, should a different number of firms register from the UK or other equivalent jurisdictions, the numbers below should be proportionally adjusted.
4. The estimation below also acknowledges that, in principle, a large number of registered firms will just require a light monitoring approach (registration, standard analysis of periodic information and very limited requests for additional information by ESMA to firms), and that only a limited number of them will require a more focused approach, with more in-depth analysis upon ESMA's or NCAs' initiative.
5. At first, the number of staff for each new task is to be estimated. To simplify the estimations, tasks have been grouped in three sets:
  - Task 1 – Analysis of applications of standard firms, analysis of annual reports by each firm, possible review of data on orders and transactions, communication with NCAs concerned for standard firms;

- Task 2 – Analysis of applications of qualified firms, analysis of annual reports by each firm, review of data on orders and transactions, communication with NCAs concerned for qualified firms (more complex, large or systemically relevant), which requires also on-site visits and potential withdrawal proceedings;

Tasks 1 and 2 also include the preparation of the annual report to the Commission with regard to the persistence of the initial conditions under which equivalence was granted as well as the daily management of cooperation arrangements with TC authorities.

- Task 3 – IT systems to exchange with investment firms and fee collection staff and system.

6. Annex 5.1.2 presents the details of the calculations that can be summarised in the following table:

Task	Assumptions	Number of FTE <sup>10</sup> s
<b>Task 1</b>	800 firms / 1 FTE for 50 firms	12 TAs and 4 CAs/SNEs
<b>Task 2</b>	80 firms / 1 FTE for 5 firms	12 TAs and 4 CAs/SNEs
<b>Task 3</b>	2 FTEs in IT / 2 FTEs in Finance for fees	2 TAs and 2 CAs
<b>Overheads</b>	Including Resources, Senior Mgt, Legal, Communication & Governance: 30% of total n. of core staff	2 TAs and 9 CAs

7. This leads to a total cost of €8.7M per year for 47 FTEs monitoring 880 firms. Out of this total number of FTEs, 3 FTEs may be re-deployed from ESMA's current staff and the remaining FTEs should be recruited.

8. In terms of annual fees to be paid by TC firms, this would lead to EUR 9,800 / per annum per firm on average (8.7M€ / 880 firms).

### 5.1.2 Detailed explanations on calculations on costs and FTEs

The following presents the detailed estimations of calculations for number of staff and costs.

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<sup>10</sup> Full Time Equivalent



### Task 1 – Standard firms

9. It is estimated that:

- There will be 880 firms under this regime, out of which 10% will be qualified. This leads to **800 standard firms**.
- 1 FTE can monitor 50 standard firms per year. This is in comparison to figures of prospectus application, which is the best proxy for the task for which we have reliable data.
- Relevant FTEs can also contribute to the preparation of the annual report for the Commission and handle the daily management of cooperation arrangements/MoUs with third-country authorities.

10. This would mean:

- 16 FTEs to cover this task.

### Task 2 – Qualified firms

11. It is estimated that:

- There will be 10% out of 880 firms that will be qualified such as large, systematically relevant or complex. This leads to **80 qualified firms**.
- 1 FTE can monitor 5 qualified firms per year. This is in comparison to figures of supervision of a small CRA, which is the best proxy for the task for which we have data.
- Relevant FTEs can also contribute to the preparation of the annual report for the Commission and handle the daily management of cooperation arrangements/MoUs with third-country authorities.

12. This would mean:

- 16 FTEs to cover this task.

### Task 3 – Fees and IT

13. It is estimated that:

- There is a need for an IT tool to exchange, receive information from the firms and manage the fee collection process. This is a medium-large tool estimated to 1M€ to set up.
- There is a need for 2 IT staff to set up the tool and maintain it and 2 Finance staff to manage the fee process.

14. This would mean:

- 4 FTEs to cover this task.
- 1M€

### Overheads and legal support



15. ESMA has currently in place a well-developed Activity Based Management system that allows ESMA to budget all activities per activity and calculate costs *a posteriori*. According to existing, past and planned figures, the following ratio are in place:

- The overheads in terms of resources support at ESMA, covering HR, Finance, Facility Management, Senior Management, Legal, Governance, Communications and IT basic support (excluding IT pan European projects) is 30% of ESMA staff.

16. As a comparison, the benchmarks exercises of the Commission lead to 22% of resources overheads in the Commission, but this does not include the Finance part, whereas the ESMA 20% include the Finance activity in its calculations (ESMA's equivalent benchmark in 2016 is 15.5%).

17. Given that there are 36 FTEs (16+16+4) for the main tasks, this leads to:

- Core tasks representing 70% of the total number of staff –36 FTEs
- Overheads: 30% of the total number of staff - 11 FTEs

#### Translation cost

18. Given the number of relationships with third countries and possible request for information as well as exchanges with other competent authorities, ESMA estimates a translation cost of 1 M€ per year. Considering that the current report assumes, for the only purpose of resources calculation, a hypothetical equivalence in relation to the UK, the translation costs have not been included in the final amount of the ESMA needs. However, this cost will have to be taken into account if other non-English speaking jurisdictions are declared equivalent.

#### Redeployment

19. Three FTEs at ESMA working on Investment Firms (and overhead) could be redeployed.

#### Conclusion

20. As a conclusion, the number of staff estimated for this task is 47 FTEs (16+16+4+11); in detail, 28 Temporary Agents and 19 Contract Agents/SNEs.

#### Cost calculations

21. The estimate of the costs of ESMA's new tasks is mainly based on the average cost per staff and on the outputs of ESMA's Activity-Based Budgeting (ABB) model for 2020.

22. In particular, the average cost of ESMA's staff in similar functions in 2020 calculated by ESMA's ABB model is €173,000 for TAs and €86,000 for CAs.

23. These costs are allocated as follow for each ESMA's staff:

- 74% - all staff-related expenditure with the exception of recruitment costs and the pension contribution not covered by the EU budget;
- 21% - all administrative expenditure (including also the regular expenditure for the building); and
- 5% - all operational expenditure with the exception of IT and translation expenditure.

24. The following expenditure is calculated separately and based on specific assumptions as explained here below:

- The recruitment expenditure: €13,000 per recruited staff in line with the Commission's proposal of Regulation for CCPs;
- The pension contribution for the staff not covered by the EU budget: based on ESMA's historic data, in 2020 the yearly amount of the pension contribution is estimated at €17,000 per TA and €9,000 per CA (the pension contribution being not relevant for the SNEs). If the budget of the new task is partially covered by the EU budget, the amount of the pension contribution is calculated proportionally to the percentage of non-EU funds;
- The IT expenditure: 1M€ one-off IT development cost to be followed by IT maintenance cost in the following years.

25. The expected total budget in this area is therefore as follows:

Areas of cost	Explanations	Budgetary cost in EUR
<b>Title 1: Staff cost</b>		<b>5,983,120</b>
Staff-related costs for TAs	74% of €173,000 X 28 TAs	3,584,560
Staff-related costs for CAs	74% of €86,000 X 19 CAs /SNEs	1,209,160
Recruitment Expenditure	44 new FTEs	569,400
Pension contribution	€17,000 X TA and €9,000 X CA * % non-EU budget	620,000
<b>Title 2: Administrative cost</b>	21% of FTEs cost	<b>1,360,380</b>
<b>Title 3: Operational cost</b>		<b>1,323,900</b>
Missions, databases, legal, meetings, comm...	5% of FTEs cost	323,900
IT development		1,000,000
<b>TOTAL</b>		<b>8,667,400</b>

## 5.2 IFR – MIFIR Third country regime – Expected ESMA resources – Scenario 2

*This analysis is based on the same assumptions as the one developed under the Scenario 1 but takes into account a second scenario (Scenario 2) in which a smaller number of TCFs (notably 550 TFCs) would be registered in the ESMA register and would be monitored by ESMA.*

## 5.2.1 Estimation of ESMA staffing and resources needs

26. The Scenario 2 is based on the same assumptions of Scenario 1 (illustrated above in Annex 5.1) but considers a smaller universe of firms interested in benefiting from the new MiFIR regime if the EC provides equivalence. Scenario 2 considers a number of 550 UK firms (only 25% of UK passported firms would therefore apply for registration in the ESMA register). With reference to this second scenario, it is expected that this number would progressively increase based on the application by additional UK firms and on the application by firms from other jurisdictions that could be deemed equivalent by the EC. The staff estimation below concerns 550 firms from one single jurisdiction and, should a different number of firms register from the UK or other equivalent jurisdictions, the numbers below should be proportionally adjusted.
27. Similarly to the estimation of ESMA needs under Scenario 1, the estimation acknowledges that, in principle, a large number of registered firms will just require a light monitoring approach (registration, standard analysis of periodic information and, in principle, very limited requests for additional information by ESMA to firms), and that only a limited number of them will require a more focused approach, with more in-depth analysis, upon ESMA's or NCAs' initiative.
28. To simplify the estimations of the number of staff, three sets of tasks have been grouped:
- Task 1 – Analysis of applications of standard firms, analysis of annual reports by each firm, possible review of data on orders and transactions, communication with NCAs concerned for standard firms;
  - Task 2 – Analysis of applications of qualified firms, analysis of annual reports by each firm, review of data on orders and transactions, communication with NCAs concerned for qualified firms (more complex, large or systemically relevant), which requires also on-site visits and potential withdrawal proceedings;
- Tasks 1 and 2 also include the preparation of the annual report to the Commission with regard to the persistence of the initial conditions under which equivalence was granted as well as the daily management of cooperation arrangements with TC authorities; and
- Task 3 – IT systems to exchange with investment firms and fee collection staff and system.
29. Annex 5.2.2 presents the details of the calculations that can be summarised in the following table:

<b>Task</b>	<b>Assumptions</b>	<b>Number of FTE<sup>11</sup>s</b>
<b>Task 1</b>	500 firms / 1 FTE for 50 firms	7 TAs and 3 CAs/SNEs
<b>Task 2</b>	50 firms / 1 FTE for 5 firms	8 TAs and 2 CAs/SNEs
<b>Task 3</b>	2 FTEs in IT / 1 FTEs in Finance for fees	2 TAs and 1 CAs/SNE

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<sup>11</sup> Full Time Equivalent

<b>Overheads</b>	Including Resources, Senior Mgt, Legal, Communication & Governance: 30% of total n. of core staff	1 TAs and 6 CAs
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30. In this case, the total cost per year for the above tasks (foreseeing 550 monitored firms) carried out by 30 FTEs would be €5.9M.

31. In terms of annual fees to be paid by TC firms, this would mean EUR 10,700 / per year per firm on average (5.9M€ / 550 firms). The slightly higher amount of the average fee versus the first scenario is mainly explained by the €1M cost for the development of an IT system which stay unchanged regardless the number of firms to be monitored.

## 5.2.2 Detailed explanations on calculations on costs and FTEs

The following presents the detailed estimations of calculations for number of staff and costs.

### Task 1 – Standard firms

32. It is estimated that:

- The Scenario 2 considers 550 firms under this regime, out of which 10% will be qualified. This leads to **500 standard firms**.
- 1 FTE can monitor 50 standard firms per year. This is in comparison to figures of prospectus application, which is the best proxy for the task for which we have reliable data.
- Relevant FTEs can also support the preparation of the annual report for the Commission and handle the daily management of cooperation arrangements/MoUs with third-country authorities.

33. This would mean:

- 10 FTEs to cover this task.

### Task 2 – Qualified firms

34. It is estimated that:

- There will be 10% out of 550 firms that will be qualified such as complex, large or systematically relevant firms. This leads to **50 qualified firms**.
- 1 FTE can monitor 5 qualified firms per year. This is in comparison to figures of supervision of a small CRA, which is the best proxy for the task for which we have data.
- Relevant FTEs can also support the preparation of the annual report for the Commission and handle the daily management of cooperation arrangements/MoUs with third-country authorities.

35. This would mean:



- 10 FTEs to cover this task.

### Task 3 – Fees and IT

36. It is estimated that:

- There is a need for an IT tool to exchange, receive information from the firms and manage the fee collection process. This is a medium-large tool estimated to 1M€ to set up.
- There is a need for 2 IT staff to set up the tool and maintain it and 1 Finance staff to manage the fee process.

37. This would mean:

- 3 FTEs to cover this task.
- 1M€

### Overheads and legal support

38. ESMA has currently in place a well-developed Activity Based Management system that allows ESMA to budget all activities per activity and calculate costs *a posteriori*. According to existing, past and planned figures, the following ratio are in place:

- The overheads in terms of resources support at ESMA, covering HR, Finance, Facility Management, Senior Management, Legal, Governance, Communications and IT basic support (excluding IT pan European projects) is 30% of ESMA staff.

39. As a comparison, the benchmarks exercises of the Commission lead to 22% of resources overheads in the Commission, but this does not include the Finance part, whereas the ESMA 20% include the Finance activity in its calculations (ESMA's equivalent benchmark in 2016 is 15.5%).

40. Given that there are 23 FTEs (10+10+3) for the main tasks, this leads to:

- Core tasks representing 70% of the total number of staff – 23 FTEs
- Overheads: 30% of the total number of core staff – 7 FTEs.

### Translation cost

41. Given the number of relationships with third countries and possible request for information as well as exchanges with other competent authorities, it is estimated a translation cost of 1 M€ per year. Considering that the current report assumes, for the only purpose of resources calculation, a potential equivalence in relation to the UK, the translation costs have not been included in the final amount of the ESMA needs. However, this cost will have to be taken into account if other non-English speaking jurisdictions are declared equivalent.

### Redeployment



42. There is currently 3 FTEs at ESMA working on Investment Firms (and overhead) that could consider being redeployed.

Conclusion

43. As a conclusion, the number of staff estimated for this task is 30 FTEs (10+10+3+7); in details, 18 Temporary Agents and 12 Contract Agents.

Cost calculations

44. The estimate of the costs of ESMA’s new tasks is mainly based on the average cost per staff and on the outputs of ESMA’s Activity-Based Budgeting (ABB) model for 2020.

45. In particular, the average cost of ESMA’s staff in similar functions in 2020 calculated by ESMA’s ABB model is €173,000 for TAs and €86,000 for CAs.

46. These costs are allocated as follow for each ESMA’s staff:

- 74% - all staff-related expenditure with the exception of recruitment costs and the pension contribution not covered by the EU budget;
- 21% - all administrative expenditure (including also the regular expenditure for the building); and
- 5% - all operational expenditure with the exception of IT and translation expenditure.

47. The following expenditure is calculated separately and based on specific assumptions as explained here below:

- The recruitment expenditure: €13,000 per recruited staff in line with the Commission’s proposal of Regulation for CCPs;
- The pension contribution for the staff not covered by the EU budget: based on ESMA’s historic data, in 2020 the yearly amount of the pension contribution is estimated at €17,000 per TA and €9,000 per CA (the pension contribution being not relevant for the SNEs). If the budget of the new task is partially covered by the EU budget, the amount of the pension contribution is calculated proportionally to the percentage of non-EU funds;
- IT expenditure: 1M€ one-off IT development cost to be followed by IT maintenance cost in the following years.

48. The expected total budget for those powers is therefore as follows:

Areas of cost	Explanations	Budgetary cost in EUR
<b>Title 1: Staff cost</b>		<b>3,813,740</b>
Staff-related costs for TAs	74% of €173,000 X 18 TAs	2,304,360
Staff-related costs for CAs	74% of €86,000 X 12 CAs	763,680
Recruitment Expenditure	27 new FTEs	349,700

Pension contribution	€17,000 X TA and €9,000 X CA * % non-EU budget	396,000
<b>Title 2: Administrative cost</b>	21% of FTEs cost	<b>870,660</b>
<b>Title 3: Operational cost</b>		<b>1,207,300</b>
Missions, databases, legal, meetings, comm...	5% of FTEs cost	207,300
IT development		1,000,000
<b>TOTAL</b>		<b>5,891,700</b>