

NOTE

Practical guidance for the registration of Trade Repositories by ESMA

Introduction

1. The purpose of this note is to provide information on the registration by ESMA of Trade Repositories (“TR”) under Titles VI and VII of Regulation EU n°648/2012¹ (“EMIR”) and the relevant technical standards.
2. Issues relating to the substantive examination of whether the conditions for registration of the TR applicant are met are not dealt with in this note.
3. TR applicants should take particular notice of the section on fees below.

1. Communication with ESMA prior to the application

Handling of questions before the application

4. In order to establish a quick and efficient way of communication between ESMA and potential applicants for registration as a TR under Titles VI and VII EMIR, a functional mailbox TR-Registration@esma.europa.eu has been set up.
5. General questions on the preparation of a TR application should be sent to this email address, clearly stating on behalf of which TR applicant the questions are submitted and, if possible, the planned date for its application.
6. This email address should only be used for questions related to procedural matters or general questions on the applicable rules that are relevant to the application, but ESMA will not reply to specific issues that would imply a pre-assessment of the TR’s application.
7. In order to avoid duplication of work, ESMA does not accept to review draft applications or a specific part of an application ahead of the full submission. Only the final version of the application will be acknowledged and replied.

Indication of the planned application date

8. For organisational purposes, the TR applicant is invited to send an email to TR-Registration@esma.europa.eu at least 5 working days before the date on which it intends to send its application, indicating the planned application date. This email is for information only and is not binding on the TR applicant.

¹ Regulation EU n°648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ 27/7/2012, L201/1.



Contacts on language issues

9. According to Article 73(1) of Regulation 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority)² and Regulation 1/1958 determining the languages to be used in the EU³, documents sent to ESMA (including applications) may be drafted in any one of the official EU languages.
10. Nevertheless, Article 73(2) of Regulation 1095/2010 also provides that ESMA's Management Board shall decide on the internal language arrangements of ESMA and the Management Board decided that the internal working language of ESMA is English⁴.
11. Therefore, the working language for the examination by ESMA of all TR applications will be English.
12. In this respect, ESMA strongly prefers to receive documentation in English, and the TR applicant is thus invited to send its application in English. Nonetheless, the choice of language will not play any role in the consideration of the application.
13. If a TR applicant intends to send an application in an official EU language other than English, contacts between the TR applicant and ESMA should take place before the application is sent in order to provide ESMA with sufficient time to organise the relevant translation arrangements.
14. The TR applicant is invited to do the following:
 - a. contact ESMA as early as possible before sending its application with an indication of the approximate number of pages that will be submitted in a language other than English;
 - b. send as many documents as possible in Word format in order to facilitate translation.
15. Furthermore, in the event an application is sent in another language than English, and unless the TR applicant indicates that it prefers to receive correspondence from ESMA in the language of the application, ESMA intends to send all correspondence to the TR applicant, such as the acknowledgement of receipt, requests for additional information, the letter of completeness, and the decision on registration, in English rather than in the language of the application.

2. Sending the application

Format of the application and number of copies

16. An application for registration shall be provided in an instrument which stores information in a durable medium.
17. The TR applicant shall send to ESMA (i) two paper versions of its application (including one original) and (ii) an electronic version of its application saved in an electronic device, such as USB-key (preferred option), a CD-rom, or a DVD.

² Regulation EU n°1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), OJ 15/12/2010, L 331/84.

³ Regulation EC n°1 of 15 April 1958, determining the languages to be used by the European Economic Community, OJ 17, 6/10/1958, p.385.

⁴ ESMA, Decision of the Management Board, ESMA/2011/MB/3, 11 January 2011.



18. The application should be sent to: ESMA, Markets division, Post-Trading, **Trade Repository Registration**, CS 60747, 103 rue de Grenelle, 75345 Paris Cedex 07, France.
19. **In order to ensure that ESMA is able to deal with your application in a timely manner, please make sure that it is correctly addressed and that the reference to “Trade Repository Registration” is clearly visible.**
20. The paper version must be strictly identical to the electronic version and must be sent to ESMA together with the electronic version. Both the paper and the electronic versions should therefore be sent by post. Applications should not be sent by email.
21. If requested by ESMA, the TR applicant must be able to send certified copies of the documents.
22. The TR applicant shall give a unique reference number to each document submitted in its application, and shall provide a table clearly linking the reference number of the document with the article of EMIR and of the regulatory technical standards in relation to which the document is provided.

Language of the application

23. Please see paragraph 9 and following.

3. Acknowledgment of receipt of the application

24. An acknowledgement of receipt is sent to the TR applicant at the latest on the following working day after receipt of the application at the address provided in paragraph 18.
25. The acknowledgement of receipt does not imply that the file is considered as complete.

4. Deadlines

26. For the calculation of deadlines referred to in the EMIR legislation, “working days” are defined as the working days within ESMA.
27. For a list of dates when ESMA is closed, please refer to http://www.esma.europa.eu/system/files/esma_closing_dates_2013.pdf
28. The computation of deadlines starts from the following working day after the relevant event (receipt of the application, notification of completeness, receipt of additional information when the application was considered as incomplete, etc.).

5. Assessment of the completeness, requests for additional information and notification of completeness

29. If the application is considered as incomplete, ESMA will send a letter of incompleteness to the TR applicant, together with a list of additional information that must be submitted.
30. ESMA will set a deadline for the additional information to be provided by the TR applicant. The standard deadline is 10 working days, extended to 20 working days if necessary due to the complexity or volume of the requested information.



31. The applicant TR can provide its response in paper version or by email to TR-Registration@esma.europa.eu. In case you decide to provide your response in paper version, to ensure ESMA is able to process it quickly, please send it to the address provided in paragraph 18.
32. ESMA will acknowledge the receipt of the additional information within one working day from receipt at the address provided in paragraph 18.
33. When the requested information is received by ESMA, ESMA will assess whether the additional information causes the application to be complete within 20 working days of receipt of the information.
34. When the application is considered complete, ESMA will send a letter of completeness to the TR applicant from which ESMA has 40 working days to examine the application's compliance with the requirements of EMIR.

6. Examination of the application

35. If needed, in order to assess whether the conditions for registration are met, an on-site visit may be requested by ESMA. Arrangements for such an on-site visit will be discussed on a case-by-case basis between the TR applicant and ESMA. These on-site visits are distinct from the general investigations and the on-site inspections that ESMA has the right to carry out under Articles 62 and 63 EMIR.
36. Furthermore, if need be, requests for additional information can be sent by ESMA during the examination phase of the application. Deadlines for the reply by the TR should be as short as possible. In principle, the standard deadline will be 3 working days.

7. Decision on the registration application

37. According to Article 58 EMIR, the registration decision must be adopted within 40 working days from the notification on completeness.
38. The decision on the TR application is adopted by ESMA's Board of Supervisors.
39. The decision shall take effect on the fifth working day following its adoption.

8. Notification of the decision

40. According to Article 59 EMIR, the decision on the registration must be notified to the TR within 5 working days. The decision is also notified without undue delay to the relevant NCA (i.e. the NCA referred to in Article 57 EMIR, if applicable) and communicated to the European Commission.

9. Publication on ESMA's website

41. According to Article 59(3) EMIR, ESMA shall publish on its website a list of registered TRs.
42. This list shall be updated within five working days following the adoption of the registration decision.

10. Fees

43. According to Article 72 EMIR, ESMA must charge fees to TRs in order to fully cover ESMA's necessary expenditure relating to the registration and supervision of TRs and to reimburse the necessary expenditure of competent authorities carrying out work as a result of a delegation of supervisory tasks



related to TRs. The amount of the fee charged must cover all administrative costs incurred by ESMA and be proportionate to the turnover of the trade repository concerned.

44. **A TR applicant should therefore be aware that the submission of an application to ESMA for registration as a TR under EMIR gives rise to an obligation to pay fees to ESMA which will be determined by a delegated act adopted by the European Commission.** That act will provide further specification on the type of fees charged, the matters for which fees are due, the amount of fees and the manner in which they are to be paid.
45. On 14 January 2013, ESMA received a formal request from the Commission to provide technical advice to assist it in formulating its delegated act on fees. ESMA conducted a public consultation on possible fee structures for the registration and supervision of TRs. On 2 April 2013, ESMA sent its final technical advice to the Commission on fees for TRs. This final advice may be consulted on ESMA's TR webpage (<http://www.esma.europa.eu/page/Trade-repositories>).
46. TR applicants should note that the fees payable to ESMA for the submission of an application to ESMA will be determined by the delegated act on fees. In particular, in accordance with Article 72 EMIR, ESMA must charge fees for TR registration and ESMA will collect any fees due to it in accordance with the delegated act on fees and after the date of its entry into force.
47. For an indication of the amount and structure of fees charged by ESMA, the TR applicant may refer to the aforementioned final technical advice that ESMA provided to the Commission. However, a TR applicant should note that the delegated act ultimately adopted by the Commission may depart from ESMA's advice.
48. Operationally, when an application for TR registration is received, a financial identification form will be sent to the applicant. Once the delegated act on fees comes into force, in accordance with that act, ESMA will send an invoice for registration and supervisory fees payable to ESMA and will specify the payment due dates.

11. Notification of material changes

49. According to Article 55(4) EMIR, a TR shall comply at all times with the conditions for registration, and a TR shall, without undue delay, notify ESMA of any material changes to the conditions for registration. Furthermore, Article 61 EMIR gives the power to ESMA to send requests for information to the TR and Article 71(1)(c) EMIR provides that ESMA shall withdraw the registration of a TR where the TR no longer meets the conditions under which it was registered.
50. In light of these provisions, TRs are encouraged to warn ESMA in advance in the event that they wish to implement in the future a material change to the conditions for registration. They should send an email to TR-Registration@esma.europa.eu.
51. A material change is any change that may affect the substance of the information submitted in the application. In any event, all changes that may affect compliance with the requirements of EMIR are material.
52. The following is a non-exhaustive list of examples of changes to be considered as material and thus notified: opening or closing of branches; changes in the legal form; changes in the services and ancillary activities which are performed; changes in the classes of derivatives which are reported; changes



in the ownership structure; changes in the systems and resources used; changes in internal compliance policies; etc.