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| Response Form to the Consultation Paper  |
| ESMA advice on the criteria 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\_DRCR\_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\_DRCR\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_ DRCR \_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” 🡪 “ CP on DRSP criteria for derogation”).

**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 | KELER Central Securities Depository Ltd. |
| Activity | Other Financial service providers |
| Are you representing an association? |[ ]
| Country/Region | Hungary |

**Introduction**

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

<ESMA\_COMMENT\_CP\_DRCR\_1>

KELER Ltd., the sole central securities depository and a specialized credit institution in Hungary, founded in 1993 is owned by the Central Bank of Hungary and the Budapest Stock Exchange. KELER has started it’s trade reporting services as a third party service provider with EMIR in 2014 and constantly expanding the range of services with other reporting regimes (REMIT, MiFIR, SFTR).

As a reporting agent, KELER collects and forwards the required details of financial derivatives and energy trades to the relevant trade repository or authority. KELER TR offers the same platform for meeting REMIT, EMIR, MiFID II / MIFIR and SFTR reporting obligations, making the data submission easy and straightforward for Clients.

KELER is a registered APA and ARM. Pre- and post trade transparency reporting is open for investment firms authorised in any Member State while transaction reporting can only be sent to the Hungarian NCA (Central Bank of Hungary).

As a result of the above KELER as a DRSP feels addressed to fill ESMA’s consultation paper. We understand that the delegated act to be introduced shall highly affect our operation especially if derogation criteria wouldn’t be met.

<ESMA\_COMMENT\_CP\_DRCR\_1>

**Questions**

1. : Do you agree with the proposed method to determine if the APA or ARM services are provided to investment firms authorised in one Member State only?

<ESMA\_QUESTION\_DRCR\_1>

We suggest ESMA not to use only one criteria to determine which service providers have the derogation from authorisation and supervision by ESMA. In our opinion service providers who have limited number of investment firms as clients can have limited relevance for the internal market even if they have cross-border services to report.

<ESMA\_QUESTION\_DRCR\_1>

1. : Do you agree with the need for a periodic (e.g. annual) reassessment of adherence to this specific criterion?

<ESMA\_QUESTION\_DRCR\_2>

Yes, we do agree that periodic review is necessary.

<ESMA\_QUESTION\_DRCR\_2>

1. : Do you have a view if a minimum threshold should be applied to a number of investment firms to which services are provided in a given Member State? If yes, please specify.

<ESMA\_QUESTION\_DRCR\_3>

A threshold might be applied to define the extent to which the services of the DRSP qualify as cross-border. Taken into consideration the different sizes of businesess and clienteles across the industry we suggest a combination of a proportion and an absolute number as follows:

* 1. Define an absolute (minimum) number of investment firms authorised in other Member States that are served by the DRSP. (At least 10 firms). If the number of investment firms to which the DRSP provides services reaches at least this threshold then the DRSP might qualify as cross-border provider.
	2. Define the proportion (in precentage) of the relevant foreign clients (authorised in other Member States and using the APA and/or ARM services) of the DRPS, where the minimum threshold should be at least 25%.

*(E.g. If threshold is set to 25% and the DRSP has 100 clients then at least 25 investment firms should be authorised in other Member States in order to be qualified as a cross-border provider.*

Both criteria should be simultaneously met, i.e.:

Minimum number of 10 AND 25% of the all the firms served by the DRSP (as APA or ARM) should be authorised in other Member State(s)

<ESMA\_QUESTION\_DRCR\_3>

1. : Do you think another method for determination of the first criterion should be considered? If yes, please specify.

<ESMA\_QUESTION\_DRCR\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRCR\_4>

1. : Do you agree that the proposed method should rely on the information to be provided APAs and ARMs?

<ESMA\_QUESTION\_DRCR\_5>

Yes, we do agree.

<ESMA\_QUESTION\_DRCR\_5>

1. : Do you agree with the proposed calculation method for APA and ARM?

<ESMA\_QUESTION\_DRCR\_6>

Yes, we do agree.

<ESMA\_QUESTION\_DRCR\_6>

1. : Do you agree that consideration should be given not only to the number of trade reports or transaction, but also overall volumes made public by/reported within the trade reports/transactions?

<ESMA\_QUESTION\_DRCR\_7>

Yes, we do agree.

<ESMA\_QUESTION\_DRCR\_7>

1. : Do you have a view below what threshold (both, in terms of number of trade reports/transactions and their volumes) an APA or an ARM should be considered to be of limited relevance for the internal market?

<ESMA\_QUESTION\_DRCR\_8>

We suggest ESMA to specify the threshold for number of trade reports at least 1.000.000 transactions per year.

<ESMA\_QUESTION\_DRCR\_8>

1. : Do you agree that calculation for APA would be carried out based on transparency quantitative data submitted to FIRDS Transparency system (FITRS)?

<ESMA\_QUESTION\_DRCR\_9>

Yes, we do agree. FITRS is an accurate and reliable data source.

<ESMA\_QUESTION\_DRCR\_9>

1. : Do you agree that calculations for ARM would be carried out based on transactions reported under Article 26(1) of MiFIR?

<ESMA\_QUESTION\_DRCR\_10>

Yes, we do agree.

<ESMA\_QUESTION\_DRCR\_10>

1. : Do you agree with the need for a periodic (e.g. annual) reassessment of initial calculations in order to confirm their ongoing relevance?

<ESMA\_QUESTION\_DRCR\_11>

Yes, we do agree.

<ESMA\_QUESTION\_DRCR\_11>

1. : Do you think another method for determination of the second criterion should be considered? Please specify?

<ESMA\_QUESTION\_DRCR\_12>

In our view the amount of income from the DRSP activity (in the relevant reporting services, ie. APA, ARM) should be considered as a criterion. Since ESMA plans to collect a membership/supervisory fee from DRSPs, it would be counterproductive if this fee were higher then the annual revenue from this activity or would significantly endanger the profitabilty of the services.

Obviously KELER will only provide APA and ARM services as long as it’s profitability is ensured. Assessing market conditions we do not see the possibility of further fee increases on our side.

We suggest ESMA to consider profitability issues and determine the second criterion taking this to account.

<ESMA\_QUESTION\_DRCR\_12>

1. : Do you agree with the proposed method?

<ESMA\_QUESTION\_DRCR\_13>

Yes, we do agree.

<ESMA\_QUESTION\_DRCR\_13>

1. : Do you think another method for determination of the third criterion should be considered? Please specify?

<ESMA\_QUESTION\_DRCR\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRCR\_14>

1. : Do you agree with this additional criterion for ARMs? If not, please explain why.

<ESMA\_QUESTION\_DRCR\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRCR\_15>

1. : Do you think another additional criterion should be considered for APAs? If yes, please specify.

<ESMA\_QUESTION\_DRCR\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRCR\_16>

1. : Do you agree that criteria to determine upfront which data reporting services providers are derogated from ESMA supervision should be the same as those, to be applied for possible future applicants? If no, please explain why and propose alternative criteria.

<ESMA\_QUESTION\_DRCR\_17>

Yes, we do agree.

<ESMA\_QUESTION\_DRCR\_17>

1. : How do you think the elements to determine if an ARM or APA have a derogation should apply: cumulatively or not? Please explain why.

<ESMA\_QUESTION\_DRCR\_18>

In our view the elements should not apply cumulatively. If an ARM or APA does not fulfill specific criterion that does not mean that it has material relevance for the internal market.

For example if an APA reaches the threshold set for the number of trade reports or transaction values but does not qualify as cross-border provider it should still be eligible for derogation from ESMA supervision.

<ESMA\_QUESTION\_DRCR\_18>

1. : If the elements are not to be applied cumulatively, should a combination of several elements apply instead? If yes, combination of which ones and why?

<ESMA\_QUESTION\_DRCR\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_DRCR\_19>