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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**

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

**Introduction**

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

<ESMA\_COMMENT\_CP\_DRFE\_1>

Euronext operates Regulated Trading Venues and Central Security Depositories in seven European Countries. As part of its service, Euronext offers, through one of its affiliates, trade publication and transaction reporting services, registered as an Approved Publication Arrangement (APA) and an Approved Reporting Mechanism (ARM) with the AMF”.

<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>

We have reviewed the ESMA Consultation Paper with respect to the **proposed fees for DRSPs.** Currently, Euronext runs an APA/ARM service which is supervised by the AMF.

We have concerns on the suggested amount of the fees. The proposed baseline fee by ESMA already covers the not insubstantial amount of EUR 30,000. On top of this fee an additional portion will be assigned for ESMA to recover the costs incurred during the preparatory work inherent to the task assigned to ESMA.

We understand the argument of budget neutrality, but we question the amount budgeted by ESMA given the current (limited) landscape of APA/ARMs that would be expected to cover this fee.

We believe the fees as suggested could potentially create a considerable burden on what is essentially a high risk and associated cost, low margin business and for that reason we deem the suggested fees disproportionate.

When assessing the broader market, we would suspect that the impact of the proposed fee structure could even lead to **further market concentration of APA/ARM service providers** with only the largest in scale able to operate without incurring ongoing financial losses.

In addition, the unpredictability of fees on a year-on-year basis as laid out in the Consultation Paper adds **difficulty for the financial planning of DRSP businesses**. The unpredictability 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‘s 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.
* The number of DRSP supervised by ESMA: this can change from one year to another and, considering the above, it is likely that the number of DRSPs will decrease 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 a DRSP‘s remit.
* The weighting of each DRSP revenues over the total turnover for a given DRSP: 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.

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. Should these supervisory fees lead to a further concentration, the fees would consequently be even higher for the DRSPs that are able to remain active.

<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 DRSPs (i.e. EUR 100,000 and EUR 50,000 for the first and second services respectively) makes it very unlikely that new players will enter this market unless they have an outstanding size prior to their entry into activity.

We therefore believe this proposal could potentially lead to a decrease in the number of players in the DRSP arena. Such a marked decrease in competition would deviate from the spirit and intent of MiFID II as well as from that of the broader regulatory framework for financial services.

<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>

We refer to our answers to Questions 1 and 2.

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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 believe using a basis of EBIT or EBITDA calculations would provide a more level approach and avoid favouring Large in Scale vendors where fixed costs potentially spread across greater transaction volumes.

<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>

No, we do not agree that ancillary services need to be included. The purpose of supervision is to supervise the **regulated activities**. Ancillary services are not part of the core regulated activities and should therefore be excluded. Also, the term “ancillary services” could be interpreted quite broadly and differ per type of market participant which could lead to an uneven application of the methodology and a distorted outcome in terms of the fees charged.

<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 above, we do not agree that ancillary services need to be included. The term “ancillary services” could be interpreted quite broadly and differ per type of market participant which could lead to an uneven application of the methodology and a distorted outcome in terms of the fees charged.

<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 believe the amount is relatively high compared to the fees currently charged across the EU. Considering the type of activity, which is data driven and automated, we would expect a relatively lower fee.

<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>

No, we do not agree and refer to our answers under Questions 1, 2 and 11.

<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>

We do not believe the request for separate auditable accounts on APA and ARM services may be practical, especially not in the case of group activities.

<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 with the proposed approach. The Consultation Paper (Paragraph 71 and 72) states that costs incurred for the preparatory work will amount up to around EUR 4.2 million with these 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 suggest a reconsideration of this approach with respect to the burden on DRSPS, for two main reasons:

* The additional fees, so far unpredictable, will risk the financial viability and risk of DRSPs, as explained above.
* Preparatory work is inherent to the task assigned to ESMA; without this preparatory work, 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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>

TYPE YOUR TEXT HERE

<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>