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| Response Form to the Consultation Paper  |
| Technical Advice on simplification TR fees under SFTR and EMIR |

**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 **24 April 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\_TRFE\_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\_TRFE\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_ TRFE \_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” 🡪 “Technical Advice on simplification TR fees under SFTR and EMIR”).

**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?**

All interested stakeholders are invited to respond to this consultation. In particular, responses are sought from financial and non-financial counterparties to derivatives, central counterparties (CCPs) and trade repositories (TRs), as well as from all the authorities having access to the TR data.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | REGIS-TR |
| Activity | Other Financial service providers |
| Are you representing an association? |[ ]
| Country/Region | Luxembourg |

**Introduction**

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

<ESMA\_COMMENT\_TRFE\_1>

REGIS-TR is a European Trade Repository (TR) which enables market participants to report transactions as required under EMIR[[1]](#footnote-2) and SFTR[[2]](#footnote-3). REGIS-TR thanks ESMA for the opportunity to participate in this consultation paper on Technical Advice on simplification TR fees under SFTR and EMIR.

<ESMA\_COMMENT\_TRFE\_1>

**Questions**

1. Do you agree with the alignment of fee frameworks between EMIR and SFTR? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TRFE\_1>

REGIS-TR agrees with the alignment of the EMIR and SFTR fee framework. For increased transparency and due to the similarities of both services, REGIS-TR considers it reasonable to adopt a common approach.

<ESMA\_QUESTION\_TRFE\_1>

1. Do you agree with the proposed alignment of the registration fees structure under EMIR with that under SFTR? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TRFE\_2>

REGIS-TR agrees with the alignment of the registration fee structure between EMIR and SFTR. For increased transparency and due to the similarities of both services, REGIS-TR considers it reasonable to adopt a common approach.

<ESMA\_QUESTION\_TRFE\_2>

1. Do you agree with the simplification and harmonisation as proposed under Alternative A or as proposed under Alternative B? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TRFE\_3>

REGIS-TR agrees with the simplification and harmonisation as proposed under Alternative B. REGIS-TR believes that a single fixed fee would be a fair approach given that all registered TRs were already subject to that amount.

<ESMA\_QUESTION\_TRFE\_3>

1. Do you agree with the proposed alignment of amounts of fees for registration and extension of registration under EMIR with those under SFTR? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TRFE\_4>

REGIS-TR agrees with the alignment of fee amounts for the registration and extension of registration fees between EMIR and SFTR. For increased transparency and due to the similarities of both services, REGIS-TR considers it reasonable to adopt a common approach.

<ESMA\_QUESTION\_TRFE\_4>

1. Do you agree with the fee proposals under Alternative A or as proposed under Alternative B? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TRFE\_5>

REGIS-TR agrees with the fee proposal under Alternative B, which we consider more appropriate than Alternative A. REGIS-TR believes that a single fixed fee would be a fair approach given that all registered TRs that extended their registration were already subject to that amount.

<ESMA\_QUESTION\_TRFE\_5>

1. Do you agree with this proposal? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TRFE\_6>

REGIS-TR agrees with the proposal. Taking into consideration cost-relatedness aspects, REGIS-TR believes that a concurrent application for EMIR and SFTR should trigger reduced SFTR registration fees instead of the full fee, as administrative costs related to the processing of the two applications must be lower.

<ESMA\_QUESTION\_TRFE\_6>

1. Do you agree with the proposed alignment of calculation of the applicable turnover under EMIR with that under SFTR? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TRFE\_7>

REGIS-TR agrees, in general, with the alignment of the turnover calculation between EMIR and SFTR. For increased transparency and due to the similarities of both services, REGIS-TR considers convenient a common and simplified approach.

We would, nevertheless, like to point out that although the proposal intends to simplify the calculation mechanism, REGIS-TR has a number of concerns related to the annual budget management process in general:

1. CDR 1003/2013 provides that the relevant amount for the calculation of the annual supervisory fee charged to a supervised TR is based on the estimate of expenditure relating to the supervision, potentially decreased by recognition fees charged to third-country TRs registration fees, annual supervisory fees paid by new TRs, and the surplus of annual supervisory fees from the previous year (or the deficit from the previous year). This base amount is then split across different TRs based on their turnover. During the annual budget exercise in September/October of each calendar year, TRs do not have information related to the base amount that ESMA needs to recover from TRs in the following calendar year. At that point in time, TRs also cannot estimate their overall market share that ESMA is going to use to calculate the annual supervisory fees. Thus, under the current regime, the annual supervisory fee to be charged by ESMA for the following year is largely indeterminable during the annual budget process as it is dependent and variable according to the total ESMA expenditure and the performance of other TRs. TRs who need to plan their budget well in advance, are facing problems to accurately estimate the applicable annual supervisory fee amount. Subsequent deviations in the actual figures versus the budgeted amounts may lead to problems during the year in terms of the TRs financial performance and the adequate allocation of financial resources to project activities and regulatory initiatives to be financed. Therefore, guidance from ESMA on how to estimate forthcoming annual supervisory fees would be appreciated. Particularly, REGIS-TR would appreciate to receive the criteria used by ESMA to calculate the budget in order to have the sufficient tools to simulate it. REGIS-TR understands that such criteria is based on a supervision which is characteristic of TRs.
2. The close-down / wind-down of a TR in one particular year should not affect the ratio of the ESMA expenditure to be distributed amongst the TRs that continue operations in the following year. REGIS-TR would like to recommend that ESMA considers that in case of close-down / wind-down of a TR, the leaving TR should pay a fixed supervisory fee related to the close-down, or a fee with a variable element depending on its volume, potentially linked to a cap. In addition, with regard to the ESMA supervisory fees, REGIS-TR would recommend to establish a process for the recalculation of the supervisory fees that are distributed amongst the remaining TRs by excluding the ESMA costs related to the leaving/wind-down TR.
3. REGIS-TR feels that increased or decreased turnover may not necessarily lead to proportionally higher or lower supervisory fees. REGIS-TR would appreciate if ESMA would consider preparing a benchmark of fees to be charged based on historical data (aligned approximately with historic fees charged), and in addition include a sliding scale / cap of fees to be charged. Example: EUR 500k additional revenue in the current year would lead to a x% increase in the following year’s fees; EUR 1m additional revenue would lead to a y% increase in the supervisory fee in the following year.

<ESMA\_QUESTION\_TRFE\_7>

1. Do you agree with retaining the current approach relating to minimum annual supervisory fee under EMIR and SFTR? Please detail the reasons for your response.

<ESMA\_QUESTION\_TRFE\_8>

REGIS-TR agrees with retaining the current approach relating to minimum annual supervisory fees. For increased transparency and due to the similarities of both services, REGIS-TR considers convenient to adopt a common approach.

<ESMA\_QUESTION\_TRFE\_8>

1. Do you agree with the proposal for the first-year supervisory fees under EMIR and SFTR? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TRFE\_9>

REGIS-TR agrees with the proposal for the first-year supervisory fees under EMIR and SFTR. Taking into consideration cost-relatedness aspects, we feel that pro-rating the fees for the first year based on the number of days of activity is a reasonable approach. We understand that the determining factor in the calculation is the date of the actual registration, as opposed to the date of the submission of the application.

<ESMA\_QUESTION\_TRFE\_9>

1. Do you agree with the simplification of the determination of the initial recognition fees under EMIR and SFTR? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TRFE\_10>

REGIS-TR agrees with the simplification of the initial recognition fees under EMIR and SFTR. Taking into consideration cost-relatedness aspects, we feel that a concurrent application by a third-country TR for recognition under EMIR and SFTR should trigger reduced SFTR recognition fees instead of paying the full fee twice, as administrative costs related to the processing of the two applications must be lower.

<ESMA\_QUESTION\_TRFE\_10>

1. Do you agree with the proposed amounts? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TRFE\_11>

REGIS-TR is not convinced the proposed amounts are set at the right level. We feel it would make more sense to adopt an approach similar to the fees proposed for the concurrent application for registration under EMIR and SFTR, i.e. in the case of application for recognition under EMIR only, the third-country TR should pay EUR 55,000. In case the third-country TR applies at the same time for recognition under EMIR and SFTR, the third-country TR should pay 50% of the EMIR recognition fees, i.e. EUR 22,500.

<ESMA\_QUESTION\_TRFE\_11>

1. Do you agree with the proposal for the payment conditions by TRs of the fees for registration, extension of registration and initial recognition under EMIR and SFTR? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TRFE\_12>

REGIS-TR is not aligned with the proposed payment conditions. Whilst those conditions are standard business practice for smaller amounts, ESMA invoices typically require high level approvals in the organisation, up to board level, which may result in longer approval processes and hence a longer payment timeframe. REGIS-TR would therefore recommend to change the payment terms to 45 or 60 days from the date of issuance of ESMA’s relevant debit note, which would give TRs the necessary time to obtain the required approvals, particularly if ESMA intends to only issue one Debit Note per year, rather than the current two instalments.

<ESMA\_QUESTION\_TRFE\_12>

1. Do you agree with retaining the approach on non-reimbursemnt of fees of the fees for registration, extension of registration and initial recognition under EMIR and SFTR? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TRFE\_13>

REGIS-TR is not aligned with the non-reimbursement of fees in case of the withdrawal of the application. REGIS-TR believes that although some costs may already be triggered as of the start of the application process, a cost-related approach would rather suggest linking the reimbursement amount to the actual status of the application process. REGIS-TR would therefore recommend that for applications withdrawn during the first phase of the application process (during the completeness assessment), 50% of the registration fees would be reimbursed. We think it is justified not to reimburse any registration fees once the compliance assessment phase has started.

<ESMA\_QUESTION\_TRFE\_13>

1. Do you agree with the proposed approach for the payment of the annual supervisory and recognition fees under EMIR and SFTR? Please elaborate on the reasons for your response.

<ESMA\_QUESTION\_TRFE\_14>

REGIS-TR agrees with the proposal to only make one full payment of the annual recognition fees in each calendar year. We believe this practice would ease the budget monitoring processes on the TR side, as no further costs would be expected later in the year, once the full amount has been paid.

REGIS-TR nevertheless has concerns regarding the timing of the annual supervisory fee. ESMA proposes to calculate and charge the annual supervisory fee by the end of March based on the audited accounts from a TR. REGIS-TR’s annual accounts are generally not available until the end of May for the preceding year. Whilst we provide our interim accounts by 31st January, they do not include a revenue breakdown between EMIR, SFTR, ancillary services and other services (i.e. FinfraG). We believe that other TRs may follow the same calendar and thus face the same problem. The current approach could potentially lead to discrepancies whereby one TR would be charged according to the audit accounts of the preceding year (e.g. 2020, in the case of a “fast” submission to ESMA in Q1 2021), whereas another TR is charged according to their last audit accounts (e.g. 2019, if the 2020 accounts are submitted after March 2021).  REGIS-TR proposes that the annual supervisory fee should be charged to all TRs in July, based upon and only after the submission of the annual accounts of all TRs for the preceding year. Linked to our previous comments under Q7, and in order to facilitate the subsequent annual budget planning process, REGIS-TR would appreciate to receive by 15th September an estimate of the supervisory fees to be expected in the following year.

For transparency in the TRs budgeting process, REGIS-TR also welcomes ESMA to share with the TRs a detailed breakdown of the calculation of the annual supervisory fee as an annex to the ESMA Debit Note.

In alignment with our response to question 12 in relation to the payment conditions, REGIS-TR considers convenient to change the payment terms to 45 or 60 days from the date of issuance of ESMA’s relevant annual supervisory fees debit note, which would give TRs the necessary time to obtain the required approvals.

<ESMA\_QUESTION\_TRFE\_14>

1. Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4th July 2012 on OTC derivatives, central counterparties, and trade repositories [↑](#footnote-ref-2)
2. Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 [↑](#footnote-ref-3)