



European Securities and  
Markets Authority

## **Report on staffing and resources**

Report to the European Parliament, the Council and the Commission on the budgetary implications of Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR)



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## **Acronyms used**

EMIR	Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories
OTC	Over-the-Counter
NCA	National Competent Authority
FTE	Full Time Equivalent

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## **I. Executive Summary**

### **Reasons for publication**

Article 90 of Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR) requires ESMA to assess the staffing and resource needs arising from the assumption of its powers and duties under EMIR and submit a report to the European Parliament, the Council and the Commission of these needs.

### **Contents**

This paper highlights the tasks that ESMA will need to carry out in view of its responsibilities under EMIR. For each task the report analyses the implications in terms of processes and activities to be carried out. It estimates the different processes that are expected to be followed and completed and it determines the resource implications that these will have.

### **Next steps**

The European Parliament, the Council and the Commission are asked to assign the relevant resources from the EU budget in order to allow ESMA to perform its tasks under EMIR.

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## II. Introduction

1. Article 90 of Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR) requires ESMA to assess the staffing and resources needs arising from the assumption of its powers and duties under EMIR and submit a report to the European Parliament, the Council and the Commission of these needs.
2. This report lists the additional tasks assigned to ESMA under EMIR and for every task it analyses the activity that it involves and resources needed, both in terms of human resources and IT developments.

## III. ESMA tasks under EMIR

3. In addition to the already accomplished regulatory tasks of developing the technical standards and guidelines prescribed under EMIR (40 set of draft technical standards and one set of guidelines) for which no dedicated budget was envisaged, ESMA will have the following direct responsibilities under EMIR from 2013:

### A. Trade Repositories

- Registration of trade repositories established in the EU
- Supervision of European trade repositories and enforcement actions
- Recognition of third country trade repositories
- Direct reporting to ESMA of derivatives transactions that cannot be reported to trade repositories

### B. Central counterparties

- Participation in all the colleges of European CCPs
- Recognition of third country CCPs
- Validation of the CCPs risk models and parameters

### C. OTC Derivatives

- Determination of the OTC derivatives subject to the clearing obligation:
  - i. Bottom-up approach;
  - ii. Top-down approach.
- Monitoring the activity on OTC derivatives for the following purposes:
  - i. To identify systemic risk and prevent regulatory arbitrage between cleared and non-cleared transactions;
  - ii. To ensure the proper functioning of the exemptions:
    1. Periodic review of the thresholds for non-financial counterparties;
    2. Management and controls of the notifications from NCAs on intragroup transactions;
  - iii. To assist the Commission in preparing reports to the European Parliament and the Council on the international application of the clearing and reporting obligations, the exemptions

to non-financial counterparties and the risk mitigation techniques for the contracts not cleared by CCP, in particular with regard to potential duplicative or conflicting requirements;

#### D. Public registers

Set-up and maintenance of the following registers:

- Register for the clearing obligation;
- Register for authorised and recognised trade repositories;
- Register for authorised and recognised CCPs;
- Register on the penalties imposed for breaches of clearing, reporting and risk mitigation obligations, of provisions on access to CCP and trading venues, of obligations imposed on non-financial counterparties;
- Register on the penalties imposed for breaches of CCP requirements and provisions on interoperability arrangements;
- Register on fines and periodic penalty payments imposed to trade repositories;
- Register on the types of pension scheme entities and arrangements which have been granted an exemption;
- Register on the list of the competent authorities responsible for the authorisation and supervision of CCPs

#### E. Opinions

- Issuing opinions on exemptions for pension scheme arrangements;
- Issuing opinions in case of denial of access of interoperability arrangements.

#### F. Reports

- On the application of the clearing obligation;
- On the application of the identification procedure under the top-down approach;
- On the application of segregation requirements for CCPs;
- On the extension of the interoperability requirements to non-cash financial instruments;
- On the access of CCPs to trading venues, the effect on competitiveness of certain practices and the impact on liquidity fragmentation;
- On the impact of the application by Member States of additional requirements to CCPs, including a banking licence;
- On the penalties imposed by competent authorities, including supervisory measures, fines, periodic penalty payments.
- Assist the Commission in preparing the 2015 report on: i) systemic relevance of transactions by non-financial counterparties; ii) efficiency of the margining requirements; iii) the evolution of CCPs' policies on collateral margining.

#### G. Regulatory work for consistent implementation of EMIR

- Guidelines, Q&A, processes and procedures for: i) consistent application of exemptions; ii) harmonising the templates for notification; iii) facilitating the establishment and functioning of the colleges; iv) ensuring consistent risk assessments for CCPs; v) ensuring consistent reporting to trade repositories.

#### **IV. Trade repositories**

##### Registration of trade repositories

4. According to the procedure outlined in Article 56 of EMIR, ESMA has 20 working days following the receipt of an application for registration by a trade repository (TR) to assess whether the application is complete.
5. Following a complete application, ESMA has 40 working days to analyse it and assess the compliance of the applicant trade repository with the requirements in EMIR and relevant technical standards. After completing the analysis, ESMA will need to take a full reasoned decision to register or refusing registration of the applicant trade repository.
6. The technical standards drafted by ESMA under Article 56 of EMIR, specify a number of documents and information that applicant trade repositories will need to submit to ESMA to prove their compliance with EMIR. This assessment includes:
  - the services trade repositories intend to provide;
  - ownership and governance structure, including internal controls and reporting lines;
  - the fitness and properness of board members and staff;
  - the adequacy of the TR's resources from a financial, IT and staff perspective, including an accurate description of their IT systems and the remuneration policies for the staff;
  - the adequacy of the procedures for the management of conflicts of interests and for ensuring confidentiality of the information maintained by the TR;
  - outsourcing arrangements and the provision of ancillary services, to detect any potential risk arising from them;
  - the access rules, including the relevant policy, procedures, conditions and fees to access the trade repositories;
  - any potential source of operational risk, including the business continuity and disaster recovery policies;
  - the record keeping policy and systems;
  - the resources, systems, methods and channels for making the information available to the public and to the relevant authorities.

7. It is estimated that an application might range from 200 to 1000 pages, depending on the complexity of the trade repository, the services it provides and the asset classes it covers.
8. It is also estimated that in 2013 ESMA will receive applications from both more complex, multi asset trade repositories and from less complex single asset/single product trade repositories. In particular, from the analysis of the trade repositories currently operated and the projects currently being developed, the following applications may be envisaged:
  - 3 applications from complex trade repositories in 2013;
  - 8 applications from less complex trade repositories in 2013 and 2 applications in 2014.
9. In this respect, it should be noted that EMIR (contrary to the US Dodd-Frank Act): a) does not impose to a trade repository once authorised to collect transaction in one asset class, to collect all the contracts that can be concluded in such asset class; b) requires the reporting of exchange traded derivatives. These differences are expected to have a significant effect on the number of possible applicant trade repositories. In particular, it is expected that: a) some regulated markets will establish their own trade repositories for the reporting of the derivatives traded on their exchanges; b) some information providers will also apply, to expand the services they offer.
10. Although it is uncertain whether all these applications will actually result in effective registrations of trade repositories, if received, they will need to be analysed and a reasoned decision will need to be taken. In addition, it is expected that they will all arrive roughly at the same time. ESMA will therefore need to have all the resources available when the applications will be received.
11. Although several officers will intervene in the assessment of the applications (IT, fitness and propriety, corporate governance) ESMA estimates that, in total, the equivalent of 75 days of one full time equivalent of a supervision officer will be needed for the assessment of a complex TR and around 45 days for a less complex one. These estimates are based on ESMA's experience in processing CRAs applications. In particular, ESMA needed 50 days FTE, plus 1 day on-site visit to process the application of a small CRA.
12. Against this background, ESMA estimates that for processing the applications for registration of trade repositories it will need the following resources:
  - 2013: 1 full time equivalent (FTE) for the expected 3 complex TRs and 1.6 FTE for the 8 less complex TRs.
  - 2014: 0.4 FTE for the expected 2 less complex TRs.

#### Supervision of European trade repositories and enforcement actions

13. The supervision of TRs implies an on-going assessment of the compliance of TRs with EMIR and technical standards. This will be done through on-site inspections and off-site work to assess: a) the compliance of the rules and procedures and adequacy of their systems and controls; b) the quality of the data maintained by TRs. Following these assessments and on the basis of the evidence produced by the relevant people in charge of supervision, remedial/enforcing actions might be taken by ESMA.

14. The supervisory activity will start following the registration of the trade repositories. Therefore, the officers counted for the application process, should not be double counted for supervision, as they will naturally move to supervision following the conclusion of the application process. The process will need to ensure some rotation of officers from the authorisation to the supervision phase, in order to ensure some variety in the assessments of the same trade repository.
15. Starting from the consideration above, according to which ESMA is expected to receive 11 applications, applying a reasonable discounted factor and considering that some application may come from entities not specialised in trade repository or related business, we estimate that only 7 of those 11 applications will actually be registered in 2013.
16. It is estimated that 3 officers can supervise on average 4 TRs of average complexity (e.g. 1 complex and 3 less complex). Considering that supervision is expected to start from the second half of 2013, and that the officers employed in authorisation will move to supervision, of the more than 5 officers needed to supervise the expected 7 TRs, ESMA will need to allocate 2.6 officers for supervision of TRs in 2013.
17. For 2014 no new complex TRs are expected to apply, but possibly 2 additional TRs could be registered. Thus raising to 9 the number of TRs to be supervised and to 6.7 the number of officers involved in the supervision of trade repositories. Such number is expected to remain stable in 2015.

#### Recognition of third country trade repositories

18. For the recognition of trade repositories, the following steps are envisaged: 1) the Commission should determine the equivalence of the relevant third country jurisdiction; 2) the third country jurisdiction should enter into an international agreement with the EU; 3) ESMA should conclude a co-operation agreement with the relevant third country authority.
19. For the determination of equivalence, the European Commission requested a technical advice to ESMA for 9 jurisdictions to be completed by mid-2013. The technical advice will cover equivalence for the purpose of: 1) requirements for CCPs; 2) requirements for TRs; 3) requirements for OTC derivatives. On average it is expected that to deliver such advice ESMA will need to allocate 20 days of work per jurisdiction (some jurisdictions will have more complex frameworks to assess, some less). Therefore, overall ESMA estimates that to deliver its advice to the Commission on equivalence it would need 1 FTE for the three areas and the 9 jurisdictions.
20. For the additional tasks to complete a recognition process, i.e. the establishment of co-operation agreements and the processing of the application, ESMA expects 20 days of 1 FTE to process each application. ESMA also estimates to receive 3 applications for recognition, which would require 0.3 FTE in 2013, an equal number in 2014 and less in 2015 (2 applications, 0.2 FTE). In addition, ESMA estimates 5 days FTE for the on-going activity related to registered trade repositories which would amount to 0.1 FTE in 2014 and 0.2 FTE in 2015.

#### Direct reporting to ESMA of derivatives transactions that cannot be reported to trade repositories

21. In accordance with Article 9(3) of EMIR, if a trade repository is not able to collect the details of certain derivatives transactions, these details should be sent to ESMA, who should then make them available to the relevant competent authorities.

22. According to the preliminary analysis made by ESMA, some applicant TRs will be able to collect the details of any derivatives transactions, even the most complex ones. ESMA, therefore, considers that at this stage it is not worth spending taxpayers' money on building a very complex system that might never be used.
23. Against this background, ESMA established a calendar for reporting according to which, if by 1 July 2015 there will not be TRs able to collect the reports of certain derivatives transactions, these reports should be sent to ESMA. This timeline will give ESMA sufficient time to assess whether the assumption according to which authorised TRs will be able to collect also tailor made derivatives is correct and if not, it will give ESMA the time to develop the fall-back solution for direct reporting.
24. Building the systems for direct reporting to ESMA is a fall-back option in the Regulation. However, that would be similar to building a Trade Repository, since ESMA would have to interact with potentially thousands of firms and counterparties, do the appropriate checks on the reports received, reconcile them when needed and classify the reports in such a way that competent authorities have access to them. Such 'in-house' Trade Repository in ESMA, would only be used while no other solution is available and potentially for a very limited period of time.
25. It should be noted that developing a quasi-TR in ESMA is a very complex IT project that would require extraordinary resources. Therefore, if such project has to be developed by ESMA, a dedicated budget would be needed. Besides, it would have to be paid for by public resources, since there are no provisions for ESMA to apply fees to recover that cost.
26. For the reasons explained above, no detailed analysis has been made of the different tasks, tools and resources that such a project would imply. However, from a rough estimate, it is expected that to build a direct reporting system and a repository in ESMA and to make it accessible to the relevant authorities according to their mandate, the IT development costs will exceed 10 million euros, which would need to be added to the 2015 budget, for the subsequent years the running cost would be equal to 2.5 million euro per year of running costs. These amounts have not been included in the final summary of resources, for the reasons explained above.

### Supervisory fees

27. In accordance with Article 72 of EMIR, ESMA shall charge fees to trade repositories. These fees will be defined through a delegated act by the Commission that will specify: the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.
28. It is therefore expected that all the cost outlined above for the registration, recognition and supervision of trade repositories will be fully covered by supervisory fees. ESMA stands ready to advice at the earliest convenience the Commission on the calculation and level of these fees, in order to ensure that the fees mechanism are in place by the time the applications by trade repositories will start being received by ESMA, i.e. immediately after the entry into force of the technical standards on trade repositories.

## V. Central counterparties

29. As mentioned above, ESMA will have two direct competencies with reference to CCPs: 1) the participation in the colleges; 2) the recognition of third country CCPs.
30. As for the ESMA role in the colleges, ESMA will need to:
  - Participate in all the colleges of CCPs;
  - Have a coordination role between competent authorities and across colleges.
  - Ensure the consistent application of EMIR and relevant technical standards;
  - Facilitate the adoption of joint opinions;
  - Resolve disputes between competent authorities;
  - Take decisions on the authorisation of a CCP when the matter is referred to it;
  - Conduct an annual peer review;
  - Conduct Union wide stress tests.
31. In addition, under Article 49 of EMIR, NCAs and ESMA need to validate the risk models and parameters of CCPs, following significant changes of those and after having received: 1) an independent validation obtained by the CCP; 2) the results of the stress and back tests carried out by the CCP.
32. For the performance of all the tasks above, ESMA estimates that one officer can follow 5 colleges (1 large CCP and 4 smaller CCPs). The activity of model validation can be considered an additional task to be performed under ESMA's role in the colleges, so no dedicated resources are expected for such activity. 23 European CCPs are currently authorised to provide services and another 2 CCPs are expected to be authorised in 2013. ESMA, therefore, estimates its resource needs to fulfil its duties in terms of colleges to be equal to 5 FTE from 2013 onward.
33. For the recognition of third country CCPs the process is similar to the one described for trade repositories, i.e. equivalence, cooperation agreement and recognition. No international agreement is though required for the recognition of third country CCPs.
34. Although the process for the recognition of a CCP is similar to the one of a trade repositories and although recognised third country CCPs are already subject to equivalent legislation, ESMA believes that given the risks CCPs are exposed to and the impact they might have on financial stability, the process for the recognition of a CCP will be more detailed and granular than the one to recognise a trade repository. Against this background, ESMA estimates that to handle a recognition application 30 days FTE will be necessary.
35. Considering 4 applications for recognition in 2013, 3 applications in 2014 and zero in 2015, ESMA resource needs for the recognition of third country CCP is equal to 0.6 FTE in 2013 and 0.4 FTE in 2014. In addition, ESMA estimates an on-going cost related to recognised CCPs equal to 20 days FTE, which would amount to 0.2 FTE in 2013, 0.6 FTE in 2014 and 2015.

### Fees for recognition third country CCPs

36. Although EMIR does not explicitly refer to fees for the recognition of third country CCPs, ESMA believes that the Commission Delegated Regulation on fees should include fees for third country CCPs for the following reasons:
- Processing the application of third country CCPs will have a cost and an impact on ESMA's budget;
  - European taxpayers (i.e. the contributors to ESMA budget) should not pay for allowing third country CCPs to freely offer their services within the EU;
  - European CCPs will pay fees to their supervisors to offer services in the EU and generally pay fees to offer services in third countries;
  - Fees dis-incentivise unsubstantiated applications, i.e. incomplete, inaccurate, or spurious applications;
  - National competent authorities currently require application and annual fees from recognised foreign CCPs, be they European or third country CCPs. In certain cases those fees are equal to around 90,000 euro for recognition and 100,000 euro annual fee.
37. As highlighted above under the supervisory fees for trade repositories, ESMA stands ready to advice the Commission at the earliest convenience on the computation and level of these fees.

## **VI. OTC Derivatives**

### Clearing obligation

38. The determination of the classes of derivatives subject to the clearing obligation envisages two processes:
- 1) A bottom-up approach, under which following the authorisation of a CCP to clear a class of OTC derivatives, such class is notified to ESMA and this would trigger the ESMA assessment;
  - 2) A top-down approach according to which ESMA will need to identify the OTC derivatives that pose significant risks and that may be mitigated through the use of a CCP.
39. Under the bottom-up approach, following the notification of the competent authority, ESMA has 6 months to:
- Assess whether the relevant class of OTC derivatives meets the eligibility criteria;
  - Develop and draft the technical standards to determine: i) the class of OTC derivatives subject to the clearing obligation; ii) the date of application of the clearing obligation, including any

phasing-in per category of counterparty; iii) the minimum remaining maturity for frontloaded contracts to be cleared;

- Publicly consult;
- Finalise the draft technical standards to be sent to the European Commission for endorsement.

This is a complex and delicate task since it involves an assessment of market conditions and practices and ends up with a proposed obligation to clear that affects multiple parties.

40. ESMA estimates that 1 FTE can process two dossiers (i.e. group or categories of products for which the clearing obligation is proposed) per year. In fact, it will be 3-4 officers part time involved in each of those processes that will amount to 1 full FTE. Although ESMA is expected to receive a number of notifications in 2013, which will need to be processed, our estimates are based on the notifications expected to result in draft technical standards. ESMA, therefore, expects to issue the draft technical standards in the following cases, which would require the relevant reported resources:

- 6 dossiers in 2013, which would require 3 FTE;
- 5 dossiers in 2014, which would require 2.5 FTE;
- 2 dossiers in 2015, which would require 1 FTE.

41. With reference to the top-down approach, ESMA expects that to be covered under the general monitoring described below. It, therefore, does not consider to split that activity to determine the exact resources dedicated to the top-down process. In addition, it should be noted that following a top-down decision by ESMA (i.e. calling for the development of CCP solutions for clearing certain classes of OTC derivatives), for the obligation to start applying, a bottom-up approach will need to be followed and the resources for the analytical job of assessing the relevant classes of derivatives to be subject to the clearing obligation should not be double-counted in estimating the cost of the two approaches.

### Monitoring

42. As mentioned under Section III, ESMA will need to carry out monitoring activity on OTC derivatives for the following purposes:

- 1) To identify systemic risk and prevent regulatory arbitrage between cleared and non-cleared transactions;
- 2) To ensure the proper functioning of the exemptions:
  - a. Periodic review of the thresholds for non-financial counterparties;
  - b. Management and controls of the notifications from NCAs on intragroup transactions;
- 3) To assist the Commission in preparing reports to the European Parliament and the Council on the international application of the clearing and reporting obligations, the exemptions to non-financial counterparties and the risk mitigation techniques for the contracts not cleared by CCP, in particular with regard to potential duplicative or conflicting requirements.

43. In addition, ESMA considers that the activity involved in the determination of the clearing obligation under the top-down process is basically an on-going monitoring activity of the OTC derivatives market and of specific asset classes.
44. It should be noted that in view of the amount of notifications expected to be received for intragroup transactions, this will have an impact both in terms of IT and human resources. In particular, in terms of IT, ESMA will need to develop tools to: 1) receive the notifications from NCAs; 2) store such information; 3) process and analyse it.
45. ESMA is expecting to receive tens of thousands of intra-group notifications in the first wave (shortly after the entry into force of the technical standards on EMIR, expected for end Q1). It is difficult to estimate the amount of updates and new notifications which ESMA will receive on an on-going basis, but this number is unlikely to be more than 10% of the initial number of notifications, on a yearly basis.
46. Against this background, ESMA estimates that to carry out such monitoring activity, it would need to dedicate the equivalent of 2 officers working 2 days per week on the above tasks, thus amounting to 0.87 FTE per year.
47. With reference to the IT developments only the drafting of business requirements, system specifications and feasibility studies in order to determine the required technologies are foreseen for 2013. ESMA expects that those tasks will require 230 days of work, divided in 180 of an external consultancy and 50 days internal resources. The external consultancy cost would amount to €117,000, plus 30,000 euro per year for the maintenance. The internal resources will add up to the total overhead that EMIR implies.

## **VII. Public registers**

48. As mentioned in Section III, ESMA will need to set up and maintain a number of registers. Some are more complex as they require continuous updates or links with national registers. Others are simpler and will take the form of a web page that would not require significant updates.

### Register for the clearing obligation

49. The register for the clearing obligation will have two sections: 1) the classes of derivatives notified to ESMA, that might be eligible for the clearing obligation, but that are not yet declared subject to the clearing obligation; 2) the classes of derivatives subject to the clearing obligation.
50. The first part of the register will be relevant for the purpose of the frontloading and will contain a significant amount of information, given the number of OTC derivatives that are currently traded OTC and that can be cleared by various CCPs. The second part will be updated following the adoption of technical standards determining the classes of derivatives subject to the clearing obligation, so it is expected to be updated less frequently.
51. The complexity of this register will depend on the definition of the class of derivatives. As mentioned in ESMA technical standards, the classes should not be defined too narrowly to allow an easy circumvention of the obligation and not too broadly to include contracts that either do not

meet the conditions for subjecting them to the clearing obligation, or that cannot be cleared by an authorised or recognised CCP.

52. The complexity of this register will impact its IT development and depending on the level of automation of the notifications and resulting decisions on the clearing obligation, it might require more or less manual work. ESMA is considering developing a relatively automated system, to have a smaller impact on resources.

#### Registers of CCPs' competent authorities and of authorised and recognised CCPs and trade repositories

53. The registers of CCPs' competent authorities and of authorised and recognised CCPs and trade repositories will be basically five webpages: 1) the list of NCAs responsible for the authorisation and supervision of CCPs; 2) authorised CCPs; 3) recognised CCPs; 4) authorised trade repositories; 5) recognised trade repositories. Although the registers for CCPs will need to include information on the services and activities they are authorised to provide or perform, including the financial instruments covered by the authorisation, ESMA does not expect a significant amount of work for the set-up and maintenance, given the relatively small number of updates per year.

#### Registers on penalties

54. ESMA will need to set-up the following registers on penalties imposed by national competent authorities for breaches of: 1) clearing obligation, 2) reporting obligation; 3) risk mitigation obligations; 4) provisions on access to CCP and trading venues; 5) obligations imposed on non-financial counterparties; 6) CCP requirements; and 7) interoperability provisions.
55. These registers will need to be linked with the national registers set-up for the same purposes. ESMA considers that initially, i.e. for 2013 the process and the link with the national registers can be managed manually, with exchange of information from NCAs to ESMA on the penalties imposed by the NCAs. Depending on the number of penalties imposed and on the basis of the experience gained following the manual set-up and maintenance of these registers, ESMA will consider whether to automatise the process.

#### Registers on fines and periodic penalty payments imposed to trade repositories and on types of pension scheme entities

56. These last two registers will be fed by either decisions taken by ESMA or by decisions taken by NCAs following an opinion released by ESMA. Although following the entry into force of the technical standards ESMA is expected to adopt a number of opinions on the type of the exempted pension scheme arrangements, following this initial wave of exemptions, the register is not expected to require a significant number of updates per year.

#### Resources needed for registers

57. In terms of human resources, ESMA expects that all the activity related to registers will require two days of work per month of an officer, for a total of 0.1 FTE per year from 2013 onward.
58. From an IT perspective the total cost of setting-up these registers is expected to be equal to 150 full time working days (100 days allocated to external consultant and 50 to internal resources ) and 60.000 € material resources (software application development costs). Therefore the total project costs are estimated to 125,000 € for 2013 (65,000 € consultancy resources and 60,000 € material

resources) and 32,000 € per year for the maintenance of the system. As for the other IT project mentioned above on intragroup notifications, the internal resources will be counted under the total overhead that EMIR implies.

## **VIII. Opinions**

59. In accordance with Article 89(2) of EMIR, ESMA will need to issue opinions assessing the compliance of the type of entities and arrangements for pension schemes with Article 2(10)(c) or (d) of EMIR and the reasons why an exemption is justified due to the difficulties in meeting the variation margins requirements.
60. The procedure for the NCAs to grant an exemption to these types of pension scheme entities and arrangements foresees the following steps:
  - 1) An NCA receives a request for exemption;
  - 2) The NCA notifies ESMA and EIOPA of the request to grant an exemption to certain types of entities or arrangements;
  - 3) ESMA will need to consult EIOPA;
  - 4) ESMA, within 30 days from the notification, will need to issue the above-mentioned opinion.
61. ESMA will also need to issue opinions under Article 54(3) when an NCA wants to deny an interoperability arrangement, in order to assess the validity of the risk considerations on the basis of which the interoperability arrangement is denied. ESMA considers that the guidelines it will need to adopt for the consistent assessment of interoperability arrangements by competent authorities will limit the possibility for competent authorities to come to different conclusions on the fulfilment by the arrangement of the relevant requirements. Therefore, ESMA expects to adopt very few opinions in this respect.
62. With reference to the first type of opinions, ESMA expects the majority of those to be taken in 2013. ESMA is currently analysing together with EIOPA the existing type of entities and arrangements that may require an exemption under Article 2(10)(c) or (d). Therefore, at this stage, ESMA is not in a position to forecast precisely the number of opinions that it will be required to issue. However, from a very preliminary analysis and considering that ESMA intends to group the opinions to facilitate the process, it would be reasonable to assume around 10 procedures for requests of opinions on pension schemes in 2013 and 2 in 2014 and 2015. Given the very short timeframe for consulting and delivering these opinions, ESMA considers that this activity will be very resource intensive. It therefore considers that 10 days of a full time officer will be needed to process each opinion, thus amounting to 0.5 FTE in 2013 and 0.1 in 2014 and 2015.

## **IX. Reports**

63. In accordance with Article 85 of EMIR, ESMA will need to prepare the following reports by September 2014:

- 1) On the application of the clearing obligation;
  - 2) On the application of the identification procedure under the top-down approach;
  - 3) On the application of segregation requirements for CCPs;
  - 4) On the extension of the interoperability requirements to non-cash financial instruments;
  - 5) On the access of CCPs to trading venues, the effect on competitiveness of certain practices and the impact on liquidity fragmentation;
  - 6) On the impact of the application by Members States of additional requirements to CCPs, including a banking licence;
  - 7) On the penalties imposed by competent authorities, including supervisory measures, fines, periodic penalty payments.
64. Part of the job to prepare these reports has been already counted under the monitoring section or under the college participation. However, dedicated time and resources will need to be allocated to the actual drafting of the reports.
65. In addition to these reports, ESMA will need to assist the Commission in preparing by August 2015 the following reports on:
- 1) systemic relevance of transactions by non-financial counterparties;
  - 2) efficiency of the margining requirements;
  - 3) evolution of CCPs' policies on collateral margining.
66. On the basis of previous experience, ESMA expects that the Commission will require technical advices to complete these reports.
67. For completing these tasks and considering that some of the analysis would be done under the monitoring of OTC derivative market or under participation in colleges of CCPs, ESMA expects that each report will require 15 days full time work. This would amount to:
- 0.5 FTE for 2014
  - 0.2 FTE for 2015

## **X. Regulatory work for consistent implementation of EMIR**

68. Although EMIR does not prescribe ESMA to prepare guidelines for the implementation of EMIR and relevant technical standards or Q&A for understanding how certain provisions in the standards should be implemented, ESMA expects to develop some of these measures in 2013 and 2014.

In addition, different processes, procedures and templates will need to be established to facilitate the communication or notifications from market participants to NCAs and from NCAs to ESMA. These measures will be necessary to allow for:

- 1) the consistent application of exemptions (intragroup and pension schemes);
  - 2) the harmonisation of the communication processes, with uniform templates for notification on:
    - a. Clearing obligation;
    - b. Intragroup exemptions;
    - c. Pension schemes exemptions;
  - 3) The smooth establishment and functioning of the colleges, through:
    - a. A framework written agreement for the establishment and operation of colleges;
    - b. A template for the risk assessment report;
  - 4) Ensuring consistent reporting to trade repositories.
69. On the basis of the past experiences in draft guidelines and Q&As, ESMA estimates that it will need on average 45 days FTE per set of Guidelines or new Q&As and that it will have to work on 5 of these measures in 2013 and on 3 in 2014. This would amount to:
- 1 FTE for 2013
  - 0.6 FTE in 2014.

## **XI. Total resources needed for EMIR**

70. On the basis of the analysis described in the previous sections, Annex I summarises the resources needed and the monetary impact of EMIR on ESMA's budget.
71. In summary, ESMA will need in total 17 dedicated resources (FTE) in 2013, 18 dedicated resources in 2014 and 14 dedicated resources in 2015 to fulfil its mandate under EMIR. Each additional resource has an overall impact on the structure in terms of administrative support of 20%. In addition, the tasks required will also have an overall impact on the legal division of ESMA, requiring 1 FTE legal officer. Finally, considering the above-mentioned 100 days FTE of internal resources for IT development in 2013 of the OTC derivatives register and intragroup notifications tools, the overall total overhead (including legal and IT development) will amount to 5 additional staff in 2013, 5 in 2014 and 4 in 2015. These numbers are not higher than comparable international supervisors with similar responsibilities.
72. In 2012 and in the 2013 budget, ESMA took out some resources planned for other areas to assign them to the ESMA post-trading team in charge of carrying out the activities described in this report. This was due to: 1) the priority to implement EMIR; 2) the absence of a dedicated budget line

allocated to EMIR (in view of the competencies assigned to ESMA, for which this report has been requested).

73. As mentioned above, the average cost of an officer (of average grade and including all indirect costs associated to it) is equal to 200,000 euro. In addition, the IT costs are expected to be 242,000 euro in 2013 and 62,000 euro in 2014 and 2015. This means that the total impact of EMIR on ESMA budget is equal to:

- 4,695,000 euro for 2013

- 4,586,000 euro for 2014

- 3,684,000 euro in 2015

74. It should be noted that around half of EMIR's total impact on ESMA's budget is expected to be covered by fees. The collection of full cost recovery fees is foreseen in EMIR. Therefore, in the expectation that the Commission delegated act on fees will be adopted before the application date by trade repositories, the 2013 budget of ESMA already incorporates the collection of fees as a source of revenues.

**ANNEX I – Tables of total resources**

<b>STAFF NEEDS</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
	<u>FTE</u>	<u>FTE</u>	<u>FTE</u>
<b>TRs</b>			
Authorization of EU complex TRs	1.0	0.0	0.0
Authorization of EU less complex TRs	1.6	0.4	0.0
Recognition of 3rd country TRs	0.3	0.3	0.2
Ongoing supervision of TRs	2.6	6.7	6.7
Ongoing activity on third country TRs	0.0	0.1	0.2
<i>Sub-total TRs</i>	<i>5.5</i>	<i>7.5</i>	<i>7.1</i>
<b>CCPs</b>			
Participation in colleges	5.0	5.0	5.0
Recognition of foreign CCPs	0.6	0.4	0.0
On-going cost for recognised CCPs	0.2	0.6	0.6
<i>Sub-total CCPs</i>	<i>5.6</i>	<i>5.4</i>	<i>5.0</i>
<b>OTC Derivatives and others</b>			
Determination of the clearing obligation	3.0	2.5	1.0
Monitoring	0.9	0.9	0.9
Registers (Clearing , CCPs, TRs, Penalties, exemptions)	0.1	0.1	0.1
Opinions: pension funds and interoperability	0.5	0.1	0.1
Advice to the European Commission on equivalence	0.9	0.5	0.0
EMIR Review Report in 2014 (art 85.3 )	0.0	0.5	0.0
EMIR Reports in 2015 (art 85.1 b. d. and e., if required by EU COM))	0.0	0.0	0.2
Guidelines, Q&A	1.0	0.6	0.0
<i>Sub-total OTC and others</i>	<i>6.3</i>	<i>5.1</i>	<i>2.2</i>
<b>Sub-total FTE required for EMIR tasks</b>	<b>17</b>	<b>18</b>	<b>14</b>
<b>Sub-total Overhead, including legal officer and IT development (FTE required)</b>	<b>5</b>	<b>5</b>	<b>4</b>
<b>Total FTE required</b>	<b>22</b>	<b>23</b>	<b>18</b>

<b>MONETARY Value (Euro)</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Total TRs	1,105,667	1,507,940	1,417,031
Total CCPs	1,114,286	1,085,714	1,000,000
Total OTC and others	1,245,455	1,008,182	433,636
<b>Sub-total cost for FTE required for EMIR tasks</b>	<b>3,465,408</b>	<b>3,601,836</b>	<b>2,850,667</b>
IT costs for intragroup notifications	117,000	30,000	30,000
IT costs for registers	125,000	32,000	32,000
<b>Sub-total IT costs</b>	<b>242,000</b>	<b>62,000</b>	<b>62,000</b>
<b>Sub-total Overhead, including legal officer and IT development (Euro equivalent)</b>	<b>988,354</b>	<b>922,549</b>	<b>772,315</b>
<b>Total Budget required</b>	<b>4,695,762</b>	<b>4,586,385</b>	<b>3,684,983</b>