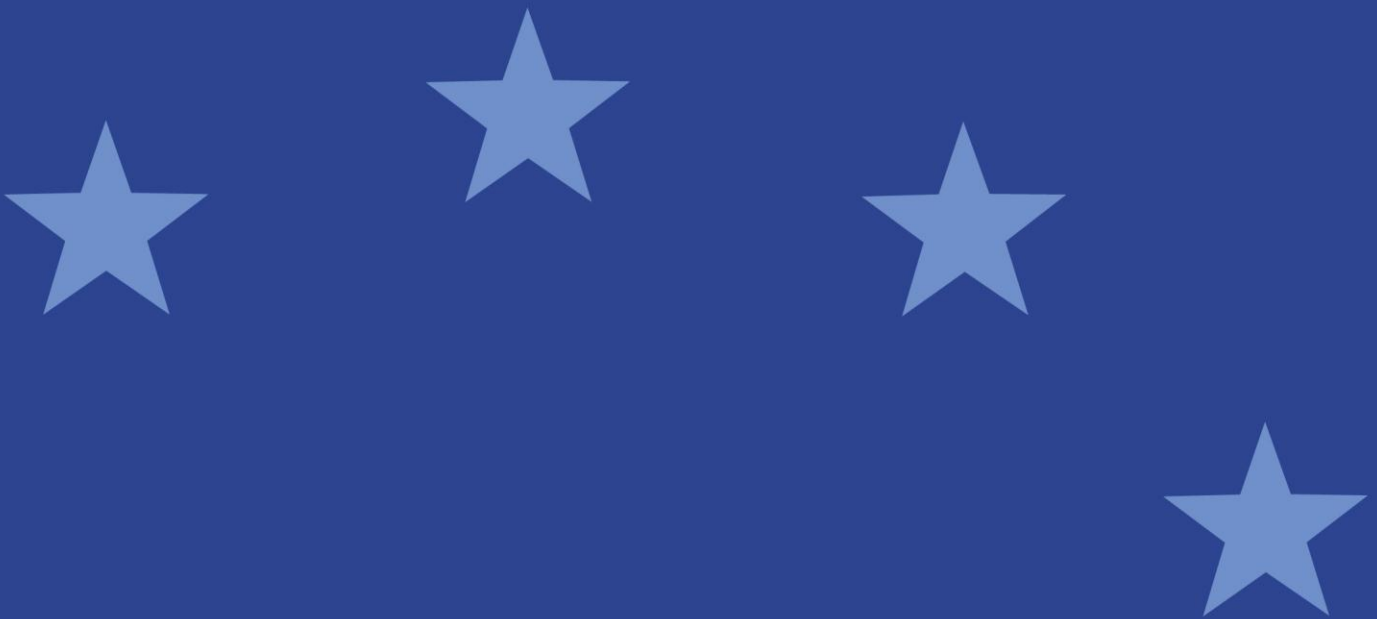




European Securities and  
Markets Authority

## Report on staffing and resources

Report to the European Parliament, the Council and the Commission on the budgetary implications of Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps



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[Responding to this paper]

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Annex I:



## Acronyms used

CDS	Credit default swap
FTE	Full time equivalent
MiFID	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments
NCA	National Competent Authority
MAD	Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)
SSR	Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspect of credit default swaps
TD	Transparency Directive - Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market

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## I. Executive Summary

### Reasons for publication

Article 47 of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspect of credit default swaps (SSR) requires ESMA to assess the staffing and resource needs arising from the assumption of its powers and duties under the SSR and submit a report to the European Parliament, the Council and the Commission of these needs by 31 December 2012.

### Contents

This paper highlights the tasks that ESMA will need to carry out in view of its responsibilities under the SSR. 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 the SSR.

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## **II. Introduction**

1. Article 47 of Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspect of credit default swaps (SSR) requires ESMA to assess the staffing and resource needs arising from the assumption of its powers and duties under the SSR 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 and performed by ESMA under the SSR to ensure its proper implementation and for every task it analyses the activity that it involves and resources needed, both in terms of human resources and IT developments.

## **III. Overview of the ESMA tasks under the SSR**

3. In addition to the already accomplished regulatory tasks of developing the technical standards prescribed under the SSR (9 sets of draft technical standards), providing a technical advice to the Commission on delegated acts and developing additional one set of guidelines for which no dedicated budget was envisaged, ESMA will have to fulfil the following main categories of tasks and activities under the SSR:
  - a. Regulatory and supervisory work for consistent and convergent implementation of SSR
    - i. SSR review (report and review of regulation)
    - ii. Guidelines and Q&As
    - iii. Advice to the Commission on equivalence of third country markets
    - iv. Template and coordination of cooperation arrangements
  - b. Management of information flows, including public registers
    - i. Registers (static registers, list of exempted shares, list of market makers and authorised primary dealers)
    - ii. Regular information to collect
  - c. The monitoring and assessment of market developments and economic analysis
  - d. Need for ESMA opinion, decision, reports or coordination in particular circumstances
    - i. Management of emergency situations requiring ESMA coordination and/or application of intervention powers through the issuance of opinions and decisions
    - ii. Inquiries by ESMA and coordination of cross-border inspection or investigation
4. As the SSR becomes applicable on 1 November 2012, it should be noted that some of the tasks have already been initiated by ESMA with the existing staff available although these resources had to be allocated from other areas within ESMA. Nevertheless, the present report will focus on the resources needed from 2013 onwards.

#### **IV. Regulatory and supervisory work for consistent and convergent implementation of SSR.**

5. Under this category, ESMA is regrouping various tasks either prescribed under the SSR or part of the overall mandate of ESMA. The driving factors are the need to ensure regulatory consistency as well as convergence in the implementation of the SSR.
  - A. SSR review (report and review of regulation)
6. The Commission has to submit a report to the European Parliament and the Council by 30 June 2013 in view of the review to be conducted pursuant to Article 45 of the SSR. ESMA has already received a formal mandate from the Commission (ref: Ares(2012)1243954-22/10/2012) seeking a technical advice on the evaluation of the SSR. ESMA should deliver the advice by 31 May 2013.
7. ESMA is expected to report on the observable effects of the SSR. In short, ESMA is asked to analyse:
  - a. The market impacts of the transparency requirements, restrictions on uncovered short selling and uncovered sovereign CDS and of any temporary measures (introduced and/or lifted);
  - b. Whether the current provisions of the SSR and their application are fulfilling the needs of market participants in terms of transparency and the needs of the Regulators to perform their supervisory functions.
8. The mandate requires ESMA to provide factual information and evidence. On the one hand, ESMA should conduct an evaluation of statistics, including comparison of data pre and post SSR application, for a quantitative analysis. And, on the other hand, ESMA should perform a more qualitative analysis relying on surveys of market participants and competent authorities.
9. Considering the timeline for submitting the advice, this has become a priority for ESMA in relation to short selling related tasks.
10. In addition, ESMA expects that if, further to the 2013 Commission's report, a legislative initiative is launched for reviewing the text of the SSR, ESMA will start being impacted in 2015 in order to contribute to this review or prepare possible technical standards and/or technical advice.
11. Against this background, ESMA estimates that
  - a. 2 officers should dedicate half their time for a 6 months period to produce the ESMA technical advice in due time. This correspond to 0.5 full time equivalent (FTE) over 2013, that should be reduced to 0.38 FTE as some work will have been performed over the last two months of 2012.
  - b. 0.3 FTE should be planned as of 2015 for contributing to the process of reviewing the text of the SSR.
- B. Guidelines and Q&As

12. Though the SSR does not prescribe ESMA to prepare guidelines, this tool can be used by ESMA on its own initiative as this was the case for the draft guidelines on market making for which a public consultation was already conducted. The need for guidelines will rise when more experience in the implementation of the SSR is gained allowing thus to identify potential areas of interests for such guidelines. In a first analysis, ESMA envisages to draft and issue guidelines at least on duration adjustment related issues.
13. Practical problems of implementation can also be dealt with by ESMA through public Q&As. Prior to the SSR becoming applicable, ESMA already issued a first set of Q&As in September 2012 that was complemented by additional Q&As in October 2012. ESMA is planning to issue another update of its Q&A document before the end of 2012. This demonstrates the demand for clarifications on the application of the SSR. Though ESMA expects such demand to slow down over time, the need to revisit the already published set of Q&As will persist (at least once a year) and the new requests for clarification are likely to become more specific, complex and technical and thus remaining as resource intensive.
14. Against this background and relying on past experiences in drafting guidelines and Q&As, ESMA estimates that it will need on average a 0.2 FTE per guidelines/set of new Q&As or updates and that it will have to work on 3 of these in 2013, 2 in 2014 and 2 in 2015 (between guidelines, set of new Q&As and review of existing Q&As).

C. Advice to the Commission on equivalence of third country markets

15. For the purpose of the exemption for market making activities by third country entities who are members of a market in that country, the Commission has to issue a decision of equivalence of the legal and supervisory framework of a third country to ensure that a market authorised in that third country has to comply with equivalent requirements as the ones set out in MiFID, MAD and TD (Transparency Directive) and that these requirements are subject to effective supervision and enforcement.
16. As it is the case under EMIR, it is highly likely that the Commission will ask for ESMA's technical advice in such legal and supervisory equivalence assessments of third countries. However, ESMA has not been mandated yet by the Commission since the entry of application of the SSR on 1 November 2012. It is a reasonable expectation that for 2013, ESMA may have to advise the Commission on 3 third countries, on 2 countries in 2014 and 1 in 2015.
17. Considering the legal scope of the assessments to perform, ESMA estimates that on average the legal and supervisory assessment will require an overall 35 working days of one FTE per country although several staff will intervene in the assessment.
18. Against this background, ESMA estimates that for advising the Commission on the equivalence of third countries markets,
  - a. 0.48 FTE in 2013
  - b. 0.32 FTE in 2014
  - c. 0.16 FTE in 2015

D. Template and coordination of cooperation arrangements

19. In order to facilitate the cooperation with third countries, ESMA is entrusted with a coordination role. ESMA should develop a template of the cooperation arrangement that European competent authorities should conclude with supervisory authorities of third countries concerning the exchange of information, the enforcement of obligations arising under the SSR in third countries and the taking of similar measures in third countries by their supervisory authorities to complement the temporary measures taken in exceptional circumstances or emergency situations. The bulk of the activity for preparing such a template could reasonably be considered to be borne in 2013.
20. ESMA, as it has done for AIMFD, may be entrusted by national competent authorities to conduct on their behalf the preliminary negotiations on the cooperation arrangement to be concluded with a particular third country supervisory authority on the basis of the above mentioned template. Based on ESMA's experience, the timeline for negotiating cooperation arrangements is measured in months rather than weeks unless an already existing multilateral MoU could provide the framework.
21. Against this background, ESMA estimates that for the establishment of the template of cooperation arrangements and the coordination it will need:
  - a. 0.4 FTE in 2013
  - b. 0.25 FTE in 2014
  - c. 0.1 FTE in 2015

## V. Management of information flows, including public registers

22. Under the SSR, ESMA is required to set-up and maintain a number of registers, public and private, and to collect from national competent authorities information on a regular basis (not meant to be published).

### A. Registers

#### *Static registers*

23. Some of the registers to be set up and maintained contain rather static information and for 4 of them, ESMA is making public the information:
  - a. Links to central websites where the public disclosure of net short positions is posted (public)

According to Article 9(4) of the SSR, on the basis of the information communicated by national competent authorities, ESMA has to publish on its own website the links to the central websites operated or supervised by each CA where the public disclosure of net positions is posted. The updating of the information will be performed by ESMA on a case by case basis when needed.
  - b. Links to national websites for the purpose of notification of net short positions (public)

Though not required under the SSR, ESMA has considered that for the implementation of the requirements to notify competent authorities and to publicly disclosed net short positions and for the proper information of investors a list of the websites where the infor-



mation on the national processes for notifying and the forms to use is made available. The updating of the information will be performed on a case by case basis when needed and upon reception of the information from national competent authorities.

c. List of notification thresholds for sovereign issuers (public)

According to Article 7(2) of the SSR, ESMA has to publish a list of the thresholds applicable to the sovereign issuers for the purpose of the notification to competent authorities of significant net short position in sovereign debt. On a quarterly basis, national competent authorities will provide ESMA with updated figures on the overall amount of sovereign debt issued by relevant sovereign issuers allowing thus ESMA to update the public list of applicable thresholds.

d. A list of existing penalties and administrative measures applicable in Member States (public)

According to Article 41 of the SSR, ESMA should publish and update a list of existing penalties and administrative measures applicable in each Member State. The updating of the information will be performed on a case by case basis when needed and upon reception of the information from Member States which have a duty to notify ESMA of any amendments to the existing measures and penalties previously notified.

e. List of designated competent authorities (private)

According to Article 32 of the SSR, ESMA should be informed of the national competent authority or authorities designated in each Member State for the purpose of the SSR. ESMA does not expect many updates of such a list though it should stand ready for changes and for informing accordingly the other competent authorities across the European Union.

24. Against this background, ESMA estimates that for ensuring the maintenance of such rather “static” registers it will need, per register, between 12 and 14 working days per year corresponding on average to 0.06 FTE.

*List of exempted shares*

25. ESMA is also required under Article 16(2) of the SSR to set up and maintain the list of shares for which the principal trading venue is located in the third country and which are exempted from the provisions of the SSR. Though the identification of the exempted shares is the responsibility of the relevant national competent authorities, ESMA is in charge of consolidating the list and making it available to the public. The list currently contains some 10 500 exempted shares.

26. The SSR requires a periodic updating of the list, every two years, though Article 12 of Commission implementing Regulation No 827/2012 foresees specific cases of review of exempted shares leading to potentially daily updates of the list to be published.

27. For fulfilling its obligations, ESMA has started the process of setting up an IT tool - register of exempted shares – to automate the updating of the list. Most of the necessary IT developments will take place in 2013 and this register should become operational the same year.

28. Against this background, ESMA estimates that:

- a. for setting up the exempted shares register in 2013,
  - i. 0.37 FTE will be needed
  - ii. IT costs amount to 62 500 Euros. It should be noted that they have been already planned in ESMA budget for 2013.
- b. For ensuring the maintenance of the register and of the periodic and on-going update process both from a business perspective and an IT perspective, 0.20 FTE is needed on a yearly basis, and the yearly IT cost are estimated to 15 625 Euros (25% of IT set up costs)

*A list of market makers and authorised primary dealers (Article 17(3));*

29. According to Article 17(13) of the SSR, ESMA has to publish and keep up to date on its website a list of market makers and authorised primary dealers who are using the exemption, on the basis of the information national competent authorities have to provide to ESMA.

30. Besides, for the supervisory purpose by national competent authorities, information about the financial instruments for which a market maker or an authorised primary dealer is using the exemption should be provided to ESMA, which will store it. This information will be made available and accessible to all competent authorities. This will require the setting up and maintenance of a database.

31. Against this background, ESMA estimates that for ensuring the maintenance and publication of the market makers/authorised primary dealers' list and the set up and maintenance of the internal database including the additional information about financial instruments, it will need 0.05 FTE on a yearly basis.

#### E. Regular information to collect

32. There are two types of aggregated information that ESMA is required to collect according to the SSR, though their periodicity of reception is different:

- a. Quarterly information on net short positions in accordance with Article 11 of the SSR, Article 4 of Commission Delegated Regulation No826/2012 and Article 3 of Commission Implementing Regulation No827/2012. An IT system to automate the data collection from national competent authorities and to ensure proper storage of the information received has been set up in 2012. However, ensuring the maintenance of the collection process from the IT and business perspectives is required.
- b. Aggregate information regarding the penalties and administrative measures imposed by competent authorities. According to Article 41 of the SSR, this aggregate information should be provided by competent authorities on an annual basis. No automated tool is envisaged for this process of collection; this will require human involvement to be performed and monitored though in a rather negligible amount; thus ESMA is not providing estimates.

33. Against this background, ESMA estimates that for these two types of periodic information to be collected, it will need

- a. 0.02 FTE per quarterly reporting of aggregated information on net short positions
- b. In IT cost terms, as the system is already implemented, there is no additional set up cost included in this report. However, there are yearly IT maintenance costs to consider. They are estimated to be 26 690 Euros per year (representing 25% of the IT set up costs).

## **VI. The monitoring and assessment of market developments, research and economic analysis**

34. In line with Recital 5 of the Commission Delegated Regulation No 826/2012, ESMA will use the aggregate information on net short positions provided on a quarterly basis by competent authorities to perform research and economic analyses. In addition, this information will be also used by ESMA to monitor and assess market developments with respect to the objective of ensuring orderly functioning and integrity of the financial markets and the stability of the financial system in the Union.
35. The ESMA Economic Research/financial stability unit will be the main user of the data received. They will need to process and analyse the information and prepare specific reports and/or integrate their findings in other research and analysis. The estimate of the needs presented below is aligned with the frequency of the data reception i.e. quarterly.

Against this background, ESMA estimates that for the processing and the analysis of quarterly information on net short positions, it will need to dedicate 6 working days per quarter corresponding to 0.11 FTE per year.

## **VII. Needs for ESMA opinions, decisions, reports or for coordination in particular circumstances**

### A. Management of emergency situations requiring ESMA coordination and/or application of intervention powers through the issuance of opinions and decisions

36. There are a number of provisions in the SSR which allow under certain exceptional circumstance or emergency situations to temporarily lift a restriction or a requirement usually applicable, or to impose temporary measures for a limited period of time. More specifically;
- a. Under Article 13(3), ESMA is requested to produce and publish an opinion when a competent authority has notified its intention to temporarily suspend the restrictions on uncovered short sales in sovereign debt.
  - b. Under Article 14(2), ESMA is requested to produce and publish an opinion when a competent authority has notified its intention to temporarily suspend the prohibition to enter into sovereign CDS transactions that lead to an uncovered position in sovereign CDS.
  - c. Under Article 23, ESMA is required to ensure coordination in relation to the decision of a competent authority to take the decision to restrict temporarily short selling in a financial instrument in case of a significant fall in price of that instrument. ESMA should also play a mediation role in case of disagreement between competent authorities on the measure taken and notified, which may result ultimately in ESMA issuing a decision.

- d. Under Article 27, ESMA is required to facilitate and coordinate efforts in relation to the use by national competent authorities of their powers of intervention in exceptional circumstances. The relevant intervention powers and temporary measures set out in Article 18 to 21 are of a different nature but imply the same ESMA involvement. Upon notification by a competent authority of its intent to impose a temporary measure, ESMA should issue an opinion on the necessity of the intended measure with respect to the circumstances, its appropriateness and proportionality and whether the duration of the intended measure is justified. The opinion to be made public should also indicate (where relevant) any consideration on expanding temporary measures to other countries.
  - e. Under Article 28, ESMA can issue a decision aiming at using its own powers of intervention in exceptional circumstances by introducing temporary measures. It has first to notify its intention to the concerned competent authorities.
  - f. Under Article 29 and provided an emergency situation relating to sovereign debt or sovereign CDS has been declared by the Council, ESMA could have to adopt an individual decision requiring a competent authority to take action.
37. With the exception of Article 29, the SSR prescribes the timeline for the adoption and publication of the ESMA opinion or decision in such exceptional circumstances. This timeline is generally 24 hours from the reception of the notification of intent, except for the temporary measures foreseen under Article 23 whereby ESMA is required to react between the closing of the market on one day and its opening on the following trading day.
38. Considering the short period of time allowed for adopting such opinions and decisions and the difficulty to anticipate the occurrence of such situations, there is a strong need for developing a set of appropriate emergency procedures and internal processes ensuring the necessary availability of staff and the necessary back up (in case of missions, leave, illness, etc.).
39. Three procedures should be already finalised by the end of 2012. However, others still need to be developed. In addition, ESMA is planning to update, revise and fine-tune them over time based on experience gathered.

#### B. Inquiries by ESMA and coordination of cross-border inspection or investigation

40. According to Article 31 of the SSR, ESMA may upon request of a European institution (Parliament, Council or Commission), of one or more competent authorities or on its own initiative conduct an inquiry into a particular issue or practice relating to short selling or CDS. In such cases, ESMA will have three months to report on its findings and related recommendations.
41. Under Article 37(1), ESMA may be requested to coordinate investigations or inspections with cross-border effects. Such coordination aims at ensuring smooth exchanges of information, aligning as much as possible the nature and timing of the investigatory activities of the involved competent authorities over a period of time which is difficult to quantify ex-ante as it depends on the complexity of the case.
42. Such ad hoc activities will need to temporarily dedicate specific resources over the relevant period that are otherwise allocated to other short selling related tasks, calling thus for back up resources to be planned.

43. Against the background described in the two sub-sections above, ESMA estimates that for

- a. Setting up and updating the necessary procedures, 15 working days allocated per procedure on average (initial and update), corresponding to 0.05 FTE, is needed based on the recent experience;
- b. Dealing with ad hoc activities relating to opinion and decision issuance, coordination and mediation needed for managing emergency situations as well as to cope with ad hoc inquiries and coordination of cross-border inspection or investigation, dedicating on average 0.3 FTE per year would be appropriate.

### **VIII. Total resources needed for SSR**

44. On the basis of the analysis described in the previous sections, Annex I summarises the resources needed and the monetary impact on ESMA's budget of the SSR.

45. In summary, ESMA will need in total 4 dedicated resources (FTE) in 2013, 2 dedicated resources in 2014 and 2 dedicated resources in 2015 to fulfil its mandate under the SSR. This includes all overhead (central operations) resources and is already rounded to units.

46. The average cost of an officer (including all indirect costs associated) is close to 200,000 euro. In addition, the IT costs are expected to be close to 104,000 euro in 2013 and 42,000 euro in 2014 and 2015. This means that the total impact due to the SSR on ESMA's budget is:

- 920,270 euro for 2013
- 534,751 euro for 2014
- 532,351 euro in 2015.

47. The proposal of SSR did not contain any legislative financial statement. In order to carry out the most urgent tasks assigned under the SSR, resources have already been taken out from other areas of work assigned to ESMA (1 FTE). Unless the European Parliament, the Council and the Commission approve a special budget to fulfil Short Selling competencies, ESMA will have to continue to proceed in such way that is likely to impact overall ESMA's ability to timely and properly fulfil its tasks and objectives.

## ANNEX I – Tables of total resources and deficits

STAFF NEEDS	2013	2014	2015
<b>Regulatory and supervisory consistence and convergence</b>			
SSR Review Report in 2013 (art 45 )	0.38	0.00	0.00
Contribution to review of Regulation (if Commission action)	0.00	0.00	0.30
Guidelines and Q&A	0.60	<b>0.40</b>	<b>0.40</b>
Advice to the European Commission (if requested) on equivalence of markets (Art. 17)	0.48	<b>0.32</b>	<b>0.16</b>
Template and Coordination of cooperation arrangement with third countries; (Art. 38)	0.40	<b>0.25</b>	<b>0.10</b>
<b>Management of information flows, including public registers</b>			
Registers: : links to national websites for net short position notification purposes and for accessing disclosures; list of measures and sanctions; list of designated CAs, sovereign debt thresholds	0.30	0.30	0.30
Exempted shares register (set up in 2013 and maintenance)	0.57	0.20	0.20
Maintenance of list of market makers/authorised primary dealers (database; publication)	0.05	0.05	0.05
Receipt and maintenance of quarterly information on net short positions	0.07	0.07	0.07
Yearly compilation of aggregate information on CA penalties and measures imposed (Art. 41)	0.00	0.00	0.00
<b>Monitoring and assessment of market developments (research and analysis)</b>			
Processing and analysis of quarterly information on net short positions	0.11	0.11	0.11
<b>Need for ESMA opinions, decisions, reports or for coordination in particular circumstances</b>			
Setting procedures in emergency situations	0.14	0.05	0.05
Issuance of Opinions and decisions/Mediation/Coordination competences:	0.30	0.30	0.30
<b>Sub - Total FTE required</b>	<b>3.4</b>	<b>2.1</b>	<b>2.0</b>
<b>Sub-total Overhead / FTE required</b>	<b>0.7</b>	<b>0.4</b>	<b>0.4</b>
<b>Total FTE required</b>	<b>4</b>	<b>2</b>	<b>2</b>

Assuming a monetary cost close to 200.000 € per each officer (average seniority), which includes all costs components (salary, premises, overhead expenses, etc), the total budget requirement to be assigned to cover these tasks goes up to:

<b>Monetary Value</b>	<b>2013</b>	<b>2014</b>	<b>2015</b>
Regulatory and supervisory consistence and convergence	€ 371,000	€ 194,000	€ 192,000
Management of information flows, including public registers	€ 199,455	€ 125,455	€ 125,455
Monitoring and assessment of market developments (research and analysis)	€ 21,818	€ 21,818	€ 21,818
Need for ESMA opinions, decisions, reports or for coordination in particular circumstances	€ 87,273	€ 69,091	€ 69,091
<i>Sub-total cost for FTE required</i>	<i>€ 679,545</i>	<i>€ 410,364</i>	<i>€ 408,364</i>
<i>Sub-total Overhead / FTE required</i>	<i>€ 135,909</i>	<i>€ 82,073</i>	<i>€ 81,673</i>
<b>Sub Total cost (including overhead) for FTE required</b>	<b>€ 815,455</b>	<b>€ 492,436</b>	<b>€ 490,036</b>
IT: Set up of exempted shares register	€ 62,500	€ 0	€ 0
IT: maintenance of exempted shares register	€ 15,625	€ 15,625	€ 15,625
IT: maintenance of quarterly information reporting tool	€ 26,690	€ 26,690	€ 26,690
<b>Sub Total IT costs</b>	<b>€ 104,815</b>	<b>€ 42,315</b>	<b>€ 42,315</b>
<b>Total budget required</b>	<b>€ 920,270</b>	<b>€ 534,751</b>	<b>€ 532,351</b>