

TRADE REPOSITORY SUPERVISION WORK PLAN 2014

I. Introduction

1. The European Securities and Markets Authority (ESMA) is publishing a summary of its 2014 supervisory work plan in relation to trade repositories (TRs) with the aim of enhancing the transparency of its actions regarding TRs in the European Union.
2. TRs centrally collect and maintain the records of derivative trades and play a central role in enhancing the transparency of derivative markets and reducing risks to financial stability. In November 2013, ESMA registered six TRs. The obligation for counterparties to report their derivative trades to registered TRs began on 12 February 2014.
3. Under Titles VI and VII of Regulation EU 648/2012¹ (EMIR), the direct supervision of TRs has been entrusted to ESMA, who has started to supervise the six registered TRs. Supervision of TRs by ESMA is crucial to ensuring that TRs comply on an on-going basis with all EMIR requirements, thereby enabling regulators to access data and details of derivative contracts in order for them to fulfil their respective mandates.

II. Main features of ESMA's TR supervision in 2014

4. In 2014, ESMA will put in place all the tools and procedures needed to perform its TR supervisory activities through the development of a risk-based approach adapted to the structure of the TR industry.

On-going supervision

5. The bulk of activities ESMA expects to perform in 2014 in terms of on-going TR supervision will be desk-based. They include the following (non-exhaustive list):
 - a. monitoring and assessment of periodical information received from TRs;
 - b. monitoring and assessment of notifications by TRs of material changes to their conditions for registration;
 - c. analysis of external information received from authorities or complainants; and
 - d. requests for information, etc.

¹ Regulation EU n°648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ 27/7/2012, L201/1.



Use of ESMA's investigatory powers

6. In addition to on-going supervision, ESMA has the right under EMIR to use specific investigatory powers. EMIR foresees three main types of investigatory powers in relation to TRs: requests for information (Article 61), general investigations (Article 62) and on-site inspections (Article 63). These investigatory powers apply to supervised TRs but also to related third parties to whom the TR has outsourced operational functions or activities.
7. Concerning on-site inspections and investigations, it should be noted that the on-going supervision will feed into the risk analysis for the selection of specific TRs for which further investigatory actions will be undertaken. Inspections can be announced, or be conducted without prior announcement.
8. Furthermore, the investigatory tools will also be used by ESMA to perform thematic reviews. These will be dedicated to the most important horizontal issues common to several TRs, which have been detected during on-going supervision, or to the supervision of TR compliance with new regulatory developments.

III. TR supervisory activities in 2014

9. In defining what topics will be the focus of ESMA's TR supervisory activity, and which TRs, there are 2 distinct periods in 2014:
 - From registration of the TRs until the reporting regime is fully operational;
 - After the reporting regime is fully operational.
10. The first period is a transitory one. It covers the period from registration (November 2013) until several weeks after reporting to TRs is implemented (March 2014). During this period, the supervisory priorities and focus cannot be strictly inferred from indicators because no TR was yet receiving reports under EMIR or the quantitative data on reports was still not reliable. Therefore, the supervisory action has to be shaped based on two pillars:
 - a. the follow-up of the issues identified in the assessment of the registration applications; and
 - b. the qualitative signals or information received from stakeholders and TRs during this preparatory period.
11. In practice, the main issues supervised during this first period of 2014 are the following:
 - On-boarding process of clients. On-boarding is one of the challenges of the start of a new reporting regime, like the EMIR one, especially if it affects thousands of counterparties with a limited 90-day period between the TR registration and the start of reporting. ESMA expects this issue to be one of the topics that will require more supervisory attention during Q1 (and potentially Q2) 2014.



- On-boarding of authorities. ESMA is monitoring the process and the tools available to regulators to access TR data, and is ensuring TRs' swift reaction to requests for access by regulators.
 - Monitoring of the IT Systems Deployment;
 - Inter-TR reconciliation of data. Data should be reconciled between trade repositories if counterparties report to different trade repositories. The technical complexity of the inter-TR reconciliation process and the linkages with the reporting guidance requires supervisory attention from ESMA from the start of the EMIR reporting.
 - Transparency of TR's pricing policy: ESMA reviews all the websites of the TRs to check whether their fees are published in compliance with EMIR.
12. The second period in 2014 would be the ordinary way of fixing the priorities of TR supervision based on a risk-based approach relying on evidence and data related to TR activity (see below). This approach needs operating TRs and a stable flow of data in which to build the metrics and the indicators. It can be elaborated and put in practice only after the actual EMIR reporting starts.

IV. TR risk-based supervision

13. ESMA's TR risk-based supervisory approach stems from the requirements set out in EMIR, the relevant delegated regulations and the CPSS-IOSCO's Principles for Market Infrastructures. The main risks to which TRs are exposed are operational risk, legal risk, governance risk and general business risk. EMIR and the relevant standards have developed these general risk categories into specific legal, organisational, financial, operational and data access requirements for the TRs.
14. In order to plan and prioritise ESMA's TR supervisory activities and efficiently allocate resources, a risk-based approach will be used by ESMA to define a risk profile for each TR or for certain activities within a TR. ESMA's supervisory powers will therefore be exercised as a result of a risk analysis/assessment and will be concentrated, to a certain extent, on those TRs (or certain activities of the TRs, such as the IT functions) where the probability of infringement, the impact of the lack of compliance and the effect of contagion are higher.
15. The risk posed by a TR is defined in terms of impact, probability and interconnectivity. Indeed, the risk posed by a TR depends on the likelihood that this entity is not compliant with the relevant laws (probability of infringement) and the degree of damage that a breach could have. For example, there are situations where the probability that a TR is not compliant with regulatory provisions is high but the impact of such non-compliance is low, and vice versa. The interconnectivity aspect of the risks should also be taken into account.
16. In order to perform a sound risk analysis, key risk factors and key risk indicators will be used by ESMA. They are a way to ensure consistency and comparability of assessments across all TRs, in particular in relation to the probability of non-compliance of supervised TRs.



17. The result of the risk analysis will be a mapping of the TRs and the risks related to their functioning. It will be complemented by the TR supervisors' individual judgement.

18. It should nevertheless be noted that the application of the risk-based approach is without prejudice to the fact that all TRs, even those involving less risks according to the mentioned approach, will be subject to supervision by ESMA. In addition, some flexibility in the risk-based approach should be allowed so that adjustments of the TR supervisory priorities will remain possible when this is justified.