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COMMISSION DELEGATED REGULATION (EU) .../...

of 13.12.2018

**supplementing Regulation (EU) 2015/2365 of the European Parliament and of the
Council with regard to fees charged by the European Securities and Markets Authority
to trade repositories**

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (SFTR) was published in the Official Journal on 23 December 2015.

One of the main objectives of SFTR is to bring transparency to the market of securities financing transactions (SFTs) through the reporting by counterparties of their SFTs to trade repositories, i.e. entities that centrally collect and maintain records of SFTs. In line with the framework under Regulation (EU) No 648/2012 (EMIR), SFTR grants the European Securities and Markets Authority (ESMA) direct registration and supervisory powers over trade repositories. As provided in Article 11(1) of SFTR, ESMA shall charge fees to trade repositories and those fees shall fully cover ESMA's necessary expenditure relating to the registration, recognition and supervision of trade repositories.

Legal background

The power to adopt a delegated regulation is provided in Article 11(2) of SFTR. According to that provision, the Commission is empowered to adopt a delegated regulation specifying the types of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

Under Article 11(1) of SFTR, ESMA shall charge trade repositories fees that are proportionate to the turnover of the trade repository and fully cover ESMA's necessary expenditure relating to the registration, recognition and supervision of trade repositories. Those fees should also cover the reimbursement of any costs that the competent authorities may incur as a result of delegation from ESMA. Where a trade repository is already registered under EMIR, the fees should be adjusted to reflect only the additional costs related to registration, recognition and supervision of trade repositories under SFTR.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In January 2016, the Commission asked ESMA for an opinion (technical advice) on the Commission delegated regulation to be adopted under Article 11(2) of SFTR.

Following an in-depth technical assessment, ESMA conducted a public consultation on the technical aspects of the envisaged delegated regulation on fees from 19 December 2016 to 31 January 2017. The non-confidential responses to the consultation are published on ESMA's website.¹ ESMA submitted its technical advice to the Commission on 20 April 2017 (hereafter the Final Report).

Six stakeholders responded to ESMA's public consultation, including five trade repositories and one asset manager. In general, the respondents supported the approach ESMA proposed for the types of fees, their amount and manner of their collection. Some respondents deemed the proposed reduced fee for extending the registration of a trade repository already registered under EMIR as too high. Referring to the risk of cross-subsidisation aimed at paying lower fees to ESMA, some of the respondents to the public consultation also commented on the method of determining the applicable turnover for the calculation of the supervisory fees, expressing preference for calculations based on both revenues from core SFT reporting

¹ See at <https://www.esma.europa.eu/press-news/consultations/technical-advice-commission-fees-trs-under-sftr-and-certain-amendments-fees>

services and services ancillary to core SFT reporting services (e.g. trade confirmation, trade matching, agent lending, collateral management, collateral valuation, third-party reporting), rather than only on revenue from core SFT services. Other respondents considered that instead of using the turnover of the trade repositories, the fees should be calculated on the basis of the volume of trades processed as that, in their view, would most accurately reflect the supervisory effort required from ESMA.

EGESC and other views

On 4 July 2017, the Commission consulted the Expert Group of the European Securities Committee (EGESC) on ESMA's technical advice and on the content of this delegated act. EGESC has supported the Commission's approach.

The delegated act has been subject to public feedback from 16 November to 14 December 2017 in line with the Commission's Better Regulation guidelines. Three contributions were received. The low number of responses and the individual character of the issues raised did not result in changes to the substance of the delegated act but on the basis of the responses some minor drafting changes were made regarding the definition of the trade repository revenues which serve as the basis for calculating the fees charged by ESMA.

The Commission has also taken into account the views expressed by members of the European Parliament on the content of ESMA's technical advice, in particular the view that ancillary services should be one of the elements to be taken into account in determining the fee level, rather than only the revenues from core services.

3. IMPACT ASSESSMENT

Having fully considered the technical advice provided by ESMA and the feedback received from the EGESC, the Commission is proposing the adoption under Article 11(2) of SFTR of this delegated act on the types, amounts and manner of collection of fees for trade repositories centrally collecting records of SFTs.

Under SFTR, the two main principles of the collection of supervisory fees are: (1) the proportionality with the trade repository's turnover; and (2) the fact that they should fully cover ESMA's expenditure. ESMA elaborated its advice for the types of fees, the determination of their amounts and the manner of their collection on the basis of the existing ESMA framework for budgeting and the approach taken in Commission Delegated Regulation 1003/2013². Specifically, ESMA proposes: (i) registration fees that cover ESMA's one-off costs for the registration of new trade repositories; (ii) fees for an extension of registration that cover ESMA's one-off costs for registration of trade repositories but reflect the synergies of processing an application by a trade repository that has already been registered under EMIR; (iii) supervisory fees that cover ESMA's ongoing annual supervisory costs; and (iv) fees for the recognition of third-country trade repositories which have a one-off and an annual on-going component.

The basis of the impact assessment is thus an estimation of ESMA's costs and an assessment of the methodology for distributing these costs amongst the trade repositories.

ESMA's budgeting principles and expected costs

² See Commission Delegated Regulation (EU) No 1003/2013 with regard to fees charged by ESMA to trade repositories, OJ 2013 L 279, 19.10.2013, p. 4.

To cover its expenditure, ESMA prepares annual budgets aiming at balancing their incurred cost with income from fees. ESMA does not recover deficits from trade repositories, nor do they pay back surpluses.

Given that most of the conditions for registration of trade repositories under SFTR are similar to those under EMIR, ESMA expects that their cost structure will be similar. ESMA's budget is managed on the basis of ESMA's actual costs per activity (activity-based budgeting). According to ESMA's 2017 annual work programme, the sub-activity budget for supervising trade repositories in 2017 is EUR 2.5 million and sub-activity staff is 16 full time equivalents (FTEs). Thus, the average cost of one FTE dedicated to trade repository supervision is approximately EUR 155 000 which includes the salary and all relevant overheads.

Fees for registration and extension of registration

Similarly to EMIR³, ESMA proposes to apply different registration fees to trade repositories depending on their expected turnover. Trade repositories providing services ancillary to SFT reporting are expected to have higher revenues due to their more complete commercial offering and would thus require greater registration and supervisory efforts from ESMA.

Taking into account its experience of registration of trade repositories under EMIR, ESMA estimates that the registration costs for high expected turnover trade repositories under SFTR will be 0.65 annual FTE per application, i.e. EUR 100 000. ESMA further estimates that the cost for lower turnover trade repositories will be EUR 65 000. Most of the respondents to the public consultation were in favour of ESMA's proposal although some of them suggested a reduction of the fees in order to boost competition. ESMA notes that in any event the amounts of the fees are set to cover ESMA's costs related to the registration of trade repositories.

As regards the cost for extension of registration, ESMA estimated that they would be approximately half the cost of a new application, i.e. approximately 0.33 annual FTE. In estimating the figure for extension of registration ESMA took into account that: (1) the application for extension of registration would require around 70% of the resources of a new application; (2) ESMA would benefit from knowing already the applicant and (3) ESMA's similar experience with re-applications of credit rating agencies.

Based on that, ESMA originally proposed that the fee for extension of registration be fixed at EUR 50 000, regardless of the expected turnover. The respondents to the public consultation supported ESMA's proposal to have a reduced fee for extension. However, one of the respondents considered excessive the estimated 70% of time and effort by ESMA compared to the processing of a new application. Another respondent suggested that a fee of EUR 50 000 for extension may be discouraging for trade repositories that expect lower volumes of SFTs and that it might impact their competitiveness. Still another respondent argued for a lower fee for trade repositories with lower expected turnover applying for extension of registration. ESMA addressed the respondents' concerns by amending its advice so that the fees for lower expected turnover trade repositories is set at EUR 32 500 while the fee for high expected turnover trade repositories is kept at EUR 50 000.

Annual supervisory fees

The purpose of the annual supervisory fees is to cover ESMA's annual ongoing supervisory costs. In line with the SFTR principle that the fees have to be proportionate to trade repositories' turnover and fully cover ESMA's costs, ESMA proposes that these fees be determined on the basis of ESMA's estimate of its total annual expenditure related to

³ See Commission Delegated Regulation (EU) No 1003/2013 with regard to fees charged by ESMA to trade repositories, OJ 2013 L 279, 19.10.2013, p. 4.

supervision, distributed proportionally to the trade repositories based on their revenues. This approach is similar to the one under EMIR. Under EMIR the proportion for each trade repository is computed by taking into account three equally weighted components: core revenues, trades reported and outstanding trades. However, ESMA proposes that under SFTR the proportions of the costs to be covered be computed under a simplified formula.

ESMA's experience under EMIR demonstrated that there were no difficulties in collecting the core trade repository revenues given that trade repositories are obliged under national law to prepare financial statements which usually contain the breakdown of the revenues so that the EMIR-related revenues could be identified. Based on that, ESMA initially proposed a simplified formula for computing the proportion of the cost to be covered by each trade repository by dividing each trade repository's core SFT revenues by the sum of the core SFT revenues of all trade repositories.

ESMA also inquired whether the ancillary services should be taken into account. In that regard, ESMA explained that in some cases, due to a different cost structure, some trade repositories may charge lower fees for SFT reporting than their peers. Such lower fees may result in a greater number of SFT reports than the trade repository's SFT revenue would suggest. ESMA's understanding at this stage is that, with some level of tolerance, the supervisory efforts are still proportionate to the supervisory fees charged on the basis of core revenues. However, ESMA noted that this might not be the case in the future. Moreover, ESMA mentioned the possibility that some trade repositories may engage in a cross-subsidisation, where they lower their core services fees while increasing their ancillary services fees in order to pay lower supervisory fees to ESMA. ESMA noted that such situation may create unfair competition, mentioning also that a similar concern was addressed under the CRA Regulation⁴ by including the relevant ancillary services in the formula determining the proportion of the cost to be covered by credit rating agencies.

This proposal was widely discussed by the participants in the public consultation. Some of the respondents disagreed with ESMA's proposal, supporting the EMIR approach where the ancillary revenues are not included in the formula. They argued that there is not necessarily a correlation between offering ancillary services and having greater turnover. One respondent argued in favour of computing the trade repositories' proportions based on the volume of trades processed as the only reliable indicator of supervisory effort required from ESMA. Another respondent argued in favour of the EMIR approach with changed weights of each component of the EMIR formula. On the other hand, other market participants argued that in the EMIR approach the inclusion of the outstanding trades in the formula created unexpected problems due to the nature of certain derivative transactions. Those respondents were in favour of ESMA's proposal, arguing that the core revenues alone do not accurately reflect the amount of supervisory work ESMA needs to carry out.

Based on this input, ESMA proposed in its Final Report to use as a parameter in the formula both the revenues from the core SFT services and the revenue from ancillary SFT services. This reflects the views by members of the European Parliament who also expressed support for the inclusion of the ancillary services due to the risk of wrong incentivisation (i.e. cross-subsidisation), alignment with the approach in CRA Regulation and the need for having comprehensive metrics. As indicated, ESMA addressed those concerns in its Final Report.

Minimum annual supervisory fees

Given that the supervision of trade repositories requires the performance of a certain minimum level of supervisory activities for each trade repository, ESMA proposed minimum

⁴ Regulation (EC) No 1060/2009 on credit rating agencies, OJ L 302, 17.11.2009, p. 2.

supervisory fees, similarly to the approach in EMIR. Considering the similarities with EMIR, ESMA proposed to fix the minimum fee at EUR 30 000. ESMA expects the minimum supervisory activities to be SFTR-specific, i.e. ESMA does not expect synergies with EMIR in this respect. Therefore, ESMA proposes that the minimum fee should be the same for new trade repositories and the ones already registered under EMIR.

Part of the respondents to the public consultation supported ESMA's proposal for minimum supervisory fees. Other respondents argued that, as required by SFTR, the fees should be proportionate to the trade repository's turnover and that the minimum fees should be adjusted (i.e. reduced) to reflect only the additional necessary expenditure in case of an extension of registration.

In the Final Report, ESMA maintained its initial proposal arguing that the minimum fees should cover ESMA's fixed costs and that in this case there are no synergies with EMIR that would justify a reduced level of fees.

First-year supervisory fees

In its consultation paper, ESMA explained, based on their EMIR experience, that in the first months after registration of a trade repository, ESMA's supervisory effort is not related to the level of activity of the trade repository but instead is similar across all trade repositories and is approximately equal to the supervisory effort during registration. ESMA noted in this regard that under SFTR the reporting obligation only applies as of 12 months after the adoption of the RTS on the details of reports, based on Article 4(9) SFTR. In that regard, ESMA considered that if the registration occurs in a certain year and SFTR reporting obligation starts the following year the costs will be lower than in an ordinary year of typical supervision, while if registration of a trade repository falls into the same year as the start of the SFT reporting obligation, it would give rise to a situation closer to business-as-usual supervision.

Based on those considerations, ESMA proposed three scenarios for the calculation of the first-year supervisory fees.

In the first scenario where the registration occurs in a certain year and the SFTR reporting obligation starts in the next year, ESMA proposes that the first-year fee is capped at the amount of the registration fee, to be computed under a formula so that the fee is proportionally lower where the registration occurs closer to the end of the year.

In the second scenario (the SFTR reporting obligation falls into the first six months of the year where the registration occurs), ESMA proposes that the fees are calculated on the basis of a turnover extrapolation for an interim period similar to the approach in the EMIR interim rules that apply in the second year of reporting.

In the third scenario (the SFTR reporting obligation falls into the last six months of the year where the registration occurs), ESMA proposes that the fees are calculated on the basis of the trade repository's registration fee.

The majority of the respondents, in order to be able to plan their costs, expressed preference for a single approach that follows the first scenario described above.

ESMA proposes to keep all of the above scenarios given that these reflect closer the actual costs and supervisory efforts by ESMA.

Recognition fees

With respect to the recognition costs, ESMA note that they have not yet processed an application for recognition from a third-country trade repository but given the similarities between the procedures under EMIR and SFTR they consider that both the recognition fees

and the ongoing supervisory fees for third-country trade repositories should be identical under the two regulations.

In view of that, and given the similarities with the recognition under EMIR, ESMA proposed to maintain the same structure and level of fees as in EMIR. Specifically, ESMA proposed that third-country trade repositories pay a first-time recognition fee consisting of two components: (1) EUR 20 000 for the processing of the application for recognition and (2) an amount resulting from the costs for concluding a cooperation agreement, estimated at EUR 35 000. Furthermore, ESMA proposed that in case of extending the registration for recognition the first component, processing of the application for recognition, be reduced by 50% which corresponds to EUR 10 000 given the synergies with the EMIR registration process. ESMA proposed that the second component is unchanged in case of extension of recognition.

Regarding the ongoing recognition fee, ESMA proposed that it should be fixed at EUR 5 000 similarly to the ongoing recognition fee in EMIR.

While market participants broadly agreed with ESMA's proposal, they raised concerns that the estimate of the cost for assessing the third-country regime and concluding cooperation agreements is too high. However, ESMA maintains its estimate given that the assessments under SFTR and EMIR are different and that it is not clear that the third-country authority responsible for supervising the trade repositories for derivatives and SFTs would be the same, hence there is no reason to assume that there would be synergies resulting in reduced supervisory efforts which in turn would justify reduced fees.

Payment and reimbursement conditions

As the fees have to cover ESMA's costs, ESMA proposes that the registration fees should be paid in full at the time of the application. To avoid spurious applications, ESMA proposes that there should not be a possibility to withdraw an application.

Furthermore, ESMA proposes, similarly to EMIR, that the annual supervisory fees be paid in two instalments. Hence, the first instalment is to be paid on 28 February each year. However, ESMA proposes to change the date of the payment of the second instalment from 31 August to 31 October in order to better address the possibility of unexpected applications for registration or recognition. The majority of the respondents did not object to this approach.

Finally, ESMA proposes that all fees should be collected by ESMA who will reimburse the costs incurred by national authorities as a result of carrying out supervisory tasks delegated to them by ESMA. The respondents supported ESMA's proposal.

This Regulation follows the measures proposed by ESMA in its technical advice.

3.1. Analysis of costs and benefits

The registration of trade repositories and recognition of third-country trade repositories, as well as their ongoing supervision by ESMA and the national authorities entails supervisory costs. SFTR requires that trade repositories cover these costs proportionally to their turnover. It is likely that trade repositories would pass those costs or a substantial amount of those costs to the reporting counterparties through the fees the trade repositories charge.

The total costs for supervision of trade repositories may be expected to be approximately the same as those for trade repositories operating under EMIR, i.e. EUR 2.5 million (see above ESMA estimates). This amount is not insignificant compared to the total trade repositories

compliance costs, estimated by Europe Economics⁵ at EUR 3.4-6.5 million one-off cost and EUR 1.6-2.1 million on-going annual cost per trade repository. However, given that the trade repositories are likely to pass on the cost to the reporting parties, they should be compared to the total costs for the reporting parties. Europe Economics has estimated the total one-off industry costs to be in the region of EUR 151 – EUR 198 million and total ongoing annual industry costs in the region of EUR 44 – EUR 59 million. Against this background, ESMA’s annual supervisory costs of EUR 2.5 million are less significant.

In any event, those costs would be offset by the benefits resulting from enhanced transparency and from providing the regulators with regular and granular data about the SFT market. Such information would enable regulators to monitor and detect the emergence of systemic risk stemming from the build-up of leverage and from maturity and liquidity transformation outside the traditional banking system and take preventive action, if needed.

3.2. Proportionality

This Regulation sets out the fees for trade repositories, specifying their types, the amounts and the manner in which they are paid. The objective of the fees is to fully cover ESMA’s costs related to trade repository supervision without leading to significant deficits or surpluses. The fees are calibrated so that this objective is met and therefore they are proportionate.

In view of the above, this Regulation ensures the proportionate application of SFTR rules, thus taking into account the principle of proportionality.

3.3. Subsidiarity

The objective of this Regulation is to specify the types of fees and the amount that trade repositories pay to ESMA in order to cover the supervisory costs which ESMA incurs.

Member States cannot take such actions by themselves, because those fees have to be determined in a consistent manner across the EU so as to ensure a fair distribution of the costs amongst trade repositories and a level-playing field in the EU. This Regulation complements the SFTR, whilst respecting the principle of proportionality as set out above, and therefore is in line with the principle of subsidiarity.

4. LEGAL ELEMENTS OF THE DELEGATED ACT

Chapter I of the proposed regulation on fees sets out the general provisions, in particular:

- Article 1 sets out the costs to be covered by the fees. The proposal does not entail any additional costs as regards staff expenditure.
- Article 2 defines the applicable turnover of trade repositories, on the basis of which supervisory fees will be charged.
- Article 3 foresees the possibility to review the level of fees in case of a significant and recurrent surplus or deficit.

Chapter II provides for the types of fees to be charged to trade repositories under SFTR:

- Article 4 lists the types of fees that must be paid.

⁵ Europe Economics’ Cost-Benefit Analysis on the Draft Technical Standards Relating to Securities Financing Transactions is attached as an annex to ESMA’s Final Report on Technical Standards under SFTR. See section 19.3 at https://www.esma.europa.eu/sites/default/files/library/esma70-708036281-82_2017_sftr_final_report_and_cba.pdf.

- Article 5 specifies the one-off registration and extension of registration fee to be charged, which reflects the expenditure necessary for ESMA to process an application for registration or extension of registration.
- Article 6 specifies the annual supervisory fees to be charged, which cover ESMA's costs for ongoing supervisory activities and will be proportionate to a trade repository's applicable turnover. A minimum supervisory fee is established to cover fixed administrative costs for the supervision.
- Article 7 specifies the recognition fees to be charged to third-country trade repositories.

Chapter III defines the payment modalities and possible reimbursement of fees, in particular:

- Article 8 specifies the general payment modalities. Payments have to be made in euro currency. A daily penalty in case of late payment is also established.
- Article 9 specifies the payment modalities of registration fees, payable in full at the time of application for registration.
- Article 10 specifies the payment modalities of annual supervisory fees, payable in two instalments (February and October of each year).
- Article 11 specifies the payment modalities of recognition fees, payable in full at the time of the application for recognition, and in February each year as regards the annual supervisory fee.
- Article 12 provides for the reimbursement of the costs incurred by competent authorities in the performance of tasks delegated to them by ESMA under SFTR.

Chapter IV provides for transitional and final provisions:

- Article 13 determines how first-year interim supervisory fees are calculated and to be paid by trade repositories.
- Article 14 specifies the payment modalities of registration fees and fees for third country repositories in 2019.
- Article 15 establishes the annual supervisory fee for 2020 to be paid by trade repositories registered in 2019.
- Article 16 provides the date of the entry into force of the Act.

In its Annex, the delegated regulation specifies the calculation method and payment terms for the first-year interim supervisory fees defined in Article 13.

COMMISSION DELEGATED REGULATION (EU) .../...

of 13.12.2018

supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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 648/2012⁶, and in particular Article 11(2) thereof,

Whereas:

- (1) Article 62 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council⁷ provides that the revenues of the European Securities and Markets Authority (ESMA) consist of fees paid to ESMA in the cases specified in Union legislation, together with contributions from national public authorities and a subsidy from the Union.
- (2) A registration fee should be charged to trade repositories established in the Union to cover ESMA's costs for processing the application for registration.
- (3) ESMA's costs for processing the application for registration will be higher where the trade repository provides ancillary services. The provision of such ancillary services is an indicator for high expected turnover and for increased costs associated with assessing the application for registration. Therefore, for the purpose of charging registration fees, trade repositories should be classified into two categories of expected total turnover, higher and lower expected turnover, to which different registration fees should apply, depending on whether they intend to provide ancillary services.
- (4) Where a trade repository already registered under Regulation (EU) No 648/2012 of the European Parliament and of the Council⁸ applies for an extension of registration, the expenditure necessary to accurately assess and examine the application would be lower than for a new registration as ESMA is already in possession of pertinent information regarding the applicant trade repository. Therefore, the applicant trade repository should pay a reduced fee. Where a trade repository not already registered under Regulation (EU) No 648/2012 simultaneously submits applications for registration under both Regulation (EU) No 648/2012 and Regulation (EU)

⁶ OJ L 337, 23.12.2015, p. 1.

⁷ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority)), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

⁸ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201 27.7.2012, p. 1).

2015/2365, the expenditure necessary to accurately assess and examine the applications would also be lower because of the synergies of reviewing once the same type of documents. In the case of simultaneous applications, the trade repository should pay the full registration fee due under Regulation (EU) No 648/2012, and the reduced fee for extension of registration due under Regulation (EU) 2015/2365.

- (5) If, after registration, a trade repository starts offering ancillary services and thereby falls into a higher category in terms of expected total turnover, the trade repository should pay the difference between the initial registration fee and the registration fee corresponding to the category of higher expected turnover. Conversely, where a trade repository stops offering ancillary services after registration, it should not be reimbursed by ESMA as the expenditure necessary to assess the application of a high turnover trade repository has effectively been spent during registration.
- (6) In order to discourage unfounded applications, registration fees should not be reimbursed if an applicant withdraws its application during the registration process, nor if registration is refused.
- (7) To ensure an efficient use of ESMA's budget and, at the same time, alleviate the financial burden on Member States and the Union, it is necessary to ensure that trade repositories pay at least all the costs related to their supervision. Supervisory fees should be set at a level such as to avoid a significant accumulation of deficit or surplus for activities related to trade repositories. Should deficits occur, ESMA should not recover the deficit from the trade repositories. Should the deficit be significant, ESMA should analyse the reasons and amend its pro-forma supervisory costs for the next budgeting period. With regard to surpluses, surpluses of fees should not be recovered by trade repositories.
- (8) In order to ensure a fair and clear allocation of fees which, at the same time, reflects the actual administrative effort devoted to each supervised entity, the supervisory fee should be calculated on the basis of the turnover generated by a trade repository's core activities and its ancillary services. For the purpose of calculating the applicable turnover, it is necessary to distinguish ancillary services directly related to the provision of the core services of centrally collecting and maintaining records of securities financing transactions (SFTs) under Regulation (EU) 2015/2365, such as agent lending and collateral management or services relating to centrally collecting and maintaining records of SFTs and derivatives, such as trade matching, trade confirmation/affirmation, collateral valuation, and third-party reporting. The supervisory fees charged to a trade repository should be proportionate to the activity of that individual trade repository compared to the total activity of all registered and supervised trade repositories within a given year. However, given that there are some fixed administrative costs for the supervision of trade repositories, a minimum annual supervisory fee should be established. This amount is not affected by payment of supervisory fees under Regulation (EU) No 648/2012.
- (9) Rules should be provided for fees to be charged to third country trade repositories that apply for recognition in the Union pursuant to Regulation (EU) 2015/2365, in order to cover recognition and annual supervisory administrative costs. In this regard, the recognition fee should include two components, the necessary expenditure relating to processing the application for recognition of such third-country trade repositories by ESMA pursuant to Article 19(4) of that Regulation and the necessary expenditure relating to the conclusion of cooperation arrangements with the competent authorities of the third country where the applicant trade repository is registered pursuant to

Article 20 of that Regulation. The costs associated with the conclusion of cooperation arrangements should be shared among the trade repositories recognised from the same third country. Furthermore, third country trade repositories should be charged an annual supervisory fee.

- (10) Where a third-country trade repository already recognised under Regulation (EU) No 648/2012 applies for an extension of its registration or recognition, the costs of processing the application should be lower than the costs of processing a new application due to synergies between the regimes under Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365. Therefore, the component of the recognition fee relating to processing the application should be reduced. On the other hand, the costs of concluding a cooperation agreement entail costs specific to compliance with Regulation (EU) 2015/2365. Therefore, the component of the recognition fee relating to cooperation agreements should be independent from the existence of cooperation agreements under Regulation (EU) No 648/2012.
- (11) The supervisory functions exercised by ESMA in respect of recognised third-country trade repositories mainly relate to the implementation of cooperation arrangements, including the effective exchange of data between relevant authorities. The cost of providing those functions should be covered by annual supervisory fees charged to recognised trade repositories. As those costs will be much lower than the costs incurred by ESMA for providing direct supervision of registered trade repositories in the Union, the supervisory fees for recognised trade repositories should be significantly lower than the minimum supervisory fee charged to registered trade repositories directly supervised by ESMA.
- (12) National competent authorities incur costs when carrying out work pursuant to Regulation (EU) 2015/2365 and as a result of any delegation of tasks by ESMA to national competent authorities pursuant to Article 74 of Regulation (EU) No 648/2010 and in accordance with Article 9(1) of Regulation (EU) 2015/2365. The fees charged by ESMA to trade repositories should also cover those costs. In order to avoid competent authorities incurring a loss or profit from carrying out delegated tasks or from assisting ESMA, ESMA should reimburse the actual costs incurred by that national competent authority.
- (13) As only limited data will be available regarding the activity of a trade repository in the year in which it is registered, an interim supervisory fee should be calculated on the basis of an estimate of the expenditure necessary for supervising that trade repository in its first year. The exact calculation of the fee should take into account the date of the registration of the trade repository and the date when the reporting obligation referred to in Article 4(1) of Regulation (EU) 2015/2365 starts so as to accurately reflect the level of supervision required from ESMA. If the regulatory reporting of a trade repository only starts in the year following its registration, the interim supervisory fee for the year of registration should be based on the registration fee. This is because the expenditure necessary for the supervision of a trade repository not yet reporting is comparable to the expenditure necessary for assessing the application for registration. Depending on the time between registration and the end of the year, the amount is adjusted pro rata assuming that a standard registration process requires 150 working days. If the regulatory reporting of a trade repository starts in the first six months of the year of its registration, the interim supervisory fee should be calculated on the basis of the applicable turnover reflecting the trade repository's revenues for the first half year. If the regulatory reporting of a trade repository starts in the last six months of the year of its registration, the interim supervisory fee should be calculated on the

basis of the level of the trade repository's registration fee. This is because there is only limited data available for the application of the applicable turnover.

- (14) Trade repositories registered in 2019 will not start providing reporting services before the end of 2019 and their level of activity in 2019 is likely to be almost non-existent. Therefore, their annual supervisory fee for 2020 should be calculated on the basis of their applicable turnover during the first half of 2020.
- (15) This Regulation should form the basis for ESMA's right to charge fees to trade repositories,

HAS ADOPTED THIS REGULATION:

CHAPTER I

General Provisions

Article 1

Recovery of supervisory costs in full

The fees charged to trade repositories shall cover:

- (a) all costs relating to the registration and supervision of trade repositories by ESMA in accordance with Regulation (EU) 2015/2365, including those costs resulting from the recognition of trade repositories as well as costs resulting from the extension of registration or extension of recognition for trade repositories that have already been registered or recognised under Regulation (EU) No 648/2012;
- (b) all costs for the reimbursement of competent authorities that have carried out work pursuant to Regulation (EU) 2015/2365, and as a result of any delegation of tasks pursuant to Article 74 of Regulation (EU) No 648/2012 and in accordance with Article 9 of Regulation 2015/2365 (EU).

Article 2

Applicable turnover

1. Trade repositories registered under Regulation (EU) 2015/2365 only shall keep audited accounts for the purposes of this Regulation which distinguish between at least the following:
 - (a) revenues generated from core functions of centrally collecting and maintaining records of SFTs under Regulation (EU) 2015/2365;
 - (b) revenues generated from ancillary services that are directly related to centrally collecting and maintaining records of SFTs under Regulation (EU) 2015/2365.The applicable revenues from ancillary services of the trade repository for a given year (n) shall be the revenues from the services determined under point (b).
2. Trade repositories registered under both Regulation (EU) 2015/2365 and Regulation (EU) No 648/2012 shall keep audited accounts for the purposes of this Regulation which distinguish between at least the following:
 - (a) revenues generated from core functions of centrally collecting and maintaining records of SFTs under Regulation (EU) 2015/2365;

- (b) revenues generated from core functions of centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012;
- (c) revenues generated from ancillary services that are directly related to centrally collecting and maintaining records of SFTs under Regulation (EU) 2015/2365;
- (d) revenues generated from ancillary services that are directly related to both centrally collecting and maintaining records of SFTs under Regulation (EU) 2015/2365 and centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012.

The applicable revenues from ancillary services of the trade repository for a given year (n) shall be the sum of

- the revenues referred to in point (c) and
- a share of the revenues referred to in point (d).

The share of the revenues referred to in point (d) shall be equal to the revenues referred to in point (a), divided by the sum of

- the revenues referred to in point (a) and
- the revenues referred to in point (b).

3. The applicable turnover of a trade repository for a given year (n) shall be the sum of
- its revenues generated from the core functions of centrally collecting and maintaining records of SFTs under Regulation (EU) 2015/2365 on the basis of the audited accounts of the previous year (n-1) and
 - its applicable revenues from ancillary services determined according to paragraphs 1 and 2, as applicable, on the basis of the audited accounts of the previous year (n-1)

divided by the sum of

- the total revenues of all registered trade repositories generated from the core functions of centrally collecting and maintaining records of SFTs under Regulation (EU) 2015/2365 on the basis of the audited accounts of the previous year (n-1) and
- the total applicable revenues from ancillary services of all registered trade repositories determined according to paragraphs 1 and 2, as applicable, on the basis of the audited accounts of the previous year (n-1).

The applicable turnover of a given trade repository ('TRi' in the formula below) shall hence be calculated as follows:

$$\frac{SFT \text{ revenue } TR_i}{\sum SFT \text{ revenue all } TR}$$

where SFT revenue = revenue core SFT services + applicable revenue ancillary services.

4. Where the trade repository did not operate during the full previous year (n-1), its applicable turnover shall be estimated according to the formula set out in paragraph 3 by extrapolating, for the trade repository, the value calculated for the number of

months during which the trade repository operated in year (n-1) to the whole year (n-1).

Article 3

Adjustment of fees

Fees charged for ESMA's activities related to trade repositories shall be set at a level such as to avoid a significant accumulation of deficit or surplus.

Where there is a recurrent significant surplus or deficit, the Commission shall revise the level of fees.

CHAPTER II

Fees

Article 4

Types of fees

1. Trade repositories established in the Union that apply for registration in accordance with Article 5(1) of Regulation (EU) 2015/2365 shall be charged the following types of fees:
 - (a) registration and extension of registration fees in accordance with Article 5;
 - (b) annual supervisory fees in accordance with Article 6.
2. Trade repositories established in third countries that apply for recognition in accordance with Article 19(4) of Regulation (EU) 2015/2365 shall be charged the following types of fees:
 - (a) recognition or extension of registration fees in accordance with paragraphs 1 and 2 of Article 7;
 - (b) annual supervisory fees for recognised trade repositories in accordance with Article 7(3).

Article 5

Registration fee and extension of registration fee

1. The registration fee to be paid by individual applicant trade repositories shall reflect the expenditure necessary to accurately assess and examine the application for registration or extension of registration, taking into account the services to be provided by the trade repository, including any ancillary services.
2. A trade repository shall be deemed to offer ancillary services in any of the following situations:
 - (a) where it directly provides ancillary services;
 - (b) where an entity belonging to the same group as the trade repository provides ancillary services;

- (c) where an entity with which the trade repository has concluded an agreement in the context of the trading or post-trading chain or business line to cooperate in the provision of services provides the ancillary services.
3. Where a trade repository does not provide ancillary services as referred to in paragraph 2, the trade repository concerned is deemed to have a low expected total turnover and shall pay a registration fee of EUR 65 000.
 4. Where a trade repository provides ancillary services as referred to in paragraph 2, the trade repository is deemed to have a high expected total turnover and shall pay a registration fee of EUR 100 000.
 5. Where a trade repository is applying for registration and has already been registered under Title VI, Chapter 1 of Regulation (EU) No 648/2012, the trade repository shall pay an extension of registration fee of:
 - (a) EUR 50 000 for trade repositories that provide ancillary services as referred to in paragraph 2;
 - (b) EUR 32 500 for low expected turnover trade repositories that do not provide ancillary services as referred to in paragraph 2.
 6. Where a trade repository not already registered under Regulation (EU) No 648/2012 simultaneously submits applications for registration under both Regulation (EU) No 648/2012 and Regulation (EU) 2015/2365, the trade repository shall pay the full registration fee due under Regulation (EU) No 648/2012, and the fee for extension of registration pursuant to paragraph 5.
 7. In case of a material change to the conditions for registration as referred to in Article 5(4) of Regulation (EU) 2015/2365, as a consequence of which the trade repository owes a higher registration fee pursuant to paragraphs 3, 4 and 5 than the registration fee paid initially, the trade repository shall be charged the difference between the initially paid registration fee and the higher applicable registration fee resulting from that material change.

Article 6

Annual supervisory fees for registered trade repositories and trade repositories that have extended their registration

1. A registered trade repository shall be charged an annual supervisory fee.
2. The total annual supervisory fee and the annual supervisory fee for a given trade repository for a given year (n) shall be calculated as follows:
 - (a) the total annual supervisory fee for a given year (n) shall be the estimate of expenditure relating to the supervision of trade repositories' activities under Regulation (EU) 2015/2365 as included in the ESMA's budget for that year;
 - (b) a trade repository's annual supervisory fee for a given year (n) shall be the total annual supervisory fee determined pursuant to point (a), divided between all trade repositories registered in year n-1, in proportion to their applicable turnover calculated pursuant to Article 2(3).
3. In no case shall a trade repository applying for registration or an extension of registration under Article 5(5) of Regulation (EU) 2015/2365 pay an annual supervisory fee of less than EUR 30 000.

Article 7

Fees for third country trade repositories

1. A trade repository applying for recognition under Article 19(4)(a) of Regulation (EU) 2015/2365 shall pay a recognition fee calculated as the sum of the following:
 - (a) EUR 20 000;
 - (b) the amount resulting from dividing EUR 35 000 among the total number of trade repositories from the same third country that are either recognised by ESMA, or that have applied for recognition but have not been yet recognised.
2. A trade repository applying for extension of registration under Article 19(4)(b) of Regulation (EU) 2015/2365 shall pay a recognition fee calculated as the sum of EUR 10 000 and the amount calculated in accordance with paragraph 1(b).
3. A trade repository recognised in accordance with Article 19(3) of Regulation (EU) 2015/2365 shall pay an annual supervisory fee of EUR 5 000.

CHAPTER III

Payment and Reimbursement Conditions

Article 8

General payment modalities

1. All fees shall be payable in euros. They shall be paid as specified in Articles 9, 10 and 11.
2. Any late payments shall incur a daily penalty equal to 0.1% of the amount due.

Article 9

Payment of registration fees

1. The registration fee referred to in Article 5 shall be paid in full at the time the trade repository submits its application for registration under Article 5(5) of Regulation (EU) 2015/2365.
2. Registration fees shall not be reimbursed if a trade repository withdraws its application for registration before ESMA adopts the reasoned decision to register or refuse registration, or if registration is refused.

Article 10

Payment of annual supervisory fees

1. The annual supervisory fee referred to in Article 6 for a given year shall be paid in two instalments.

The first instalment shall be due on 28 February of that year and shall amount to five sixths of the estimated annual supervisory fee. If the applicable turnover calculated

pursuant to Article 2 is not yet available at that time, the calculation on the turnover shall be based on the last applicable turnover available pursuant to Article 2.

The second instalment shall be due on 31 October. The amount of the second instalment shall be the annual supervisory fee calculated according to Article 6 minus the amount of the first instalment.

2. ESMA shall send the invoices for the instalments to the trade repositories at least 30 days before the respective payment date.

Article 11

Payment of fees for third country trade repositories

1. The recognition fees referred to in Articles 7(1) and 7(2) shall be payable in full at the time the trade repository submits its application for recognition under Article 19(4) of Regulation (EU) 2015/2365. They shall not be reimbursed.
2. Each time a new application for recognition of a third country trade repository is submitted under Article 19(4) of Regulation (EU) 2015/2365, ESMA shall recalculate the amount referred to in Article 7(1)(b).

ESMA shall reimburse the difference between the amount charged pursuant to Article 7(1)(b) and the amount resulting from the recalculation equally among the trade repositories already recognised from the same third country. That difference shall be reimbursed either through direct payment or through reduction of the fees charged the subsequent year.

3. The annual supervisory fee for a recognised trade repository shall be due by the end of February each year. ESMA shall send a payment invoice to a recognised trade repository at least 30 days before that date.

Article 12

Reimbursement of competent authorities

1. Only ESMA shall charge fees to trade repositories for their registration, extension of registration, supervision and recognition pursuant to this Regulation.
2. ESMA shall reimburse a competent authority for the actual costs incurred as a result of carrying out tasks pursuant to Regulation (EU) 2015/2365 and as a result of any delegation of tasks pursuant to Article 74 of Regulation (EU) No 648/2012 and in accordance with Article 9(1) of Regulation (EU) 2015/2365.

CHAPTER IV

Transitional and Final Provisions

Article 13

Calculation of interim supervisory fees

1. Where the reporting obligation referred to in Article 4(1) of Regulation (EU) 2015/2365 in accordance with Article 33(2)(a) of that Regulation starts in the year following a trade repository's registration under Article 5(5) of Regulation (EU) 2015/2365, the trade repository shall pay, in the year of its registration, an interim supervisory fee calculated in accordance with Part 1 of the Annex.
2. Where the reporting obligation referred to in Article 4(1) of Regulation (EU) 2015/2365 in accordance with Article 33(2)(a) of that Regulation starts in the first six months of the year of a trade repository's registration under Article 5(5) of Regulation (EU) 2015/2365, the trade repository shall pay, in the year of its registration, an interim supervisory fee calculated in accordance with Part 2 of the Annex.
3. Where the reporting obligation referred to in Article 4(1) of Regulation (EU) 2015/2365 in accordance with Article 33(2)(a) of that Regulation starts in the last six months of the year of a trade repository's registration under Article 5(5) of Regulation (EU) 2015/2365, the trade repository shall pay, in the year of its registration, an interim supervisory fee calculated in accordance with Part 3 of the Annex.

Article 14

Payment of registration fees and fees for third country trade repositories in 2019

1. Trade repositories which apply for registration under Article 5(5) of Regulation (EU) 2015/2365 in 2019 shall pay the registration fee referred to in Article 6 in full 30 days after the entry into force of this Regulation or at the date of submission of the application for registration, whichever is the later.
2. Third country trade repositories which apply for recognition under Article 19(4) of Regulation (EU) 2015/2365 in 2019 shall pay the recognition fee referred to in Article 7(1) or 7(2), as applicable, in full 30 days after the entry into force of this Regulation or at the date of submission of the application, whichever is the later.
3. Third country trade repositories recognised in 2019 under Article 19(3) of Regulation (EU) 2015/2365 shall pay an annual supervisory fee for 2019 in accordance with Article 7(3) in full 60 days after the entry into force of this Regulation or 30 days after ESMA informing the trade repository of the decision on recognition referred to in Article 19(7) of Regulation (EU) 2015/2365, whichever is the later.

Annual supervisory fee for 2020 for trade repositories registered or having extended their registration in 2019

1. The trade repository's supervisory fee for 2020 shall be the total annual supervisory fee determined pursuant to Article 6(2)(a) divided between all trade repositories registered in 2019, in proportion to the applicable turnover calculated pursuant to paragraph 2.
2. For the purposes of calculating the annual supervisory fee for 2020 in accordance with Article 6 for a trade repository registered in 2019 under Article 5(5) of Regulation (EU) 2015/2365, the applicable turnover of the trade repository shall be the sum of
 - the revenues generated from the core functions of centrally collecting and maintaining records of SFTs during the period from 1 January 2020 to 30 June 2020 and
 - the applicable revenues from ancillary services of the trade repository in accordance with paragraphs 1 and 2 of Article 2 during the period from 1 January 2020 to 30 June 2020

divided by the sum of

- the total revenues generated from the core functions of centrally collecting and maintaining records of SFTs during the period from 1 January 2020 to 30 June 2020 of all registered trade repositories and
 - the applicable revenues from ancillary services in accordance with paragraphs 1 and 2 of Article 2 during the period from 1 January 2020 to 30 June 2020 of all registered trade repositories.
3. The annual supervisory fee for 2020 for trade repositories registered in 2019 shall be paid in two instalments.

The first instalment shall be due on 28 February 2020 and shall amount to the registration fee paid by the trade repository in 2019 pursuant to Article 5.

The second instalment shall be due on 31 October 2020. The amount of the second instalment shall be the annual supervisory fee calculated according to paragraph 1 minus the amount of the first instalment.

Where the amount paid by a trade repository in the first instalment is higher than the annual supervisory fee calculated according to paragraph 1, ESMA shall reimburse the trade repository the difference between the amount paid in the first instalment and the annual supervisory fee calculated according to paragraph 1.

4. ESMA shall send the invoices for the instalments of the annual supervisory fee for 2020 to the trade repositories registered in 2019 at least 30 days before the payment date.
5. When the audited accounts for 2020 become available, trade repositories registered in 2019 shall report to ESMA any change in the applicable turnover calculated in accordance with paragraph 2, stemming from the difference between the final data for the period from 1 January 2020 to 30 June 2020 and the provisional data used for the calculation pursuant to paragraph 2.

Trade repositories will be charged the difference between the annual supervisory fee for 2020 actually paid pursuant to paragraph 1 and the annual supervisory fee for 2020 to be paid as a consequence of any change to the applicable turnover referred to in the first subparagraph.

ESMA shall send the invoice for any additional payment referred to in the previous subparagraph at least 30 days before the respective payment date.

Article 16

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all the Member States.

Done at Brussels, 13.12.2018

For the Commission
The President
Jean-Claude JUNCKER