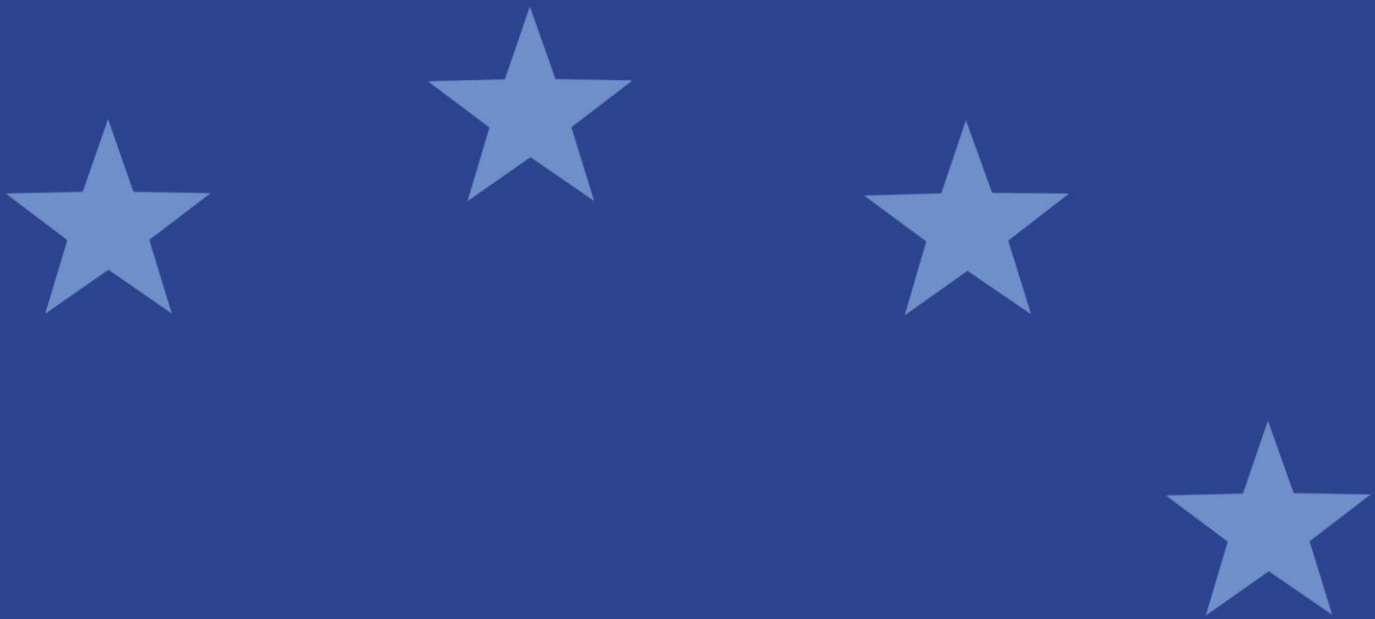




European Securities and  
Markets Authority

# Consultation Report

**ESMA's technical advice to the Commission on fees for securitisation  
Repositories under the Securitisation Regulation**



## Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Annex 1. Comments are most helpful if they:

- respond to the question stated;
- indicate the specific question to which the comment relates;
- contain a clear rationale; and
- describe any alternatives ESMA should consider.

ESMA will consider all comments received by **23 May 2018**.

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading 'Your input - Consultations'.

### Publication of responses

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be publically disclosed. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA's rules on access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by ESMA's Board of Appeal and the European Ombudsman.

### Data protection

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](#).

### Who should read this paper

This consultation paper may be specifically of interest to securitisation repositories which plan to apply for registration, extension of registration or recognition under the Securitisation Regulation, the already registered trade repositories under EMIR, as well as of interest to trade associations, securitisation reporting entities and market infrastructures.

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### Acronyms and definitions used

|                           |   |
|---------------------------|---|
| ABCP                      | Asset-Backed Commercial Paper   |
| ABS                       | Asset-backed security   |
| CRA                       | Credit Rating Agency  |
| CRAR                      | Regulation (EU) No 462/2013 of the European Parliament and of the Council of 21 May 2013 amending Regulation (EC) No 1060/2009 on credit rating agencies Text with EEA relevance  |
| EBA                       | European Banking Authority  |
| EMIR                      | European Market Infrastructure Regulation (Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories)   |
| ESMA                      | European Securities and Markets Authority   |
| ESMA Regulation           | 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, as amended.  |
| EU                        | European Union  |
| FTE                       | Full-Time Equivalent  |
| ITS                       | Implementing Technical Standards  |
| RTS                       | Regulatory Technical Standards  |
| Securitisation Regulation | Regulation (EU) 2017/2402 of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple, transparent, and standardized securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, and Regulations (EC) No 1060/2009 and (EU) No 648/2012 |
| SFTR                      | Securities Financing Transactions Regulation (Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012)   |

# 1 Executive Summary

## Reasons for publication

On 31 January 2018 the European Securities and Markets Authority (ESMA) received a formal request from the European Commission (Commission) to provide technical advice to assist the Commission in formulating a Regulation on fees for Securitisation Repositories (SRs) under the Securitisation Regulation.

## Contents

The present report contains ESMA's proposed technical advice on supervisory fees. In making these proposals, ESMA has sought to be consistent with existing fee provisions under SFTR and EMIR. At the same time, ESMA has sought to streamline the fee arrangement where possible, also in view of its experience in calculating and processing fees for trade repositories and CRAs for several years. In doing so, ESMA has aimed to both meet its legislative mandate (i.e. that its fees should be proportionate to repositories' turnover) while also establishing an efficient framework. To this end, ESMA proposes a single registration fee differentiated between new registrations and extensions of registrations for existing trade repositories. ESMA also proposes annual supervisory fees that reflect the available information on repositories' applicable turnover. Annex I lists ESMA's consultation questions, Annex II includes the Commission's mandate to ESMA, and Annex III contains the draft technical advice on fees.

## Next Steps

ESMA will consider the feedback it receives to this consultation in Q2 2018 and expects to publish and submit its final technical advice to the Commission in Q3 2018.

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## 2 Legal mandate

1. Regulation (EU) 2017/2402 of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple, transparent, and standardized securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, and Regulations (EC) No 1060/2009 and (EU) No 648/2012 ('the Securitisation Regulation') was published in the Official Journal of the European Union on 28 December 2017.
2. The Securitisation Regulation confers a pivotal role on securitisation repositories, who will help foster transparency in securitisation markets and will be relied upon by numerous investors, public entities, and reporting entities to meet their respective obligations under the Securitisation Regulation. As set out in Article 10(1) of the Regulation, ESMA will register securitisation repositories and supervise their continued compliance with the Regulation and its Delegated Acts. As set out in Article 16 of the Regulation, ESMA shall charge the securitisation repositories fees that shall fully cover ESMA's necessary expenditure relating to the registration, recognition and supervision of securitisation repositories.
3. On 31 January 2018 the European Securities and Markets Authority (ESMA) received a formal request to provide technical advice to the Commission in formulating an EU Regulation on fees for securitisation repositories under the Securitisation Regulation by delegated act. The advice is to be delivered to the Commission by 31 October 2018. The mandate is enclosed in Annex II in this paper.
4. In turn, pursuant to Article 16(2) of the Securitisation Regulation, the Commission is empowered to adopt a Regulation on fees in the form of a delegated act to specify further 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. ESMA expects that its final technical advice would form the basis for the Commission's forthcoming delegated act.

## 3 Background on ESMA's budget and proposed approach

5. As required under the second sub-paragraph of Article 16(2) of the Securitisation Regulation, ESMA shall charge the securitisation repositories fees which are proportionate to the turnover of the securitisation repository concerned and which shall fully cover ESMA's necessary expenditure relating to the registration and supervision of securitisation repositories as well as the reimbursement of any costs that the competent authorities may incur as a result of any delegation of tasks pursuant to Article 14(1) of the Securitisation Regulation. Therefore, to ensure an efficient use of ESMA's budget and, at the same time, alleviate the financial burden for Member States and the Union, it is necessary to ensure that securitisation repositories pay for all of ESMA's necessary expenditures related to their registration/extension of registration and supervision.

6. ESMA's budget is managed on the basis of an activity-based method: financial and staff resources are allocated per activity, rather than per functional cost or per internal management hierarchy. This method is used both for budget planning i.e. for calculating ESMA's estimated costs generated per activity (including the relevant overheads), and for budget costing, i.e. calculating ESMA's actual costs per activity. For example, this is reflected in ESMA's 2018 annual work programme<sup>1</sup>, which allocates 16 FTE to the supervision of trade repositories, for a total budget of EUR 2,548,050 (which includes salary and all relevant overheads). This equates to EUR 159,000 per FTE.
7. ESMA applies a universal budgeting approach, which means that income from fees is treated as general revenue. This is in line with the standard practice of other partially funded EU agencies, as recommended by DG Budget of the European Commission.
8. ESMA prepares annual budgets aiming at balancing income from fees with its relevant expenditure, on the understanding that deficits or surpluses are to be balanced by the rest of ESMA's income sources. This mechanism is already in place at ESMA for Credit Rating Agencies (CRAs) and also for trade repositories under EMIR (and envisaged under SFTR<sup>2</sup>). In case of deficits (ESMA collecting less than incurred), ESMA does not recover the deficit from the supervised entities. If the deficit is significant and recurrent, ESMA should analyse the reasons why it happened, drawing up lessons for the next budgeting period. For surpluses (ESMA collecting more than incurred) the same reasoning should be followed. As a result, no excess of fees is paid back to supervised entities.
9. Through the existing mechanisms in place (EU budgetary procedure, annual reporting, single programming document), ESMA's Management Board and Board of Supervisors (of which the European Commission is a permanent member) remain fully informed of ESMA's fee collection and expenditure levels. ESMA's supervisory costs are presented in its annual work programme and yearly fee income is included in ESMA's budget (which is duly published on its website and in the Official Journal of the European Union). On a yearly basis, the European Court of Auditors evaluates the correct implementation of ESMA's budget, including its fee-funded budget, versus the applicable EU Regulations. The final audit report is communicated to the European Parliament and to the European Council.
10. The Commission's present mandate requests ESMA to build upon its previous experience in advising on supervisory fees for trade repositories registered under EMIR and SFTR, and on the experience of relevant national authorities in setting supervisory fees for financial institutions. Accordingly, ESMA has, to the extent possible, based its proposals on fees for trade repositories, and on both ESMA's final technical advice on fees under SFTR<sup>3</sup> and on the Commission Delegated Regulation 1003/2013 (ESMA's fees under EMIR, hereafter). At the same time, ESMA notes that, under Article 10(2) of the

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<sup>1</sup> [https://www.esma.europa.eu/sites/default/files/library/esma20-95-619\\_2018\\_work\\_programme.pdf](https://www.esma.europa.eu/sites/default/files/library/esma20-95-619_2018_work_programme.pdf)

<sup>2</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-151-223\\_final\\_report\\_on\\_technical\\_advice\\_on\\_tr\\_fees\\_under\\_sftr\\_and\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-151-223_final_report_on_technical_advice_on_tr_fees_under_sftr_and_emir.pdf)

<sup>3</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-151-223\\_final\\_report\\_on\\_technical\\_advice\\_on\\_tr\\_fees\\_under\\_sftr\\_and\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-151-223_final_report_on_technical_advice_on_tr_fees_under_sftr_and_emir.pdf)

Securitisation Regulation, securitisation repositories must be established in the Union and that there is no arrangement in place for the recognition of securitisation repositories established outside the Union. Hence, ESMA's present technical advice does not cover recognition fees (unlike its technical advice provided under EMIR and SFTR, respectively).

11. Moreover, ESMA has borne in mind the European Commission's proposals on EMIR 2.2 and on the ESMA Regulation, notably as concerns the additional fees charged to specific market participants and products being directly or indirectly supervised by ESMA<sup>4</sup>. Furthermore, ESMA notes that with the various fee-related arrangements set out for CRAs (via CDR 272/2012<sup>5</sup>), trade repositories under EMIR, trade repositories under SFTR, and presently securitisation repositories under the Securitisation Regulation, there is an important need for the regulations on ESMA's fee management to be as harmonised and simplified as possible, while still meeting ESMA's legislative mandates in each applicable Regulation. Such efforts are, in ESMA's view, crucial to ensuring a sound financial management approach for the use of ESMA's resources.
12. Elsewhere, in providing the present draft Technical Advice, ESMA has drawn on its experience in collecting fees for approximately 6 years for CRAs and for 5 years on trade repositories. These experiences have shown that the present fee collection arrangements can be challenging to implement in practice, both in ESMA's operational functions and also as regards the operational functions of the supervised entities in question (for example, as regards the payment of annual fees in several instalments). In ESMA's view, implementation issues can lead to increased operational risks on all sides, which may be heightened if there is a broader scope of entities being charged fees by ESMA. Thus, ESMA considers it important that its technical advice both satisfies its legislative mandates while also ensuring arrangements that are adequately streamlined.
13. In light of these considerations, ESMA would continue to favour the establishment of a system containing specific fees for the registration (or extension of registration) process; and an annual fee proportionate to securitisation repository-related turnover (subject to a minimum annual fee). As requested in the Commission's mandate, ESMA has considered the possibility of setting out, in its fee structures, arrangements to take into account potential exceptional/non-routine supervisory activities. However, in line with its technical advice under EMIR and SFTR, ESMA does not see a need for such an arrangement at the present juncture.
14. The following sections examine each of these fee categories in turn. Additional considerations (concurrent applications, reimbursements, payment timing, and delegation of tasks) follow thereafter.

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<sup>4</sup> [https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-536\\_en](https://ec.europa.eu/info/law/better-regulation/initiatives/com-2017-536_en) and [http://ec.europa.eu/finance/docs/law/170920-communication-esas\\_en.pdf](http://ec.europa.eu/finance/docs/law/170920-communication-esas_en.pdf)

<sup>5</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32012R0272&from=EN>



## 4 Registration fees

### 4.1 New registration fees

15. As explained in the Consultation paper on securitisation repositories' application requirements<sup>6</sup>, the majority of the conditions for registration under the Securitisation Regulation are the same as those under EMIR. Therefore, ESMA expects that its efforts for registering securitisation repositories under the Securitisation Regulation will bear similarities to its efforts for registering trade repositories under EMIR (and SFTR, once the delegated act is adopted).
16. ESMA recognizes that its past experience on trade repositories registration could help in making the securitisation repository registration process more efficient and, therefore, reduce the expected workload going forward for securitisation repositories (all else being equal). However, ESMA also notes that the Securitisation Regulation and the draft Delegated Acts (if adopted in their current form<sup>7</sup>) specifies in greater detail some requirements that would need to be taken on board by the securitisation repositories, such as the conduct of completeness and consistency checks, the production of data completeness scores, and the production of end-of-day reports. The assessment of repositories' compliance with these extra requirements could entail some additional work for ESMA.
17. Thus, on balance, ESMA considers that the most realistic way to estimate its potential new registration expenditures for securitisation repositories is to examine the costs it has experienced so far in relation to the new registration of trade repositories under EMIR. To this end, ESMA considered the actual average registration costs for trade repositories during 2013. During this period supervisory efforts were almost fully dedicated to registering new trade repositories (the actual supervision of trade repositories started only at the end of 2013). The first application for registration reached ESMA on 15 March 2013 and five subsequent applications followed shortly thereafter. The first four trade repositories were registered on 7 November 2013, and the other two were registered on 5 December 2013.
18. ESMA has considered the actual working days spent to establish the trade repository registration process and to assess the completeness and compliance of applications. Consequently, ESMA concludes that processing one securitisation repository application for registration requires around 0.65 FTE (full-time equivalent). Applying this 0.65 FTE

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<sup>6</sup>[https://www.esma.europa.eu/sites/default/files/library/consultation\\_paper\\_secureditisation\\_repositories\\_application.pdf](https://www.esma.europa.eu/sites/default/files/library/consultation_paper_secureditisation_repositories_application.pdf)

<sup>7</sup> See the Consultation Paper on disclosure requirements, operational standards, and access conditions:

[https://www.esma.europa.eu/sites/default/files/library/esma33-128-107\\_consultation\\_paper\\_disclosure\\_and\\_operational\\_standards\\_0.pdf](https://www.esma.europa.eu/sites/default/files/library/esma33-128-107_consultation_paper_disclosure_and_operational_standards_0.pdf)

estimate to ESMA's supervisory budget (see paragraph 6 above) results in a proposed new registration fee of EUR 100,000 for securitisation repositories<sup>8</sup>.

19. ESMA notes that this proposal represents a departure from its past technical advice under EMIR and SFTR, which defined registration fees also to reflect the expected turnover of trade repositories, on the basis of specific criteria<sup>9</sup>. However, in ESMA's experience since then, such categories appear unnecessary, insofar as all of the trade repositories registered so far have been classified as trade repositories with high expected turnover, because all of them were deemed to provide ancillary services. In the present context, it is expected that securitisation repositories would also provide ancillary services (to compensate for the free-of-charge access arrangements in the Securitisation Regulation<sup>10</sup>).

**Q 1: Do you agree with the proposed new registration fees for securitisation repositories? Please elaborate on the reasons for your response.**

## 4.2 Extension of registration fees

20. Firms that are already registered as trade repositories under EMIR or SFTR can apply for extension of their registration under the Securitisation Regulation by means of a simplified application. To date no such application has been received (under SFTR, relating to an extension of registration under EMIR), and thus ESMA possesses no actual historical experience available to estimate the costs of an extension for registration. Nevertheless, relative to its expenditures for a new registration, ESMA assumes its expenditure estimates for a registration extension would be driven by the following factors:

- a. An extension for registration will be less time consuming than a new registration under the Securitisation Regulation. In other words, ESMA believes it could more efficiently process applications from firms it is already familiar with (i.e. existing trade repositories) than from new entities. For example, ESMA's experience with CRA re-applications (either because of previous refusals or withdrawals) has shown that documentation has been processed on average 30% more quickly than when processing the same items received as part of the original application.
- b. The Securitisation Regulation introduces additional detailed requirements, which will need to be taken on board by trade repositories seeking an extension of

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<sup>8</sup> Strictly-speaking, the number is EUR 103,000 (i.e. from applying 0.65 FTE to the EUR 159,000 figure discussed above). However, ESMA considers that a single new registration fee for securitisation repositories (rather than two different registration fees depending on whether ancillary services are provided—see the link below to ESMA's final technical advice under SFTR) would provide for somewhat simpler registration processes on ESMA's side and therefore some efficiency gains. [https://www.esma.europa.eu/sites/default/files/library/esma70-151-223\\_final\\_report\\_on\\_technical\\_advice\\_on\\_tr\\_fees\\_under\\_sftr\\_and\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-151-223_final_report_on_technical_advice_on_tr_fees_under_sftr_and_emir.pdf)

<sup>9</sup> (1) the number of derivatives asset classes covered by the trade repository and (2) the provision of ancillary services.

<sup>10</sup> See the Consultation Paper on disclosure requirements, operational standards, and access conditions: [https://www.esma.europa.eu/sites/default/files/library/esma33-128-107\\_consultation\\_paper\\_disclosure\\_and\\_operational\\_standards\\_0.pdf](https://www.esma.europa.eu/sites/default/files/library/esma33-128-107_consultation_paper_disclosure_and_operational_standards_0.pdf)

registration. Ensuring that the repository has effectively addressed these detailed requirements could entail some additional explanatory work for ESMA until a common understanding has been reached between the repository and ESMA.

- c. An application for extension of registration would require the applicant to submit around 80% of the documentation that it would have submitted if applying for registration<sup>11</sup>.

21. In summary, based on the above factors, ESMA expects that its expenditures for an extension of registration application would be around half the cost of an assessment of an application for new registration, i.e. approximately 0.33 FTE. This is identical to the estimate set out in ESMA's technical advice on fees under SFTR.

22. Applying this 0.33 FTE estimate to ESMA's above-mentioned supervisory budget results in a proposed registration fee of EUR 53,000 for trade repositories seeking to extend their registration with ESMA to cover securitisation repository services under the Securitisation Regulation. Taking into account the efficiency gain triggered by the use of a single extension of registration fee (in contrast to previous arrangements), it is proposed to set the amount of the extension of registration fee for securitisation repositories at €50,000.

**Q 2: Do you agree with the proposed extension of registration fees for securitisation repositories? Please elaborate on the reasons for your response.**

### **4.3 Registration fees in the event of simultaneously applications under EMIR, SFTR, and/or the Securitisation Regulation**

23. ESMA considers it important, as in its previous technical advice under SFTR, to set out a proposed registration fee arrangement in the event that a firm applies for new registration both under EMIR/SFTR and the Securitisation Regulation. Although ESMA understands that separate applications should be sent, ESMA considers it unreasonable that a firm should pay the same registration fee twice. In other words, ESMA seeks to avoid that a given firm would pay more under simultaneous applications than in the situation where it is first registered under EMIR and/or SFTR and then asks for an extension under the Securitisation Regulation.

24. To avoid such a misalignment, ESMA proposes that if a firm applies at the same time for registration under EMIR or SFTR and the Securitisation Regulation, then the applicant

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<sup>11</sup> The Securitisation Regulation establishes a simplified registration process for entities which are already registered under EMIR. From that perspective most of the administrative documents, such as ownership, organisational charts, etc. might not need to be submitted, if no change takes place. However, information on critical operational aspects related to the provision of repository functions under the Securitisation Regulation is required. The 80% figure has been estimated based on the draft RTS on application requirements for securitisation repositories, using the number of information items proposed for existing trade repositories to provide to ESMA in their application, relative to the number of information items proposed for non-trade repositories in their application to ESMA. The draft RTS on application requirements can be found here: [https://www.esma.europa.eu/sites/default/files/library/consultation\\_paper\\_secured\\_repositories\\_application.pdf](https://www.esma.europa.eu/sites/default/files/library/consultation_paper_secured_repositories_application.pdf)

should pay (i) the full EMIR or SFTR fee (as applicable) and (ii) the fee for extension of the registration under the Securitisation Regulation, instead of the Securitisation Regulation new registration fee. In the event that an applicant registers at the same time to provide EMIR, SFTR, and securitisation repository services, ESMA proposes that the applicant would pay the full EMIR fee, the fee for extension of registration under the SFTR, and thirdly the fee for extension of registration under the Securitisation Regulation.

25. ESMA considers that this fee arrangement is justified by the synergies it would experience, such as reviewing only once the type of documents, like organisational chart, ownership, etc., which are not required to be re-submitted in the case of extension. Furthermore, in the case of concurrent applications those documents will be referring to the same information at the same point in time.

**Q 3: Do you agree with this proposal on registration fees in the event of simultaneous applications under EMIR, SFTR, and/or the Securitisation Regulation? Please elaborate on the reasons for your response.**

## 5 Annual supervisory fees

26. In line with ESMA's technical advice under SFTR (also amending CDR 1003/2013, i.e. ESMA's fees under EMIR)<sup>12</sup>, ESMA proposes that its annual supervisory fees be determined in accordance with its budgeting procedure, which takes into account all the activities that would result in supervisory efforts related to the Securitisation Regulation.
27. Once the relevant total amount of supervisory costs is determined for the year, ESMA proposes that these costs be allocated to each securitisation repository (in the form of an annual supervisory fee) according to the ratio of the securitisation repository's specific turnover to the total turnover of all registered securitisation repositories. The cost for each repository would necessarily be separate from the ones under EMIR and SFTR so that entities providing repository services under only one of the three regimes can be charged accurate supervisory fees.

### 5.1 How to define applicable turnover

28. Although securitisation repositories would cover a distinct type of financial product, ESMA believes that the general securitisation repository business model (as regards services provided under the Securitisation Regulation) bears sufficient similarities with existing trade repositories (as regards services provided under EMIR) to warrant a similar approach as regards the estimation of applicable turnover. This is further supported by the fact that the respective eligibility requirements for repository services under EMIR, SFTR, and the Securitisation Regulation are nearly identical, and that the Securitisation Regulation makes

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<sup>12</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-151-223\\_final\\_report\\_on\\_technical\\_advice\\_on\\_tr\\_fees\\_under\\_sfr\\_and\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-151-223_final_report_on_technical_advice_on_tr_fees_under_sfr_and_emir.pdf)

explicit reference to EMIR for determining the application requirements for firms seeking to become registered securitisation repositories.

29. Thus, in line with its past advice under SFTR and EMIR, ESMA considers that the term ‘turnover’, for the purposes of implementing Article 16(1) of the Securitisation Regulation, should be based on revenue figures. Accordingly, and in line with its technical advice under SFTR, ESMA proposes that the term ‘revenue’ for calculating annual turnover should refer to both revenue from the provision of core securitisation repository services related to the Securitisation Regulation, and revenue from the provision of ancillary securitisation repository services. In doing so, ESMA considers that the rationale set out in its technical advice on fees under SFTR could also apply to determining securitisation repository applicable turnover<sup>13</sup>.
30. The rationale for ESMA incorporating revenue from ancillary services in the applicable turnover figure (in addition to core services) is that if a securitisation repository provides ancillary services it would have a greater commercial offering towards reporting entities and/or users in Articles 7 and/or 17 (respectively) of the Securitisation Regulation, thus most likely generating higher revenues.
31. Although the market for securitisation repository services is only beginning, ESMA believes that it is possible that some form of ancillary services will be provided by securitisation repositories. This is because of the interplay between, on one hand, the central role of the repositories and, on the other hand, the complexity of securitisations and the already-widespread use of third-parties (such as interest rate swap providers, account banks, trustees, and back-up servicers) in the securitisation process. ESMA considers that the following could be examples of ancillary securitisation repository services (non-exhaustive list<sup>14</sup>):
- a. Provision of data to users or reporting entities that incorporates information or assessments that are in addition to information mandated to be reported to or produced by securitisation repositories in the Securitisation Regulation or the accompanying delegated acts<sup>15</sup>.

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<sup>13</sup> In that document, ESMA also advised the Commission to simplify the calculation of applicable turnover in the EMIR context so that it does not take into consideration the number of trades and the number of outstanding trades. Moreover, ESMA therein also explained how many of the potential difficulties regarding the establishment of the trade repository industry, its initial business practices, and the potential cost structures of the trade repositories appear to have been overcome in the years since the entry into force of the EMIR reporting requirements. Thus, the use of revenue figures alone rather than additional indicators would appear reasonable.

<sup>14</sup> Some examples of ancillary services under EMIR are mentioned in Article 78(5) of EMIR (as well as in SFTR in ESMA’s technical advice on fees—see footnote 2 in the following link) however not all the ancillary services mentioned therein would be applicable in the context of the Securitisation Regulation.

[https://www.esma.europa.eu/sites/default/files/library/esma70-151-223\\_final\\_report\\_on\\_technical\\_advice\\_on\\_tr\\_fees\\_under\\_sftr\\_and\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-151-223_final_report_on_technical_advice_on_tr_fees_under_sftr_and_emir.pdf)

<sup>15</sup> For example (but not exclusively) the draft delegated acts set out in the Consultation Paper on disclosure requirements, operational standards, and access conditions:

- b. Provision of tools to users or reporting entities to leverage information mandated to be reported to or produced by securitisation repositories in the Securitisation Regulation or the accompanying delegated acts.
  - c. Provision of services (e.g. consulting services) to users or reporting entities making use of information mandated to be reported to or produced by securitisation repositories in the Securitisation Regulation or the accompanying delegated acts.
32. In a similar manner to the considerations set out in ESMA's respective technical advice under EMIR and SFTR, the provision of ancillary services is considered to take place in the following instances<sup>16</sup>:
- a. direct provision by the securitisation repository; or
  - b. indirect provision by a company within the securitisation repository's group.
33. To enable the identification of 'Securitisation Regulation (core and ancillary service) revenue' to be performed smoothly and accurately, ESMA proposes that securitisation repositories would separately present, in their financial accounts, the revenue stream categories listed below. These categories are an expansion of the list previously contained in ESMA's technical advice under SFTR, in order to cover for the possibility (set out in Article 10(5)(b) of the Securitisation Regulation) that an applicant would also provide repository services under EMIR and/or SFTR:
- a. Securitisation Regulation core services of centrally collecting and maintaining records of securitisations;
  - b. Securitisation Regulation ancillary services, as discussed above;
  - c. EMIR core services of centrally collecting and maintaining records of derivatives;
  - d. EMIR ancillary services, such as credit event servicing, portfolio reconciliation, or portfolio compression;
  - e. SFTR core services of centrally collecting and maintaining records of SFTs;
  - f. SFTR ancillary services, such as agent lending or collateral management;
  - g. Combined ancillary services under (each sub-item to be presented separately):

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[https://www.esma.europa.eu/sites/default/files/library/esma33-128-107\\_consultation\\_paper\\_disclosure\\_and\\_operational\\_standards\\_0.pdf](https://www.esma.europa.eu/sites/default/files/library/esma33-128-107_consultation_paper_disclosure_and_operational_standards_0.pdf)

<sup>16</sup> The third category mentioned in the EMIR and SFTR technical advice final reports, namely "provision by a third entity with which the securitisation repository has concluded a material agreement to cooperate in the provision of services", appears less relevant in the present context, insofar as here these types of ancillary service provision categories are being set out for the determination of applicable turnover, whereas in EMIR and SFTR they were principally used to define registration fees.

- i. EMIR and SFTR;
  - ii. EMIR and Securitisation Regulation;
  - iii. SFTR and Securitisation Regulation; and
- h. Any services provided under other regulations different from the Securitisation Regulation, EMIR, and SFTR.
34. Where revenue has been earned from combined ancillary services (i.e. point (g) in the list above), ESMA proposes that those revenues are allocated in a manner that is proportionate to the revenues from core services under each regulation. For example, consider a repository registered under EMIR and the Securitisation Regulation, with respective core revenues of EUR 7.5 million and 2.5 million (for a total of EUR 10 million), zero ancillary services under EMIR and the Securitisation Regulation, and combined ancillary services under both worth EUR 1 million. In this case, the proportion of core revenues in EMIR relative to total core revenues would be 75% (i.e. EUR 7.5 million to EUR 10 million). This percentage (75%) applied to the combined ancillary services revenue of EUR 1 million would imply that EMIR ancillary services revenue would be EUR 0.75 million and Securitisation Regulation ancillary services revenue would be EUR 0.25 million.
35. ESMA understands that segmenting repository revenues into the above categories should not be a problem for securitisation repositories. This is because Article 19 of the draft RTS for registration under the Securitisation Regulation<sup>17</sup>, Article 20 of Commission Delegated regulation 150/2013 (for EMIR), as well as Article 20 of the draft RTS for registration under SFTR, each require repositories to disclose separate prices and fees for their 'core' repository services, their ancillary services, and (for SFTR) their combined services.
36. Moreover, as explained in ESMA's technical advice under SFTR<sup>18</sup>, ESMA has to date not experienced any material difficulties to determine the core revenues of a trade repository and does not expect difficulties in identifying ancillary services revenues, so long as these are clearly set out in financial statements. To this end, ESMA notes that trade repositories are obliged by national legislation to prepare financial statements and they regularly submit their financial statements to ESMA, as periodic information. The profit and loss account and the respective notes of the financial statements usually contain a revenue breakdown, thus enabling ESMA to identify the applicable revenues related to core services and ancillary services under EMIR. As required by CDR 1003/2013 and as recommended in ESMA's final TA on fees under SFTR, this information is certified by auditors, therefore the risk that ESMA uses an inaccurate figure for the calculation of fees is low.

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<sup>17</sup>[https://www.esma.europa.eu/sites/default/files/library/consultation\\_paper\\_secritisation\\_repositories\\_application.pdf](https://www.esma.europa.eu/sites/default/files/library/consultation_paper_secritisation_repositories_application.pdf)

<sup>18</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-151-223\\_final\\_report\\_on\\_technical\\_advice\\_on\\_tr\\_fees\\_under\\_sfr\\_and\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-151-223_final_report_on_technical_advice_on_tr_fees_under_sfr_and_emir.pdf)

**Q 4: Do you agree with this approach to determining applicable turnover? Please elaborate.**

## **5.2 Minimum supervisory fees**

37. ESMA adopts a risk-based approach to supervision and, as set out in its supervision work programme<sup>19</sup>, prioritises the supervisory actions that it will take each year in accordance with its objectives of promoting financial stability and orderly markets and enhancing investor protection. At present, ESMA expects that its risk-based approach to supervision would most probably be extended to the supervision of securitisation repositories.

38. However, although specific supervisory actions may vary per securitisation repository, ESMA must systematically undertake a minimum level of supervisory activities in order to be able to perform its tasks (i.e. ESMA bears fixed costs). Therefore, ESMA believes that a minimum annual supervisory fee is warranted. ESMA considers that the minimum annual fee to be paid by a securitisation repository should be identical to minimum under EMIR and SFTR, i.e. 30,000 EUR.

39. Furthermore, the minimum set of common activities at the level of each regulation (EMIR and the Securitisation Regulation) would most likely be specific to each regulation. Thus, potential synergies such as the ones referred in section 4.2 above are unlikely to be achievable at this level. Therefore, ESMA proposes that the minimum supervisory fee under the Securitisation Regulation should be the same regardless of whether a firm has registered as a new securitisation repository or has extended its registration under EMIR to also include activities under the Securitisation Regulation.

40. For the avoidance of doubt, in case an entity is subject to minimum supervisory fees under both EMIR, SFTR, and the Securitisation Regulation, it would be required to pay minimum supervisory fees under each regulation (e.g. 60,000 EUR if the entity registered under EMIR/SFTR and the Securitisation Regulation or 90,000 EUR if the entity is registered under all three Regulations).

**Q 5: Do you agree with the proposed minimum supervisory fee arrangements? Please elaborate on the reasons for your response.**

## **5.3 First-year supervisory fees**

41. ESMA's experience with the registration and supervision of trade repositories has shown that its supervisory efforts in the first months after a repository is registered are similar to its supervisory efforts during registration. More importantly, in ESMA's experience, its first-year supervisory effort is not related to the actual level of activity of the trade repository in question, but is quite similar across all trade repositories.

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<sup>19</sup> Link to the latest one can be found here [https://www.esma.europa.eu/sites/default/files/library/esma80-199-153\\_supervision\\_ar2017\\_and\\_wp2018.pdf](https://www.esma.europa.eu/sites/default/files/library/esma80-199-153_supervision_ar2017_and_wp2018.pdf)



42. In addition, there is an important distinction in ESMA's supervisory effort related to the timing of the entry into force of the RTS and ITS on disclosure requirements. Although not yet finalised, as mentioned in ESMA's consultation paper on disclosure requirements and operational standards, the date of entry into force is expected to be later than the Commission's date of adoption of these RTS/ITS (pursuant to Article 7(4) and 17(3) of the Securitisation Regulation)<sup>20</sup>. This implies that any turnover-based calculations for supervisory fees would be challenging to implement, because registered securitisation repositories will have little applicable turnover to include until the reporting requirements enter into force. The following situation appears possible therefore:

- a. The securitisation repository application requirements delegated act is adopted by the Commission at some point in 2019, following ESMA's submission of its draft RTS on this subject to the Commission by the 18 January 2019 deadline set out in the Securitisation Regulation.
- b. Due to the need for market participants to adapt their reporting systems, the actual disclosure requirements become applicable at some point in 2020.

43. ESMA therefore proposes that securitisation repositories registered in 2019 or who are (regardless of the year) in their first calendar year of registration (i.e. have been registered earlier in the same year) would pay a first-year supervisory fee equal to the registration fee adjusted by a coefficient. The coefficient would reflect the share of remaining working days until the end of the year from the date the registration is granted<sup>21</sup>. ESMA would not make a distinction towards extension of registration fees in this situation, insofar as its subsequent ongoing supervisory efforts relating to securitisation repository registrations do not make a distinction between new or extended registrations. This also reflects considerations set out in ESMA's technical advice under SFTR.

44. This first-year supervisory fee would be payable after the firm has been notified by ESMA that its application has been successful and within 30 days from the date of issuance of ESMA's relevant debit note.

**Q 6: Do you agree with the proposed first-year fee arrangements? Please elaborate on the reasons for your response.**

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<sup>20</sup> In this regard, the period of time between the registration of a securitisation repository and the start of the reporting obligation would be part of the preparatory phase for ESMA, the national competent authorities, the reporting entities and the securitisation repositories.

<sup>21</sup> I.e. the securitisation repository supervisory fee in 2019 or in the first year of the repository's registration (e.g. 2021 if registered in 2021) = *new registration fee* \*  $\frac{\text{Remaining supervisory working days in the year}}{250}$ . Thus, the maximum annual supervisory fee amount due by a securitisation repository in its first year of operation (year 1) would be equal to the amount of the new registration fee.

## 5.4 Annual supervisory fees after the first year of registration

45. Regulation (EU) 2017/2402 of the European Parliament and of the Council laying down common rules on securitisation and creating a European framework for simple, transparent, and standardized securitisation and amending Directives 2009/65/EC, 2009/138/EC, 2011/61/EU, and Regulations (EC) No 1060/2009 and (EU) No 648/2012 ('the Securitisation Regulation') was published in the Official Journal of the European Union on 28 December 2017.

46. The present sub-section brings together the considerations mentioned in the above parts of section 5, in the years following a repository's registration. In this regard, ESMA proposes the following annual supervisory fee arrangement for securitisation repositories: each repository would be charged a fee in proportion to its applicable turnover (calculated in line with section 5.1 above), subject to the minimum floor of EUR 30,000. This implies that each firm would be allocated a portion of ESMA's total supervisory costs.

47. The total fee for each repository would thus be calculated according to the following equation:

$$\text{Annual fee for repository}_i = (\text{ESMA total supervisory costs}) \times \frac{\text{Securitisation Regulation revenue of repository}_i}{\sum \text{Securitisation Regulation revenues of each repository}}$$

**Q 7: Do you agree with these proposed annual supervisory fee arrangements? Please elaborate on the reasons for your response.**

48. The annual supervisory fees would be based on the following calculation timing:

- a. In early Q4 of year n-1, ESMA notifies securitisation repositories of their annual fee for the year ahead (i.e. year n). This would be based on the audited financial statements of year n-2.
- b. The fee for year n would be payable by each securitisation repository by 31 December of year n-1.

49. However, ESMA recognises that in the first two years of the start of the disclosure requirements, applicable turnover figures will not be available in the annual financial statements of the registered repositories. This is because applicable turnover is based on providing services under the Securitisation Regulation (as discussed in section 5.1 above). In other words, the audited financial statements for the year n-2 would not be available for the first two years of annual supervisory fee calculations, and thus the above formula would not be possible to be calculated. For example, assuming that the detailed templates (i.e. ESMA's draft disclosure RTS/ITS) become applicable in 2020, the following situation would apply for calculating the annual supervisory fee for 2020 for a given repository (that had been registered in 2019):

- a. In early Q4 of 2019 (i.e. year n-1), ESMA would seek to calculate the annual fee for the firm in 2020 (i.e. year n). As discussed in the previous paragraph, this would normally be based first on the firm's audited financial statements of year n-2, i.e. 2018 in this case.
  - b. However, given that there was no legal basis in 2018 for information to be reported to the repository (i.e. the draft disclosure RTS/ITS had not yet become applicable), there is no applicable turnover measure to be used.
50. The same consideration would apply (for the same repository registered in 2019) in the subsequent year, i.e. for calculating its annual supervisory fee in 2021. This is because the annual fee would, according to the previous paragraph, be based on the firm's 2019 annual financial statements, but no information would be available, since the draft disclosure RTS/ITS had also not yet become applicable by then (and had only become applicable in 2020).
51. Furthermore, the same consideration would apply for any firm registering at a later date: in all cases, the firm would not have any applicable turnover figure for the first two periods where ESMA would seek to calculate the applicable annual supervisory fee.
52. For this reason, ESMA proposes that, in the first two full years since their registration, it would use estimated applicable turnover figures (calculated in line with section 5.1 above) as inputs for the formula discussed above. This information would be sourced from securitisation repositories' business plans provided during the application to be registered with ESMA (which is proposed to be required as part of the application requirements to be registered)<sup>22</sup>. Should a repository desire or need to update this information, then it should be provided to ESMA by 30 September of the year preceding the reference year for the annual supervisory fee calculation (e.g. by 30 September 2019 for use in ESMA's annual fee calculations for 2020)<sup>23</sup>. ESMA considers that this approach preserves the 'proportionate' aspect of the supervisory fees charged to repositories required under Article 16 of the Securitisation Regulation, while also facilitating ESMA's calculation work.
53. Should repository estimates significantly deviate from subsequent actual turnover figures, ESMA notes this would be compensated for in subsequent years once the actual applicable turnover figures are available in the firm's audited financial statements and are thus incorporated in the above-mentioned formula. This reflects ESMA's understanding that the number of EU securitisations subject to the reporting requirements under the Securitisation Regulation is unlikely to move dramatically from one year to the next, due to the specialised nature of the market and the fixed costs involved for banks seeking to securitise. Longer-

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<sup>22</sup> See the draft Article 13(2) in the application requirements RTS (found in Section 3.4, i.e. Annex IV in [https://www.esma.europa.eu/sites/default/files/library/consultation\\_paper\\_secureditisation\\_repositories\\_application.pdf](https://www.esma.europa.eu/sites/default/files/library/consultation_paper_secureditisation_repositories_application.pdf)).

<sup>23</sup> This would allow ESMA to be able to prepare its annual supervisory fee calculations and communicate these to the firm in its application assessment letter (assuming that the firm had been deemed by ESMA to meet the conditions for registration as set out in the draft delegated act and also assuming that ESMA's decision was made before the end of that same calendar year).

term trends in EU securitisation markets would still be captured under the proposed arrangement, which would only apply substantially in the early years of the securitisation repository market (where all entrants would effectively be subject to uncertainty at the same time).

**Q 8: Do you agree with the proposed arrangements for the calculation of annual securitisation repository supervisory fees in the first two full years following a firm's registration? Please elaborate on the reasons for your response.**

## **6 Payment and reimbursement conditions**

### **6.1 New registration and extension of registration fees**

54. The Securitisation Regulation's Article 16 establishes the need for ESMA to charge fees to securitisation repositories that "fully cover ESMA's necessary expenditure relating to the registration and supervision of trade repositories as well as the reimbursement of any costs that the competent authorities may incur as a result of any delegation of tasks pursuant to Article 14(1) of [the Securitisation Regulation]". In that respect, it can be understood that the payment of the relevant fees is an essential condition for the securitisation repository to be registered or have its registration extended under the Securitisation Regulation.

55. A securitisation repository should therefore pay the relevant fees established in section 4 at the time at which it applies to ESMA. This is in line with the requirements for ESMA's fees under EMIR.

**Q 9: Do you agree with the proposed timing relating to the payment of new registration and extension of registration fees? Please elaborate on the reasons for your response.**

### **6.2 Reimbursement conditions in case of withdrawal of an application**

56. ESMA's fees under EMIR (CDR 1003/2013) do not envisage reimbursement to applicant trade repositories in case of an application being withdrawn prior to the registration of the entity under EMIR. At the same time, based on its experience since then, ESMA considers that this arrangement may also encourage applicants to persist in a clearly-unsuccessful bid for registration, thereby consuming excessive amounts of ESMA's resources (relative to the fixed registration fees discussed in section 4 above).

57. ESMA therefore proposes the following reimbursements conditions on the registration fee:

- a. 50% reimbursement for applications that withdraw before being deemed complete by ESMA (pursuant to Article 10(6) of the Securitisation Regulation); and

- b. 0% reimbursement for applications that withdraw after being deemed complete by ESMA (i.e. applications that have begun to be examined pursuant to Article 12 of the Securitisation Regulation).

**Q 10: Do you have any comments on the proposed reimbursement arrangements? Please elaborate on the reasons for your response.**

### **6.3 Timing of payment of annual supervisory fees**

58. ESMA's technical advice under SFTR (and recommendations to amend fees under EMIR), stipulated that trade repositories should pay their annual supervisory fees in two instalments – the first by 28 February and the second by 31 October. The respective share of these instalments would be equal to 5/6 of the annual supervisory fees and that the second one would be equal to 1/6.

59. However, in ESMA's experience of processing fees since then, and given the benefits of a simplified fee payment calendar, ESMA proposes that annual supervisory fees for securitisation repositories should be paid in a single instalment (either within 30 days or by 31 December, as discussed in sections 5.3 and 5.4 above).

**Q 11: Do you agree with the proposed timing of the payments of annual securitisation repository supervisory fees? Please elaborate on the reasons for your response.**

### **6.4 Reimbursement of competent authorities**

60. As set out in Article 14(1) of the Securitisation Regulation, any costs incurred by national competent authorities while carrying out supervisory tasks delegated by ESMA will be covered by ESMA's supervisory fees. This implies that the competent authority will not seek to recover these costs directly from the securitisation repository.

61. Stemming from the above, ESMA considers (in line with its arrangements under SFTR and EMIR) that the costs to be reimbursed to national competent authorities must:

- a. have been previously agreed between ESMA and the competent authority;
- b. be calculated in accordance with the method used to determine ESMA's total administrative costs regarding securitisation repositories;
- c. be proportionate to the applicable turnover of the relevant securitisation repositories; and
- d. not be greater than the total amount of supervisory fees paid by the relevant securitisation repositories.

62. Any delegation of tasks by ESMA to national competent authorities will be determined on an independent basis, may be revoked at any time, and will not impact the amount of fees charged to a particular securitisation repository.

**Q 12: Do you agree with the proposed approach to dealing with the reimbursement of costs to the competent authorities in case of delegation of ESMA tasks under Article 14(1) of the Securitisation Regulation? Please elaborate on the reasons for your response**

## **7 Annexes**

### **7.1 Annex 1**

#### **Summary of questions**

**Q 1: Do you agree with the proposed new registration fees for securitisation repositories? Please elaborate on the reasons for your response.**

**Q 2: Do you agree with the proposed extension of registration fees for securitisation repositories? Please elaborate on the reasons for your response.**

**Q 3: Do you agree with this proposal on registration fees in the event of simultaneous applications under EMIR, SFTR, and/or the Securitisation Regulation? Please elaborate on the reasons for your response.**

**Q 4: Do you agree with this approach to determining applicable turnover? Please elaborate.**

**Q 5: Do you agree with the proposed minimum supervisory fee arrangements? Please elaborate on the reasons for your response.**

**Q 6: Do you agree with the proposed first-year fee arrangements? Please elaborate on the reasons for your response.**

**Q 7: Do you agree with these proposed annual supervisory fee arrangements? Please elaborate on the reasons for your response.**

**Q 8: Do you agree with the proposed arrangements for the calculation of annual securitisation repository supervisory fees in the first two full years following a firm's registration? Please elaborate on the reasons for your response.**

**Q 9: Do you agree with the proposed timing relating to the payment of new registration and extension of registration fees? Please elaborate on the reasons for your response.**

**Q 10: Do you have any comments on the proposed reimbursement arrangements? Please elaborate on the reasons for your response.**

**Q 11: Do you agree with the proposed timing of the payments of annual securitisation repository supervisory fees? Please elaborate on the reasons for your response.**

**Q 12: Do you agree with the proposed approach to dealing with the reimbursement of costs to the competent authorities in case of delegation of ESMA tasks under Article 14(1) of the Securitisation Regulation? Please elaborate on the reasons for your response**

## 7.2 Annex II

### Commission mandate to provide technical advice

#### REQUEST TO ESMA FOR TECHNICAL ADVICE ON POSSIBLE DELEGATED ACTS CONCERNING THE SUPERVISORY FEES TO BE CHARGED TO SECURITISATION REPOSITORIES

With this mandate, the Commission seeks ESMA's technical advice on a possible delegated act concerning the Regulation on a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation ('Securitisation Regulation') or the "**legislative act**"). This delegated act should be adopted in accordance with Article 290 of the Treaty on the Functioning of the European Union (TFEU).

The Commission reserves the right to revise and/or supplement this formal mandate. The technical advice received on the basis of this mandate should not prejudice the Commission's final decision.

The mandate follows the Regulation of the European Parliament and the Council establishing a European Securities and Markets Authority (the "**ESMA Regulation**"),<sup>24</sup> the Communication from the Commission to the European Parliament and the Council - Implementation of Article 290 of the Treaty on the Functioning of the European Union (the "**290 Communication**"),<sup>25</sup> and the Framework Agreement on Relations between the European Parliament and the European Commission (the "**Framework Agreement**").<sup>26</sup>

According to Article 11(2) of the legislative act and with regard to the supervisory fees to be charged to securitisation repositories, the Commission shall adopt a delegated act to specify further the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

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The European Parliament and the Council shall be duly informed about this mandate.

In accordance with Declaration 39 on Article 290 TFEU, annexed to the Final Act of the Intergovernmental Conference which adopted the Treaty of Lisbon, signed on 13 December 2007, and in accordance with the established practice within the European Securities Committee,<sup>27</sup> the Commission will continue, as appropriate, to consult experts appointed by the Member States in the preparation of possible delegated acts in the financial services area.

In accordance with point 15 of the Framework Agreement, the Commission will provide full information and documentation on its meetings with experts appointed by the Member States within the framework of its work on the preparation and implementation of Union legislation, including soft law and delegated acts. Upon request by the Parliament, the Commission may also invite Parliament's experts to attend those meetings.

The powers of the Commission to adopt delegated acts are subject to Article 82 of the legislative act. As soon as the Commission adopts a possible delegated act, the Commission will notify it simultaneously to the European Parliament and the Council.

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<sup>24</sup> 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), OJ L 331, 15.12.2010, p. 84.

<sup>25</sup> Communication of 9.12.2009. COM (2009) 673 final.

<sup>26</sup> OJ L 304, 20.11.2010, p. 47.

<sup>27</sup> Commission Decision of 6.6.2001 establishing the European Securities Committee, OJ L 191, 17.7.2001, p.45.



## 1. Context

### 1.1 Scope

One of the objectives of Securitisation Regulation is to enhance the transparency of securitisations and thus of the financial system. Among other aspects, the Securitisation Regulation creates a Union framework under which specific elements of securitisations can be efficiently reported to securitisation repositories (SRs).

The Securitisation Regulation grants ESMA direct registration and supervisory powers over securitisation repositories, in a similar fashion to Regulation No. 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ('EMIR'). In accordance with Article 16(1) of the Securitisation Regulation, ESMA shall charge fees to securitisation repositories and those fees shall fully cover ESMA's necessary expenditure relating to the registration, recognition and supervision of securitisation repositories.

In accordance with Article 16(2) of the Securitisation Regulation, the Commission shall adopt a Regulation on fees, to be adopted in the form of a delegated act, that specifies further the type of fees, the matters for which fees are due, the amount of the fees and the manner in which they are to be paid.

This mandate focuses on the technical aspects of the Regulation on fees. In providing its advice, ESMA should build upon its previous experience in advising on supervisory fees for trade repositories registered under EMIR and under the Securities Financing Transactions Regulation (SFTR), as well as the experience of relevant national authorities in setting supervisory fees for financial institutions.

### 1.2 Principles that ESMA should take into account

On the working approach, ESMA is invited to take account of the following principles:

- It should respect the requirements of the ESMA Regulation, and, to the extent that ESMA takes over the tasks of CESR in accordance with Art 8(1)(l) of the ESMA Regulation, take account of the principles set out in the Lamfalussy Report<sup>28</sup> and those mentioned in the Stockholm Resolution of 23 March 2001.<sup>29</sup>
- The principle of proportionality: the technical advice should not go beyond what is necessary to achieve the objective of the delegated acts set out in the legislative act. It should be simple and avoid suggesting excessive financial, administrative or procedural burdens for securitisation repositories.
- While preparing its advice, ESMA should seek coherence within the regulatory

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<sup>28</sup> Final Report of the Committee of Wise Men on the Regulation of European Securities Markets, chaired by M. Lamfalussy, Brussels, 15 February 2001.

([http://ec.europa.eu/internal\\_market/securities/docs/lamfalussy/wisemen/final-report-wise-men\\_en.pdf](http://ec.europa.eu/internal_market/securities/docs/lamfalussy/wisemen/final-report-wise-men_en.pdf) )

<sup>29</sup> Results of the Council of Economics and Finance Ministers, 22 March 2001, Stockholm Securities legislation. (<http://europa.eu/rapid/pressReleasesAction.do?reference=MEMO/01/105&format=HTML&aged=0&language=EN&guiLanguage=en> )

framework of the Union, in particular with the EMIR and SFTR frameworks (as amended).

- In accordance with the ESMA Regulation, ESMA should not feel confined in its reflection to elements that it considers should be addressed by the delegated acts. If it finds it appropriate, ESMA may also indicate guidelines and recommendations that it believes should accompany the delegated acts to better ensure their effectiveness.
- ESMA will determine its own working methods depending on the content of the provisions being dealt with. Nevertheless, horizontal questions should be handled in a way that ensures coherence between different standards of work being carried out by the various expert groups.
- In accordance with the ESMA Regulation, ESMA is invited to widely consult market participants in an open and transparent manner, and take into account the resulting opinions in its advice. ESMA should provide a detailed feedback statement on the consultation, specifying when consultations took place, how many responses were received and from whom, as well as the main arguments for and against the issues raised. This feedback statement should be annexed to its technical advice. The technical advice should justify ESMA's choices vis-à-vis the main arguments raised during the consultation.
- ESMA is invited to justify its advice by providing a quantitative and qualitative cost-benefit analysis of all the options considered and proposed.
- ESMA's technical advice should not take the form of a legal text. However, ESMA should provide the Commission with a clear and structured ("articulated") text. The technical advice carried out should be accompanied by sufficient and detailed explanations. Furthermore, the technical advice should be presented in an easily understandable language that respects current legal terminology at the European level. Similarly, explanations should be presented in an easily understandable language respecting current terminology in the Union.
- ESMA should provide comprehensive technical analysis on the subject matters described in section 3 below, where these are covered by the delegated powers included in:
  - o the relevant provision of the legislative act,
  - o the corresponding recitals, or
  - o the relevant Commission's request included in this mandate.
- ESMA should address to the Commission any questions to clarify texts of the Securitisation Regulation that ESMA considers of relevance for the preparation of its technical advice.

## 2. Procedure

The Commission is requesting ESMA's technical advice in view of the preparation of possible delegated acts to be adopted pursuant to the Securitisation Regulation and in particular regarding the questions referred to in section 3 of this formal mandate.

The mandate takes into account the ESMA Regulation, the 290 Communication and the Framework Agreement.

The Commission reserves the right to revise and/or supplement this mandate. The technical advice received on the basis of this mandate will not prejudice the Commission's final decision.

In accordance with established practice, the Commission may continue to consult experts appointed by the Member States in the preparation of the delegated acts relating to the legislative act.

The Commission has duly informed the European Parliament and the Council about this mandate. As soon as the Commission adopts possible delegated acts, it will notify them simultaneously to the European Parliament and the Council.

## 3. ESMA is invited to provide technical advice on the following issues

ESMA is invited to provide technical advice to assist the Commission in formulating a delegated act on fees for securitisation repositories, and more specifically on the following aspects:

- In order to ensure a fair treatment of securitisation repositories within the Union framework, ESMA should base its work on the EMIR Delegated Regulation on trade repositories' fees, as well as on ESMA's combined Technical Advice on fees to trade repositories under SFTR and on certain amendments to fees to trade repositories under EMIR.<sup>30</sup>
- ESMA is invited to reflect on the type of fees that could be levied. Fees could be provided for specific supervisory actions (e.g. registration fees) or a general flat fee (for example annual) could be levied which would cover all supervisory activity for a year. A mixed system (fees for individual supervisory actions complemented by a general flat fee to cover the remaining expenditure) could also be considered.
- In case ESMA suggests fees for specific supervisory actions, ESMA should draw up a list of supervisory actions with the corresponding amounts of fees taking into account any applicable fees on trade repositories already registered under EMIR, where such

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<sup>30</sup> Commission Delegated Regulation (EU) No 1003/2013 of 12 July 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to securitisation repositories OJ L 279, 19.10.2013, p. 4. (<http://ec.europa.eu/transparency/regdoc/rep/3/2013/EN/3-2013-4363-EN-F1-1.Pdf>) and ESMA Final Report: ESMA Technical advice to EC on fees to trade repositories under SFTR and on certain amendments to fees to trade repositories under EMIR, 20.04.2013 ([https://www.esma.europa.eu/sites/default/files/library/esma70-151-223\\_final\\_report\\_on\\_technical\\_advice\\_on\\_tr\\_fees\\_under\\_sfr\\_and\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-151-223_final_report_on_technical_advice_on_tr_fees_under_sfr_and_emir.pdf))

repositories register with ESMA extend their services, pursuant to Article 10 of the Securitisation Regulation. ESMA is also invited to advise on whether exceptional circumstances need to be foreseen in the fees structures to take into account potential exceptional/non-routine supervisory activities.

- In case ESMA suggests annual flat fees, ESMA should indicate how the flat fee should be calculated, i.e. how its expenditure necessary for the registration, recognition and supervision of securitisation repositories should be distributed to the individual supervised securitisation repositories. ESMA should take into account any applicable fees on trade repositories already registered under EMIR, where such repositories extend their services, pursuant to Article 10 of the Securitisation Regulation. ESMA is invited to advise on whether fees should be yearly adjustable or fixed.
- According to Article 16(1) of the Securitisation Regulation, the amount of fees charged to a securitisation repository shall fully cover all necessary expenditure incurred by ESMA for its registration, recognition and supervision activities under the Securitisation Regulation. Accordingly, ESMA is invited to detail its assessment of the necessary expenditure it will incur for the registration, recognition and supervision of securitisation repositories, and provide information on its estimates and methods of calculation. ESMA should build upon its existing experience of registering and supervising trade repositories under EMIR to inform its analysis. ESMA should also advise on how the surpluses/deficits in ESMA's supervision budget for securitisation repositories should be managed.
- According to Article 16(1) of the Securitisation Regulation, the amount of fees charged to a securitisation repository shall be proportionate to the turnover of the securitisation repository concerned. ESMA is invited to provide its technical advice on the appropriate method for considering the turnover of the securitisation repository in fee calculations, including the use of activity indicators when revenue figures are not yet existent, are not reliable or are not an adequate measure of the securitisation repository activity. ESMA should take into account any applicable fees on trade repositories already registered under EMIR, where such repositories extend their services, pursuant to Article 10 of the Securitisation Regulation.
- According to Article 16(1) of the Securitisation Regulation, the fees charged to securitisation repositories shall also fully cover the reimbursement of any costs that the competent authorities may incur carrying out work pursuant to the Securitisation Regulation in particular as a result of any delegation of tasks in accordance with Article 14(1) of the Securitisation Regulation. ESMA is invited to suggest a method for calculating the amount that competent authorities may claim from ESMA. The amount should depend on the scope and complexity of the task to be delegated and should be consistent with any specific supervisory fee that ESMA can claim from the securitisation repository for undertaking a supervisory action.
- According to Article 16(1) of the Securitisation Regulation, where a securitisation repository has already been registered under EMIR, the supervisory fees charged under the Securitisation Regulation shall only be adjusted to reflect additional necessary expenditure and costs relating to the registration, recognition and

supervision stemming from the Securitisation Regulation. ESMA is invited to reflect on whether there is any need to adapt the methodologies and fees specified in the EMIR Delegated Regulation on trade repositories' fees, to the situation where a trade repository chooses to provide services under both the Securitisation Regulation and EMIR. In this regard, ESMA should consider that additional operational costs for market participants should be minimised.

- ESMA should suggest the timing and appropriate modalities of the payment of the fees, taking into account existing rules and advice under the EMIR Delegated Regulation on trade repositories' fees, as well as under ESMA's combined Technical Advice on fees to trade repositories under SFTR and on certain amendments to fees to trade repositories under EMIR.<sup>31</sup> ESMA is invited to advise on appropriate schedules for the collection of fees (one single payment vs several payments). It has to be ensured that ESMA has at its disposal the resources to finance its activities related to securitisation repositories. This could for instance be achieved by requiring the supervised securitisation repositories to pay the expected fees upfront, drawing up an account at the end of the year.

#### **4. Indicative timetable**

This mandate takes into consideration that ESMA requires sufficient time to prepare its technical advice and that the Commission needs to adopt the delegated acts according to Article 290 of the TFEU. The powers of the Commission to adopt delegated acts are subject to Article 47 of the Securitisation Regulation, which allows the European Parliament and the Council to object to within a period of 2 months, extendable by 2 further months. The delegated act will only enter into force if neither the European Parliament nor the Council has objected on expiry of that period or if both institutions have informed the Commission of their intention not to raise objections.

The deadline set to ESMA to deliver the technical advice is 31 October 2018.

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<sup>31</sup> Commission Delegated Regulation (EU) No 1003/2013 of 12 July 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to securitisation repositories OJ L 279, 19.10.2013, p. 4. (<http://ec.europa.eu/transparency/regdoc/rep/3/2013/EN/3-2013-4363-EN-F1-1.Pdf>) and ESMA Final Report: ESMA Technical advice to EC on fees to trade repositories under SFTR and on certain amendments to fees to trade repositories under EMIR, 20.04.2013 ([https://www.esma.europa.eu/sites/default/files/library/esma70-151-223\\_final\\_report\\_on\\_technical\\_advice\\_on\\_tr\\_fees\\_under\\_sfr\\_and\\_emir.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-151-223_final_report_on_technical_advice_on_tr_fees_under_sfr_and_emir.pdf))

## 7.3 Annex VI

### Draft technical advice

#### Section 1

##### *Recovery of supervisory costs in full*

The fees charged to securitisation repositories shall cover:

1. all costs relating to the registration and supervision of securitisation repositories by ESMA in accordance with Regulation (EU) 2017/2402, including those costs resulting from the recognition of securitisation repositories as well as those costs resulting from the extension of registration for trade repositories that have already been registered under Regulation (EU) No 648/2012 and/or under Regulation (EU) No 2015/2365;
2. all costs for the reimbursement of competent authorities that have carried out work pursuant to Regulation (EU) 2017/2402, and as a result of any delegation of tasks pursuant to Article 74 of Regulation (EU) No 648/2012 and in accordance with Article 14 of Regulation 2017/2402 (EU).

#### Section 2

##### *Applicable turnover*

1. Securitisation repositories registered only under Regulation (EU) 2017/2402 shall keep audited accounts for the purposes of this Regulation which distinguish the revenues generated from at least the following:
  - (a) core functions of centrally collecting and maintaining records of securitisations;
  - (b) ancillary services that are directly related to centrally collecting and maintaining records of securitisations.

The applicable turnover from ancillary services of the securitisation repository for a given year (n) shall be the revenues from the services determined under point (b).

2. A firm registered both as a securitisation repository under Regulation (EU) 2017/2402 and either as a trade repository under Regulation (EU) No 648/2012 or a trade repository under Regulation (EU) No 2015/2365 shall keep audited accounts for the purposes of this Regulation which distinguish the revenues generated from at least the following:
  - (a) core functions of centrally collecting and maintaining records of securitisations under Regulation (EU) 2017/2402;

- (b) ancillary services that are directly related to centrally collecting and maintaining records of securitisations under Regulation (EU) 2017/2402;
- (c) core functions of centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012;
- (d) ancillary services that are directly related to centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012;
- (e) core functions of centrally collecting and maintaining records of securities financing transactions under Regulation (EU) No 2015/2365;
- (f) ancillary services that are directly related to centrally collecting and maintaining records of securities financing transactions under Regulation (EU) No 2015/2365;
- (g) combined ancillary services that are directly related to:
  - (1) both centrally collecting and maintaining records of securitisations under Regulation (EU) 2017/2402 and centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012;
  - (2) both centrally collecting and maintaining records of securitisations under Regulation (EU) 2017/2402 and centrally collecting and maintaining records of securities financing transactions under Regulation (EU) No 2015/2365;
  - (3) both centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012 and centrally collecting and maintaining records of securities financing transactions under Regulation (EU) No 2015/2365;
- (h) Any services provided under other regulations different from Regulation (EU) 2017/2402, Regulation (EU) No 648/2012, and Regulation (EU) No 2015/2365.

The applicable turnover from ancillary services of the securitisation repository used for the purpose of determination of supervisory fees to cover ESMA's securitisation repositories expenses shall be the sum of

- the revenues under point (b) and
- a share of the revenues under point (g)(1) and g(2).

This share shall be equal to the revenues under point (a) divided by the sum of:

- the revenues under point (a) and
- the revenues under point (c) and
- the revenues under point (e).

3. Where audited accounts covering the year (n-2) are not available, ESMA shall use the applicable turnover projections for year (n) provided in the business plans submitted to ESMA pursuant to Article 13(2) of [ref. securitisation repository application requirements RTS]. Where a repository decides to provide any updated applicable turnover projections for year (n) to ESMA, this information shall be provided to ESMA by 30 September of year (n-1). The estimates shall be broken down into the following elements:

- (a) core functions of centrally collecting and maintaining records of securitisations under Regulation (EU) 2017/2402;
- (b) ancillary services that are directly related to centrally collecting and maintaining records of securitisations under Regulation (EU) 2017/2402; and
- (c) where applicable, additional applicable turnover elements as set out pursuant to paragraph 2(g).

4. The applicable turnover of a securitisation repository used for the purposes of supervisory fees covering a given year (n) shall be the sum of

- (a) The repository's revenues (or estimated revenues, where paragraph 3 applies) generated from the core functions of centrally collecting and maintaining records of securitisations on the basis of the audited accounts of the year (n-2) and
- (b) The repository's applicable revenues from ancillary services determined according to paragraphs 1 and 2, as applicable, on the basis of the audited accounts of the year (n-2) or, where paragraph 3 applies, the repository's estimated revenues under points (b) and (c) of that paragraph.

### **Section 3**

#### ***Adjustment of fees***

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

### **Section 4**

#### ***Types of fees***

1. Securitisation repositories that apply for registration in accordance with Article 10(1) of Regulation (EU) 2017/2402 shall be charged the following types of fees:

- (a) registration and extension of registration fees in accordance with Section 5;
- (b) annual supervisory fees in accordance with Section 6.



## Section 5

### ***Registration fee and extension of registration fee***

1. The registration fee to be paid by individual applicant securitisation repositories shall reflect the expenditure necessary to accurately assess and examine the application for registration or extension of registration

Where a securitisation repository is applying for registration and has not already been registered under either Title VI, Chapter 1 of Regulation (EU) No 648/2012 or Chapter 3 of Regulation (EU) No 2015/2365, the securitisation repository shall pay a registration fee of EUR 100 000.

2. Where a securitisation repository is applying for registration and has already been registered under either Title VI, Chapter 1 of Regulation (EU) No 648/2012 or Chapter 3 of Regulation (EU) No 2015/2365, the securitisation repository shall pay an extension of registration fee of EUR 50 000.

3. Where a securitisation repository not already registered under either Regulation (EU) No 648/2012 or Regulation (EU) No 2015/2365 simultaneously submits applications for registration under both Regulation (EU) 2017/2402 and either Regulation (EU) No 648/2012 or Regulation (EU) No 2015/2365, the securitisation repository shall pay the full registration fee due under either Regulation (EU) No 648/2012 or Regulation (EU) No 2015/2365 (as applicable), and the fee for extension of registration pursuant to paragraph 5.

4. Where a securitisation repository not already registered under either Regulation (EU) No 648/2012 and Regulation (EU) No 2015/2365 simultaneously submits applications for registration under both Regulation (EU) 2017/2402, Regulation (EU) No 2015/2365, and Regulation (EU) No 648/2012, the securitisation repository shall pay the full registration fee due under Regulation (EU) No 648/2012, the fee for extension of registration due under Regulation (EU) No 2015/2365 (as applicable), and the fee for extensions of registration pursuant to paragraph 5.

## Section 6

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

1. The total annual supervisory fee for a given year (n) shall be the estimate of expenditure relating to the supervision of securitisation repositories' activities under Regulation (EU) 2017/2402 as included in the ESMA's budget for that year.

2. A registered securitisation repository shall be charged an annual supervisory fee.

3. Where a decision for registration of a repository by ESMA, pursuant to Article 12(1) of Regulation (EU) 2017/2402, took effect in year (n), the annual supervisory fee for the year (n) for that repository shall be the registration fee due in accordance with Section 5(2) multiplied by the ratio between the working days from its date of registration until the end of the year and 250 days.

4. The annual supervisory fee for a given year (n) for a securitisation repository registered pursuant to Article 12(1) of Regulation (EU) 2017/2402 before 1 October of year (n-1) shall be the total annual supervisory fee determined pursuant to paragraph 3, divided between all securitisation repositories registered pursuant to Article 12(1) of Regulation (EU) 2017/2402 before 1 October of year (n-1), in proportion to the applicable turnover for that repository calculated pursuant to Section 2(4).

5. In no case shall a securitisation repository applying for registration or an extension of registration under Article 10(5) of Regulation (EU) 2017/2402 pay an annual supervisory fee of less than EUR 30 000.

## **Section 7**

### ***General payment modalities***

1. All fees shall be payable in euros. They shall be paid as specified in Sections 8, 9, and 10.
2. Any late payments shall incur a daily penalty equal to 0.1% of the amount due.

## **Section 8**

### ***Payment of registration fees and reimbursements***

1. The registration fee referred to in Section 5 shall be paid in full at the time the securitisation repository submits its application for registration under Article 10(5) of Regulation (EU) 2017/2402.
2. One-half of the registration fee paid by a repository is reimbursed if a securitisation repository withdraws its application for registration before ESMA has adopted a decision that it has assessed the application as complete, pursuant to Article 10(6) of Regulation (EU) 2017/2402.
3. Registration fees shall not be reimbursed if a securitisation repository withdraws its application for registration after ESMA has adopted a decision that it has assessed the application as complete, pursuant to Article 10(6) of Regulation (EU) 2017/2402, and before ESMA adopts a reasoned decision to register or refuse registration.

## **Section 9**

### ***Payment of annual supervisory fees***

1. With the exception of the annual supervisory fee set out in Section 6(3), the annual supervisory fee for a given year referred to in Section 6 shall be paid in one instalment, which shall be due by 31 December of the preceding year.
2. The annual supervisory fee set out in Section 6(3) shall be paid in one instalment, which shall be due within 30 days of the date of issuance of the relevant debit note from ESMA.

## **Section 10**

### ***Reimbursement of competent authorities***

1. Only ESMA shall charge fees to securitisation 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) 2017/2402 and as a result of any delegation of tasks pursuant to Article 74 of Regulation (EU) No 648/2012 and in accordance with Article 14(1) of Regulation (EU) 2017/2402.