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From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	21 September 2020
To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
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Subject:	COMMISSION DELEGATED REGULATION (EU) .../... of 18.9.2020 supplementing Regulation (EU) No 2017/2402 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to securitisation repositories

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Delegations will find attached document C(2020) 6281 final.

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EUROPEAN  
COMMISSION

Brussels, 18.9.2020  
C(2020) 6281 final

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

**of 18.9.2020**

**supplementing Regulation (EU) No 2017/2402 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to securitisation repositories**

(Text with EEA relevance)

## **EXPLANATORY MEMORANDUM**

### **1. CONTEXT OF THE DELEGATED ACT**

Regulation (EU) 2017/2402<sup>1</sup> ('the Securitisation Regulation') was published in the Official Journal on 12 December 2017. Chapter 3 of the Securitisation Regulation creates a framework for securitisation repositories that will collect all relevant information on a given securitisation instrument. This framework will facilitate the access to reliable information by investors in the process of their due diligence by providing a single and supervised data source. The securitisation repositories will be registered and supervised by the European Securities and Markets Authority (ESMA).

Article 16(2) of the Securitisation Regulation mandates the Commission to adopt a delegated act specifying the type of fees to be charged by ESMA to securitisation repositories, the matters for which fees are due and the manner in which they are to be paid.

The legal provisions in this delegated act draw upon ESMA's experience with the registration and supervision of trade repositories under Regulation (EU) No 648/2012<sup>2</sup> (EMIR) and Regulation (EU) 2015/2365<sup>3</sup> (SFTR) and therefore they are consistent with the fee provisions under those two Regulations.

Under Article 16(1) of the Securitisation Regulation, ESMA shall charge securitisation repositories fees that are proportionate to the turnover of the securitisation repository and fully cover ESMA's necessary expenditure relating to the registration and supervision of securitisation 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 or SFTR, the fees should be adjusted to reflect only the additional costs related to registration and supervision of securitisation repositories pursuant to the Securitisation Regulation.

### **2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT**

On 31 January 2018, the Commission asked ESMA to provide technical advice on the fees to be charged to securitisation repositories. ESMA published a consultation paper on 23 March. The consultation period closed on 23 May with ESMA receiving responses from five entities. A public hearing was held on 13 April. ESMA delivered its advice to the Commission on 31 October 2018.

Five respondents replied to the public consultation and indicated broad support for the proposed fee structure. As a result, the final provisions stick closely to the ones proposed in ESMA's consultation paper.

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<sup>1</sup> Regulation 2017/2402 of the European Parliament and of the Council laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012

<sup>2</sup> European Market Infrastructure Regulation (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)

<sup>3</sup> 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)

On 27 February 2020, 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 supported the Commission's approach.

### 3. IMPACT ASSESSMENT

Having fully considered the technical advice provided by ESMA, the Commission has adopted under Article 16(2) of the Securitisation Regulation this delegated act on the types, amounts and manner of collection of fees for securitisation repositories. This delegated act is fully consistent with the technical advice provided by ESMA.

Under the Securitisation Regulation, the two main principles of the collection of supervisory fees are (1) the proportionality with the turnover of the securitisation repository 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 1003/2013<sup>4</sup> and Delegated Regulation 2019/360<sup>5</sup>. Therefore, as proposed by ESMA, this delegated act puts forward: (i) registration fees that cover ESMA's one-off costs for the registration of new securitisation repositories (ii) fees for an extension of registration that cover ESMA's one-off costs for registration of securitisation repositories but reflect the synergies of processing an application by a repository that has already been registered under EMIR; and (iii) supervisory fees that cover ESMA's ongoing annual supervisory costs.

The basis of the impact assessment is thus an estimation of ESMA's costs and an assessment of the methodology for distributing these costs among the securitisation repositories, taking into account that ESMA has sought in its proposals to be consistent with existing fee provision under SFTR and EMIR.

#### *New registration fees*

ESMA initially considered departing from its past technical advices under EMIR and SFTR and proposed in its Consultation Paper a new fixed registration fee of EUR 100,000 per securitisation repository. However, some feedback received under the consultation highlighted that such a registration fee structure would disadvantage smaller firms with lower expected turnover. Consequently, ESMA acknowledged that the drafting of Article 16(1) of the Securitisation Regulation could be interpreted as requiring each of ESMA's fees (registration and annual) to be proportionate to the turnover of the securitisation repository concerned.

ESMA has therefore amended its technical advice to be in line with the existing arrangements under EMIR and SFTR and use a 'low-turnover'/'high-turnover' fee split (i.e firms providing both core and ancillary securitisation repository services are 'high turnover' and firms providing only core securitisation repository services are 'low turnover'). This would

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<sup>4</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 trade repositories

<sup>5</sup> Commission Delegated Regulation (EU) 2019/360 of 13 December 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

translate, in line with ESMA's past technical advice, to a registration fee of EUR 100,000 for high turnover repositories and EUR 65,000 for low turnover repositories.

At the same time, in order to avoid incentive issues, ESMA has further specified in its technical advice that, in case of a material change in the provision of services (i.e. a change in classification from 'low' to 'high' turnover), as a consequence of which the securitisation repository would owe a higher registration fee than the one paid initially, ESMA will charge the difference between the initially paid registration fee and the higher applicable registration fee resulting from that material change. ESMA has noted that this arrangement is in line with the fee arrangements under EMIR and SFTR.

### ***Extension of registration fees***

Firms 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.

Albeit lacking actual historical experience available to estimate the costs of an extension for registration, ESMA has assumed that expenditure estimates for a registration extension would be driven by the following factors: (i) an extension for registration will be less time consuming than a new registration under the Securitisation Regulation, (ii) the additional detailed requirements introduced by the Securitisation Regulation could entail some additional work for ESMA until a common understanding has been reached between the repository and ESMA and (iii) 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 a first time registration.

Therefore, based on the above factors, ESMA estimated 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. Such a fee is identical to the estimate set out in ESMA's technical advice on fees under SFTR.

When applied to ESMA's supervisory budget, this 0,33 FTE estimate would result 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.

After submitting this proposal for public consultation and receiving overall positive feedback by respondents, ESMA has come with the following final advice: for applicants seeking an extension of registration and classified as 'high turnover', the extension of registration fee would be EUR 50,000 (i.e. 50% of the new registration fee for 'high turnover' applicants of EUR 100,000). For firms classified as 'low turnover', the extension of registration fee would be EUR 32,500 (i.e. 50% of the new registration fee for 'low turnover' applicants of EUR 65,000).

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

In the event of a firm applying simultaneously under EMIR and/or SFTR and the Securitisation Regulation, ESMA has considered it unreasonable that the firm should pay the same registration fee each time. In other words, ESMA has sought 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.

To avoid such a misalignment, ESMA has proposed that if a firm applies at the same time for registration under EMIR or SFTR and the Securitisation Regulation, then the applicant 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, this arrangement being justified by the synergies experienced.

This proposal received a positive feedback and has therefore been kept as such in ESMA's final technical advice.

### ***Annual supervisory fees***

In line with the previous technical advice delivered under SFTR, ESMA proposed 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. Such an approach would therefore imply (i) a concrete definition of the scope of turnover, (ii) defining a floor supervisory fees and (iii) defining first-year supervisory fees.

#### ***(i) Defining applicable turnover***

In line with its past advice under SFTR and EMIR, ESMA has considered that the term 'turnover', for the purposes of implementing Article 16(1) of the Securitisation Regulation, should be based on revenue figures. Accordingly, ESMA has proposed 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. To enable the identification of 'Securitisation Regulation (core and ancillary service) revenue' to be performed smoothly and accurately, ESMA has proposed that securitisation repositories would separately present, in their financial accounts, the various revenue stream categories listed in its technical advice.

Respondents to the public consultation had mixed views on ESMA's proposal. Some requested further clarification of the term 'ancillary services' and that a distinction be introduced between the services that can be provided exclusively by securitisation repositories and services that can be provided by other market participants. Respondents were concerned that the wide scope of information that must be provided 'free of charge' would put other market participants such as investors and potential investors in a position to obtain data that could be used to obtain a competitively advantageous position vis-à-vis securitization repositories. Some considered that ESMA's supervisory efforts are essentially related to supervising core services.

To address these concerns, ESMA emphasized that the list of entities in Article 17(1) does not appear to include other registered securitisation repositories. Indeed, although sophisticated investors or potential investors could obtain substantial information from securitization repositories, it is not clear whether these entities could immediately compete with the specialised nature and experience of repositories in securitisation markets. ESMA also did not

consider it within its mandate to define the ability of securitisation repositories to exert control or restrictions over information reported to them by reporting entities or how this information is subsequently used by data users. ESMA furthermore recalled that the objective of including ancillary services in the applicable turnover calculation is aimed at introducing an approach as proportionate as possible across the population of registered securitisation repositories.

As regards further details on ancillary services, ESMA pointed out that such services related to securitisation would arise when a repository would make use of information provided by a reporting entity for the purpose of meeting its disclosure requirements under Articles 7 and 17 of the Securitisation Regulation, and would leverage this information into additional services or products that were not governed by the ‘free-of-charge’ provisions under Article 17(1) of the Securitisation Regulation.

#### *(ii) Minimum supervisory fees*

As 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), ESMA believes that a minimum annual supervisory fee is warranted. ESMA has therefore proposed that the minimum annual fee to be paid by a securitisation repository should be identical to the minimum under EMIR and SFTR, i.e. 30,000 EUR. ESMA also emphasized that potential synergies such as the ones discussed under the registration fees are unlikely to be achievable at this level. Therefore, ESMA has proposed 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. In such a configuration, an entity being subject to minimum supervisory fees under both EMIR, SFTR, and the Securitisation Regulation, would be required to pay minimum supervisory fees under each regulation (e.g. 60,000 EUR if the entity is registered under EMIR/SFTR and the Securitisation Regulation or 90,000 EUR if the entity is registered under all three Regulations).

Respondents unanimously agreed with the proposal, and ESMA has therefore left its technical advice on this aspect unchanged.

#### *(iii) First-year supervisory fees*

ESMA recalled from experience that its first-year supervisory effort is not related to the actual level of activity of the securitisation repository in question, but is quite similar across all repositories. ESMA therefore proposed that securitisation repositories registered in 2020 or who are (regardless of the year) in their first calendar year of registration 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. ESMA would not make a distinction towards entities with an extended registration in this situation as its subsequent ongoing supervisory efforts do not make a distinction between new or extended registrations. This is also in line with ESMA’s technical advice under SFTR.

In light of feedback received, ESMA has left its technical advice on this aspect unchanged. As regards the specific calculation modalities, ESMA has made clear that the minimum fee arrangement would not apply to supervisory fees in year (n) for firms registered in the same

year (n). In these cases, the registration fee would be multiplied by the ratio of working days from the firm's date of registration until the end of the year and 250 days.

*(iv) Annual supervisory fees after the first year of registration*

Having regard to the considerations mentioned above, ESMA has proposed that each repository would be charged an annual supervisory fee in proportion to the share of its applicable turnover in the aggregate turnover generated by securitisation repositories calculated in line with the applicable turnover as discussed above, subject to the minimum floor of EUR 30,000. This would imply that each firm would be allocated a portion of ESMA's total supervisory costs.

The majority of respondents to this question agreed with the proposal. Still, a few concerns were raised related to the impact of not being able to predict the annual supervisory costs on the viability of the securitisation repositories' business models with ESMA's future supervisory costs being unknown, some respondents asking that ESMA's annual supervisory fees should be capped at a given percentage of each repository's annual turnover and that, in case a repository ceases to fulfil the conditions for registration, ESMA should reimburse any fees paid.

In response, ESMA recalled that its mandate under Article 16(1) of the Securitisation Regulation is to recover in full its costs related to the supervision of firms registered to provide securitisation repository services, Article 16(1) not introducing any notion of a 'cap' or 'threshold' above which ESMA's supervisory costs should not be recouped. As regards the future supervisory expenses that ESMA plans to undertake, ESMA emphasized that, as the type and number of entities that it supervises increases, there may be further synergies that might result in some savings in supervisory costs. Insofar as ESMA's fees are set to reflect its supervisory costs, any cost savings of this type would then be passed on via fee reductions over time to supervised entities.

Furthermore, ESMA has considered that, in the event that a securitisation repository ceases to be registered with ESMA, there would be additional supervisory efforts unique to this situation and which would not, at the present juncture, appear to justify the insertion of provisions for reimbursing any supervisory fees paid by that repository to ESMA.

As regards the actual annual supervisory fees, ESMA proposed that it would then 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 no later than the end of March of the year for which they relate.

However, ESMA has acknowledged 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 because applicable turnover would be based on providing services under the Securitisation Regulation.

For this reason, ESMA has proposed that, in the first two full years after the registration of the firm, it would use estimated applicable turnover figures as inputs for the calculation. This information would be sourced from securitisation repositories' business plans provided during the application to be registered with ESMA. Should repository estimates significantly deviate from subsequent actual turnover figures, 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 calculation formula.

Such a proposal by ESMA received a globally positive feedback and has therefore been kept as such in ESMA's final technical advice.

### ***Payment and reimbursement conditions***

#### ***(i) New registration and extension of registration fees***

As 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 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]", 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.

ESMA has therefore proposed that a securitisation repository should pay the relevant registration and extension-of-registration fees at the time at which it applies for registration. Such a proposal is in line with the requirements for ESMA's fees under EMIR and received unanimous agreement from all the respondents.

#### ***(ii) Reimbursement conditions in case of withdrawal of an application***

ESMA's current fees doctrine under EMIR (CDR 1003/2013) does not envisage reimbursement to applicant trade repositories in case of an application being withdrawn prior to the registration decision. However, based on its experience since then, ESMA has acknowledged that such a configuration may not provide the proper incentives to applicants in a clearly-unsuccessful bid for registration, thereby consuming excessive amounts of ESMA's resources. ESMA has therefore proposed the following reimbursements conditions on the registration fee: (a) 50% reimbursement for applications that are withdrawn before being deemed complete by ESMA (pursuant to Article 10(6) of the Securitisation Regulation); and (b) 0% reimbursement for applications that are withdrawn after being deemed complete by ESMA (i.e. applications that have begun to be examined pursuant to Article 12 of the Securitisation Regulation).

This proposal received a positive consensual feedback and has therefore been kept as such in ESMA's final technical advice.

#### ***(iii) Timing of payment of annual supervisory fees***

The trade repositories fee arrangement under SFTR stipulate that trade repositories should pay their annual supervisory fees in two instalments – the first by 28 February and the second by 31 October. However, in view of ESMA's experience with processing fees since then and the benefits of a simplified fee payment calendar, ESMA has proposed that annual supervisory fees for securitisation repositories should be paid in a single instalment.

In light of positive feedback received, ESMA has left its technical advice on this aspect unchanged.

#### ***(iv) Reimbursement of competent authorities***

Article 16(1) of the Securitisation Regulation sets out that 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.

In accordance with this article and with the existing arrangements under SFTR and EMIR, ESMA has proposed 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.

ESMA also pointed out that 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.

In light of feedback received, ESMA has left its technical advice on this aspect unchanged.

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

#### **4. LEGAL ELEMENTS OF THE DELEGATED ACT**

Article 62 of Regulation (EU) 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (ESMA), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC provides that ESMA's revenues consist of a combination of fees paid to ESMA in the cases specified under Union law, contributions from national public authorities competent for the supervision of financial market participants and a subsidy from the Union.

This delegated act defines the types of fees to be paid by securitisation repositories. It sets (i) the level of the registration and extension-of-registration fees that are to be paid by applicants, (ii) defines the applicable turnover on the basis of which annual supervisory fees are to be charged and (iii) sets the level of the annual supervisory fees.

Finally, the delegated act defines the payment modalities and provides for reimbursements of costs incurred by national competent authorities.

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

of 18.9.2020

## **supplementing Regulation (EU) No 2017/2402 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to securitisation 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) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012<sup>6</sup>, and in particular Article 16(2) thereof,

Whereas:

- (1) Pursuant to Article 16 of Regulation (EU) 2017/2402, the European Securities and Markets Authority (“ESMA”) shall charge securitisation repositories fees that fully cover ESMA’s necessary expenditure relating to the registration and supervision of those repositories. ESMA will incur higher costs when processing applications for registration from securitisation repositories that intend to offer ancillary services. Such costs, however, will be lower where the securitisation repository is already registered as a trade repository under either Regulation (EU) 648/2012 of the European Parliament and of the Council<sup>7</sup>, or Regulation (EU) No 2015/2365 of the European Parliament and of the Council<sup>8</sup>. The registration fee on entities applying for registration should therefore take specific account of the type of services to be provided by the securitisation repository and whether or not it is already registered as a trade repository. As ESMA’s expenditure in assessing the application for registration is the same, regardless of the size of the applicant, and only depends on the type of services that are to be provided, it is appropriate that the registration fee is fixed.
- (2) Where an entity that is not already registered as a trade repository submits, at the same time, applications for registration as a trade repository and as a securitisation repository, the costs incurred by ESMA when processing those applications

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<sup>6</sup> OJ L 347, 28.12.2017, p. 35.

<sup>7</sup> 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).

<sup>8</sup> 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 (OJ L 337, 23.12.2015, p. 1)

simultaneously would also be lower owing to synergies. Where such applications are submitted simultaneously, the securitisation repository should pay the full fee pursuant to Regulation (EU) No 648/2012 or Regulation (EU) 2015/2365, as applicable, for registration as a trade repository while a reduced extension-of-registration fee should be payable for registration as a securitisation repository.

- (3) The registration fee or extension-of-registration fee payable by a securitisation repository that offers ancillary services after registration should take account of those ancillary services. Conversely, a securitisation repository that stops offering ancillary services after registration should not have its registration fee or extension-of-registration fee reimbursed as ESMA will already have incurred the cost for the assessment of the application.
- (4) In order to discourage frivolous applications, registration fees or extension-of-registration fees should not be reimbursed where ESMA has refused registration and should only be partially reimbursed where an applicant withdraws its application during the registration process.
- (5) In order to ensure the fair allocation of supervisory fees and to ensure that fees imposed reflect the actual cost incurred by ESMA with respect to each supervised entity, the annual supervisory fee should be calculated on the basis of the turnover generated by each securitisation repository. Where historical data on a registered securitisation repository's turnover are not available, the annual supervisory fee should be based on the securitisation repository's expected turnover.
- (6) The annual supervisory fees charged to each securitisation repository should be proportionate to the turnover accrued by that repository within a given financial year in comparison with the total turnover accrued by all registered and supervised securitisation repositories within the same financial year. A minimum annual supervisory fee should also be imposed on each securitisation repository, given that certain fixed administrative costs apply for the supervision of all securitisation repositories, irrespective of the amount of turnover accrued.
- (7) As only limited data will be available on the activity of a securitisation repository during the financial year following registration, the annual supervisory fee for that year should be calculated on the basis of the registration fee and the effort ESMA has put into supervising that securitisation repository over the course of the year. The supervisory effort in the first months after registration is similar to the effort in assessing the registration of the applicant. Therefore, in the first year of operation of the securitisation repository, the supervisory fee should be based on the registration fee paid by the applicant, adjusted by a coefficient.
- (8) In view of ESMA's annual budgetary procedure and the time needed to estimate supervisory costs, it will not be possible to take securitisation repositories registered on or after 1 October of a given financial year into account for the purposes of calculating the total annual supervisory cost for the following year. Therefore, the annual supervisory fee for a securitisation repository registered on or after 1 October of the preceding year should be equal to its registration fee.
- (9) National competent authorities incur costs when carrying out work pursuant to Regulation (EU) 2017/2402, and, in particular, undertaking tasks delegated in

accordance with Article 14(1) of that Regulation. The fees charged by ESMA to securitisation repositories should also cover those costs. To ensure that competent authorities do not incur a loss or profit when carrying out delegated tasks or when assisting ESMA, ESMA should reimburse only the actual costs incurred by a national competent authority in this respect,

HAS ADOPTED THIS REGULATION:

### *Article 1*

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

The fees charged to securitisation repositories shall cover:

- (a) all costs relating to the registration and supervision of securitisation repositories by ESMA in accordance with Regulation (EU) 2017/2402, including costs resulting from the extension of registration for trade repositories that have already been registered under Title VI, Chapter 1 of Regulation (EU) No 648/2012 or Chapter III of Regulation (EU) 2015/2365;
- (b) 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 14(1) of that Regulation.

### *Article 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 the following:
  - (a) core securitisation services as defined in Article 1, point (3), of Commission Delegated Regulation (EU) 2020/1230<sup>9</sup>;
  - (b) ancillary securitisation services as defined in Article 1, point (4), of Delegated Regulation (EU) 2020/1230.
  - (c) Any other services provided.
- 2. A securitisation repository registered under Regulation (EU) 2017/2402 that is also registered as a trade repository under either Regulation (EU) No 648/2012 or Regulation (EU) 2015/2365 shall keep audited accounts for the purposes of this Regulation which distinguish between the revenues generated from:

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<sup>9</sup> Commission Delegated Regulation (EU) 2020/1230 of 29 November 2019 supplementing Regulation (EU) 2017/2402 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration of a securitisation repository and the details of the simplified application for an extension of registration of a trade repository (OJ L 289, 3.9.2020, p. 345–363).

- (a) provision of core securitisation services;
  - (b) provision of ancillary securitisation services;
  - (c) core functions of centrally collecting and maintaining records of derivatives under Regulation (EU) No 648/2012;
  - (d) provision of 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) 2015/2365;
  - (f) provision of ancillary services that are directly related to centrally collecting and maintaining records of securities financing transactions under Regulation (EU) 2015/2365;
  - (g) provision of combined ancillary services that are directly related to:
    - (i) the activities referred to in points (a) and (c);
    - (ii) the activities referred to in points (a) and (e);
    - (iii) the activities referred to in points (c) and (e);
    - (h) any other services provided.
3. The applicable turnover of a securitisation repository for a given year n shall be the sum of:
- (a) the repository's revenues, or expected revenues, where paragraph 5 applies, generated from the activities referred to in paragraph 2, point (a), as stated in the audited accounts of year n-2;
  - (b) the repository's revenues generated from the activities referred to in paragraph 2, point (b) and the applicable share of the revenues generated from the activities referred to in paragraph 2, points (g)(i) and g(ii), as stated in the audited accounts of year n-2.
4. The applicable share of the revenues referred to in paragraph 3, point (b), shall be equal to the revenues generated from the activities referred to in paragraph 2, point (a), divided by the sum of the revenues generated by the activities referred to in:
- (a) paragraph 2, point (a);
  - (b) paragraph 2, point (c);
  - (c) paragraph 2, point (e).
5. Where no audited accounts for year n-2 are available, ESMA shall use the expected revenues for year n provided in the business plans submitted to ESMA pursuant to

Article 13(3) of Delegated Regulation (EU) 2020/1230. Those expected revenues shall be broken down into the following elements:

- (a) revenues expected to be generated from the activities referred to in paragraph 2, point (a);
- (b) revenues expected to be generated from the activities referred to in paragraph 2, point (b);
- (c) revenues expected to be generated from the activities referred to in paragraph 2, points (g)(i) and g(ii).

A securitisation repository that decides to provide ESMA with an update of the expected revenues for year n shall do so by 30 September of year n-1.

### *Article 3*

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

1. Where the applicant is not registered as a trade repository under either Title VI, Chapter 1, of Regulation (EU) No 648/2012 or Chapter III of Regulation (EU) 2015/2365, the registration fee shall amount to the following:
  - (a) EUR 100 000, where the repository intends to provide ancillary services as referred to in Article 2(2), points (b), (g)(i), or (g)(ii);
  - (b) EUR 65 000, where point (a) does not apply.
2. Where the applicant is registered as a trade repository under either Title VI, Chapter 1 of Regulation (EU) No 648/2012 or Chapter III of Regulation (EU) 2015/2365, the extension-of-registration fee shall be the following:
  - (a) EUR 50 000, where the repository intends to provide ancillary services as referred to in Article 2(2), points (b), (g)(i), or (g)(ii);
  - (b) EUR 32 500 where point (a) does not apply.
3. Where the applicant is not registered as a trade repository under either Regulation (EU) No 648/2012 or Regulation (EU) 2015/2365 and simultaneously submits applications for registration under both Regulation (EU) 2017/2402 and either Regulation (EU) No 648/2012 or Regulation (EU) 2015/2365, the applicant shall pay the full registration fee due under either Article 6 of Commission Delegated Regulation (EU) No 1003/2013<sup>10</sup> or Article 5(1) of Commission Delegated

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<sup>10</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 trade repositories (OJ L 279, 19.10.2013, p. 4).

Regulation (EU) 2019/360<sup>11</sup>, as applicable, and the extension-of-registration fee due under paragraph 3.

4. Where the applicant is not registered as a trade repository under either Regulation (EU) No 648/2012, nor under Regulation (EU) 2015/2365, and simultaneously submits applications for registration under both Regulation (EU) No 648/2012, Regulation (EU) 2015/2365 and Regulation (EU) 2017/2402, the applicant shall pay the full registration fee due under Article 6 of Delegated Regulation (EU) No 1003/2013, the extension-of-registration fee due under Article 5(5) of Delegated Regulation (EU) 2019/360 and the extension-of-registration fee due under paragraph 3.
5. A securitisation repository that offers ancillary services after registration and, by consequence, owes a higher registration fee or a higher extension-of-registration fee than the registration fee or extension-of-registration fee paid initially, shall pay the difference between the initially paid registration fee or extension-of-registration fee and the higher applicable registration fee or extension-of-registration fee.

#### *Article 4*

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

1. The annual supervisory fee for all registered securitisation repositories for year n shall be equal to the cost estimate for the supervision of those securitisation repositories' activities as included in ESMA's budget for that year.
2. The annual supervisory fee to be paid by a securitisation repository for the year in which that securitisation repository was registered shall be equal to the registration fee due under Article 5, multiplied by the number of working days from the securitisation repository's date of registration until the end of that year and divided by 250.
3. The annual supervisory fee for a given year n to be paid by a securitisation repository registered on or after 1 October of the preceding year shall be equal to the registration fee due under Article 5.
4. The annual supervisory fee for a given year n to be paid by a securitisation repository registered before 1 October of the preceding year shall be equal to the annual supervisory fee referred to in paragraph 1 divided between all securitisation repositories registered before 1 October of that preceding year in proportion to the applicable turnover for each securitisation repository calculated in accordance with Article 2(3).
5. With the exception of the annual supervisory fee payable under paragraph 2, the annual supervisory fee shall never be less than EUR 30 000.

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<sup>11</sup> Commission Delegated Regulation (EU) 2019/360 of 13 December 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 (OJ L 81, 22.3.2019, p. 58).



## *Article 5*

### **General payment modalities**

1. All fees shall be payable in euros. The fees shall be paid as specified in Articles 6, 7, and 8.
2. Any delay in payment shall incur a daily penalty equal to 0.1% of the amount due.

## *Article 6*

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

1. The registration fee and extension-of-registration fee referred to in Article 3 shall be paid in full at the time the securitisation repository submits its application for registration or extension of registration.
2. Half of the registration fee or the extension-of-registration fee paid by the securitisation repository shall be reimbursed where the securitisation repository withdraws its application for registration or extension of registration before ESMA has notified the securitisation repository that its application is complete pursuant to Article 10(6) of Regulation (EU) 2017/2402.
3. The registration fee and extension-of-registration fee shall not be reimbursed after ESMA has notified the securitisation repository that its application is complete pursuant to Article 10(6) of Regulation (EU) 2017/2402.

## *Article 7*

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

The annual supervisory fee referred to in Article 4 shall be paid in a single instalment, which shall be due by no later than the end of March of the year to which it relates, except for the annual supervisory fee referred to in paragraphs 2 and 3 of that Article.

ESMA shall send debit notes to all registered securitisation repositories specifying the amount of the annual fee at least 30 calendar days before the day when annual fees are to be paid.

## *Article 8*

### **Reimbursement of competent authorities**

1. Only ESMA shall charge the registration fee, the extension-of-registration fee and the annual supervisory fee.
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, in accordance with Article 9(1) of Regulation (EU) 2015/2365 and in accordance with Article 14(1) of Regulation (EU) 2017/2402.

*Article 9*

**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 Member States.

Done at Brussels, 18.9.2020

*For the Commission*  
*The President*  
*Ursula VON DER LEYEN*