



European Securities and
Markets Authority

Final Report

Guidelines on transfer of data between Trade Repositories





European Securities and
Markets Authority

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Table of Contents

1	Executive Summary	5
2	Scope.....	8
3	Legal framework.....	8
4	Glossary of concepts and terms	9
5	Status quo.....	10
6	Purpose.....	13
7	Conditions of transfer of data.....	14
7.1	Entities involved in the transfer.....	14
7.2	Migration plan.....	15
7.2.1	Content of the migration plan	15
7.3	Format of the data	16
7.4	Secure machine-to-machine connection.....	18
7.5	Data security	18
7.6	Data completeness.....	19
7.7	Data integrity	20
7.8	Timeliness of the data transfer	21
7.9	Data availability	21
7.10	Fees.....	22
7.10.1	Transfer of data.....	22
7.10.2	Recordkeeping of non-outstanding derivatives up to 10 years.....	23
7.11	Prioritisation of data to be transferred.....	23
8	Transfer of data requested by a TR participant.....	24
8.1	Scope of the data subject to transfer	24
8.2	Initiation of the process	26
8.3	Communications	27
8.4	Recordkeeping of the transferred data	27
8.5	Fees in the case of transfer requested by a TR participant.....	28
9	Transfer of data in the case of withdrawal of registration	29
9.1	Scope of the data to be transferred in the case of withdrawal.....	29
9.2	Migration plan as part of the wind-down plan.....	30
9.3	Withdrawal of registration requested by the TR - Article 71(1)(a) of EMIR.....	30
9.4	Withdrawal of registration not requested by the TR	31



9.5	Communication to authorities	32
9.6	Recordkeeping of the transferred data	33
9.7	Fees in the cases of withdrawal of registration	34
10	Annex I - Procedure for transfer of data at the request of a TR participant.....	36
11	Annex II - Procedure for migration in case of withdrawal of registration	38
12	Guidelines.....	40
13	Opinion of the Securities and Markets Stakeholders Group	44
14	Cost benefit analysis.....	45

1 Executive Summary

Reasons for publication

The purpose of these Guidelines is threefold. First of all, they aim at setting the necessary arrangements to foster and facilitate a consistent application of the relevant EMIR requirements that underpin a competitive TR environment. Furthermore, these Guidelines set out the basis to ensure high quality data available to authorities, including the aggregations carried out by TRs, even in those cases where the TR participant changes the TR to which their derivatives are reported. Finally, the Guidelines establish a consistent and harmonised way to transfer records from one TR to another TR and support the continuity of reporting and reconciliation in all cases including the withdrawal of registration of a TR.

In addition, to ensure consistent implementation across TRs, ESMA better specifies the expected compliance with the requirement established in Article 79(3) of EMIR for the transfer of reporting flow in the case of withdrawal of registration of a TR.

Contents

The present final report contains fourteen sections. Section 1 refers to the Executive Summary of the report. Section 2 establishes the scope and timeline of the Guidelines, while Section 3 outlines the legal framework under which these guidelines are prepared. Section 4 provides the relevant concepts and terms used in the Guidelines. Section 5 indicates the status quo. Section 6 sets out the purpose of the Guidelines. Section 7 establishes the general conditions for data transfer. Sections 8 and 9 establish the specificities of data transfer in general or where there is an upcoming withdrawal of registration. Finally, Sections 10 and 11 set out the protocols for data transfer in the two relevant situations. Section 12 contains the actual Guidelines, while Section 13 includes a reference to the requested opinion to SMSG and Section 14 contains a high-level cost-benefit analysis of the proposed Guidelines.

Next Steps

Following the publication of this final report on Guidelines on transfer of data between TRs, the Guidelines will become applicable on 16 October 2017 and will require assessment on the compliance by the TRs with these Guidelines on an annual basis.



Acronyms and definitions used

CCP	Central Counterparty
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as “the Regulation”
ESMA	European Securities and Markets Authority
EU	European Union
ISO	International Organization for Standardization
ITS	Implementing Technical Standards
LEI	Legal entity identifier
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation).
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012
MMSR	Regulation (EU) No 1333/2014 of the European Central Bank of 26 November 2014 concerning statistics on the money markets
NCA	National Competent Authority
OJ	The Official Journal of the European Union
OTC	Over-the-counter
Q&A	Questions and Answers
RTS	Regulatory Technical Standards
SFTR	Regulation (EU) No 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
TR	Trade repository
UTI	Unique Transaction Identifier



XML

Extensible Mark-up Language

XSD

XML Schema Definition



2 Scope

Who?

1. These guidelines apply to trade repositories (TRs) registered or recognised by ESMA.

What?

2. The adopted guidelines will apply in relation to:
 - a. The reporting without duplication of details of derivatives by counterparties and CCPs under Article 9(1) of EMIR,
 - b. The transfer of derivatives data between trade repositories at the request of the counterparties to a derivative, or the entity reporting on their behalf, or in the situation covered by Article 79(3) of EMIR, and
 - c. The record keeping of details of derivatives under Article 80(3) of EMIR.

When?

3. These guidelines apply as of 16 October 2017.

3 Legal framework

4. The guidelines are providing additional clarification for TRs on how to ensure compliance at all time with the following EMIR provisions:
 - a. Article 9(1) of EMIR which provides that “Counterparties and CCPs shall ensure that the details of their derivative contracts are reported without duplication”,
 - b. Article 80(3) of EMIR which provides that “A trade repository shall promptly record the information received under Article 9 and shall maintain it for at least 10 years following the termination of the relevant contracts. It shall employ timely and efficient record keeping procedures to document changes to recorded information.”
 - c. Article 79(3) of EMIR which provides that “A trade repository from which registration has been withdrawn shall ensure orderly substitution including the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories.”, and
 - d. Article 16(1) of 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) which provides that "The Authority shall, with a view to establishing consistent, efficient and effective

supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to competent authorities or financial market participants."

4 Glossary of concepts and terms

5. All the definition, concepts and terms that are used in EMIR, in the current RTS and ITS on reporting¹, in the amended RTS and ITS on reporting², in the Q&As and in these guidelines are used with the same meaning.
6. Furthermore, for the purpose of these guidelines, ESMA defines the following concepts that would be used to better illustrate the different situations that might take place.
7. "Report submitting entity" (RSE, hereinafter) which is one of the counterparty fields of the amended technical standards on reporting³ should be understood as the entity which has entered in a contractual relationship with a registered or recognised TR and it:
 - a. Reports only its side of derivatives contract, in which case it would coincide with the reporting counterparty of the contract
 - b. Reports only derivatives where it is one of the counterparties, in which case it would coincide with either the reporting counterparty of the contract or the other counterparty, and
 - c. Reports derivatives where it might be or might not be one of the counterparties.
8. "TR participant"⁴ is an entity which has a contractual arrangement for the purpose of reporting derivative contracts under Article 9 of EMIR with at least one registered or recognised TR. The TR participant may be an RSE, or a reporting counterparty or a CCP, which has a "view-only" access to a TR.

¹ COMMISSION DELEGATED REGULATION (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, L52, OJ 23.2.2013, p.1

COMMISSION IMPLEMENTING REGULATION (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, L352, OJ 21.12.2012, p. 20

² COMMISSION DELEGATED REGULATION (EU) 2017/104 of 19 October 2016 amending Delegated Regulation (EU) No 148/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, L17, OJ 21.1.2017, p.1

COMMISSION IMPLEMENTING REGULATION (EU) 2017/105 of 19 October 2016 amending Implementing Regulation (EU) No 1247/2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories L17, OJ 21.1.2017, p.17

³ https://www.esma.europa.eu/system/files/force/library/2015/11/2015-esma-1645_-_final_report_emir_article_9_rts_its.pdf

⁴ Some TRs might further specify the types of TR participants such as reporting, general reporting, non-reporting, etc. participants. These sub-categories are transparent from the perspective of these guidelines.

9. “Old TR” means a TR to which a TR participant was reporting or to which the derivatives of a TR participant were reported by an RSE under Article 9 of EMIR, but (i) the TR participant decided to discontinue its contractual arrangement reporting or (ii) the registration of the TR was withdrawn.
10. “New TR” means a TR to which a TR participant has started or intends to start reporting derivatives under Article 9 of EMIR, although initially that entity was reporting, either directly or through an RSE, to the old TR.
11. “Transfer” or “transfer (of details) of derivatives” means an act or process of moving the records of the derivatives from the old TR to the new TR.
12. “Portability” means the possibility to transfer records relating to details of derivatives reported under Article 9 of EMIR from the old TR to the new TR, as those are defined in these guidelines.
13. “Terminated derivatives” means derivatives trades which have been terminated before their initially established maturity date by the two counterparties and are identified with action type “C”.
14. “Compressed derivatives” means a set of derivatives trades between a pair of counterparties which have been terminated before their initially established maturity date by the two counterparties and are identified with action type “Z” under the current RTS on reporting and additionally with action type “P” under the amended RTS on reporting. In most cases the compressed derivatives give rise to one or several new derivatives or CCP-cleared derivatives, which are identified as “resulting from compression”.
15. “Matured derivatives” means derivatives trades which are reported to a TR and at a given point in time have reached their contractually-agreed maturity date.
16. “Errored derivatives” means derivatives trades which are reported to a TR as a result of a mistake. They are identified with action type “E”.
17. “Outstanding trades” or “outstanding derivatives” are those derivatives, including CCP-cleared derivatives, which are reported to a TR and have not matured and have not been subject of a report with action types “E”, “C”, “P” or “Z”.

5 Status quo

18. EMIR establishes a multi-TR reporting environment. RSEs have been reporting under Article 9 of EMIR the details of exchange traded or over-the-counter derivative contracts to any of the registered TRs under EMIR. As mentioned in paragraph 94 of

ESMA's 2015 annual report and 2016 work plan⁵, ESMA was examining two further applications for registration. The registration of one of them, Bloomberg Trade Repository Limited, became effective on 7 June 2017.

19. One of the priorities for ESMA is to ensure that high quality data is available to the authorities to allow them to fulfil their responsibilities and mandates. ESMA is aware that portability, if not properly conducted, can affect negatively the quality of the data available to authorities.
20. Reporting counterparties do not have an obligation to continue reporting to the same TR indefinitely, given there is competition between TRs. Likewise, it cannot be assumed that all existing and future TRs will continue to operate indefinitely, since there can be TRs that might in the future cease their operations. There are several situations in the market place that are currently observed by ESMA and National Competent Authorities (NCAs) supervising reporting entities when TR participants decide to change the TR to which they report.
21. These changes of TR, depending on how they take place, can be currently performed in different manners. In the consultation paper, ESMA outlined a few examples.
22. In the first case, the TR participant leaves its reports at the old TR and re-reports them to the new TR. All the lifecycle events pertaining to the derivatives are then submitted to the new TR. The old TR keeps the records as they were at the point in time at which the participant decided to change TR. Some issues with the fees charged by the old TR to the TR participant might arise (e.g. for maintaining outstanding transactions).
23. In the second case, the TR participant submits reports with Action type "Error" to the old TR⁶ with regards to the derivatives that it intends to report to the new TR. The TR participant then re-reports the relevant derivatives to the new TR. While in some instances this is made simultaneously, it might not necessarily always be done in such manner.
24. In the third case, the TR participant submits reports with Action type "Cancel" to the old TR⁷ with regards to the derivatives that it intends to report to the new TR. The TR participant then re-reports the relevant derivatives to the new TR. While in some instances this is made simultaneously, it might not necessarily always be done in such manner.
25. ESMA indicated in the consultation paper that the aforementioned situations lead to the following breaches of the EMIR rules and issues with data quality:

⁵ https://www.esma.europa.eu/sites/default/files/library/2016-234_esma_2015_annual_report_on_supervision_and_2016_work_plan.pdf

⁶ Action type "Error" is used under EMIR to report that the derivatives contract was reported in mistake and never took place.

⁷ Action type "Cancel" is used under EMIR to report the early termination, i.e. termination before the previously agreed maturity date of the derivatives contract

- a. In all three cases there is duplication of reporting, i.e. the same derivative is reported twice by the same counterparty, thus breaching Article 9(1) of EMIR.
 - b. In all three cases, until the derivatives at the old TR are terminated, a given entity or its counterparty might erroneously be considered as having larger exposures than other entities, which are in fact the ones that have the actual risk. In general, the resulting increase in the volume of reported derivatives would signal potential systemic risk to the relevant authorities, which would as a result be misled by erroneous reporting, thus contravening one of the primary objectives of TR reporting, i.e. detection of systemic risk.
 - c. In all three cases, if the old TR decides not to keep derivatives reported by TR participants which no longer report to it for at least 10 years, there is a potential breach of the recordkeeping obligation under Article 80(3) of EMIR.
 - d. In all three cases, the re-reporting by the TR participant to the new TR might not include the full details of the derivatives or of all their relevant lifecycle events thus posing an additional problem on the record-keeping by the new TR, which would be in possession of position information and not of the actual transaction information.
 - e. In all three cases the performance of inter-TR reconciliation for the derivatives reported to different TRs would be significantly hindered, if not rendered impossible, as the TRs would not know with which TR to reconcile records.
26. ESMA further indicated that the lack of a clear process on portability between TRs undermines the competitive framework under EMIR. In particular, the absence of a clear process to transfer transactions and the lack of clarity on the consequences for the participants that wish to transfer their positions to another TR, might force the latter to be “locked” at the old TR and not able to make use of the advantages of having a competitive TR landscape, such as more competitive prices and a better service offering.
27. Finally, ESMA is aware that the lack of clear rules on portability also poses problems when the TR landscape is experiencing changes, i.e. either where new TRs are registered or where the registration from a TR is withdrawn. In the latter case, it remains unclear how the TR participants need to deal with such situations without breaching their reporting obligations under Article 9 of EMIR. Similarly, it is essential to clarify how the record keeping obligation in Article 80(3) of EMIR would be ensured.
28. The vast majority of the respondents agreed with ESMA’s assessment and were in favour of ESMA’s proposal to provide further clarity on a standardised manner to transfer data between TRs, as this enhances competition and provides market participants with a possibility to select the TR that is best suited for their reporting needs. Notwithstanding this, some respondents called for greater flexibility in the portability. ESMA strongly opposes flexibility in the portability as this is how the process



is organised currently and this leads to substantial data quality problems as outlined in paragraph 25. In the following sections, ESMA includes the guidelines on all the relevant aspects relating to data transfer.

29. The respondents suggested that ESMA includes the following clarifications:
- a. In case a non-reporting TR participant transfers its derivatives to a new TR, it shall notify its RSE(s);
 - b. Specify whether, and, if so, how, the reconciliation status could be transferred;
 - c. Specify whether and if so, how the reporting log could be transferred.
30. ESMA is addressing these aspects in the subsequent sections.

6 Purpose

31. The purpose of these guidelines therefore is threefold:
- a. Remove portability obstacles from the competitive TR environment underpinning EMIR, and ensure that TR participants can benefit from the multi-TR environment;
 - b. Ensure the quality of data available to authorities, including the aggregations carried out by TRs, even when the TR participant changes the TR to which it reports and irrespective of the reason for such a change;
 - c. Ensure that there is a consistent and harmonised way to transfer records from one TR to another TR and support the continuity of reporting and reconciliation in all cases including the withdrawal of registration of a TR.
32. The need to transfer data to another TR may arise for different reasons. The guidelines therefore address separately the situations where (i) the transfer is due to withdrawal of registration of the TR from the cases in which (ii) the transfer is done on a voluntary basis and under normal market conditions. The incentives and motivations for the relevant parties in each of the two cases would be different and therefore there is a need for a specific approach in each particular situation.
33. The guidelines establish high-level principles that would need to be followed by the TR participants, e.g. RSE, counterparties and CCPs, on the one hand, and the TRs on the other. Those principles are complemented by specific procedures, included in sections 10 and 11 of this final report, set out to ensure the timely and robust transfer of details of derivatives.

34. These guidelines however do not cover situations that do not require transfer of data, such as reporting counterparties that have decided to report to two or more TRs at the same time.

7 Conditions of transfer of data

35. The following subsections include the reference to the general conditions relating to the transfer of data.
36. There are also certain very specific aspects of the data transfers which would depend on whether a TR whose registration is to be withdrawn is involved or not. Those aspects would relate to (i) the scope of the data transfer, (ii) the recordkeeping of the data subject to transfer, (iii) the timeline of the communications and (iv) the applicable fees.
37. The following Guidelines apply in case the transfer takes place between two TRs that continue in operation: Guideline 1 to Guideline 22.
38. The following Guidelines apply in case of withdrawal of registration of a TR: Guideline 1 to Guideline 15 and Guideline 23 to Guideline 29.

7.1 Entities involved in the transfer

39. The TRs are the market infrastructures which underpin the EMIR reporting and have a central function in ensuring the accurate record-keeping of data required under EMIR as well as the appropriate access to data by the authorities.
40. Furthermore, to ensure the achievement of the objectives included in Section 30, there is the need to establish a controlled and fully traceable process with the minimum number of error-prone links or stages. Therefore, ESMA proposed that the transfer of data should be carried out only by the old TR and the new TRs (i.e. not by the TR participant) following the principles outlined in the following sections. Furthermore, ESMA underlined that the TR participant should not re-report to the new TR any derivatives subject to the transfer, neither should it send any report to the old TR in order to cancel or error them. Therefore any such reports should be rejected by the new and by the old TR, respectively.
41. Given the substantial character of this aspect, it was one of the most widely discussed elements of the guidelines during the public consultation. Some respondents indicated that the reporting counterparties should remain responsible for data quality and they should retain greater responsibility for the transfer of data. Specifically for the data reported before the start of Level 2 validation rules (1 November 2015) it was mentioned that it will be practically impossible for it to be transferred without data loss due to incomplete information reported.

42. ESMA agrees with the suggestions on increasing the responsibility of the counterparties. ESMA however understands that the relevant instance is covered by ESMA EMIR TR Q&A 44, therefore there will be no need to include an additional provision in these Guidelines to request the counterparties to ensure that the data subject to transfer is compliant with the reporting and validation rules applicable at the time of the transfer.

Guideline 1. Only the old TR and the new TR should carry out the transfer of derivatives data. The new TR should not accept duplicate reports by TR participants relating to derivatives subject to transfer. The old TR should not accept reports with action types “Cancellation” and “Error” made by TR participants relating to derivatives subject to transfer.

7.2 Migration plan

43. It is essential to ensure seamless, complete and accurate transfer of data from the old TR to the new TR. The transfer of data should be carried out in accordance with a migration plan. The migration plan should contain the detailed planning (timeline) and a description of the required controls in place to ensure the timely, complete and accurate transfer of data. Some of the additional aspects to be taken into account as part of the migration plan are detailed in the following subsections. The migration plan would allow all the involved entities to better control the process of data transfer.

44. ESMA proposed that the migration plan is prepared and agreed by the relevant TRs.

Guideline 2. The transfer of data should be carried out by the TRs in accordance with a mutually agreed migration plan. The migration plan should contain the detailed planning (timeline) and a description of the required controls in place to ensure the timely, complete and accurate transfer of data.

7.2.1 Content of the migration plan

45. In the consultation paper ESMA also specified the content of the migration plan. The respondents unanimously agreed on the need for a migration plan and provided several additional comments for further consideration by ESMA:

- a. The information on which the TRs should agree should be standardised as much as possible and should not be a source of discussion.
- b. The responsibilities of the new and the old TR from the moment of finalisation of the transfer should be clear. The migration plan should also explicitly detail responsibilities of the old (effective date, removal of impacted records from file extracts, statistics, aggregations, breaking of pairing) and new TR (effective date inclusion of impacted and reposting for reconciliations).

- c. In addition, the scope of data to be transferred should be clarified and also whether this should include invalid reports.

46. ESMA agrees that the type of information to be included in the migration plan should not be subject to discussion between the TRs and that the responsibilities of the old and new should be clear. ESMA further agrees that the migration plan should include the scope of the derivatives data that should be transferred. ESMA understands that the scope of data to be transferred is discussed in detail in Guideline 16, Guideline 18 and Guideline 23.

47. The content of the migration plan is provided in Guideline 3 below.

Guideline 3. All TRs should use a standardised migration plan template mutually agreed across all TRs and that is compliant with the content included in Guideline 4.

Guideline 4. The migration plan should contain the following information:

- i. The scope of the data transfer (e.g. the TR participant(s), derivatives involved, etc.)
- ii. Detailed roles and responsibilities of the involved entities
- iii. Timeline and relevant milestones for the transfer
- iv. The controls required to ensure the confidentiality of the transferred data (e.g. type of encryption used)
- v. The controls required to ensure the integrity and accuracy of the transferred data (e.g. cryptographic checksums and hashing algorithms)
- vi. The controls required to ensure continuity of operations and the inter-TR reconciliation status of the derivatives under transfer
- vii. Cut-off time and data availability
- viii. Any other information that will facilitate and secure the smooth transfer of data.

7.3 Format of the data

48. ESMA has undertaken substantial work to ensure the harmonisation and standardisation of the reporting requirements by counterparties and the provision of data to authorities for EMIR, MIFID II/MIFIR, SFTR and MAR.

49. Under the amendments of Article 4 and 5 of Commission Delegated Regulation 151/2013 (amended RTS on operational standards for data access)⁸, ESMA has already proposed that the TRs use XML format and a template developed in accordance with ISO 20022 methodology to provide access to data to authorities. The same XML templates are already used for access to data through the ESMA's TRACE project. Their use would:
- a. Ensure consistent and harmonised provision of the data and eliminate any potential barriers to entry stemming from the use of proprietary formats;
 - b. Reduce processing costs for both the old and the new TR; and
 - c. Preserve the quality of the data subject to transfer.
50. As a result, ESMA proposed in the Consultation paper that the format of the files to transfer data from the old TR to the new TR should be the XML format and template defined in the amended RTS on operational standards for data access.
51. The vast majority of the respondents supported ESMA's proposal. The implementation of a uniform approach ensures that TRs are able to easily transfer data using the ISO 20022 xml format. In addition, it was suggested that:
- a. TRs to be required to accept porting (in or out) of data required under EMIR at the time of porting, as it will not be possible to perform validation under the current rules for derivatives that were originally submitted in earlier versions of the RTS.
 - b. The schema already in use for TRACE purposes will not ensure the integrity with TR databases and it will be very challenging for TRs to store the data received as this schema was produced to serve new RTS. Some data reported before L2 and L1 validations are not compatible with that schemas, meaning that those reports would be lost in the data transfer
 - c. ESMA to consider including a reference on how to deal with exceptions during the data integration process.
52. ESMA is therefore updating the Guidelines accordingly in order to allow for transfer in some isolated cases, such as derivatives that are not outstanding at the time of transfer, outstanding derivatives that are not modified after 1 November 2017 or rejected derivatives in comma separated values file(s). However the reference to exception in the case of integration refers to a more general issue, therefore it is not considered as pertaining to the scope of the Guidelines.

⁸ https://www.esma.europa.eu/system/files_force/library/2016-422_final_report_rts_on_tr_data_under_art.81_emir.pdf?download=1

Guideline 5. TRs should transfer data to each other by using the XML format and template defined in accordance with Article 4 of the amended RTS 151/2013. Notwithstanding this, in the case of (i) derivatives that are not outstanding at the time of transfer, (ii) outstanding derivatives that have not been amended after the date of application of the amended Commission Delegated Regulation 148/2013 or (iii) rejected derivatives, the TRs could use comma separated value (csv) files. In the files that will be transferred, the old TR should include all the relevant details of the derivatives subject to transfer.

7.4 Secure machine-to-machine connection

53. In similar way, as described in section 7.3, ESMA proposes to leverage on the harmonisation and standardisation work done so far and the available infrastructures.
54. For the purpose of performing the inter-TR reconciliation process, the TRs currently exchange on a daily basis data via SFTP connections. The amended RTS on operational standards for data access establishes the same type of transfer protocol for access to data by authorities.
55. Furthermore, in the Consultation paper ESMA indicated that the volumes of data to be transferred between TRs for the purposes of portability would be lower than or equal to the daily volumes provided to authorities and certainly similar to the ones related to the inter-TR reconciliation process. ESMA acknowledged that the portability transfers would be much less frequent however.
56. To contain the costs, ESMA proposed and the respondents unanimously agreed that, to the extent possible, the TRs should use the existing infrastructure but scheduling the data transfers, for instance, in the “valley” timeslots of the inter-TR reconciliation process, which includes the weekends.

Guideline 6. The TRs should use secure machine-to-machine protocols, including the SSH File Transfer Protocol, to transfer data between each other.

7.5 Data security

57. Also under the amendments of Article 4 and 5 of the amended RTS on operational standards to data access, ESMA proposed that the TRs use electronic signature and data encryption protocols, when providing access to or making available the data to the authorities.
58. Furthermore, ESMA indicated that those signatures and data encryption protocols should be sufficient to maintain the confidentiality, integrity and protection of data and should not impede the timely provision of data to authorities neither should pose any type of barrier to the access to data. ESMA considers that the transfer of data between



the TRs should be organised in a similar manner as the provision of data indicated in the amended RTS on operational standards on data access. The respondents unanimously agreed with the proposed encryption process suggested by ESMA.

Guideline 7. The TRs should use advanced encryption protocols and should exchange the relevant public encryption keys with their peers. To ensure the seamless functioning of data encryption, the TRs should test in advance that they are able to encrypt and decrypt each one's data files.

7.6 Data completeness

59. ESMA believes that it is essential that the completeness of the data subject to transfer is verified. However, this would inevitably require additional time for both the old TR, the TR participant and the new TR to complete the transfer of data. All three entities (old TR, the TR participant and the new TR) should agree on the number of derivatives and of records to be transferred.
60. Therefore in the Consultation paper, ESMA indicated its understanding that the reporting counterparties, as part of their due diligence processes and obligations under EMIR, verify on an on-going basis the details of derivatives that they, or the TR participant, report to the TR with the data that the TR records in its database⁹. Given that all the TRs have in place end-of-day feedback mechanisms and reports at least to the direct TR participants, ESMA concluded that the reporting counterparties should be in position to carry out such verification. This is a key determinant to streamline the process of verification of data completeness.
61. In terms of the verification of the number of outstanding derivatives, and of the corresponding lifecycle events, that will be transferred, ESMA proposed that the old TR should calculate these numbers and TR participant(s) should sign them off¹⁰. While the TR should also calculate the numbers of the non-outstanding derivatives and corresponding lifecycle events, it might not be possible to sign them off, as many counterparties could have switched their TR participant or gone out of business.
62. The majority of the respondents supported ESMA's proposal. Nevertheless, the market participants brought attention to the following issues:
- a. Compatibility of reports submitted before Level 2 validation rules with XML files and the impossibility on the TR's side to store the data properly causing further issues with the aggregations.

⁹ As per Article 9.2 EMIR "Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract."

¹⁰ Sign off is the process to approve or acknowledge something by or as if by a signature

- b. The role of the new TR in the reconciliation process of the scope of data to be transferred is not clear.
- c. Resolution process in case there are discrepancies on what the TR and TR participant consider outstanding and what lifecycle event refer to these derivatives.
- d. Counterparties are not able to verify on an ongoing basis the entirety of the record keeping against those maintained for the simple reason that the TR may not make that complete dataset available online at all times on an ongoing basis.
- e. Possibility to allow for partial transfer of outstanding derivatives, in which case it should be the TR participant that has requested the data transfer, to calculate the number of derivatives that it seeks to transfer.

63. ESMA understands that the resolution of the discrepancies between the TR and the TR participant should be made as soon as possible. It is of utmost importance that the TR participants are at all times in possession of complete and up-to-date information about the details of the derivatives that they have reported to the TRs. With regards to the possibility to perform a partial transfer of data, ESMA sees no actual benefit and understands that a similar outcome is achieved by reporting to two different TRs different derivatives at the same time and this is a process for which there is no need to establish a data transfer process. In case a TR participant is willing to keep reporting to two TRs, it is not clear that there is a need to handle a transfer.

Guideline 8. The old TR should calculate the number of derivatives and the number of corresponding lifecycle events that will be transferred to the new TR. The old TR should request the TR participant's sign-off of the numbers related to outstanding derivatives and should resolve all discrepancies at the earliest convenience and no later than in five working days.

7.7 Data integrity

64. It is of utmost importance to ensure the integrity of the data that is transferred. This is particularly important with regards to the transfer of data on outstanding derivatives, given that this data will be used for the calculation of risk exposures and of general aggregated positions. In that regard, ESMA included in the consultation paper a guideline requesting the old TR to generate a cryptographic checksum in accordance with a mutually agreed hashing algorithm¹¹. This requirement was broadly supported,

¹¹ A cryptographic checksum is a mathematical value (called a checksum) that is assigned to a file and used to "test" the file at a later date to verify that the data contained in the file has not been maliciously changed. A cryptographic checksum is created by performing a complicated series of mathematical operations (known as a cryptographic algorithm) that translates the data in the file into a fixed string of digits called a hash value, which is then used as a checksum. Without knowing which cryptographic algorithm was used to create the hash value, it is highly unlikely that an unauthorized person would be able to change data without inadvertently changing the corresponding checksum. Cryptographic checksums are used in data transmission and data storage. <http://searchsecurity.techtarget.com/definition/cryptographic-checksum>

though one respondent requested greater clarity on this requirement and another one considered it unnecessary. ESMA however insists on the need to use such a mechanism to ensure the integrity of the data and above all, to ensure that the files were not corrupted, on purpose or by mistake, during the data transfer.

Guideline 9. For every file generated and transferred, the old TR should generate and include in the data transfer a cryptographic checksum according to a mutually agreed hashing algorithm.

7.8 Timeliness of the data transfer

65. In principle, the data transfer should be performed on a non-working day (for example a weekend) and it should be the same for removing derivatives from the old TR and uploading to the new TR. Depending on the volume of records to be transferred, however, the two TRs might agree on carrying it out on a working day.

Guideline 10. The transfer of data requested by a TR participant should be carried out, as a general principle, on a non-working day. The old and the new TR can however agree on carrying it out on a working day depending on the expected volume of the transfer.

66. ESMA proposed in the Consultation paper that as soon as the communication referred to in paragraph 86 is made, the TR participant should ensure that it is no longer reporting any lifecycle events pertaining to these derivatives to the old TR. In conclusion the relevant lifecycle events and position data relating to the transferred derivatives should be reported to the new TR.

Guideline 11. As soon as the transfer of outstanding derivatives is confirmed by the new TR, the old TR should not accept reports on lifecycle events and position data relating to the derivatives subject to transfer to the new TR.

7.9 Data availability

67. Another critical aspect related to the data subject to transfer is its availability to TR participants, the relevant counterparties and to the NCAs.

68. In the Consultation paper, ESMA indicated that the relevant TRs should ensure the availability of data to authorities and to TR participants at the earliest opportunity. Until the transfer of all the relevant files is completed, the data on derivatives should be sent to the old TR and made available to the authorities in accordance with Article 81 of EMIR.

69. The transfer of data should only impact the TRs involved and the relevant TR participants, however it should have no effects on the quality of the data accessed by the authorities.
70. The majority of the respondents agreed with ESMA's proposed approach on data availability. Some respondents requested the following clarifications:
- a. Impossibility to submit reports for transferred derivatives and positions until the transfer is completed;
 - b. All transferred data to be included by the new TR in the later processes (aggregations, reconciliation process) only after the process of transfer has been finished; and
 - c. The transfer of a given outstanding position of a given TR participant takes several days.
71. ESMA is therefore adding Guideline 13 to specify the actions to be carried out by the new TR once the data transfer is completed. The transfer of an outstanding position is addressed in the waterfall approach outlined in Guideline 15.

Guideline 12. Until the transfer of all the relevant files subject to the transfer is completed, the new TR should not accept lifecycle events and position data relating to the derivatives subject to transfer. The data on outstanding derivatives should be made available to the relevant authorities by the old TR.

Guideline 13. Once the data transfer is completed, the new TR should:

- i. Make the data available to the authorities**
- ii. Include the data subject to transfer in the relevant public and authorities—only aggregations**
- iii. Include the data in the inter-TR reconciliation process, as applicable.**

7.10 Fees

7.10.1 Transfer of data

72. ESMA considers that the transfer of data in the general case, i.e. when both the old and the new TR continue in operation, follows a different logic from the transfer of data when one of the TRs has its registration withdrawn, hence both situations should be treated differently.

73. The basic difference stems from the fact that in the general case, it is the TR participant the one that triggers the data transfer, whereas in the case of transfer due to withdrawal of registration, the process is triggered by the withdrawal of registration, hence it is outside the discretion of the TR participant. Both cases are explained in detail in sections 8.5 and 9.7 of these Guidelines.

7.10.2 Recordkeeping of non-outstanding derivatives up to 10 years

74. Given that, under Article 80(3) of EMIR there is a requirement for the TRs to keep records of derivatives for at least 10 years after the termination of the derivative, in the Consultation paper ESMA proposed that the old TR should not charge fees after the transfer is completed. The main reasons to support this is that (i) the obligation for recordkeeping is required by EMIR and is not subject to the discretion of the counterparties and (ii) the TR would no longer have a contractual relationship with the TR participant. In case the TRs consider however that the record-keeping of derivatives for at least 10 years after the termination of the contract results in additional costs, those costs would need to be considered as part of the ordinary costs of reporting or maintaining the records of derivatives. The majority of the respondents fully supported ESMA's proposal that the old TR should not charge any specific fees for the record keeping of non-outstanding derivatives. According to some, the transfer should be cost-related, non-discriminatory and included in the fee schedule of the relevant TR. The latter aspect is addressed in Guideline 22.

Guideline 14. Following the transfer of records of a TR participant to another TR, the old TR should not charge any specific fees for the recordkeeping of non-outstanding derivatives.

7.11 Prioritisation of data to be transferred

75. All the relevant data that is in the scope of the agreed migration plan should be transferred. However, in the Consultation paper ESMA proposed that a specific waterfall is put in place to ensure the seamless continuation of operation and reporting by the TR participant. As mentioned previously, it is essential that the availability of data to authorities is ensured and that the calculation of exposures and aggregations is made on a continuous basis.
76. The feedback was overall supportive about the proposed waterfall approach. However, some respondents pointed out that there should be no need to transfer non-outstanding derivatives and related data except in the case of withdrawal of registration. ESMA however understands that in case the TR participant wishes to no longer continue the business relationship with a given TR, it should be free to request the transfer of all the data it has reported. The transfer of the reporting log however is seen as necessary only in the case of withdrawal of registration.

- Guideline 15.** In case all the data in the scope of the migration plan cannot be transferred in a single instance, the TRs should transfer the data in accordance with the following order:
- i. The latest state of the outstanding derivatives received, i.e. the “trade state”;
 - ii. The reports related to lifecycle events applicable to the outstanding derivatives;
 - iii. All terminated, compressed and matured derivatives that are still subject to the requirement under Article 80(3) of EMIR, together with the relevant lifecycle events,;
 - iv. All errored derivatives that are still subject to the requirement under Article 80(3) of EMIR together with the relevant lifecycle events;
 - v. All rejected derivatives reported by the TR participant and that have not passed the data validations (only in the case of withdrawal of registration; and
 - vi. The reporting log which records the reason or reasons for a modification, the date, timestamp and a clear description of the changes (including the old and new contents of the relevant data) pertaining to the derivatives that are transferred.

8 Transfer of data requested by a TR participant

8.1 Scope of the data subject to transfer

77. In the Consultation paper, ESMA mentioned that the data to be transferred in the general case, i.e. the transfer requested by the TR participant and where the registration of the old TR is not withdrawn nor in the process to be withdrawn, should comprise at least all outstanding derivatives, as well as any related lifecycle events, such as modifications, valuations, etc. of the TR participant or where the TR participant is an RSE, the derivatives of the clients of the TR participant that have confirmed their acceptance to transfer derivatives to another TR.
78. The majority of the respondents supported ESMA’s proposal about the scope of the data subject to transfer in the general case. Some respondents expressed the following concerns:
- a. In the case of a non-reporting TR participant, the permission of the old TR would be required before transferring their data to the new TR;

- b. The participants that remain with the old TR should report directly to the TR for itself or through another entity;
- c. In cases where reports of certain counterparties are left with old TR, the new report submitting entity shall be chosen and contact TR before the date of transfer; and
- d. Historic data should be also transferred from the old TR to the new TR.

79. ESMA has taken into account the above considerations and has included a new Guideline 16 to specify the process from the perspective of the old TR and has further amended Guideline 17 and Guideline 18.

Guideline 16. In the case of transfer of data requested by a TR participant, the old TR should determine whether all or some of the derivatives pertaining to counterparties that are non-reporting TR participants and which were reported by the TR participant should be transferred to the new TR.

Guideline 17. Where, in the case of transfer of data requested by a TR participant, a non-reporting TR participant decides to remain with the old TR although its reporting TR participant has requested a transfer to another TR, the old TR should strip the derivatives submitted on behalf of the non-reporting TR participant from the derivatives that are transferred.

Guideline 18. In the case of transfer of data requested by a TR participant, and when the registration of the old TR is not withdrawn nor in the process to be withdrawn, the scope of the data should comprise at least:

- i. All outstanding derivatives of the TR participant or where the TR participant is an RSE, the derivatives of the clients of the TR participant that have confirmed to the TR participant their acceptance to transfer derivatives to another TR;
- ii. Any lifecycle events, such as modifications, valuations, etc. pertaining to the outstanding derivatives; and
- iii. The reporting log pertaining to the derivatives that are transferred.

The data under points i and ii should be transferred, on a best efforts basis, in a single instance.

8.2 Initiation of the process

80. The TR participant that is willing to switch TR should request the new TR to initiate the transfer of its reporting. The TR participant should also notify the old TR.
81. Once the TR participant requests the transfer of the relevant derivatives, ESMA proposed in the Consultation paper that the process described in Annex I General procedure for migration of data should be followed so as to ensure that the transfer of data is performed as established in section 7.
82. Overall the feedback was supportive of the proposed sequence in relation to the transfer. Nevertheless, some of the respondents raised the following suggestions/concerns: (i) the action types to be included, (ii) whether non-outstanding derivatives should be transferred at transaction level or at message level, (iii) how the transferred data should be reflected in the public reports published by TRs. ESMA has included the relevant amendments to the Guidelines to address the aforementioned proposals.
83. In addition, it was suggested that the TRs amend the inter-TR reconciliation process so that they can inform each other of which derivatives have been transferred. ESMA is supportive of such an amendment though it is beyond the scope of these guidelines.
84. One of the specific questions raised during the public consultation related to potential delays in the agreement of the migration plan which, depending on the situation, might be due to the old TR (general case) or the new TR (mandatory portability due to withdrawal of registration). ESMA believes that the timespan for agreeing a migration plan for a given TR participant should be time-bound and should not exceed five working days' time for a TR participant requesting a transfer to another TR. ESMA has amended Guideline 19 accordingly.

Guideline 19. In the case of transfer of data requested by a TR participant, the process described in Annex I Procedure for transfer at the request of a TR participant should be followed by the old and the new TR. The TRs should agree the migration plan for the data transfer of a given TR participant as soon as possible and no later than in five working days after the request is received.

8.3 Communications

85. Given that one of the objectives of EMIR is to ensure the direct and immediate access to data by authorities, it is important that they are kept up to date with respect to the TRs used by the relevant TR participants. While currently there is no such notification when the reporting to a given TR was established, the authorities have already built some understanding of the TRs used by their supervised entities. The relevant NCA supervising the TR participant or the reporting counterparties on whose behalf it is reporting should be notified by the old TR of the expected date of the transfer.

86. ESMA proposed in the Consultation Paper that as soon as the outstanding derivatives of a TR participant are transferred to the new TR, the new TR should confirm this to the TR participant, the old TR and the relevant authorities accessing data related to the TR participant.

87. The majority of the respondents supported ESMA's proposal regarding communication in the case of transfer requested by the TR participant.

Guideline 20. In the case of transfer of data requested by a TR participant, as soon as the outstanding derivatives of a TR participant are transferred to the new TR, the new TR should confirm this to the TR participant, the old TR, the rest of the TRs and the relevant authorities accessing derivatives reported by the TR participant.

8.4 Recordkeeping of the transferred data

88. In the general case of data transfers, in the Consultation paper, ESMA proposed that the old TR should isolate and keep safely, for at least 3 months after completion of the transfer, all transferred files together with their cryptographic checksums. This will allow ESMA and NCAs to carry out any potential data quality confirmation.

89. In addition, ESMA requested that the timely retrieval of data should be ensured. The maximum allowable time should not exceed 7 calendar days. Furthermore, ESMA pointed out that as long as the transferred data is kept by the old TR, it should apply the same recordkeeping policies, procedures and safeguards to the transferred data as prescribed by EMIR for the rest of the data reported.

90. The respondents unanimously agreed to ESMA's proposal for the recordkeeping of transferred data. However, some participants argued that this proposal will increase the cost for the TRs, which will be passed onto the customers and that following the transfer it should be clearly stated that the old TR has no further record-keeping obligation. ESMA concurs that having more detailed record-keeping might increase the cost for the participants, however it is essential that the availability of the data is ensured. ESMA concurs that following the three months of recordkeeping for contingency purposes the data can be deleted and safely disposed of. All in all, no changes are made to Guideline 21.

Guideline 21. In the case of transfer of data requested by a TR participant, the old TR should isolate and keep safely the transferred data, by applying the same recordkeeping policies, procedures and safeguards to the transferred data as to the rest of derivatives data reported to that TR, for at least three months and should ensure the retrieval of data in no more than seven calendar days.

8.5 Fees in the case of transfer requested by a TR participant

91. Where TRs decide to include in their fee structures fees for transfer of data to another TR, those fees should be cost-related, as required under Article 78(8) of EMIR and should be included in the fee schedule of the TR, which is made public. The TRs should follow their respective internal procedures for notifications to ESMA.
92. Furthermore, the fees should not be set so high so as to disincentivise TR participants from transferring their derivatives to another TR as this could lead to the foreclosure of the industry or prevent innovation and specialisation.
93. While, on the one hand, ESMA considers that a fee on the transfer might potentially disincentivise portability, on the other hand ESMA understands that there is a cost related to the transfer of data that will be borne by the old TR.
94. Particularly with regards to the cost-relatedness of the fees related to the transfer of data, the old TRs should not charge fees for *lucrum cessans*, i.e. the missed profits. If charged, the fees should relate specifically to the costs necessary to carry out the data transfer.
95. Some other TRs might decide to introduce discounts or rebates to attract customers. Similarly, ESMA understands that the cost-relatedness of any discount or rebate should be duly justified prior to its application, as required under Article 78(8) of EMIR.
96. The feedback was overall supportive of the proposal that any fees charged should be cost-related in the case of transfer of data at the request of a TR participant. This will ensure that fees are not used to discourage ongoing competition among TRs. In addition, some market participants requested ESMA to consider the issue more broadly

and take into account pricing structures that could potentially be designed to trigger clauses to claw back benefits or favourable terms which a TR participant previously enjoyed until they decided to transfer to a new TR. Some others pointed out that even if the pricing of a data transfer is cost-related, it may be expensive to the point of being commercially unviable for certain firms, particularly smaller firms.

97. It is worth noting that the fees of the TRs are one of the areas on which ESMA is undertaking substantial work. Furthermore, ESMA will be monitoring to what extent small entities have access to portability and if the results indicate that access is hindered or impeded ESMA might establish specific rules for these types of entities.

Guideline 22. **In the case of transfer requested by a TR participant, any fees charged by the old or the new TR should be cost-related, non-discriminatory and included in the fee schedule of the relevant TRs, which is made public.**

9 Transfer of data in the case of withdrawal of registration

9.1 Scope of the data to be transferred in the case of withdrawal

98. In the Consultation paper, ESMA proposed that the data to be transferred in the case of withdrawal of registration of a TR should comprise:
- a. All outstanding derivatives, as well as any related lifecycle events, such as modifications, valuations, etc.
 - b. All terminated, compressed and matured derivatives that are still subject to the requirement under Article 80(3) of EMIR unless they have reached the ten-year limit for recordkeeping following the termination of those.
 - c. All errored derivatives that are still subject to the requirement under Article 80(3) of EMIR unless they have reached the ten-years limit for recordkeeping following the termination of those.
 - d. The reporting log pertaining to the derivatives that are transferred; and
 - e. All rejected derivatives reported by the TR participant that have not passed the data validations (only in the case of withdrawal of registration)
99. However, to ensure the seamless and timely reestablishment of the reporting, the general principles relating to prioritisation of data to be transferred as detailed in section 7.11. The transfer of the rest of the derivatives should commence only when it is clear that this would not impact the transfer of outstanding derivatives. The market participants expressed their preference in favour of the ESMA's proposal about scope of the data subject to transfer in the case of withdrawal of registration.

Guideline 23. In the case of withdrawal of registration of a TR, the transfer of data should comprise all the details of derivatives reported to the TR, including the rejected ones, together with the relevant reporting log. The order of data transfer set out in Guideline 15 should be followed.

9.2 Migration plan as part of the wind-down plan

100. The withdrawal of registration of a TR would require the performance of several tasks to wind down all the services and processes at the TR. In that case, ESMA proposed, and the respondents unanimously agreed that the migration plan(s) referred to in section 7.2 of the Guidelines would be part of the TR's wind-down plan. This would ensure that before the cessation of activities the reporting flows and data are successfully redirected.

Guideline 24. In the case of withdrawal of registration of a TR, the migration plan(s) for data transfer should be included as part of the wind-down plan presented by the TR.

9.3 Withdrawal of registration requested by the TR - Article 71(1)(a) of EMIR

101. Article 71(1)(a) of EMIR envisages the possibility that a withdrawal of registration is requested by the TR, i.e. the TR “expressly renounces the registration”. There is a further situation in that sub-paragraph of EMIR related to the lack of provision of services by the TR in the preceding six months, however ESMA considers that in that case there is no practical need to treat that situation separately.

102. Stemming from the requirement under Article 79(3) of EMIR, when the process for withdrawal of registration under Article 71(1)(a) of EMIR is triggered, as part of the request, the old TR should present a wind-down plan that includes the new TR or TRs to which the reports referred to in section 9.1 would be transferred.

103. In the Consultation Paper, ESMA proposed that the TR should also notify ESMA and all the TR participants of its intentions to request withdrawal of registration at least 6 months in advance of the intended date of cessation of operations. However based on the feedback received, ESMA would add that the advance notice should be adequate for the size of the business of the TR and sufficient to ensure the continuity of the reporting by the reporting participants. In particular, TRs with more than 500 TR participants should notify ESMA at least nine months in advance.

104. Where the TR participants request to move to different TRs, the TR should seek to accommodate each specific request for transfer, including the ones made by non-reporting TR participants.

105. When transferring the derivatives, the TRs should follow the protocol included in Annex II - Procedure for migration in case of withdrawal of registration.
106. In the case of withdrawal of registration under Article 71(1)(a) of EMIR, ESMA proposed that the old TR should prove that the transfer to the new TR or TRs was completed by the date on which ESMA adopts the decision to withdraw its registration.
107. The respondents to the consultation agreed with ESMA's proposals in the case of withdrawal requested by the TR.

9.4 Withdrawal of registration not requested by the TR

108. Articles 71(1)(b)-(c) of EMIR provide that ESMA shall withdraw the registration of a TR where the TR (b) obtained the registration by making false statements by any other irregular means, and (c) no longer meets the conditions under which it was registered. Article 73(1)(d) of EMIR provides that in case ESMA finds out that a TR has committed one of the infringements listed in Annex I of EMIR, it shall, as a last resort, withdraw the registration of the TR. ESMA indicated in the Consultation paper that the aforementioned situations should be treated in the same way.
109. Stemming from the requirement under Article 79(3) of EMIR, when the process for withdrawal of registration is triggered, ESMA will require the TR to present a wind-down plan that includes the new TR or TRs to which the data referred to in paragraph 98 is proposed to be transferred.
110. The main purpose for ESMA is to ensure that the old TR transfers the data in a timely manner so that the reporting of data and the calculation of risk exposures can be made seamlessly and securely.
111. In case either (i) the old TR does not provide to ESMA the TR or TRs to which the data will be transferred or (ii) the TR or TRs which are contacted by the old TR refuse to accept the data and the subsequent data flow, ESMA should determine the TR or TRs that would receive the data. It is worth mentioning that a similar approach, i.e. appointment of an entity, is envisaged in the EC proposal for Recovery and resolution of CCPs¹². An entity designated by ESMA to receive a data transfer in the context of Article 79(3) of EMIR may refuse to do so only based on objective criteria related to risks on the confidentiality, integrity and availability of data already recorded by that TR. This should be related only to the volume of data to be transferred and the additional reporting flow.
112. The new TR(s) should notify the participants of the old TR about their appointment and should proceed with the preparation of the relevant migration plans. All the general

¹² http://ec.europa.eu/finance/financial-markets/docs/ccp/161128-ccp-proposal_en.pdf

conditions of data transfer that are included in Section 7 should be followed. In the hypothetical case that a TR participant disagrees with the designated TR, that TR participant would be able to transfer its records to a TR of its choice as described in section 8.

113. The Protocol included in Annex II - Procedure for migration in case of withdrawal of registration should be followed.
114. In the case of withdrawal of registration under Article 71(1)(b)-(c) of EMIR, the old TR should prove that the transfer to the new TR or TRs was completed by the date on which ESMA adopts the decision to withdraw its registration. ESMA may also request confirmation by the new TR or TRs.
115. The feedback overall was supportive of the proposed sequence about the transfer of data in both situations related to withdrawal of a registration of a TR. Nevertheless, most of the participants encouraged ESMA to take into account the following suggestions: (i) to set out in the guidelines that a transfer should not take more than six months, otherwise it would result into a situation of substantial uncertainty in the market, (ii) to establish a transparent or even competitive process for data transfer.
116. ESMA understands that one of the conditions when adopting the final decision on withdrawal of registration will be related to the full and complete transfer of the details of all derivatives reported to the old TR. With respect to the establishment of a transparent procedure, ESMA considers its function only a last resort function, as it is expected that the TR participants and the old TR are the ones responsible for ensuring that the reporting of derivatives to a registered or a recognised TR occurs at all times.

Guideline 25. **Where the data transfer is related to the withdrawal of registration of a TR, the procedure included in Annex II - Procedure for migration in case of withdrawal of registration should be followed by the old TR and the new TR. The order of data transfer included in Guideline 15 should be duly followed. The old TR, i.e. the one whose registration is to be withdrawn, should provide to ESMA enough evidence that all the transfers have been successful.**

9.5 Communication to authorities

117. Given that one of the objectives of EMIR is to ensure the direct and immediate access to data by authorities, it is important that they are kept up to date with respect to the TRs used by the relevant TR participants. While currently there is no such notification when the reporting to a given TR was established, the authorities have already built some understanding of the TRs used by their supervised entities.
118. In the Consultation Paper, ESMA proposed that In the case of withdrawal of registration requested by the TR, the TR should notify ESMA of its request of withdrawal of

registration at least 6 months in advance of the intended date of cessation of operations. However, as indicated in paragraph 103, ESMA proposes that the advance notice is adequate to the scale of the business of the TR, hence a longer advance notice of nine months is proposed for TRs with more than 500 TR participants. The relevant NCA supervising the TR participant or the reporting counterparties on whose behalf it is reporting should be notified by the old TR of the expected date of the transfer.

119. The feedback to the consultation was somewhat mixed, as some of the respondents considered that they have only an obligation to notify ESMA. However in order to comply with the requirements under Article 79(3) EMIR, ESMA understands that the TR participants and the authorities should be notified.

Guideline 26. In the case of withdrawal of registration at the request of a TR, it should notify ESMA in advance of the intended date of cessation of operations and should then immediately notify the TR participants and the relevant NCAs. For TRs with more than 500 TR participants the advance notice should be at least nine months, while for TRs with less than 500 TR participants, the advance notice should be at least six months.

120. In the case of withdrawal of registration not requested by the TR, it will be ESMA notifying the authorities. ESMA will request the old TR to notify its participants as soon as possible.

121. As soon as the outstanding derivatives of a TR participant are transferred to the new TR, the new TR should confirm this to the TR participant, the old TR and the relevant authorities accessing data related to the TR participant. The TR participant can then establish the reporting to the new TR.

Guideline 27. In the case of withdrawal of registration, once the transfer(s) has been completed, the new TR should confirm it to the TR participants, all the remaining TRs and the respective NCAs.

9.6 Recordkeeping of the transferred data

122. In the case of withdrawal of registration, ESMA proposed in the Consultation paper and respondents agreed that the old TR should keep the transferred data available –and not delete it– for data quality confirmations until the date of actual cessation of operations. It is important that the timely retrieval of data in more than seven calendar days is ensured by the old TR.

123. Furthermore, at the date of actual cessation of operations, the old TR is expected to perform a secure data destruction/deletion ensuring that data could not be undeleted or recovered after that date.

124. The secure data destruction/deletion is expected to be done in accordance with leading practices and the most reliable techniques available at the specific time of the data destruction.

Guideline 28. In the case of withdrawal of registration, the old TR should isolate and keep safely the transferred data, by applying the same recordkeeping policies, procedures and safeguards to the transferred data as to the rest of the data, until the date of actual cessation of operations and should ensure the timely retrieval of data in no more than seven calendar days. At the date of actual cessation of operations, the old TR should perform a secure destruction/deletion, in accordance with leading practices and most reliable techniques available, ensuring that data could not be undeleted or recovered after that date.

9.7 Fees in the cases of withdrawal of registration

125. The withdrawal of registration would require the redirection of reporting flows and the transfer of data to other TR(s). From the moment in which the process of withdrawal of registration is triggered, i.e. following the communication referred in section 9.5, the transfer would be considered as part of the wind-down of the TR. It would need to be included in the relevant migration plans prepared by the old TR.

126. As mentioned earlier the withdrawal of registration would require different actions to be taken and most importantly, it is outside the discretion of the TR participants. The old TR would no longer be operational and more importantly, the cessation operations could introduce some temporary frictions in the market. The new TR or TR would receive business without any particular effort on their side either.

127. Therefore, ESMA concluded that the specificity of the case and the protection of those TR participants, and the entities on whose behalf they report, that are forced to change TRs, would require that no fees are charged by either TR.

128. The respondents disagreed with ESMA's proposal. The main objections related to the following aspects: (i) the new TR will incur in costs to accept, store the data and work with the relevant TR participants to on-board them to their service and (ii) planning a migration and carrying it out has a cost, as the new TR must ingest the data and the old TR will have additional expenses which will depend on the approach agreed between the TR participant and the old TR. Regarding the aspect of onboarding of clients, it is worth noting that these Guidelines do not prohibit the TRs from charging the TR participants, including those coming from a TR whose registration is withdrawn, their business-as-usual fees that are part of the TR's fee schedule.

129. It was also proposed that the new TR charges the old TR cost-related fees for the data transfer. While ESMA sees some value in this proposal as it is in line with the approach



in Guideline 14, it remains unclear how it can be supported. No specific proposal was received.

130. In conclusion, ESMA notes that there is currently a multi-TR environment. Similarly to the approach related to Guideline 14, each TR could assess the cost of winding down its activity and consider it in its pricing and fee schedule. This would allow the old TR to have the necessary resources in the case of wind down. ESMA furthermore understands that the competitive pressure would keep a potential add-on at sufficiently balanced level.

Guideline 29. In the case of withdrawal of registration, none of the TRs should charge fees for the transfer of data.

10 Annex I - Procedure for transfer of data at the request of a TR participant

131. The feedback included several points regarding the procedure for the migration of data. One market participant stated that it was inconsistent in the report if the old or new TR should notify the NCA, which has since been made clearer. Another market participant suggested that the underlying clients are not informed in the process, but as this procedure involves the voluntary migration to a new TR the client must initiate the migration and therefore be aware of the process. Some market participants disagreed with the transfer of data between the TRs, but ESMA disagrees with this view as TRs regularly exchange data. The procedure has been updated accordingly.

A. Planning and preparation
<p>After signing the relevant contractual agreement with the TR participant, the new TR communicates to and agrees with the old TR the migration plan elaborated in accordance with Guideline 3.</p> <p>The new TR notifies by email the relevant authorities about the transfer.</p>
<p>The old TR determines and agrees with the TR participant the following aggregate information regarding the derivatives of the TR participant subject to transfer:</p> <ul style="list-style-type: none"> ○ The total number of outstanding derivatives ○ The total number of reports relating to lifecycle events of these derivatives ○ The total number of records relating to terminated, compressed and matured derivatives (in case those are transferred) ○ The total number of records relating to errored derivatives (in case those are transferred)
<p>The old TR should request the TR participant's confirmation of the accuracy of the information above vis-à-vis the TR participant's own records¹³. In case of a mismatch, the old TR should reconcile the relevant numbers with the TR participant and agree on the final list of derivative reports that will be migrated. The old TR should solve all discrepancies at the earliest convenience and in no later than five working days.</p>
B. Execution of transfer
<p>Once the number of derivatives and records are confirmed, the old TR should proceed with generating the relevant file(s) in accordance with Guideline 5 and the relevant generic principles.</p>
<p>The old and new TRs execute the migration plan. The old TR should transfer the files generated to the new TR which acknowledges the file transfer.</p>

¹³ As per Article 9.2 EMIR "Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract." In the case of reporting TR participant that reports on behalf of others, it should use also their records.

In case the volume of files is manageable, the old TR should transfer at the same time the outstanding derivatives file(s) as well as the corresponding lifecycle activity file(s).

In case the volume of files does not allow the simultaneous transfer, the sequence included in Guideline 15 should be followed.

In this respect the outstanding derivatives should be transferred within a predetermined weekend while lifecycle events at the earliest opportunity within the next calendar week.

C. Verification of the data transferred

The new TR should determine the following figures and information for the received records and verify the completeness of the transfer:

- The latest state of the outstanding derivatives received, i.e. the “trade state”
- The total number of outstanding derivatives
- The total number of records relating to lifecycle events corresponding to the outstanding derivatives
- The total number of records relating to terminated, compressed and matured derivatives (in case those are transferred)
- The total number of records relating to errored derivatives (in case those are transferred)

The new TR should request the TR participant’s confirmation of the accuracy of the information above vis-à-vis the TR participant’s own records¹⁴. In case there is a mismatch, the two TRs should try to reconcile the relevant numbers with the TR participant until an agreement is achieved.

D. Final notifications

The new TR should inform all the TRs that the reporting participant has switched to it. This information should be used to facilitate the reconciliation process for the relevant derivatives which have been migrated to the new TR.

The new TR should inform the relevant NCA(s) and ESMA about the finalisation of the transfer of data of the TR participant and identify the types of derivatives involved.

E. Recordkeeping and secure data deletion

The old TR should remove the migrated outstanding derivatives from any data aggregations.

The old TR should maintain the data transferred for as long as prescribed by the general principles and according to EMIR requirements as before the transfer.

The old TR should retain the reporting log for at least 10 years following the termination of the relevant contracts.

The old TR will destroy/delete the transferred data when this is permitted by following the relevant general principles for secure deletion/destruction.

¹⁴ As per Article 9.2 EMIR “Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract.” In the case of reporting TR participant that reports on behalf of others, it should use also their records.

11 Annex II - Procedure for migration in case of withdrawal of registration

132. The vast majority of the respondents agreed with ESMA's proposal about the sequence of the process of transfer of data in case of withdrawal of registration. One market participant suggested that all versions and lifecycle events need to be transferred out to the new TR(s) from the old TR, which is now more explicit in the procedure.

<p>A. Initial notifications</p> <p>(Voluntary withdrawal) The TR notifies ESMA, TR participants, other involved TRs and NCAs of its request to withdraw its registration at least in advance (as per Guideline 25) of the intended date of cessation of operations (in case withdrawal is requested by the TR).</p> <p>Or</p> <p>(Non-voluntary withdrawal) ESMA notifies the new TR(s) and the NCAs that the new TR(s) should receive data that was originally reported to the old TR (in the event that withdrawal is not requested by the TR)</p>
<p>B. Planning and preparation</p> <p>The old TR informs the TR participants of its intention to cease operations. The TR(s) prepare(s) the migration plan, as detailed in Guideline 3, and submit it to ESMA and the new TR(s). ESMA and the other involved TRs raise any potential objections or concerns and after resolving them all parties agree on the migration plan details.</p> <p>The old TR identifies the derivatives subject to transfer and provides ESMA and the other involved TRs (as part of the migration plan or separately) the following information regarding the derivatives subject to transfer per TR:</p> <ul style="list-style-type: none"> ○ The total number of outstanding derivatives ○ The total number of records relating to lifecycle events corresponding to the outstanding derivatives ○ The total number of records relating to terminated, compressed and matured derivatives ○ The total number of records relating to errored derivatives ○ The number of reporting log entries
<p>C. Execution of transfer</p> <p>Once the number of derivatives and records are confirmed, the old TR should proceed with generating the relevant file(s) in accordance with Guideline 5.</p> <p>The old TR and new TR(s) execute the migration plan. Generated files are transferred from the old TR to the new TR(s) which acknowledge each transfer.</p> <p>The sequence prioritisation of derivatives and records included in Guideline 15 is followed.</p>

If possible, outstanding derivatives should be transferred during and within a weekend, while corresponding lifecycle events and valuations/collaterals at the earliest opportunity and no later than the week after.

If not possible, then outstanding derivatives should be segmented, per TR participant, to two or more batches to be transferred during consequent weekends. The corresponding lifecycle events per batch should be transferred at the earliest opportunity and no later than the end of the week that follows the transfer of the relevant outstanding derivatives batch.

The remaining derivatives should be transferred as soon as possible within a month after the conclusion of the transfer of outstanding derivatives.

Any issues identified and progress made are reported regularly to ESMA in a timely manner.

D. Verification of data transfer

The new TR(s) should determine the following figures and information for the received records and verify the completeness of the transfer:

- The latest state of the outstanding derivatives received, i.e. the “trade state”
- The total number of outstanding derivatives
- The total number of records relating to lifecycle events corresponding to the outstanding derivatives
- The total number of records relating to terminated, compressed and matured derivatives
- The total number of records relating to errored derivatives
- The number of reporting log entries

The new TRs should notify ESMA and the old TR of the result of the verification. In case of verification failure, the root cause is investigated by both parties (old and new TRs) and the transfer process is repeated until the data transfer is successful.

E. Final notifications

The new TRs should notify the relevant TR participants, all the remaining TRs and the respective NCAs (by email) of the successful conclusion of the transfer.

F. Recordkeeping and secure data deletion

The old TR should maintain the data transferred for as long as detailed in Guideline 28 and according to EMIR requirements as before the transfer.

The old TR should destroy/delete the transferred data when this is permitted and following the relevant principles for secure deletion/destruction included in Guideline 28.

12 Guidelines

Guideline 1. Only the old TR and the new TR should carry out the transfer of derivatives data. The new TR should not accept duplicate reports by TR participants relating to derivatives subject to transfer. The old TR should not accept reports with action types “Cancellation” and ”Error” made by TR participants relating to derivatives subject to transfer.

Guideline 2. The transfer of data should be carried out by the TRs in accordance with a mutually agreed migration plan. The migration plan should contain the detailed planning (timeline) and a description of the required controls in place to ensure the timely, complete and accurate transfer of data.

Guideline 3. All TRs should use a standardised migration plan template mutually agreed across all TRs and that is compliant with the content included in Guideline 4.

Guideline 4. The migration plan should contain the following information:

- i. The scope of the data transfer (e.g. the TR participant(s), derivatives involved, etc.)
- ii. Detailed roles and responsibilities of the involved entities
- iii. Timeline and relevant milestones for the transfer
- iv. The controls required to ensure the confidentiality of the transferred data (e.g. type of encryption used)
- v. The controls required to ensure the integrity and accuracy of the transferred data (e.g. cryptographic checksums and hashing algorithms)
- vi. The controls required to ensure continuity of operations and the inter-TR reconciliation status of the derivatives under transfer
- vii. Cut-off time and data availability
- viii. Any other information that will facilitate and secure the smooth transfer of data.

Guideline 5. TRs should transfer data to each other by using the XML format and template defined in accordance with Article 4 of the amended RTS 151/2013. Notwithstanding this, in the case of (i) derivatives that are not outstanding at the time of transfer, (ii) outstanding derivatives that have not been amended after the date of application of the amended Commission Delegated Regulation 148/2013 or (iii) rejected derivatives, the TRs could use comma separated value (csv) files. In the files that will be transferred, the old TR should include all the relevant details of the derivatives subject to transfer.

Guideline 6. The TRs should use secure machine-to-machine protocols, including the SSH File Transfer Protocol, to transfer data between each other.

Guideline 7. The TRs should use advanced encryption protocols and should exchange the relevant public encryption keys with their peers. To ensure the seamless functioning of data encryption, the TRs should test in advance that they are able to encrypt and decrypt each one’s data files.

Guideline 8. *The old TR should calculate the number of derivatives and the number of corresponding lifecycle events that will be transferred to the new TR. The old TR should request the TR participant’s sign-off of the numbers related to outstanding derivatives and should resolve all discrepancies at the earliest convenience and no later than in five working days.*

Guideline 9. *For every file generated and transferred, the old TR should generate and include in the data transfer a cryptographic checksum according to a mutually agreed hashing algorithm.*

Guideline 10. *The transfer of data requested by a TR participant should be carried out, as a general principle, on a non-working day. The old and the new TR can however agree on carrying it out on a working day depending on the expected volume of the transfer.*

Guideline 11. *As soon as the transfer of outstanding derivatives is confirmed by the new TR, the old TR should not accept reports on lifecycle events and position data relating to the derivatives subject to transfer to the new TR.*

Guideline 12. *Until the transfer of all the relevant files subject to the transfer is completed, the new TR should not accept lifecycle events and position data relating to the derivatives subject to transfer. The data on outstanding derivatives should be made available to the relevant authorities by the old TR.*

Guideline 13. *Once the data transfer is completed, the new TR should:*

- i. Make the data available to the authorities*
- ii. Include the data subject to transfer in the relevant public and authorities–only aggregations*
- iii. Include the data in the inter-TR reconciliation process, as applicable.*

Guideline 14. *Following the transfer of records of a TR participant to another TR, the old TR should not charge any specific fees for the recordkeeping of non-outstanding derivatives.*

Guideline 15. *In case all the data in the scope of the migration plan cannot be transferred in a single instance, the TRs should transfer the data in accordance with the following order:*

- i. The latest state of the outstanding derivatives received, i.e. the “trade state”;*
- ii. The reports related to lifecycle events applicable to the outstanding derivatives;*
- iii. All terminated, compressed and matured derivatives that are still subject to the requirement under Article 80(3) of EMIR, together with the relevant lifecycle events,;*
- iv. All errored derivatives that are still subject to the requirement under Article 80(3) of EMIR together with the relevant lifecycle events, ;*
- v. All rejected derivatives reported by the TR participant and that have not passed the data validations (only in the case of withdrawal of registration; and*
- vi. The reporting log which records the reason or reasons for a modification, the date, timestamp and a clear description of the changes (including the old and new contents of the relevant data) pertaining to the derivatives that are transferred.*

Guideline 16. *In the case of transfer of data requested by a TR participant, the old TR should determine whether all or some of the derivatives pertaining to counterparties that are non-reporting TR participants and which were reported by the TR participant should be transferred to the new TR.*

Guideline 17. *Where, in the case of transfer of data requested by a TR participant, a non-reporting TR participant decides to remain with the old TR although its reporting TR participant has requested a transfer to another TR, the old TR should strip the derivatives submitted on behalf of the non-reporting TR participant from the derivatives that are transferred.*

Guideline 18. *In the case of transfer of data requested by a TR participant, and when the registration of the old TR is not withdrawn nor in the process to be withdrawn, the scope of the data should comprise at least:*

- i. All outstanding derivatives of the TR participant or where the TR participant is an RSE, the derivatives of the clients of the TR participant that have confirmed to the TR participant their acceptance to transfer derivatives to another TR;*
- ii. Any lifecycle events, such as modifications, valuations, etc. pertaining to the outstanding derivatives; and*
- iii. The reporting log pertaining to the derivatives that are transferred.*

The data under points i and ii should be transferred, on a best efforts basis, in a single instance.

Guideline 19. *In the case of transfer of data requested by a TR participant, the process described in Annex I Procedure for transfer at the request of a TR participant should be followed by the old and the new TR. The TRs should agree the migration plan for the data transfer of a given TR participant as soon as possible and no later than in five working days after the request is received.*

Guideline 20. *In the case of transfer of data requested by a TR participant, as soon as the outstanding derivatives of a TR participant are transferred to the new TR, the new TR should confirm this to the TR participant, the old TR, the rest of the TRs and the relevant authorities accessing derivatives reported by the TR participant.*

Guideline 21. *In the case of transfer of data requested by a TR participant, the old TR should isolate and keep safely the transferred data, by applying the same recordkeeping policies, procedures and safeguards to the transferred data as to the rest of derivatives data reported to that TR, for at least three months and should ensure the retrieval of data in no more than seven calendar days.*

Guideline 22. *In the case of transfer requested by a TR participant, any fees charged by the old or the new TR should be cost-related, non-discriminatory and included in the fee schedule of the relevant TRs, which is made public.*

Guideline 23. *In the case of withdrawal of registration of a TR, the transfer of data should comprise all the details of derivatives reported to the TR, including the rejected ones, together with the relevant reporting log. The order of data transfer set out in Guideline 15 should be followed.*

Guideline 24. *In the case of withdrawal of registration of a TR, the migration plan(s) for data transfer should be included as part of the wind-down plan presented by the TR.*

Guideline 25. *Where the data transfer is related to the withdrawal of registration of a TR, the procedure included in Annex II - Procedure for migration in case of withdrawal of registration should be followed by the old TR and the new TR. The order of data transfer included in Guideline 15 should be duly followed. The old TR, i.e. the one whose registration is to be withdrawn, should provide to ESMA enough evidence that all the transfers have been successful.*

Guideline 26. *In the case of withdrawal of registration at the request of a TR, it should notify ESMA in advance of the intended date of cessation of operations and should then immediately notify the TR participants and the relevant NCAs. For TRs with more than 500 TR participants the advance notice should be at least nine months, while for TRs with less than 500 TR participants, the advance notice should be at least six months.*

Guideline 27. *In the case of withdrawal of registration, once the transfer(s) has been completed, the new TR should confirm it to the TR participants, all the remaining TRs and the respective NCAs.*

Guideline 28. *In the case of withdrawal of registration, the old TR should isolate and keep safely the transferred data, by applying the same recordkeeping policies, procedures and safeguards to the transferred data as to the rest of the data, until the date of actual cessation of operations and should ensure the timely retrieval of data in no more than seven calendar days. At the date of actual cessation of operations, the old TR should perform a secure destruction/deletion, in accordance with leading practices and most reliable techniques available, ensuring that data could not be undeleted or recovered after that date.*

Guideline 29. *In the case of withdrawal of registration, none of the TRs should charge fees for the transfer of data.*



13 Opinion of the Securities and Markets Stakeholders Group

In accordance with Article 16 of Regulation (EU) No 1095/2010 ESMA requested the opinion of the ESMA Securities and Markets Stakeholder Group. The SMSG decided not to provide an opinion.

14 Cost benefit analysis

133. As indicated in sections 5 and 6 of this final report, these guidelines are establishing a consistent and harmonised approach and a comprehensive procedure to carry out the transfer of data between TRs. The guidelines cover the transfer of data at the request of a TR participant and the transfer of data due to withdrawal of TR registration. ESMA is including a reduced cost-benefit analysis outlining the qualitative assessment of the impact of the guidelines to market participants and TRs.
134. One of the most important aspects of these guidelines is the positioning of the TRs as central market infrastructures responsible for underpinning the smooth and swift transfer of data for TR participants and to contributing to the general objective of supporting quality of data for the authorities. When assessing the different alternatives for portability, ESMA concluded that using the TRs was the most cost-effective and the least error-prone option. This is based on the rationale in the following paragraphs.
135. On the one hand, the TRs are in possession of all the data reported by the TR participant, they have well-established and supervised processes for ensuring confidentiality, integrity and availability of data, as well as for communicating with each other, as it is in the case of inter-TR reconciliation process.
136. On the other hand, in the case of TR participant-led the data transfer the following assessment applies: (i) there is no available action type for portability, (ii) the TR participants have different levels of diligence and readiness to correctly cancel and re-report the relevant and (iii) a TR participant-led transfer is problematic in the case of withdrawal of registration of a TR.
137. From that perspective, the incremental cost for TRs to comply with several specific requirements related to ensuring the completeness, security, integrity, timeliness and availability of the data is reduced. Whilst not in the remit of portability of data, most of these aspects are already in place at the TRs as part of their core functions of collecting and maintaining records of derivatives, for instance those related to the connections, as well as the format, protection, availability and recordkeeping of data.
138. Furthermore, given that the TRs would be performing this process on an on-going basis and certainly more frequently than the TR participants there are obvious efficiencies to be achieved, both in terms of processing and of incremental cost per transfer.
139. Finally, through the establishment of the relevant controls in the transfer process, there is an obvious benefit in terms of availability of data for authorities. By organising the process on non-working days and by providing access to data even when the transfer is in process allows the authorities to monitor their assessment of derivatives data on an on-going basis.