



European Securities and  
Markets Authority

# Final Report

**Guidelines on periodic information and notification of material changes  
to be submitted to ESMA by Trade Repositories**





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# 1. Legislative references, abbreviations and definitions

## Legislative references

<i>EMIR</i>	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories Text with EEA relevance
<i>SFTR</i>	Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012
<i>Amended RTS on Registration (EMIR)</i>	Commission Delegated Regulation (EU) 2019/362 of 13 December 2018 amending Delegated Regulation (EU) No 150/2013 as regards regulatory technical standards specifying the details of the application for registration as a trade repository
<i>RTS on Registration (EMIR)</i>	Commission Delegated Regulation (EU) No 150/2013 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 specifying the details of the application for registration as a trade repository
<i>RTS on Registration (SFTR)</i>	Commission Delegated Regulation (EU) 2019/359 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration and extension of registration as a trade repository
<i>RTS on data access (EMIR)</i>	Commission Delegated Regulation (EU) No 151/2013 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 specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data

<i>RTS on data access (SFTR)</i>	Commission Delegated Regulation (EU) 2019/357 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on access to details of securities
<i>CDR on Fees (EMIR)</i>	Commission Delegated Regulation (EU) No 1003/2013 of 12 July 2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories
<i>CDR on Fees (SFTR)</i>	Commission Delegated Regulation (EU) 2019/360 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to fees charged by the European Securities and Markets Authority to trade repositories

## Abbreviations

<i>BCP</i>	Business Continuity Plan
<i>BoW</i>	Book of Work
<i>CCO</i>	Chief Compliance Officer
<i>CCP</i>	Central Counterparty Clearing House
<i>CEO</i>	Chief Executive Officer
<i>CISO</i>	Chief Information Security Officer
<i>CM</i>	Compliance Monitoring
<i>COO</i>	Chief Operations Officer
<i>CP</i>	Consultation Paper
<i>CRA</i>	Credit Rating Agency
<i>CRO</i>	Chief Risk Officer
<i>CTO</i>	Chief Technology Officer

<i>ESMA</i>	European Securities and Markets Authority
<i>EU</i>	European Union
<i>FTE</i>	Full Time Employee
<i>IA</i>	Internal Audit
<i>IS</i>	Information Security
<i>IT</i>	Information Technology
<i>NCA</i>	National Competent Authority
<i>RTS</i>	Regulatory Technical Standards
<i>SFTP</i>	SSH File Transfer Protocol
<i>SLA</i>	Service Level Agreement
<i>TR</i>	Trade Repository
<i>TRACE</i>	System for single access to TR data

### **Concepts**

<i>Periodic information</i>	Supervisory data provided by TRs to ESMA with pre-established frequency.
<i>Ad-hoc information</i>	Supervisory data provided by TRs to ESMA following a material change to data already provided to ESMA.
<i>As soon as</i>	Supervisory data should be provided by the TR without incurring in any undue delay.
<i>Machine readable format</i>	<p>a) it is in an electronic format designed to be directly and automatically read by a computer. The electronic format should be specified by free, non-proprietary and open standards. Electronic format should include the type of files or messages, the rules to identify them and the name and data type of the fields they contain;</p> <p>b) it is stored in an IT architecture that enables automatic access;</p>

c) it is robust enough to ensure continuity and regularity in the performance of the services provided and ensures adequate access in terms of speed;

d) it can be accessed, read, used and copied by computer software that is free of charge and publicly available.

*TR participant*

An entity which has a contractual arrangement for the purpose of reporting derivative contracts under Article 9 of EMIR or SFTs under Article 4 of SFTR with at least one registered or recognised TR. The TR participant may be a report submitting entity, an entity responsible for reporting, a reporting counterparty or a CCP, or an entity which has a “view-only” access to a TR.

*Associated entity*

An entity that directly or indirectly controls the TR, or is directly or indirectly controlled by the TR, or is under common control alongside the TR.

## 2. Executive Summary

### Reasons for publication

This Final report summarises the feedback received on the public consultation on Guidelines that set out the information that should be periodically submitted by TRs to facilitate ESMA's ongoing supervision of TRs on a consistent basis.

### Contents

Section 3 specifies in detail the purpose of the Guidelines. Section 4 is split in several subsections which contain the detailed assessment on the feedback received to the 63 questions. In particular, Section 4.1 contains the assessment of the feedback to the approach on implementation of the Guidelines on reporting of periodic information and material changes. Sections 4.2 and 4.3. detail the assessment of the feedback on reporting specifications with regards to the reporting items, the reporting channels, the templates, the file naming conventions and the template validations. Section 4.4 and 4.5 specify the assessment of the responses to the reporting schedules and the relevant frequencies of reporting. Section 4.6 includes detailed explanations on each item of periodic information that is being requested. Section 4.7 includes detailed feedback on the responses regarding each item of ad-hoc information that is being requested. Section 5 refers to the opinion of the Securities and Markets Stakeholders Group. Finally, Section 6 includes the cost-benefit analysis.

### Next steps

The Final report and the Guidelines will be published on the ESMA website.

### 3. Purpose

1. ESMA has been entrusted with the registration and supervision of trade repositories pursuant to Titles VI and VII of EMIR and Chapter III of SFTR.
2. The RTS on Registration (EMIR), the amended RTS on Registration (EMIR) and RTS on Registration (SFTR) specify the information which have to be provided by the trade repositories for the purposes of ESMA's assessment of their compliance with the conditions for registration under EMIR and SFTR.
3. In this respect, Article 55(4) of EMIR and Article 5(4) of SFTR require registered trade repositories to 'comply at all times with the conditions for registration', and to, 'without undue delay, notify ESMA of any material changes to the conditions for registration'.
4. The purpose of these Guidelines is, therefore, to clarify the format and frequency of the different categories of information which ESMA expects to receive in its role as supervisor of trade repositories registered in accordance with EMIR and/or SFTR and, hence, to clarify the respective obligations of trade repositories in accordance with Article 55(4) of EMIR and Article 5(4) of SFTR.
5. As a result, the Guidelines aim to ensure consistent, continuous, efficient and risk based on-going supervision of trade repositories by ESMA. More specifically, the proposed Guidelines aim to increase the consistency and usability of the information provided by TRs. This is done by providing specific reporting instructions for each reporting aspect as well as standardised reporting templates where possible. The proposed Guidelines also clarify certain information to further support ESMA's supervisory processes in an efficient and effective manner.
6. In order to ensure efficient translation of any documents submitted by TRs in languages other than English, the proposed Guidelines clarify that any document that is provided in a language that is not English should be submitted in a machine-readable format.
7. ESMA's approach to its risk assessments of the TRs is dynamic, taking into account risks both at an entity and at an industry level. The basis for these assessments is the information available to ESMA. This information can come from a wide variety of sources, i.e., (periodic) information reported by supervised entities, information communicated to ESMA by NCAs, supervisory activities or requests for information (governed by Articles 61 and 62 of EMIR and equally applicable to TRs registered under SFTR by virtue of Article 9 of SFTR), information from market participants and third country regulators and information obtained through ESMA's own market intelligence.
8. TRs currently provide ESMA with certain information on a periodic and ad-hoc basis, such as submission of Board minutes, Compliance reports or Data Quality related statistics. However, the absence of a uniform format and deadlines for such submissions affects the completeness and comparability of the supervisory information.
9. Furthermore, based on the ongoing supervisory processes, ESMA has gathered sufficient insight into the frequency with which it needs to receive the relevant information from the TRs, as well as how currently provided information can be standardised through the introduction of specific templates. This will allow ESMA to take a more systematic approach to its supervisory mandate.

10. The present Guidelines take into account and build on the information required under the RTSs on registration. Furthermore, ESMA leverages the experience gathered with the supervision of TRs under EMIR and also specifies the format and frequency of periodic and ad-hoc information to be provided by the TRs registered under SFTR.
11. Some information, specifically company-specific information such as Board minutes, will be the same for EMIR and SFTR registered TRs and thus should not be duplicated if a TR is registered under both regimes and if the information covers both regimes. However, for some areas SFTR-specific templates will be developed or EMIR-specific templates will be amended later with the start of SFTR supervision. These Guidelines clearly indicate when templates are also applicable for TRs registered under SFTR.
12. These Guidelines set out the information that should be periodically submitted by TRs to ESMA, to facilitate its ongoing supervision of TRs on a consistent basis. The principal goal of these Guidelines is therefore to streamline the periodic aspect of this information generation and collection process, ensuring that it is fully aligned with ESMA's supervision and its risk assessment processes.
13. A secondary goal of the Guidelines is to increase transparency and define a harmonised framework for ESMA's supervisory interactions with TRs. In this regard, it is expected that by increasing the quality and usability of the information that is submitted by TRs to ESMA on a periodic basis, the proposed Guidelines will reduce the need for ESMA to request information from TRs on a bilateral basis through requests for information.
14. The proposed Guidelines present a grouping of the reporting specifications, where the approach is to have two overarching categories for reporting specifications: 'Periodic' and 'Ad-Hoc'. Within these two categories the individual reporting items are then grouped according to different modules. This ensures that similar specifications are addressed side by side, allowing for greater transparency as to the information ESMA is requesting.
15. ESMA suggests an increased use of common reporting templates for specific quantitative and qualitative information to be collected in a standardised format, including the list of TR participants, revenues and costs, IT incidents, FTE headcount, reports related to data processing performance, data quality, etc. This would allow ESMA staff and ESMA's supervisory tools to efficiently process the information it needs to receive.
16. However, the Guidelines should also allow for the templates to be subject to changes and modifications. A template file will be maintained on ESMA's website. TRs should be notified whenever there are changes in the template and should always use the latest available version when submitting information to ESMA. Submissions which use old templates will be rejected.
17. ESMA expects the application of these Guidelines to result in the following benefits:
  - a. reduce efforts to request this information sporadically and ensure that no information is omitted;
  - b. reduce processing time of information received;
  - c. ensure a level playing field in terms of information to be provided by all TRs by establishing harmonised reporting templates;

- d. Increase predictability of the required information and streamline processes at the TRs;
  - e. increase transparency of supervised TRs;
  - f. ensure complete information that is necessary for ESMA's risk-based supervision;
  - g. improve the internal planning of ESMA's supervision teams with regards to information review and facilitate processing;
  - h. standardise the practices that are already implemented by TRs on a best-effort basis;
  - i. achieve economies of scale due to consistency with the relevant specifications for CRAs supervised by ESMA (see the Final Report on Guidelines on periodic information to be submitted to ESMA by credit Rating Agencies – 2<sup>nd</sup> edition<sup>1</sup>, ESMA33-9-295);
  - j. ensure the accuracy of the information that is used for the calculation of supervisory fees.
18. All the above considerations will also ensure that the compliance with the Guidelines is made more proportionate.

## 4. Summary of feedback to public consultation

19. This Section provides a summary of the responses to the Consultation Paper “Guidelines on periodic information and notification of material changes to be submitted to ESMA by Trade Repositories”.
20. The Consultation Paper contained 63 questions covering all aspects of the draft Guidelines. Respondents also had the possibility to submit a separate file containing their feedback on the reporting templates.
21. The consultation ran from 27 May to 27 August 2019. However, due to conflicting priorities, mainly linked to the Covid-19 emergency and Brexit related issues, the Guidelines are only published in Q1-2021. ESMA received 5 responses, 3 of which were confidential. Two respondents provided their opinion on the proposed templates. All respondents were either a Trade Repository or the parent company of a Trade Repository.
22. The summary of feedback below follows the order of the Questions as they were presented in the Consultation Paper.
23. In addition, some of the respondents included some general considerations in their responses in relation to the implementation of the Guidelines:
- a. Allow for lead time of at least nine months;
  - b. Simplify some of the reporting, as any significant increase in the costs at the TRs would be borne by the reporting counterparties;

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<sup>1</sup> Final Report on Guidelines [https://www.esma.europa.eu/sites/default/files/library/esma\\_33-9-295\\_final\\_report\\_guidelines\\_on\\_the\\_submission\\_of\\_periodic\\_information\\_to\\_esma\\_by\\_credit\\_rating\\_agencies.pdf](https://www.esma.europa.eu/sites/default/files/library/esma_33-9-295_final_report_guidelines_on_the_submission_of_periodic_information_to_esma_by_credit_rating_agencies.pdf)

- c. Assess how to better organise the provision of data on pen-tests and system security in general;
  - d. Reduce duplicative and/or overlapping reporting of periodic information and information on material changes to the conditions of registration;
  - e. Reduce potential back-reporting.
24. Following the assessment of the received feedback, ESMA has implemented important amendments and simplifications in the Guidelines so as to reduce as much as possible any additional reporting by TRs and rather streamline and standardise the receipt of information. The specific elements are included in the relevant sections of this document. The most important are included below:
- a. Removal of the two calendars;
  - b. Removal of certain submissions where there has been no change in the status and their substitution with an attestation;
  - c. Simplification and clarification of the templates.

#### 4.1. Approach on implementation

**Q1. Do you agree with the proposed approach to implementation? Please elaborate on the reasons for your response.**

25. This question related to the main aspects of the approach flagged in paragraphs 5 to 16. Four respondents provided feedback on the approach for reporting material changes and periodic information outlined by ESMA. Three respondents supported it, and one suggested greater simplification in the provision of ad-hoc and periodic information, by substituting some periodic reporting, where possible, with attestation that no changes have taken place or a document outlining the changes.
26. ESMA has indeed undertaken important simplification of the reporting and in several instances, it would be possible to provide attestation.

#### 4.2. Reporting specifications

**Q2. Do you agree with the reporting templates provided in Annex? Please provide your feedback in the designated columns in the Templates.**

27. In the CP, ESMA indicated that in order for ESMA to streamline the reporting process to the greatest degree possible while simultaneously ensuring the submission of high-quality comparable data, ESMA is proposing a number of reporting templates. Where a template is referred to in a specific reporting item, the reference to the relevant Template is provided. All these templates will be made available on ESMA's website.
28. Each reporting template has been tailored to support the specification of each reporting item. Following the finalisation of these Guidelines all relevant templates will be made available on the ESMA website in excel format. TRs will then be free to download and use the Templates in their reporting processes.

29. Should ESMA identify a need to revise a Reporting Template following the introduction of the Guidelines this will be done in one of two ways:
- Where an amendment is limited to a non-material modification (such as the addition, removal or modification of an existing field to clarify the information to be provided) within an existing Reporting Template, ESMA will update that Reporting Template and revise the Guidelines to reflect its update, drawing TRs' attention to the change.
  - Where an amendment is not limited to a non-material modification within an existing template and includes amendments to any applicable reporting instructions, ESMA will consult on these changes in customary fashion and update the Guidelines accordingly.
30. The respondents supported unanimously the set-up of templates, where possible, as this indeed clarifies the expectations of ESMA as supervisor towards the TRs.
31. Moreover, the respondents enquired about the availability of some further supporting documentation on the population of the relevant data in the templates or the content of the information to be provided.
32. Finally, ESMA was also made aware that the implementation of the updates to the template should be communicated well in advance to the TRs. ESMA takes note of this comment and will facilitate to the extent possible the implementation of changes to the reporting templates.

### 4.3. File naming convention

33. In the CP ESMA provided that when providing the information specified in these Guidelines, each document under each reporting item and each reporting template, when applicable, should be included in a separate file that follows a naming convention as defined below: TRAAA\_REGU\_TY\_ST\_PD\_ITEMXX\_YYYYMMDD.zip

Where:

- TRAAA: the 5-digit code assigned to the TR by ESMA;
  - REGU (Regulation): "EMIR" (for EMIR), "SFTR" (for SFTR), or "BOTH" (for both);
  - TY (Type): "PR" (for periodic reporting) or "NT" (for ad-hoc notification);
  - ST (Status): "IN" (initial or one-off submission) or "FU" (follow-up related to a previous submission);
  - PD (Personal Data): "PD" (in case the document contains sensitive personal data) and "ND" (in case the document does not contain sensitive personal data);
  - ITEMXX: 6-digit item identified in these Guidelines, e.g. "ITEM34";
  - YYYYMMDD: submission deadline set in the Guidelines.
34. ESMA also suggested that within a single archive file, where a reporting template is required the TR should follow the same naming convention as above and use .csv file for data items and .xls for non-data items. Other files different from the templates included in

archive files can be provided with the original file name/type, as long as they are machine-readable. This last part was added to Guideline 4, which was amended accordingly.

#### 4.4. Reporting schedules

**Q3. Do you agree that TR's should follow appropriate reporting schedule determined by ESMA on the basis of its internal risk assessments? Please elaborate on the reasons for your response.**

**Q4. Do you agree with the proposed reporting frequencies and deadlines? Please elaborate on the reasons for your response.**

35. In the CP, ESMA proposed that, while a common base of documents will still be requested from all entities in order to ensure monitoring of key indicators, it would be beneficial to introduce distinctions in the frequency and level of details of reporting for certain types of TRs based on their risk profile and the reporting schedule that ESMA will assign to TRs accordingly. For example, ESMA supervision teams find it beneficial to receive board packs, compliance assessments, internal audit assessments and some other information from higher risk entities on a more frequent basis than from lower risk entities. In this context, TRs will be informed about their risk profile in due time. According to a risk assessment described below, ESMA will assign the TRs either 'Calendar A' or 'Calendar B' reporting schedules for each applicable Regulation under which the TR is registered.

36. The risk assessment is based on established risk management principles (i.e. impact and likelihood) and has two key pillars: i) assessment of the importance of a firm relative to other supervised entities and ii) assessment of key risk areas within each firm. The risk assessment is conducted at fixed points during the year. The first pillar – industry-level assessment – facilitates ESMA to establish for all TRs their market importance on the basis of its relative size, market share and operational characteristics (e.g. strategy, outsourcing, ancillary services, as well as organizational and technical complexity). The second pillar – the entity level assessment – facilitates ESMA to establish the risk profile of specific areas (e.g. data quality, IT risk, governance risk) within each TR. Combination of both key pillars produces a map of key risks across all supervised firms weighted by their relative importance. The most significant identified risks form the basis of ESMA supervisory work program.

37. None of the respondents objected to the set-up of reporting schedules with different frequencies, as this is understood as an important exercise of clarity on supervisory requirements by ESMA.

38. One of the respondents enquired greater transparency on the risk assessment and risk management principles used by ESMA to assign the TRs into a category. It is worth noting that the methodology is periodically updated, and this might not always be notified to TRs in advance.

39. Moreover, ESMA believes that the reduced number of TRs does not justify the inclusion of two calendars, hence Calendar B has been merged with Calendar A and the relevant frequencies and deadlines have been revised and reduced to ensure greater transparency for TRs and to reduce administrative burden on both ESMA's and TR's side.

40. Guideline 6 has been amended to reflect the changes described above.

## 4.5. Reporting Frequencies and Deadlines

41. In the CP, ESMA proposed that the applicable frequency should be dependent on a combination of the TR's reporting schedule ('Calendar A' or 'Calendar B' TRs) and the type of information to be reported.
42. In addition, ESMA indicated that the proposed approach identifies ad-hoc reporting of information relating to material changes to the conditions of registration applicable to TRs. For notifications in this category, any notification should be made on an 'as soon as possible' basis. In particular, both 'Calendar A' and 'Calendar B' TRs should report on an as soon as possible basis any material changes to initial conditions of registration as well as a number of other specified events that ESMA considers relevant to its supervisory responsibilities.
43. Following the simplification of reporting for TRs, ESMA has updated that section of the Guidelines and has included a Guideline to confirm the frequency and timeline for the reporting of periodic information. The timeline for the reporting of material changes and other ad-hoc information remains unchanged, i.e. it remains as soon as possible.
- Q5. Do you agree with the proposed approach on simplifying the submissions, when a TR is registered under both EMIR and SFTR? Please detail the reasons for your response.**
44. In the CP, with a view to ensuring that TRs are clear as to their relevant reporting periods and deadlines, ESMA included the relevant calendars of the reporting calendars for periodic items applicable to "Calendar A" and "Calendar B" TRs. The calendar B has been removed as explained earlier.
45. The remaining calendar contains all relevant information regarding when and how a periodic item should be reported. For ease of reference, information as to the applicability of a standardised reporting template is also provided on an item by item basis.
46. ESMA also indicated that when a TR is registered under both EMIR and SFTR, the reporting calendar indicates whether the reporting item should be provided separately or jointly. When it is stated that the item applies separately to both EMIR and SFTR, ESMA has updated the guidance and has included a reference that it should be clearly indicated for which of the two regimes the requested information is provided. When the item applies for both EMIR and SFTR data jointly, this means that the data is expected to be identical under both Regulations and thus should be submitted only once regarding both Regulations.
47. One of the respondents commented that from an IT perspective, this principle cannot be applied, as the reporting related to data, IT solutions, architecture and reporting of material changes is independently managed by each regulatory service. In the case of TRs registered under both EMIR and SFTR, without prejudice to the subsequent request for clarification, amendment or re-submission, ESMA also confirms that when for an item a joint submission is allowed it indeed will mean that the TR is reporting under both regulations and no second submission is expected. However, when a separate notification is required, the TR should submit for each of the regimes.

## 4.6. Modules for reporting of periodic information

### Item 1 – Board Documents

#### **Q6. Do you agree with the proposed approach to reporting of Board documents? Please elaborate on the reasons for your response.**

48. ESMA indicated in the CP, that this information is part of the requirements under the RTSs for registration. This information is relevant to the adequate supervision of the TRs and the appropriate governance arrangement and decision-making process of these firms.
49. All three respondents supported the proposal but set forth some clarification requests. ESMA believes that certain aspects of the Guideline could be amended to better define what is expected from the TRs.
50. However, ESMA does not agree with the suggestion that some of the Board information might not be relevant for ESMA, as the relevance of information which is not predetermined can only be assessed after it has been received and reviewed by ESMA.
51. In addition, ESMA has reduced the frequency of this submission to semi-annually. In this respect, ESMA understands that the suggestion by one respondent to include an option “no documentation to be submitted”, cannot materialise, as the Board of the TR would meet at least twice per year.
52. Against this backdrop, ESMA has updated the Guideline.

#### **Q7. Do you agree with the proposed approach to reporting of Board schedules, locations and agendas? Please elaborate on the reasons for your response.**

### Item 2 – Board meetings schedule, locations and agendas

53. As indicated in the CP, ESMA believes that this item complements the previous one and provides a forward-looking outline of the governance that is relevant to the effective supervision of the TRs. TRs are expected to send to ESMA the list of scheduled Board meetings and locations of the current year. Meeting agendas should be included where available. In case of a change occurring after a notification to ESMA had been made, TRs should notify ESMA and send the updated information as soon as the change is confirmed. As a result of the received comments, ESMA has implemented a change to the Guidelines to specify the provision of agendas.

#### **Q8. Do you agree with the proposed approach to the reporting of the ownership structure? Please elaborate on the reasons for your response.**

### Item 3 – The ownership structure

54. The ownership structure is part of the conditions for registration of the TRs and, ESMA indicated in the CP that it is essential for the supervision of the existing governance arrangements, as well as an early identification of any dependencies, links or conflicts of interest with parent undertakings, subsidiaries or affiliates. Although trade repositories which operate through branches are not considered separate legal persons, separate information on branches should be provided in order to facilitate ESMA to clearly identify the position of the branches in the organisational structure of the trade repository, assess the fitness for duty and appropriateness of the senior management of the branches, and

evaluate whether the control mechanisms, compliance and other functions in place are robust enough to identify, evaluate and manage the branches' risks in an effective manner.<sup>2</sup>

55. The feedback to this proposal was somehow mixed. Two of the respondents preferred to send just a document stating that there is no change. Two agreed with the provision of the information, even if no change has taken place and one requested clarification on the use of “associated entities” in the guidelines. ESMA will include a reference to associate entity for the purpose of these Guidelines. Moreover, ESMA believes that the ownership chart information is relevant as it allows ESMA to monitor that not only the ownership but also names, legal statuses, addresses of all the entities in the structure that ESMA was provided during the registration are accurate, even if the “ownership” as such did not change and would not trigger a notification of material change. Furthermore, even if the ownership of a TR did not change directly (the parent company is the same), changes may take place in the group between the associated entities, and, since the TR is part of the group, ESMA needs to be regularly updated of the changes in the business environment of TRs. However, when no such changes took place, ESMA should receive an attestation from the TR that the previously provided notification remains accurate.

**Q9. Do you agree with the proposed approach to reporting of the organisational charts? Please elaborate on the reasons for your response.**

**Item 4 - Organisational charts**

56. The provision of organisational charts is part of the requirements under the RTSs on registration. In the CP, ESMA indicated that the organisational charts should detail the organisational structure of the trade repository, including that of any ancillary services. The charts shall include information about the identity of the person responsible for each significant role, including senior management and persons who direct the activities of any branches.<sup>3</sup>

57. The views on this aspect were split, with some of the respondents requesting a submission of an attestation if changes did not take place. ESMA notes however that on a few occasions there have been changes that have not been notified, hence, to be in possession of a complete picture at the TR, ESMA retains this submission on an annual basis.

**Q10. Do you agree with the proposed approach to reporting of the number of employees and FTEs? Please elaborate on the reasons for your response.**

58. The provision of information about the FTEs employed or dedicated to the TR is part of the requirements under the RTSs on registration. As indicated in the CP, it allows ESMA to supervise the adequacy and proportionality of human resources at the TR.

59. Similarly, the feedback was mixed. One of the respondents was supportive of this proposal. The rest had also some requests to better clarify the information to be provided. In this respect ESMA will update the Guideline to refer to directly employed and dedicated staff at entity level and the indicative number of FTEs available through a pool of resources, outsourcing or other arrangements that the TR might have. ESMA notes however that on a few occasions there have been changes that have not been notified, hence, to be in

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<sup>2</sup> Recital (5) RTS on Registration (EMIR) and Recital (6) RTS on Registration (SFTR).

<sup>3</sup> Article 5 RTS on Registration (EMIR) and Article 5 RTS on Registration (SFTR).

possession of a complete picture at the TR, ESMA retains this submission on an annual basis.

**Q11. Do you agree with the proposed approach to reporting of the inventory of ancillary services performed by the TR or the Group? Please elaborate on the reasons for your response.**

60. The provision of information about the ancillary services provided directly or indirectly by an entity of the group or by a third party with which the TR has a material arrangement, is part of the requirements under the RTSs on registration. This will allow ESMA to supervise the existence of a necessary degree of operational separation in terms of resources, systems and procedures between the TR's services under the Regulation under which it is registered, and other business lines.<sup>4</sup>

61. The item should include a description of the ancillary services that the TR or the undertaking within its group performs, and a description of any agreement that the TR may have with companies offering trading, post-trading, or other related services, as well as copies of such agreements.

62. Few comments were received on this question. ESMA is updating the template and clarifies that the information that is provided is needed to assess the risk profile of the TR and the potential effects of the provision of ancillary services to the core ones under EMIR and under SFTR. As such the information of the TR participants using those ancillary services is essential. Moreover, the definition of group is the one included in Article 2(16) EMIR.

**Q12. Do you agree with the proposed approach to reporting of the inventory of other services performed by the TR? Please elaborate on the reasons for your response.**

63. To complement the information provided on ancillary services, in addition to the inventory of ancillary services, the TRs should provide ESMA with a list and definitions of all other services they perform that are not covered in the report on ancillary services. Four respondents provided feedback to this proposal. All requested further clarification on the information to be provided and on the template. As indicated in the CP, this information should complement, at the level of the TR, the information provided under Guideline 14. More importantly, the rationale to require information on the TR participants is to be in a position to better assess the risk profile of the TR, as well as to monitor potential bundling of services or offers. ESMA thus retains the approach from the CP and updates the templates accordingly.

**Q13. Do you agree with the proposed approach to reporting commercial use of TR data? Please elaborate on the reasons for your response.**

64. TRs collect and maintain confidential information used for supervising the reporting counterparties. Any commercial use of this data should follow the requirements under Article 78(7) and 80(6) EMIR, as well as Article 5(2) SFTR. The information on commercial use of data is part of the requirements under the RTSs on registration.

65. Four respondents provided feedback on the proposed reporting of commercial use of TR data. All but one raised concerns related to a potential duplication of this reporting with the

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<sup>4</sup> Article 17 RTSs on Registration (EMIR) and Article 17 RTS on Registration (SFTR).

one on ancillary or other services. In this respect, it is worth noting that Guideline 16 however focuses specifically on the cases of commercial use of data that already occurred in the past and the circumstances around it (e.g. client consent, etc.). ESMA thus retains the approach from the CP.

**Q14. Do you agree with the proposed approach to reporting of the inventory of outsourcing agreements and list of outsourced services? Please elaborate on the reasons for your response.**

66. This information is part of the requirements under the RTSs on registration. TRs are highly reliant on outsourced services from different companies in their group or closely linked to their parent undertakings. In order for ESMA to better understand the outsourcing arrangements and to assess the existence of a reliable outsourcing framework, TRs should provide detailed definitions of the services to be provided, including measurable scope of those services, the granularity of the activities as well as conditions under which those activities are rendered, and their timelines.<sup>5</sup>

67. Four respondents provided feedback on the proposed reporting of the inventory of outsourcing agreements and list of outsourced services by and to the TR. All of them requested clarifications on the template and the objective of the data collection. In that respect it is worth noting that the list of services outsourced to the TR by other entities in the group or third parties materially impacts the availability of resources at the TR and could potentially impact the risk profile of the entity. With regards to the information in the template, it should include figure for full time equivalents (FTEs), not the names of the relevant staff.

**Q15. Do you agree with the proposed approach to reporting of the internal policies and procedures? Please elaborate on the reasons for your response.**

68. In the CP ESMA indicated that policies that could be received by ESMA include, but are not limited to: policies related to conflicts of interest, protection of data confidentiality, access to data by third party providers, access filtering process, contractual provisions applicable between the TR and reporting entities, reporting channels and recordkeeping, remuneration/compensation, etc. This also includes internal audit standards and procedures. This information is part of the conditions under the RTSs on registration. The first notification should be sent as soon as the Guidelines come into force, regardless of the submission deadlines indicated in the reporting calendar.

69. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. ESMA noted that respondents were broadly supportive of this reporting item. As a result, ESMA has maintained the approach of the CP.

**Q16. Do you agree with the proposed approach to reporting of the list of TR key contacts? Please elaborate on the reasons for your response.**

70. In the CP ESMA indicated that this item served the purpose of efficient day to day interaction between ESMA and supervised entity as part of the ongoing supervision. Typically, TRs have different staff in charge of one or other area (e.g. functions, activities or specific projects) and they are highly reliant on outsourced services which implies a

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<sup>5</sup> Article 16(d) RTS on Registration (EMIR) and Article 16(d) RTS on Registration (SFTR).

certain level of staff turnover. This staff may not be a key function that would trigger a material change to the conditions of registration and immediate notification to ESMA, nevertheless, it is important to have an up-to date list of this staff in order for ESMA to be able to contact the relevant person/group of persons in the TR (e.g. for data questions, TRACE questions, regulatory on-boarding, finance related questions, etc) directly and in a timely fashion. TRs should provide the list of contacts to ESMA following the specific template.

71. Three respondents replied to this question. Two of them supported the proposal, while one objected to it because it considers it unnecessary. ESMA however recalls that the coordination by a CCO at the level of TR does not prevent ESMA from reaching the relevant contact point if need be. The proposal is thus retained.

**Q17. Do you agree with the proposed approach to reporting of the TR services revenues and cost breakdown? Please elaborate on the reasons for your response.**

72. In the CP ESMA indicated that this information is part of the conditions under the RTSs for registration. It is essential to assess cost-relatedness of fees charged by the TRs. Costs and revenues should be determined according to the same accounting principles used in preparation of the TR's financial statements. In addition to the former, costs and revenues determined by other means than financial accounting (e.g. managerial accounting) should be reported.

73. Three respondents replied to this question. Two of them supported the proposal, while one objected to it because it didn't keep revenues and costs at the level of each service or product offered. ESMA however reminds them that on the one hand, the fees for both EMIR and SFTR need to be cost related, and that on the other hand the information on revenues is necessary to determine the TR's applicable turnover for the calculation of the ESMA's supervisory fees. Further clarifications are included in the template to ensure that the provided information is clearly defined and determined according to the same accounting principles used in preparation of the TR's audited financial statements and to any other ways of internal accounting.

**Q18. Do you agree with the proposed approach to reporting of the interim financial accounts? Please elaborate on the reasons for your response.**

74. This information is part of the conditions under the RTSs for registration. This information allows ESMA to supervise the financial situation at the TR on an ongoing basis. The interim financial statements should be prepared according to the same accounting principles used in preparation of the TR's audited financial statements.

75. Four respondents replied to this question. All supported the proposal and one requested clarification regarding the period to be covered. ESMA confirms that it should contain financial information for each semester.

**Q19. Do you agree with the proposed approach to reporting of the audited financial statements? Please elaborate on the reasons for your response.**

76. This information is part of the conditions under the RTSs for registration. This information allows ESMA to supervise the financial situation at the TR on an annual basis. If the financial year does not correspond to the calendar year, by 30 June the TRs should at least submit their breakdown of revenues and expenses certified by an independent auditor.

77. Three respondents replied to this question and did not object to the proposed approach. As a result, ESMA has maintained the approach of the CP.

**Q20. Do you agree with the proposed approach to reporting of the financial resources? Please elaborate on the reason for your response.**

78. To facilitate ESMA to establish the baseline for capacity and performance planning of the trade repositories, TRs should demonstrate that they have the necessary financial resources to perform their functions as a trade repository on an ongoing basis.

79. Therefore, as required under Article 21(b) of the RTSs on registration, in the CP ESMA indicated that the TR should include a description of the liquid net assets funded by equity used to cover potential general business losses in order to continue providing services as a going concern, and an assessment of the sufficiency of its financial resources with the aim of covering the operational costs of a wind-down or reorganisation of the critical operations and services over at least a six-months period.<sup>6</sup>

80. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. As a result, ESMA has maintained the approach of the CP.

**Q21. Do you agree with the proposed approach to reporting of the assessments of pricing policy? Please elaborate on the reasons for your response.**

81. The fees associated with the services provided by trade repositories are essential information for market participants to facilitate them to make an informed choice.<sup>7</sup> The information on pricing policy and fee schedule is part of the conditions under the RTSs for registration and is needed to assess the cost-relatedness of fees, as well as of any discounts and rebates. In this regard, ESMA needs to be informed about any pricing assessments within the TR or reviews of fees and costs of its services.

82. Three respondents replied to this question. Two of them supported the proposal, while one objected to it. The main reason for this objection stemmed from the fact that the respondent considered that it is not appropriate for TRs to share specific client pricing strategies that are considered confidential and proprietary. It is worth noting that the aim of reporting the assessment of pricing policies is, inter alia, that of preventing discriminatory (and thus anti-competitive) pricing practices. Indeed, the existence of pricing abuses (rebates, predatory pricing etc) is usually assessed by comparing the price a certain firm applies to clients with its own costs. The proposal of the CP is thus retained.

**Q22. Do you agree with the proposed approach to reporting of the compliance work programme? Please elaborate on the reasons for your response.**

83. In the CP ESMA indicated that this information is part of the conditions under the RTSs on registration<sup>8</sup> and facilitates ESMA to supervise the adequacy of the compliance function at the TRs as well as be aware of the compliance priorities for the coming period. ESMA therefore needs to be updated on a periodic basis on the compliance work programme.

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<sup>6</sup> Article 21(b) RTS on Registration (EMIR) and Article 21(b) RTS on Registration (SFTR).

<sup>7</sup> Recital (9) and Article 20 of Amended RTS on Registration (EMIR) and Recital (13) and Article 20 RTS on Registration (SFTR).

<sup>8</sup> Article 8 RTS on Registration (EMIR) and Article 8 RTS on Registration (SFTR).

84. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. As a result, ESMA has maintained the approach of the CP.

**Q23. Do you agree with the proposed approach to reporting of the compliance assessment reports? Please elaborate on the reasons for your response.**

85. In the CP ESMA indicated that this information is part of the conditions under the RTSs on registration<sup>9</sup> and allows ESMA to supervise the compliance with applicable regulation at the TRs. ESMA therefore needs to be provided on a periodic basis with the compliance assessment reports.

86. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. As a result, ESMA has maintained the approach of the CP.

**Q24. Do you agree with the proposed approach to reporting of the internal audit plan? Please elaborate on the reasons for your response.**

87. In the CP ESMA indicated that this information is part of the conditions for registration<sup>10</sup> and it facilitates ESMA to assess the way in which the structure of the internal controls and the governance bodies contribute to the efficient functioning of the trade repository. It also facilitates ESMA assessing the adequacy of the internal audit function as well as being aware of the internal audit priorities for the coming period.

88. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. As a result, ESMA has maintained the approach of the CP.

**Q25. Do you agree with the proposed approach to reporting of the internal audit reports? Please elaborate on the reasons for your response.**

89. This information is part of the conditions for registration<sup>11</sup> and it facilitates ESMA to assess the outcomes of the assessments on the way in which the internal controls and the governance bodies contribute to the efficient functioning of the trade repository.

90. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. As a result, ESMA has maintained the approach of the CP.

**Q26. Do you agree with the proposed approach to reporting of the risk assessment report? Please elaborate.**

91. This information is part of the conditions for registration<sup>12</sup> and the internal control framework. Among others, it allows ESMA to better assess the risk framework and methodologies applied by the TR.

92. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. As a result, ESMA has maintained the approach of the CP.

**Q27. Do you agree with the proposed approach to reporting of the risk dashboard? Please elaborate on the reasons for your response.**

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<sup>9</sup> Article 8 RTS on Registration (EMIR) and Article 8 RTS on Registration (SFTR).

<sup>10</sup> Article 7 RTS on Registration (EMIR) and Article 7 RTS on Registration (SFTR)

<sup>11</sup> Article 7 RTS on Registration (EMIR) and Article 7 RTS on Registration (SFTR)

<sup>12</sup> Article 7 RTS on Registration (EMIR) and Article 7 RTS on Registration (SFTR)

93. This item is complementing the previous one in providing a more detailed view on the risks identified over some critical aspects of the functioning of the TR. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. As a result, ESMA has maintained the approach of the CP, while updating the timeline for the provision of this information.

**Q28. Do you agree with the proposed approach to reporting of the IA Charter and methodology? Please elaborate on the reason for your response.**

94. Three respondents replied to this question. Following an implementation of a general approach to the simplification of periodic reporting, ESMA has amended the approach of the CP and includes this submission as an ad-hoc one.

**Q29. Do you agree with the proposed approach to reporting of the CM & IA Overview? Please elaborate on the reasons for your response.**

95. The purpose of this reporting item is to help ESMA in assessing TRs' monitoring of the effectiveness of their internal control arrangements as required under Article 78(1) EMIR. The reporting item has been designed to ensure ESMA receives information on completed and consequent remedial actions. This will help ESMA understand the efforts TRs are making to implement any remedial action plans proposed by ESMA or those initiated by the TR itself.

96. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. As a result, ESMA has maintained the approach of the CP.

**Q30. Do you agree with the proposed approach to reporting of the list of potential non-compliance cases? Please elaborate on the reasons for your response.**

97. Three respondents replied to this question. One supported fully the proposal, while the other two requested certain clarifications and amendments to make the submissions more efficient. As a result, ESMA has amended the Guideline to clarify that the reporting should include all potential and actual cases and has amended the template to define better the "closed cases" category.

**Q31. Do you agree with the proposed approach to reporting of the book of work? Please elaborate on the reasons for your response.**

98. The book of work (BoW) is a standardised template sent to ESMA from each TR outlining the scope, timeline, and progress of past, ongoing and planned IT projects. Collected information is analysed periodically and feeds into ESMA's supervisory actions and engagement with TRs. ESMA's practice shows that the completed templates are highly informative in terms of increasing transparency and visibility on allocation and sufficiency of resources, current and planned TR development projects, priority setting, and timelines of actions, which explains the frequent interaction regarding this item. This item complements the information provided under the RTSs on registration<sup>13</sup>.

99. Four respondents replied to this question. Three of them supported the proposal, while one expressed no concerns. One of the respondents however, requested reducing the frequency to quarterly. As the information is provided currently on a bi-monthly basis, and

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<sup>13</sup> Article 16(a)-(b) RTS on Registration (EMIR) and Article 16(a)-(b) RTS on Registration (SFTR)

this frequency seems appropriate for the monitoring of the BoW, ESMA has maintained the approach of the CP.

**Q32. Do you agree with the proposed approach to reporting of the technology overview? Please elaborate on the reasons for your response.**

100. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns, but requested clarification on the template. ESMA will retain the proposal from the consultation and will further specify the template.

**Q33. Do you agree with the proposed approach to reporting of BCP test reports? Please elaborate on the reasons for your response.**

101. Information on Business Continuity Planning testing is provided under the RTSs on registration<sup>14</sup> and it is essential that ESMA is in possession of up-to-date information about the resilience of the TR and its business continuity.

102. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns, but requested clarification on the reference to a template. ESMA will retain the proposal from the consultation and will delete the reference to a template as the information on BCP test reports is not expected to follow a specific template.

**Q34. Do you agree with the proposed approach to submitting Information security periodic reports? Please elaborate on the reasons for your response.**

**Q35. Do you agree with the proposed approach to reporting of software vulnerability assessments? Please elaborate on the reasons for your response.**

103. In the CP ESMA indicated that TRs provide, as part of the conditions for registration under the RTSs for registration, information on any mechanisms and controls in place to effectively manage information security risks (includes cybersecurity risks)<sup>15</sup>, including results from security testing (e.g. penetration tests, vulnerability assessments, ethical hacking, red teaming etc).

104. The reports under both Guidelines would need to include at a minimum the date of the respective test, a short description of the vulnerability, the system where each vulnerability has been identified, and their criticality / risk level, as provided by the tool used,

105. Three respondents replied to questions 34 and 35 of the consultation. They expressed concerns regarding the type and sensitivity of the information required. It is worth noting that ESMA considers essential the provision of information that would facilitate gaining reasonable assurance on TR's information security testing, as well as their exposure to cybersecurity risks, At the same time, ESMA takes note of the concerns expressed and will amend the Guidelines in a way so as to address the TRs' concerns, while not impairing significantly ESMA's ability to supervise TRs.

**Q36. Do you agree with the proposed approach to reporting of the IT strategy? Please elaborate on the reasons for your response.**

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<sup>14</sup> Article 21(c)(vi) RTS on Registration (EMIR) and Article 21(c)(vi) RTS on Registration (SFTR)

<sup>15</sup> Article 14(2) RTS on Registration (EMIR) and Article 14(2) RTS on Registration (SFTR)

106. Information on IT strategy at the TR is provided under the RTSs on registration and it is underpinning some of the key decisions regarding the TR's IT systems such as the use of outsourcing, the use of cloud computing, etc. Usually the IT strategy is defined at the level of the entity.

107. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. As a result, ESMA has maintained the approach of the CP.

**Q37. Do you agree with the proposed approach to reporting an overview of the TR participants? Please elaborate on the reasons for your response.**

108. ESMA mentioned in the CP that information on the typology of TR participants<sup>16</sup> is required under the RTSs on registration. In addition, as part of the business plans projections<sup>17</sup>, the TRs are required to provide an outline of their prospective TR participants and expected volumes of reports.

109. Four respondents replied to this question. Two of them supported the proposal, one expressed no concerns and one objected it. It is worth noting that the information provided under the template is closely aligned with the one required under Article 18 of the RTSs on registration, thus ESMA will retain the proposal and will include several clarifications regarding the information to be populated in the template.

**Q38. Do you agree with the proposed approach to reporting of the regulatory access status? Please elaborate on the reasons for your response.**

110. As part of the conditions under the RTSs on registration<sup>18</sup>, TRs provide information on the resources, methods and facilities used to provide direct and immediate access to data to the authorities. To facilitate ESMA supervising the timely on-boarding and provision of data access, TRs should provide ESMA with updated information on the authorities that have requested and gained access to the TR, together with an indication of the status of on-boarding of each authority.

111. Four respondents replied to this question. Three supported the proposal and one expressed preference to retain the current reporting regime. All required detailed clarifications are provided here and the relevant aspects of the Guideline and the template are updated accordingly:

- a. Information about all authorities that have requested access should be provided
- b. Specification on files counting is provided in the template

**Q39. Do you agree with the proposed approach to reporting of the data volume and quality category? Please elaborate on the reasons for your response.**

112. This item is part of the information included under the RTSs on registration<sup>19</sup>. It allows ESMA to supervise the adequacy and appropriateness of the data quality, data portability and recordkeeping procedures, systems and resources at the TRs and it allows NCAs to better supervise the compliance with the reporting obligation by the reporting

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<sup>16</sup> Article 18 RTS on Registration (EMIR) and Article 18 RTS on Registration (SFTR)

<sup>17</sup> Article 12(2) RTS on Registration (EMIR) and Article 12(2) RTS on Registration (SFTR)

<sup>18</sup> Article 23(b) RTS on Registration (EMIR) and Articles 23(b) and 24 RTS on Registration (SFTR)

<sup>19</sup> Articles 19, 21(2) and 22 RTS on Registration (EMIR) and Articles 19, 21(2) and 22 RTS on Registration (SFTR)

counterparties, the entities responsible for reporting under SFTR and the report submitting entities, as applicable.

113. Four respondents replied to this question. Three of them supported the proposal and one expressed no concerns. All requested minor clarifications on the template. ESMA will retain the proposal from the consultation and will further specify the template and align the current statistics reported by TRs to ESMA on a regular basis.

**Q40. Do you agree with the proposed approach to reporting of the overview of the status of portability requests? Please elaborate on the reasons for your response.**

114. As part of the conditions under the RTSs on registration<sup>20</sup>, TRs provide information on procedures to ensure the orderly substitution of the original trade repository where requested by a reporting counterparty, or where requested by a third party reporting on behalf of non-reporting counterparties, or whereby such substitution is the result of a withdrawal of registration, and the TRs include the procedures for the transfer of data and the redirection of reporting flows to another trade repository. The information under this item should provide an updated overview of the compliance with the requirements set out by the RTSs on registration with regards to the status of the portability requests received or initiated by the TR.

115. Three respondents replied to this question. Two of them supported the proposal and one expressed no concerns. ESMA will retain the proposal from the consultation and will further specify the template.

**Q41. Do you agree with the proposed approach to reporting of the data reporting performance metrics? Please elaborate on the reasons for your response.**

116. To allow ESMA to supervise the compliance by the TRs of the requirement on direct and immediate access to data by authorities<sup>21</sup>, TRs should provide ESMA with updated information on the below data reporting performance metrics:

- a. Trace reports delivery vs SLA
- b. SFTP reports delivery
- c. average rate of report processing
- d. average report generation runtime
- e. system utilisation (average, max)

117. Three respondents replied to this question. Two of them supported the proposal with regards to Trace reports delivery vs SLA and SFTP reports delivery, but expressed concerns regarding average rate of report processing, average report generation runtime and system utilisation (average, max). ESMA believes that it is worth clarifying that these metrics are relevant to assess critical aspects of the functioning of the TR system. As a result, ESMA has updated the Guideline and the relevant templates.

**Q42. Do you agree with the proposed approach to reporting of the reconciliation statistics? Please elaborate on the reasons for your response.**

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<sup>20</sup> Article 21(2) RTS on Registration (EMIR) and Article 21(2) RTS on Registration (SFTR)

<sup>21</sup> Article 81(2) EMIR and Article 12(2) SFTR

118. TRs provide information on the reconciliation of data under the RTSs on registration.<sup>22</sup> The statistics facilitate ESMA to supervise the correct performance of the process by TRs and facilitate the provision of information to the NCAs for the supervision of compliance with the reporting obligation by the entities subject to it.
119. This proposal was discussed widely by respondents. First and foremost, ESMA would like to clarify that the statistics included under Guideline 43 replace all the rest of the supervisory information on reconciliation provided to ESMA. They do not replace however the information provided through TRACE and stemming from the RTSs on data access. In addition to this clarification, ESMA has also created separate templates for reporting of reconciliation statistics for derivatives and SFTs respectively.
- Q43. Do you agree with the proposed approach to reporting of the information for the calculation of supervisory fees? Please elaborate on the reasons for your response.**
120. TRs are registered and supervised by ESMA and as such they are subject to supervisory fees charged by ESMA. To facilitate for ESMA the calculation of the supervisory fees in accordance with the applicable regulations, TRs should provide the relevant certified information.
121. Three respondents replied to this question. Two of them supported the proposal and one required additional clarification on the interaction between this information and the submission of the annual accounts.
122. The information in this template will be used solely for the fees calculation and only this information needs to be certified by the auditors. Moreover, TRs are not prohibited in sending additional information that they want to share with ESMA ad-hoc, by email, if they consider it valuable for ESMA.
123. Finally, whenever there are changes in the relevant delegated acts on fees, those will be reflected in the relevant templates. ESMA will thus retain the proposal from the consultation.

#### 4.7. Reporting of ad-hoc information

124. ESMA also proposed its approach to ad-hoc notifications of material changes to the conditions of registration. Certain information currently reported to ESMA can be standardised in the form of an immediate notification. Examples of these notifications are IT and information security incidents, Board member, Key staff details or launch of new services. To reduce the time currently spent by TRs in preparing these notifications and by ESMA in logging and recording them, the standardisation in this area is expected to take the form of dedicated reporting templates and definitions where needed. Where the type of information provided does not allow for standardisation, the TRs should provide the data in free format, but including at a minimum the key elements to allow ESMA to form a view on this material change.

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<sup>22</sup> Article 19 RTS on Registration (EMIR) and Article 19 RTS on Registration (SFTR)

**Q44. Do you agree with the proposed approach on simplifying the submissions on material changes, when a TR is registered under both EMIR and SFTR? Please detail the reasons for your response.**

125. In the CP, ESMA proposed that certain ad-hoc reports which are made separately under EMIR, SFTR and others, are, when this is feasible, made jointly. The respondents supported this approach and made emphasis that the possibility to report separately should be ensured for all the areas where the TR manages separately both regimes.

**Q45. Do you agree with the proposed ad-hoc reporting of information on Board members? Please detail the reasons for your response.**

126. The proposal for ad-hoc notification of changes to the Board members was supported by respondents and ESMA is including only a small clarification to indicate that the changes should be notified as soon as the decision is taken by the Board.

**Q46. Do you agree with the proposed ad-hoc reporting of information on key staff? Please detail the reasons for your response.**

127. The proposal for ad-hoc notification of changes to key staff was supported by respondents and ESMA is including only a small clarification to indicate that the changes should be notified as soon as the decision is taken by the Board.

**Q47. Do you agree with the proposed ad-hoc reporting of information on changes in ownership structure? Please detail the reasons for your response.**

128. Three respondents replied to this question. ESMA noted that respondents were broadly supportive of this reporting item. As a result, ESMA has maintained the approach of the CP.

**Q48. Do you agree with the proposed ad-hoc reporting of information on the launch of new services by the TR? Please detail the reasons for your response.**

129. Three respondents replied to this question. The three supported the proposal, and one of them requested the addition of a specific minimum advance period. ESMA however believes that specifying the length of such minimum period is not needed and that the TRs should notify ESMA as soon as possible. As a result, ESMA has maintained the approach of the CP.

**Q49. Do you agree with the proposed ad-hoc reporting of information on changes to the fee structure and pricing policy by the TR? Please detail the reasons for your response.**

130. Three respondents replied to this question. ESMA noted that respondents were broadly supportive of this reporting item. As a result, ESMA has maintained the approach of the CP.

**Q50. Do you agree with the proposed ad-hoc reporting of information on establishment of subsidiaries and branches, reorganisation or restructuring of the TR activities or change to name, address, statutory documentation or legal status by the TR? Please detail the reasons for your response.**

131. Three respondents replied to this question. Two of them were favourable to the approach, while one objected to it due to the need for better specification of the timelines

by adding a specific minimum advance period. ESMA however believes that specifying the length of such minimum period is not needed and that TRs should notify ESMA as soon as possible. As a result, ESMA has maintained the approach of the CP.

**Q51. Do you agree with the proposed ad-hoc reporting of information by the TR on new litigation/proceedings which may potentially materially impact the TR? Please detail the reasons for your response.**

132. Three respondents replied to this question. Two of them were favourable to the approach and one of them suggested inclusion of a reference to “materially impact”. One respondent objected to it due to the need for a better specification of the timelines by adding a specific minimum advance period. ESMA agrees on the inclusion of “materially impact” but believes that specifying the length of such minimum period is not needed and that TRs should notify ESMA as soon as possible. The Guideline has been updated accordingly.

**Q52. Do you agree with the proposed ad-hoc reporting of copies of regulator contract templates? Please detail the reasons for your response.**

133. Three respondents replied to this question. The three supported the proposal, with one of them requesting the addition of a specific minimum advance period. ESMA however believes that specifying the length of such minimum period is not needed and that TRs should notify ESMA as soon as possible. As a result, ESMA has maintained the approach of the CP.

**Q53. Do you agree with the proposed ad-hoc reporting of copies of regulator contract templates? Please detail the reasons for your response.**

134. Three respondents replied to this question. The three supported the proposal, with one of them requesting the addition of a specific minimum advance period. ESMA however believes that specifying the length of such minimum period is not needed and that TRs should notify ESMA as soon as possible. As a result, ESMA has maintained the approach of the CP.

**Q54. Do you agree with the proposed ad-hoc reporting of potential and actual cases of non-compliance with the Regulation(s) under which the TR is registered? Please detail the reasons for your response.**

135. Three respondents replied to this question. One respondent proposed to put in place a single master spreadsheet template for non-compliance incidents. Two others observed that indeed the non-compliance cases in certain occasions will need to be reported also periodically under Item 11. More importantly, where relevant, TRs should clearly label the issues as either potential or actual non-compliance cases. ESMA confirms that such reporting is aligned with its expectations.

**Q55. Do you agree with the proposed ad-hoc reporting of quality assurance of the IA function? Please detail the reasons for your response.**

136. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. As a result, ESMA has maintained the approach of the CP.

**Q56. Do you agree with the proposed ad-hoc reporting of material changes to the Business Continuity Plan and to any of its features? Please detail the reasons for your response.**

137. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. As a result, ESMA has maintained the approach of the CP.

**Q57. Do you agree with the proposed ad-hoc reporting of IT and information security incidents? Please detail the reasons for your response.**

138. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. As a result, ESMA has maintained the approach of the CP

**Q58. Do you agree with the proposed ad-hoc reporting of changes or upgrades of the TR application software and/or related technical infrastructure components? Please detail the reasons for your response.**

139. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. As a result, ESMA has maintained the approach of the CP.

**Q59. Do you agree with the proposed ad-hoc reporting of changes of outsourcing with relation to the use of cloud computing? Please detail the reasons for your response.**

140. Three respondents replied to this question. Two of them supported the proposal, while one expressed no concerns. One respondent requested a clarification on the scope of the reported information on outsourcing and cloud services. As a result, ESMA has maintained the approach of the CP, has included a clarification in the guideline and has updated the template as appropriate in accordance with the ESMA Cloud Computing Guidelines.

**Q60. Do you agree with the proposed ad-hoc reporting of portability requests? Please detail the reasons for your response.**

141. Three respondents replied to this question. ESMA noted that respondents were broadly supportive of this reporting item. As a result, ESMA has maintained the approach of the CP.

**Q61. Do you agree with the proposed ad-hoc reporting of Inventory of outsourcing agreements and list of outsourced services? Please detail the reasons for your response.**

142. Three respondents replied to this question. ESMA noted that respondents were broadly supportive of this reporting item. Two of the respondents requested clarifications regarding the references included. As a result, ESMA has updated the Guideline and aligned the language with the one on periodic information.

**Q62. 109. Do you agree with the proposed ad-hoc reporting of material changes not specified in the previous items? Please detail the reasons for your response.**

143. Three respondents replied to this question. ESMA noted that respondents were broadly supportive of this reporting item. As a result, ESMA has maintained the approach of the CP.

**Q63. Do you agree with the proposed approach to reporting of the wind-down plan? Please elaborate on the reasons for your response.**

144. This reference document is to be used by trade repositories (TRs) that need to provide a wind-down plan ("plan") as per Article 79(3) in the context of a withdrawal of registration

foreseen under Article 71(1)EMIR or Article 73(1)(d) EMIR and Article 9(1) SFTR or Article 10(1) SFTR respectively.

145. Article 71(1)(a)-(c) of EMIR and Article 10(1)(a)-(c) SFTR envisage that ESMA shall withdraw the registration of a trade repository where the trade repository:
  - a. expressly renounces the registration or has provided no services for the preceding six months;
  - b. obtained the registration by making false statements or by any other irregular means;
  - c. no longer meets the conditions under which it was registered.
146. When the process for withdrawal of a registration is triggered, ESMA will require the TR to present a wind-down plan.
147. Such a plan should help a TR to assess if it has adequate resources (e.g. capital, liquidity, knowledge and manpower), controls and processes in place to wind down its operation in an orderly manner, especially under challenging circumstances.
148. Three respondents replied to this question. ESMA noted that respondents were broadly supportive of this reporting item. Two however requested a clarification on the timeline. As a result, ESMA has aligned the timeline for reporting of a withdrawal to 20 working days. ESMA has included the information on the wind-down in a specific template.

## **5. Opinion of the Securities and Markets Stakeholders Group**

In accordance with Article 10 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.

## 6. Cost-benefit analysis

149. The provision of periodic information to ESMA as a supervisor is essential for the adequate performance of its supervisory tasks.
150. In this respect, Article 55(4) of EMIR and Article 5(4) of SFTR require registered trade repositories to 'comply at all times with the conditions for registration', and to, 'without undue delay, notify ESMA of any material changes to the conditions for registration'.
151. The purpose of these Guidelines is, therefore, to clarify the format and frequency of the different categories of information which ESMA expects to receive in its role as supervisor of trade repositories registered in accordance with EMIR and/or SFTR and, hence, to clarify the respective obligations of trade repositories in accordance with Article 55(4) of EMIR and Article 5(4) of SFTR. Most of the information included under these Guidelines is already provided by TRs, however this is done in a less organised manner than the proposed under the Guidelines.
152. As the Guidelines aim to ensure consistent, continuous, efficient and risk based on-going supervision of trade repositories by ESMA, ESMA believes that they offer benefits both to the supervised entities and to ESMA. More specifically, the proposed Guidelines aim to increase the consistency and usability of the information provided by TRs, as well as to reduce the costs at TRs to produce the relevant information by establishing clear and predictable timelines for reporting and by reducing the amount of ad-hoc requests. This is done by providing specific reporting instructions for each reporting aspect as well as standardised reporting templates where possible.
153. ESMA assessed the received feedback with a view to gather further information on the costs and benefits of the options proposed in the Consultation Paper. Most of the responses were of a qualitative nature. Several respondents commented on the need to provide the relevant entities with more information for the implementation of the proposals and to establish a sufficient timespan for their implementation. ESMA believes that these aspects are key to limit the unnecessary costs and intends to provide the comprehensive guidance and documentation ahead of the reporting start date.
154. To ensure a right balance between the costs to put in place the reporting and the immediate benefits of having more structured information, ESMA established a three-month implementation timeline from the date of publication of the Guidelines. Moreover, ESMA removed a few of the requested datasets and substituted others with an attestation.
155. Overall, ESMA is of the view that the proposed changes will require an implementation effort from the TRs, however in the long run the costs will be outweighed by the benefits related to the standardisation and harmonisation of reporting as well as the expected improvement in the efficiency and effectiveness of supervision.