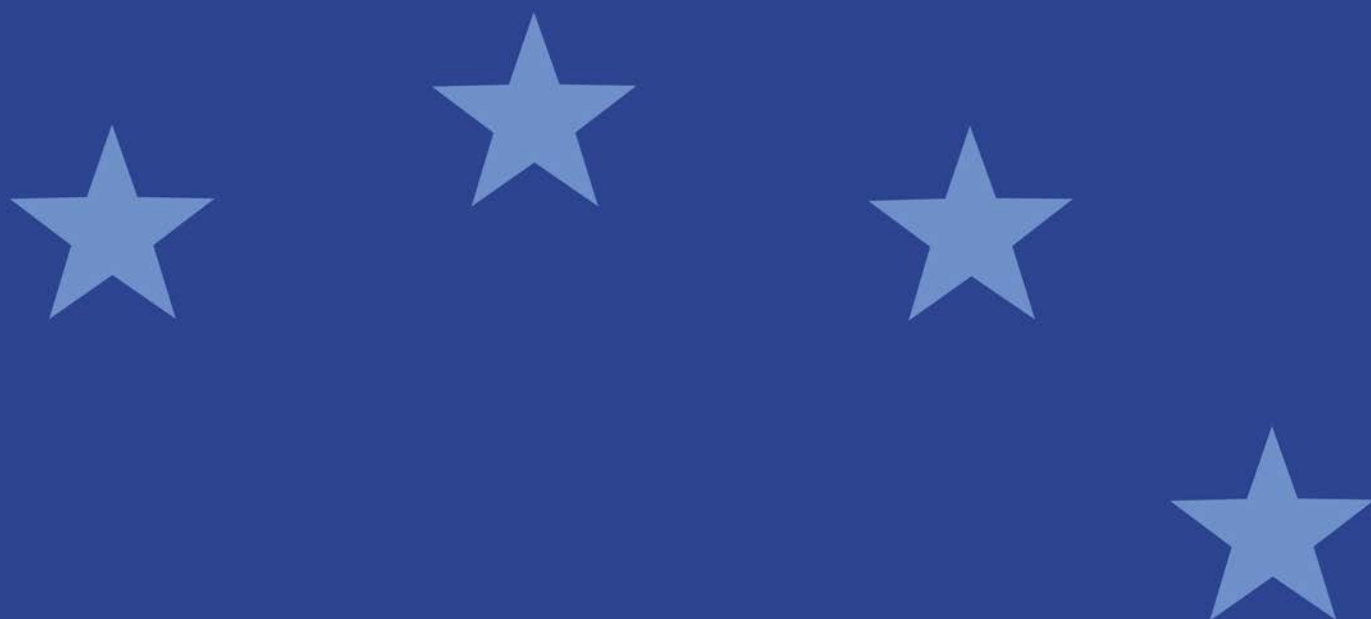# Consultation Paper

Guidelines on transfer of data between Trade Repositories under EMIR and SFTR

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Section 11. Comments are most helpful if they:

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

ESMA will consider all comments received by (three months after publication).

All contributions should be submitted online at www.esma.europa.eu under the heading 'Your input - Consultations'.

Publication of responses

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

Data protection

Information on data protection can be found at www.esma.europa.eu under the heading 'Data protection'.

Who should read this paper?

All interested stakeholders are invited to respond to this consultation paper. In particular, responses are sought from counterparties and CCPs with reporting obligation under EMIR and SFTR, trade repositories (TRs), as well as trade associations.

Table of Contents

1 Legislative references, abbreviations and definitions

Legislative references

SFTR	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
EMIR	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
ESMA Regulation	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC
RTS on data aggregation (SFTR)	Commission Delegated Regulation (EU) 2019/358 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on the collection, verification, aggregation, comparison and publication of data on securities financing transactions (SFTs) by trade repositories
RTS on reporting (SFTR)	Commission Delegated Regulation (EU) 2019/356 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 securities financing transactions (SFTs) to be reported to trade repositories
ITS on reporting (SFTR)	Commission Implementing Regulation (EU) 2019/363 of 13 December 2018 laying down implementing technical standards with regard to the format and frequency of reports on the details of securities financing transactions (SFTs) to trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) No 1247/2012 with regard to the use of reporting codes in the reporting of derivative contracts
RTS on reporting (EMIR)	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, as amended by Commission Delegated Regulation (EU) 2017/104

ITS on reporting (EMIR)	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, as amended by Commission Implementing Regulation (EU) 2017/105
RTS on registration (EMIR)	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, as amended by Commission Delegated Regulation (EU) 2019/362 of 13 December 2018
RTS on registration (SFTR)	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
RTS on data access (EMIR)	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, as amended by Commission Delegated Regulation (EU) 2017/1800 and by Commission Delegated Regulation (EU) 2019/361
RTS on data access (SFTR)	Commission Delegated Regulation (EU) No 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 financing transactions (SFTs) held in trade repositories
SFTR Reporting Guidelines	Guidelines on Reporting under Articles 4 and 12 SFTR
Guidelines on positions (EMIR)	Guidelines on position calculation by trade repositories under EMIR
Guidelines on positions (SFTR)	Guidelines on calculation of SFT positions by trade repositories under SFTR

Abbreviations

ECB	European Central Bank
EEA	European Economic Area
EER	Entity Responsible for Reporting
ESMA	European Securities and Markets Authority
EU	European Union
FSB	Financial Stability Board
ISO	International Organization for Standardization
ITS	Implementing Technical Standards
LEI	Legal Entity Identifier
NCA	National Competent Authority
NCB	National Central Bank
Q&A	Questions and Answers
RSE	Report Submitting Entity
RTS	Regulatory Technical Standards
SFTP	SSH File Transfer Protocol

SLA	Service Level Agreement
TR	Trade Repository
TRACE	System for single access to TR data
XML	Extensible Mark-up Language

Glossary of concepts and terms

- All the definitions, concepts and terms that are used in EMIR and SFTR, in the applicable EMIR RTS and EMIR ITS on reporting, the current SFTR RTS and SFTR ITS on reporting, as well as in the applicable RTS on data access and on data quality, in the Q&As and in these guidelines are used with the same meaning.

- "Positions" means the representation of exposures between a pair of counterparties as included in the Guidelines on positions (EMIR) and in the Guidelines on positions (SFTR)

- "Outstanding SFTs" means those SFTs that have not matured or which have not been the subject of reports with action types 'Error', 'Termination/Early termination', or 'Position component' as referred to in Field 98 of Table 2 of Annex I to ITS on reporting.

- "Report submitting entity" (RSE, hereinafter) which is one of the counterparty fields of the technical standards on reporting[1] should be understood as the entity which has entered in a contractual relationship with a registered or recognised TR and it:

  - Reports only its side of derivatives contract, in which case it would coincide with the reporting counterparty of the contract

  - 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

  - Reports derivatives where it might be or might not be one of the counterparties.

- "Entity responsible for reporting" (ERR, hereinafter), which is one of the counterparty fields of the RTS on reporting and should be understood as the financial counterparty which is responsible for reporting on behalf of the other counterparty.

- "TR participant"[2] is an entity which has a contractual arrangement for the purpose of reporting derivative contracts under Article 9 of EMIR and reporting SFT contracts under Article 4 of SFTR with at least one registered or recognised TR. The TR participant may be an RSE, an ERR, a reporting counterparty or a CCP.

- "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 and reporting SFT contracts under Article 4 of SFTR, but (i) the TR participant decided to discontinue its contractual arrangement reporting or (ii) the registration of the TR was withdrawn.

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[1] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0104
[2] 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.

- "New TR" means a TR to which a TR participant has started or intends to start reporting derivatives under Article 9 of EMIR and reporting SFT contracts under Article 4 of SFTR, although initially that entity was reporting, either directly or through an RSE, to the old TR.

- "Transfer" or "transfer (of details) of derivatives" or "transfer (of details) of SFTs" means an act or process of moving the records of the derivatives or the SFTs, respectively, from the old TR to the new TR.

- "Portability" means the possibility to transfer records relating to details of derivatives reported under Article 9 of EMIR and records relating to details of SFTs reported under Article 4 of SFTR from the old TR to the new TR, as those are defined in these guidelines.

- "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".

- "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" or "P" under the 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".

- "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.

- "Errored derivatives" means derivatives trades which are reported to a TR as a result of a mistake. They are identified with action type "E".

- "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".

- Terminated SFTs" means SFT trades which have been terminated before their initially established maturity date by the two counterparties and are identified with action type "ETRM".

- Matured SFTs" means SFT trades which are reported to a TR and at a given point in time have reached their contractually-agreed maturity date.

- "Errored SFTs" means SFT trades which are reported to a TR as a result of a mistake. They are identified with action type "EROR".

- "Outstanding SFTs" are those SFTs, including CCP-cleared SFTs, which are reported to a TR and have not matured and have not been subject of a report with action types "EROR", "ETRM", or "POSC".

- "Active client" means that a TR client has outstanding derivatives and/or SFTs at a TR.

- "Non-active client" means that a TR client no longer has outstanding derivatives or SFTs at a TR and is no longer a client of the TR in question. Non-active clients also refers to reporting counterparties that ceased to exist.

- "Reconciliation" is the process through which TRs confirm that the two sides of a derivative or an SFT have been reported with the same information by each ERR, in case the two ERRs do not report to the same TR.

- "Rejections" are derivatives or SFTs that have been rejected by a TR due to errors in the information reported by an ERR.

2 Executive Summary

Reasons for publication

Since 2017, the EU TR landscape has undergone major changes as a consequence of multiple TR registration withdrawals as well as Brexit. This has required ESMA to formulate expectations and provide guidance to TRs and market participants with regards to portability-related issues which were not covered in the current Guidelines on transfer of data between Trade Repositories.

The existing Guidelines on transfer of data between Trade Repositories contribute to the establishment of a competitive TR environment, and to ensure that high quality data is available to authorities, including the aggregations carried out by TRs. They also establish a consistent and harmonised process 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.

This Consultation Paper contains:

- Amendments by replacement of three Guidelines on data transfer under EMIR

- Inclusions of nine new Guidelines which compile the additional clarifications based on the experience gathered and the on-going guidance provided by ESMA to TRs and market participants for maintaining and ensuring a high degree of data quality, access to historical data for regulatory authorities, and to foster a competitive TR environment; and

- The new SFTR Guidelines, that build on the existing EMIR guidelines as well as on the proposed amendments to those.

Contents

The Consultation Paper is split into different Sections.

Section 3 provides the scope, the legal framework, the status quo, and the purpose of the Guidelines. Section 4 contains the proposed changes, namely replacement of certain already existing Guidelines and the inclusions of new Guidelines for the transfer of data under EMIR. Section 5 presents the new Guidelines on transfer of data under SFTR.

Sections 6, 7, 8 and 9 contain the Annexes covering the procedures. Section 10 provides an overview of the proposed additional Guidelines under EMIR and the future SFTR Guidelines. Section 11 contains the Q&As.

Next steps

Following the end of the public consultation on the amendments to the Guidelines on transfer of derivatives data between Trade Repositories and on the new Guidelines on transfer of SFT data between Trade Repositories, ESMA will assess the feedback provided with a view to publish the final Guidelines by the end of 2021.

3 Scope

Who?

1. These guidelines apply to trade repositories (TRs) registered or recognised by ESMA, to national competent authorities (NCAs), and to counterparties or the entities reporting on their behalf.

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 and Article 4(1) of SFTR;

    b. The procedures for portability under Article 78(9) of EMIR and under Article 5(2) of SFTR;

    c. The transfer of derivatives and SFT data between trade repositories at the request of the counterparties, or the entity reporting on their behalf, or in the situation covered by Article 79(3) of EMIR and Article 5(2) of SFTR;

    d. The record-keeping of details of derivatives in accordance with Article 80(3) of EMIR and under Article 5(2) of SFTR; and

    e. Article 21(2) of RTS on registration under EMIR and under SFTR.

3. This document comprises two separate sets of guidelines containing (i) changes to the current Guidelines on data transfer under EMIR which include amendments by replacement of three existing guidelines and nine new guidelines and (ii) new Guidelines on data transfer under SFTR.

When?

4. The current guidelines on data transfer under EMIR apply as of 16 October 2017. The amendments to the EMIR guidelines and the new SFTR guidelines apply as of [six months after publication].

3.1 Status quo

5. EMIR and SFTR establish a multi-TR reporting environment. Counterparties and report submitting entities (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 or recognised TRs under EMIR and under Article 4 of SFTR the details of SFTs to any of the registered or recognised TRs under SFTR.

6. 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 negatively affect the quality of the data available to authorities.

7. Reporting counterparties do not have an obligation to continue reporting to the same TR indefinitely, given there is a competitive TR environment. 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. Therefore, to better clarify some practical aspects, ESMA published the current Guidelines on transfer of data between TRs on 24 August 2017.

8. In July 2020, the new reporting regime under SFTR has been phased-in gradually for different types of counterparties. Actual reporting started in 13 July 2020 due a short postponement of the reporting obligation due to Covid-19. Reporting obligations for credit institutions, investment firms, central counterparties (CCPs), central securities depositories (CSDs) and relevant third-country entities started on 13 July 2020 followed by insurance companies, funds, institutions for occupational retirement provision (IORPs) and relevant third-country entities on 12 October 2020 and non-financial counterparties on 11 January 2021. To facilitate porting of SFTs, ESMA includes in this consultation paper new Guidelines on transfer of data between TRs under SFTR.

9. Since 2018, the EU TR landscape has undergone major changes as a consequence of multiple TR registration withdrawals due to TRs' commercial decisions, Brexit, etc., requiring ESMA to formulate expectations and provide guidance to TRs and TR participants with regards to issues related to derivatives subject to transfer not covered in the current guidelines. Such additional guidance should that TRs and TR participants for maintain a high degree of data quality, access to non-outstanding derivatives for authorities, and should contribute to fostering a competitive TR environment. The amendments proposed are addressed to TRs as well as to TR participants.

3.2 Summary of proposals

10. ESMA proposes the following amendments to the existing EMIR Guidelines on transfer of data between TRs:

   a. Providing guidance regarding the update of outstanding derivatives that are not meeting the most up-to-date reporting requirements at the time of the data transfer so that the TRs can ingest these records into their live systems (e.g. TRACE).

   b. Porting of data generated by TRs on reconciliation and rejections in the case of registration withdrawal so that this information remains accessible to authorities. Currently, the information is not ported in case of registration withdrawal.

   c. In the case of withdrawal of registration:

      i. ESMA proposes to add an amendment regarding the proportional allocation of non-outstanding data not related to active clients across the remaining TRs, in case the TRs whose registration is to be

withdrawn cannot enter into an agreement with one of the remaining TRs to take on the remaining historical data not related to active clients.

    ii.   ESMA proposes to add an amendment to the Guidelines clarifying that the non-outstanding derivatives data of varying data quality can be stored in separate databases/tables as long as it is still possible to run queries on demand.

    iii.   ESMA proposes to consider the possibility of allowing the TRs that receive non-outstanding data related to active clients after a TR wind-down to charge a cost-related fee for record-keeping and maintenance of data. This is to set proper and sound incentives for the TRs following such a data allocation.

11.   Furthermore, ESMA proposes the following additions to the current Guidelines on transfer of data under EMIR:

    a.   Inclusion of the clarification described under EMIR TR Q&A 54 (d) specifically for derivatives that are subject to transfer or have just been transferred.

    b.   Clarification on the participation of the TR participants in the process of verification and confirmation of the statistical information of the derivatives (e.g. total number of outstanding records, etc.) prior to and after porting.

12.   Finally, ESMA proposes guidelines on data transfer under SFTR which leverage on the existing EMIR guidelines and the aforementioned amendments of those. This will ensure a standardised and harmonised framework for data transfer across the two regimes, it would facilitate the implementation by TRs, and it will ensure a level playing field for counterparties reporting under either or both regulations.

Q1.   Do you agree with the analysis in paragraphs 5 to 9 and the need to include the amendments in the EMIR Guidelines? Please detail the reasons for your response.

Q2.   What other issues related to transfer of data have been observed? Please elaborate on the reasons for your response.

3.3 Purpose

13.   The guidelines are providing additional clarification for TRs, reporting counterparties and ERR on how to ensure compliance at all time with the following EMIR and SFTR 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" and Article 4(1) of SFTR,

    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." and Article 5(2) of SFTR;

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 Article 5(2) of SFTR, and.

d. The procedures for portability under Article 78(9) of EMIR and under Article 5(2) of SFTR

14. The Guidelines are based on 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

15. The purpose of the amended Guidelines under EMIR and the new Guidelines under SFTR is threefold:

a. Remove portability obstacles from the competitive TR environment , 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, standardised 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.

16. 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.

17. 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, set out to ensure the timely and robust transfer of details of derivatives and SFTs. 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.

4 Changes to Guidelines on transfer of data between Trade Repositories under EMIR

4.1 Communication with Authorities

18. In case of withdrawal of registration, Guideline 26 clarifies the time frame for the notice that a TR is to give to the concerned authorities and TR participants in advance of the intended date of cessation of operations depending on the TR's number of participants. For TRs with more than 500 participants, the advance notice should be at least nine months, whereas for TRs with less than 500 TR participants the advance notice should be given at least six months in advance of the intended date of cessation of operations.

19. However, the guideline does not cover the case of a TR with exactly 500 participants, therefore ESMA proposes to amend this existing guideline to also include the case of exactly 500 TR participants.

The current Guideline 26

> **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.**

is replaced by new Guideline 26

> **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 500 or with less than 500 TR participants, the advance notice should be at least six months.**

4.2 Transfer of TR data on reconciliation and rejections

20. In the case of withdrawal of registration, statistics and data on reconciliation and rejections generated by the old TR should be kept for access by authorities as they provide useful supervisory information regarding the reporting by the counterparty. Therefore, ESMA proposes that all statistics and data on reconciliation and rejections generated by the old TR related to a derivative subject to transfer should be transferred to the new TR.

21. The addition of statistics and data on reconciliation and rejections generated by the old TR to the data to be transferred should also be included in Guideline 15 and Guideline

23 in the case of withdrawal of registration. Guideline 15 describes the waterfall that TRs are to adhere to in case the data transfer for all the data in scope of the migration plan cannot be performed in one single instant. Guideline 23 further details the data that is to be transferred in the case of withdrawal of registration.

The current Guideline 15

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.**

is replaced by new Guideline 15

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);

    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; and

    vii.   In the case of withdrawal of registration, all data on Rejections at file level and all data on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level.

The current Guideline 23

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.

is replaced by new Guideline 23

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 and all data on Rejections at file level and all data on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level. The order of data transfer set out in Guideline 15 should be followed.

22. Furthermore, to cater for the update to Guideline 15, namely the inclusion of statistical data on reconciliation and rejections a new Guideline 30 is proposed :

Guideline 30. In the case of registration withdrawal, all data generated and recorded by the old TR on rejections at file level and all data on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level relating to a derivative subject to transfer should be transferred by the old TR to the new TR.

Q3. Do you agree with the inclusion of the on reconciliation and Rejections data in the waterfall described in Guideline 15? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q4. Do you agree with the transfer of data generated and recorded by the old TR on Rejections and reconciliation to the new TR in case of withdrawal of registration? Which other aspects need to be considered? Please elaborate on the reasons for your response.

4.3 Fees in the case of withdrawal of registration

23. Following the proportional allocation of non-outstanding derivative data not related to active clients by ESMA, it is the new TR who bears the cost for the implementation of a customised data query functionality and the handling of authorities' data queries. Currently, the TRs do not charge a fee for these services. In contrast to voluntary porting, the TR does not receive any fees in this case, although it incurs in costs. ESMA is therefore consulting on the possibility, but not obligation, of allowing the TRs that receive non-outstanding derivative data related to active clients after a TR wind-down to charge a cost-related fee to the TR participants for record-keeping and maintenance of derivatives data . This is specifically relevant to allow authroities having access to the derivatives data at least until the end of the ten years minimum record-keeping period as enshrined in Article 80(3) of EMIR. ESMA considers that this will set proper and sound incentives for the TRs following such a data allocation.

24. Costs related to data transfer should adhere to the requirements set out under Article 78(8) of EMIR. Costs charged by TRs as clarified in Guideline 31 should be justified.

Guideline 31. In the case of withdrawal of registration, the new TR may charge fees to the TR participants for record-keeping and maintenance of records of transferred outstanding and non-outstanding derivatives.

Q5. Do you agree that the new TR may charge fees to the TR participants for the transfer of outstanding and non-outstanding derivatives? Which other aspects need to be considered? Please elaborate on the reasons for your response.

4.4 New XML schemas and varying degrees of data quality

25. Not all outstanding derivatives meet the RTS standards that are applicable on a given date due to their evolving nature. However, meeting the most current reporting requirements is a necessary condition to use the XML format to transfer outstanding derivatives as outlined in Guideline 5. Derivative data can be classified into the following three categories according to their current quality level:

    i.   A: Data, whose quality meets the latest requirements on reporting;

    ii.   B: Data, whose quality meets level 2 validation rules; and

    iii. C: Data, whose quality is below level 2 validation rules.

26. To transfer data across TRs and enable seamless integration into their live databases and online systems (e.g. TRACE), data of categories B and C needs to be "upgraded" in terms of quality to a level compatible with the systems of the new TR, namely to data quality category A. Consequently, outstanding derivatives need to be updated to data quality category A so that they can be ported between TRs. As reporting rules and/or XML schemas will further on change on future occasions, a new data quality category will be added to the above list each time, requiring the updating of outstanding derivatives prior to transfer of data.

27. TRs have integrated ESMA's expectation to upgrade all outstanding derivatives to the newest reporting rules in the transfer of data processes. Therefore, ESMA proposes to include this clarification as a new Guideline.

28. To ensure that all outstanding derivatives are upgraded to the newest reporting rules in a timely manner prior to porting, the relevant updates should be performed at the latest by 23:59:59 on the Thursday ahead of the weekend on which the porting takes place to allow for the final sign-offs to be done on the Friday before the porting weekend.

29. Any reports pertaining to outstanding derivatives that reporting counterparties have to submit later than 23:59:59 on the Thursday ahead of the weekend on which the porting takes place should be submitted to the new TR on the first business day following the data transfer to the new TR. This is to allow the reporting counterparty to verify and confirm the aggregate information of the derivatives subject to transfer on the last business day prior to porting as set out in Guideline 35.

Guideline 32. Prior to the data transfer, TRs should ensure that TR participants upgrade the outstanding derivatives that are subject to data transfer to the most up to date reporting requirement at the latest by 23:59:59 on the Thursday ahead of the weekend on which the porting takes place.

Guideline 33. TR participants should submit reports to the new TR pertaining to the outstanding derivatives that are subject to data transfer to the new TR on the first business day following the data transfer.

Q6. Do you agree with the upgrade of outstanding derivatives that are subject to transfer to the most up to date reporting requirement at the latest by 23:59:59 on the Thursday ahead of the weekend on which the porting takes place? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q7. Do you agree that TR participants should submit reports pertaining to the outstanding derivatives that are subject to data transfer to the new TR on the first business day following the data transfer? Which other aspects need to be considered? Please elaborate on the reasons for your response.

4.5 Designation of back-stop TRs in the case of withdrawal of registration

30. In 2020, the TR landscape underwent fundamental changes as multiple withdrawals of registrations of TRs took place. In the case of the withdrawal of registration of one TR, the remaining TRs which were contacted by the TR, whose registration was to be withdrawn, refused to accept the data and subsequent data flow related to the non-outstanding data not related to active TR participants. 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 contract, ESMA should ensure compliance with this requirement by, where necessary, determining the TRs that would receive this data.

31. In the context of a wind down of a TR, the non-outstanding data that is not related to active TR participants and is stored by the old TR, was allocated by ESMA in proportion to the market share of each remaining TR. ESMA based its calculations on the total number of derivative reports received by each remaining TR since the beginning of the reporting obligation on 12 February 2014. This approach is mentioned in the ESMA public statement on "Issues affecting EMIR and SFTR reporting following the end of the UK transition period on 31 December 2020"[3] for data transfers of data from a UK-based TR to an EU TR, in case no EU TR has agreed to receive EMIR data.

32. ESMA understands that this approach should be implemented for any future data transfers.

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[3] esma74-362-881_statement_brexit_emir_and_sftr_data.pdf (europa.eu)

Guideline 34. In order to facilitate the orderly substitution (including the transfer of data to other TRs and the redirection of reporting flows to other TRs), ESMA could allocate the data based on a calculation in proportion to the new TRs' market share for a specific reference date.

33. Non-outstanding derivatives, especially the data reported before the start of Level 2 validation rules (1 November 2015), that is to be transferred to the new TR in case of withdrawal of registration cannot be integrated into the new TR's live databases and online systems (e.g. TRACE). For cases of withdrawal of registration where data was allocated to the new TRs, ESMA informed the new TR that it can store the transferred non-outstanding data in separate databases/tables as long as it is still possible to make the data available to the authorities. Therefore, ESMA proposes to include this guidance as a new Guideline.

Guideline 35. In the case of withdrawal of registration, the new TR can store non-outstanding derivative data of varying data quality and/or in different formats in separate databases/tables. The new TR should respond to the queries of authorities on demand.

Guideline 36. In the case of withdrawal of registration, the TR, whose registration will be withdrawn, should provide the new TR with the necessary technical information on the data that is to be transferred to facilitate the data transfer to and the subsequent storage by the new TR. The old TR should provide the new TR with the before-mentioned information in a timely manner to allow the new TR to prepare as necessary.

Q8. Do you agree with the allocation of non-outstanding data not related to active TR participants to the new TR in proportion to its market share for a specific reference date? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q9. Do you agree that the new TR can store non-outstanding derivative data of varying data quality and/or in different formats in separate databases/tables and should respond to the queries of authorities on demand? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q10. Do you agree that the old TR should provide the new TR with the necessary technical information on the data that is to be transferred to facilitate the data transfer to and the subsequent storage by the new TR in a timely manner? Which other aspects need to be considered? Please elaborate on the reasons for your response.

4.6 Verification and confirmation of derivative records

34. 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 prior to and after the transfer of data.

35. As part of the Planning and preparation procedure described in Annex I – Procedure for transfer of data at the request of a TR participant, the TR participant is required to verify and confirm aggregate information of the derivative records as determined by the old TR prior to the data transfer.

36. Leveraging on the existing experience of ensuring the correctness of the data subject to transfer and in order to balance the burden on the transfer of data, ESMA believes it is important that the counterparties or the entities reporting on their behalf perform a verification and confirmation of the correctness of the aggregate information prior and after the transfer of data.

37. ESMA has therefore included an additional Guideline to clarify this aspect.

Guideline 37. **Before and following the transfer of records of a TR participant, the TR participant should verify and confirm the correctness of the following aggregate information regarding the derivatives subject to transfer with the new and the old TR, in accordance with the timing detailed in Guideline 32 and Guideline 33, respectively,:**

   i. **The total number of outstanding derivatives**

   ii. **The total number of reports relating to lifecycle events of these derivatives**

   iii. **The total number of records relating to terminated, compressed and matured derivatives (in case those are transferred)**

   iv. **The total number of records relating to errored derivatives (in case those are transferred.**

Q11. **Do you agree with confirmation of the aggregate information by the TR participants or the entities reporting on their behalf prior and after the data transfer? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

4.7 Reporting of OTC derivatives by the FC on behalf of the NFC-

38. The case where an FC and an NFC- report outstanding derivatives subject to transfer to two different TRs is addressed in TR Q&A 54(d). Given the different changes in status an NFC- can undergo, TR Q&A 54(d) provides clarification as to when the outstanding derivatives of the NFC- are to be transferred to the TR of the FC. ESMA believes these clarifications should be included in the guidelines. TR Q&A 54(d) will be removed from the TR Q&A once the guidelines are published.

39. For example, in the case of transfer from the TR of the NFC- to the TR of the FC, the reference to the TR participant of the old TR should be read as a reference to the NFC-, whereas the reference to the TR participant of the new TR – as a reference to the FC. Furthermore, the NFC- should provide to the FC the relevant verifications regarding the

outstanding derivatives subject to transfer included in Sections A and C of the Annex I to the Guidelines, when derivatives are transferred to the TR of the FC, and the FC should provide to the NFC+ those verifications, when derivatives are transferred to the TR of the NFC+.

Guideline 38. **In the case of an FC and an NFC- that report to two different TRs outstanding OTC derivatives subject to transfer, the FC and the NFC- should:**

    i. **For any outstanding derivatives where an FC and an NFC- report to two different TRs, and the NFC- decides not to report itself, the outstanding derivatives of the NFC- should be transferred to the TR of the FC, unless the FC decides to become client of the TR of the NFC- and report the derivatives concluded with the NFC- to that TR.**

    ii. **Each time a NFC changes its status from NFC+ to NFC- and decides not to report itself its derivatives, it should request the transfer of its outstanding derivatives concluded with the FC to the TR of that FC as of the date of its changed status unless the FC decides to become client of the TR of the NFC- and report the derivatives concluded with the NFC- to that TR. Similarly, each time when NFC changes its status from NFC- to NFC+, the outstanding derivatives concluded with the FC should be transferred back to the TR of the NFC, unless the NFC decides to become client of the TR of the FC and report the derivatives concluded with the FC to that TR.**

    iii. **For the performance of data transfer, neither the NFC nor the FC (or any report submitting entity reporting on their behalf) are expected to onboard to the TRs of the other counterparty.**

Q12. **Do you agree with that the inclusion of TR Q&A 54(d) in the guidelines? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

Q13. **Should the requirement put forward in Guideline 38 be structured in a different manner? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

5 SFTR Guidelines

40. The Guidelines on data transfer under SFTR are fully aligned with the ones under EMIR. They contain minor adaptations in order to align the processes and datasets to the ones applicable under SFTR.

5.1 Conditions of transfer of data

41. The following sub-sections include the reference to the general conditions relating to the transfer of data.

42. 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.

43. When referring to an SFT record that is to be transferred, this comprises all three reports, namely the transaction, margin, and re-use report relating to the SFT in question.

44. The following Guidelines apply in case the transfer takes place between two TRs that continue in operation: Guideline 1 to Guideline 22, Guideline 32, Guideline 33, Guideline 37, and Guideline 38.

45. The following Guidelines apply in case of withdrawal of registration of a TR: Guideline 1 to Guideline 15 and Guideline 23 to Guideline 38.

5.1.1 Entities involved in the transfer

46. The TRs are the market infrastructures which underpin the SFTR reporting and have a central function in ensuring the accurate record-keeping of data required under SFTR as well as the appropriate access to data by the authorities.

47. Furthermore, to ensure the achievement of the objectives included in paragraph 14 there is the need to establish a controlled and fully traceable process with the minimum number of error-prone links or stages. Therefore, 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, the TR participant should not re-report to the new TR any SFTs 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.

Guideline 1. Only the old TR and the new TR should carry out the transfer of SFT data. The new TR should not accept duplicate reports by TR participants relating to SFTs subject to transfer. The old TR should not accept reports with action types "ETRM" and "EROR" made by TR participants relating to SFTs subject to transfer.

Q14. Do you agree with the proposal that only the old and the new TR should carry out the transfer of data? Please elaborate on the reasons for your response.

5.1.2 Migration plan

48. 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 considered as part of the migration plan are detailed in the following sub-sections. The migration plan would allow all the involved entities to better control the process of data transfer.

49. The migration plan should be 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.

Q12. Do you agree with the proposal that the TRs should carry out the transfer of data in accordance with a mutually agreed migration plan? Please elaborate on the reasons for your response.

5.1.2.1 Content of the migration plan

50. The type of information to be included in the migration plan should not be subject to discussion between the TRs and the responsibilities of the old and new TR should be clear. The migration plan should include the scope of the SFT data that should be transferred. The scope of data to be transferred is discussed in detail in Guideline 16, Guideline 18 and Guideline 23.

51. 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), SFTs 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 SFTs under transfer**

vii. **Cut-off time and data availability**

viii. **Any other information that will facilitate and secure the smooth transfer of data.**

Q15. **Do you agree with the proposal that all TRs should use a standardised migration plan template mutually agreed across all TRs? Please elaborate on the reasons for your response.**

Q16. **Do you agree with the proposed information the migration plan should contain? What additional aspects should be specified? Please elaborate on the reasons for your response.**

5.1.3 Format of the data

52. 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.

53. Article 5 of the RTS on data access requires TRs to 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.

54. 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 RTS on data access. The XML format always reflects the newest RTS standards in which data needs to be reported by the ERRs. SFTs that do not meet the newest RTS standards, e.g. contain formatting errors in the reported fields, are rejected by the TRs.

55. Rejected SFTs do not adhere to the XML format and can therefore not be transferred using the XML format and the template defined in the RTS on operational standards for data access. The rejected SFTs are to be transferred using a format that has been agreed by all TRs, e.g. a comma separated value file.

> **Guideline 5.** **TRs should transfer data to each other by using the XML format and template defined in accordance with Article 4 of the RTS 357/2019. Notwithstanding this, in the case of (i) SFTs that are not outstanding at the time of transfer, or (iii) rejected SFTs, 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 SFTs subject to transfer.**

Q17. Do you agree with that TRs should use the XML format to transfer data to each other? Please elaborate on the reasons for your response.

5.1.4 Secure machine-to-machine connection

56. In similar way, as described in Section 5.1.3, ESMA proposes to leverage on the harmonisation and standardisation work done so far and the available infrastructures. To contain the costs, 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.**

Q18. Do you agree that TRs should use secure machine-to-machine protocols? Which other aspects need to be considered? Please elaborate on the reasons for your response.

5.1.5 Data security

57. TRs should use electronic signature and data encryption protocols, when providing access to or making available the data to the authorities.

58. 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 RTS on data access.

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.**

Q19. **Do you agree that TRs should use advanced encryption protocols and should exchange the relevant public information with their peers? Please elaborate on the reasons for your response.**

5.1.6 Data completeness

59. ESMA believes that it is essential that the completeness of the data subject to transfer is verified. All three entities (old TR, the TR participant and the new TR) should agree on the number of SFTs and of records to be transferred.

60. Reporting counterparties, as part of their due diligence processes and obligations under SFTR, should verify on an on-going basis the details of SFTs that they, or the TR participant, report to the TR with the data that the TR records in its database[4]. 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 TR participants 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 SFTs, and of the corresponding lifecycle events, that will be transferred, the old TR should calculate these numbers and TR participant(s) should sign them off[5]. While the old TR should also calculate the numbers of the non-outstanding SFTs 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 resolution of the discrepancies between the old 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 SFTs 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 SFTs 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.

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[4] As per Article 4(4) of SFTR "Counterparties shall keep a record of any SFT they have concluded, modified or terminated for at least five years following the termination of the contract." The rationale behind that requirement is to ensure an on-going verification by counterparties
[5] Sign off is the process to approve or acknowledge something by or as if by a signature

Guideline 8. **The old TR should calculate the number of SFTs 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 SFTs and should resolve all discrepancies at the earliest convenience and no later than in five working days.**

Q20. **Do you agree that TRs should calculate the number of SFTs and the number of corresponding lifecycle events, then request the participant's sign-off, and resolve all discrepancies at the earliest convenience? Please elaborate on the reasons for your response.**

5.1.7 Data integrity

63. 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 SFTs, given that this data will be used for the calculation of risk exposures and of general aggregated positions. In that regard, ESMA included a guideline clarifying that the old TR should generate a cryptographic checksum in accordance with a mutually agreed hashing algorithm[6]. ESMA however sees 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.**

Q21. **Do you agree that for every file generated and transferred, the old TR should generate and include a cryptographic checksum? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

5.1.8 Timeliness of the data transfer

64. 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 SFTs 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.

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[6] 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

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.**

65. As soon as the communication referred to in paragraph 79 is made, the TR participant should ensure that it is no longer reporting any lifecycle events pertaining to these SFTs to the old TR. In conclusion the relevant lifecycle events and position data relating to the transferred SFTs should be reported to the new TR.

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

Q22. **Do you agree that the transfer of data requested by a TR participant should be carried out, as a general principle, on a non-working day? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

Q23. **Do you agree that once the transfer of outstanding SFTs is confirmed by the new TR the old TR should not accept reports relating to the SFTs subject to the transfer to the new TR? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

5.1.9   Data availability

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

67. 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 SFTs should be sent to the old TR and made available to the authorities in accordance with Article 12 of SFTR.

68. 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.

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 SFTs subject to transfer. The data on outstanding SFTs should be made available to the relevant authorities by the old TR.**

69. Guideline 13 was added to clarify 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 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.**

Q24. **Do you agree that the new TR should not accept lifecycle events and position data relating to the SFTs subject to transfer until the transfer of all the relevant files is completed? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

Q25. **Do you agree that the new TR should make the data available to authorities, include the data subject to transfer in the relevant public and authority-only aggregations, and include the data in the inter-TR reconciliation process, once the transfer is completed? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

5.1.10 Fees

5.1.10.1 Transfer of data

70. 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.

71. 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 5.2.5 and 5.3.7 of these Guidelines.

5.1.10.2 Recordkeeping of non-outstanding SFTs up to 10 years

72. Given that, under Article 80(3) of EMIR, as cross-referred in Article 5(2) of SFTR, there is a requirement for the TRs to keep records of SFTs for at least 10 years after the termination of the SFT, 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 SFTR and is not subject to the discretion of the counterparties and (ii) the old TR would no longer have a contractual relationship with the TR participant. In case the TRs consider however that the record-keeping of SFTs 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 SFTs.

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 SFTs.

Q26. Do you agree that the new TR should not charge any specific fees for the recordkeeping of non-outstanding SFTs? Which other aspects need to be considered? Please elaborate on the reasons for your response.

5.1.11 Prioritisation of data to be transferred

73. All the relevant data that is in the scope of the agreed migration plan should be transferred. A specific waterfall is to be 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.

74. 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.

75. As data generated and recorded by the old TR on reconciliation and rejections will be lost in the case of withdrawal of registration, this data should be transferred to the new TR in case of registration withdrawal as set out in Guideline 30. Therefore, the data should also be included in the waterfall described in Guideline 15.

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 SFTs received, i.e. the "trade state";

    ii.   The reports related to lifecycle events applicable to the outstanding SFTs;

    iii.   All terminated and matured SFTs that are still subject to the requirement under Article 80(3) of EMIR, together with the relevant lifecycle events;

    iv.   All errored SFTs that are still subject to the requirement under Article 80(3) of EMIR and cross-referred under Article 5(2) of SFTR together with the relevant lifecycle events;

      v.   **All rejected SFTs reported by the TR participant and that have not passed the data validations (only in the case of withdrawal of registration;**

      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 SFTs that are transferred; and**

      vii.   **In the case of withdrawal of registration, all data on Rejections at file level and all data on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level.**

Q27.   **Do you agree with the procedure set out in Guideline 15? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

5.2 Transfer of data requested by a TR participant

5.2.1 Scope of the data subject to transfer

76.   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 SFTs, 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 SFTs of the clients of the TR participant that have confirmed their acceptance to transfer SFTs to another TR.

> **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 SFTs 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 SFTs submitted on behalf of the non-reporting TR participant from the SFTs 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 SFTs of the TR participant or where the TR participant is an RSE, the SFTs of the clients of the TR participant that have confirmed to the TR participant their acceptance to transfer SFTs to another TR;

    ii. Any lifecycle events, such as modifications, valuations, etc. pertaining to the outstanding SFTs; and

    iii. The reporting log pertaining to the SFTs that are transferred.

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

Q28. Do you agree with the specification of the process from the perspective of the old TR in Guideline 16? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q29. Do you agree with the specification of the process from the perspective of the old TR in guideline 17? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q30. Do you agree with the scope of data that should be transferred in the case of voluntary transfer of data as set out in Guideline 18? Please elaborate on the reasons for your response.

5.2.2 Initiation of the process

77. 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.

78. Once the TR participant requests the transfer of the relevant SFTs, the process described in Section 8 (Procedure for transfer of data at the request of a TR participant under SFTR) should be followed so as to ensure that the transfer of data is performed as established in Section 8.

79. 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, which is detailed in Guideline 19 accordingly.

Guideline 19. In the case of transfer of data requested by a TR participant, the process described in the procedure contained in Annex III 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.

Q29.   Do you agree with the procedure described in Annex III? Which other aspects need to be considered? Please elaborate on the reasons for your response.

5.2.3   Communications

80.   Given that one of the objectives of SFTR 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.

81.   As soon as the outstanding SFTs 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.

Guideline 20. In the case of transfer of data requested by a TR participant, as soon as the outstanding SFTs 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 SFTs reported by the TR participant.

Q31.   Do you agree with the communications foreseen in Guideline 20? Which other aspects need to be considered? Please elaborate on the reasons for your response.

5.2.4   Recordkeeping of the transferred data

82.   In the general case of data transfers, 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.

83.   In addition, ESMA believes 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 SFTR for the rest of the data reported.

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 SFT data reported to that TR, for at least three months and should ensure the retrieval of data in no more than seven calendar days.**

Q32. **Do you agree with the handling of data by the old TR as described in Guideline 21 regarding the retrieval of data for NCAs? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

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

84. 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, as cross-referred in Article 5(2) of SFTR, 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.

85. Furthermore, the fees should not be set so high so as to disincentivise TR participants from transferring their SFTs to another TR as this could lead to the foreclosure of the industry or prevent innovation and specialisation.

86. 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.

87. 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.

88. 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, as cross-referred in Article 5(2) of SFTR.

89. 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.**

Q33. **Do you agree that any costs charged should be cost-related, non-discriminatory and included in the fee schedule of the relevant TRs? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

5.3 Transfer of data in the case of withdrawal of registration

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

90. The data to be transferred in the case of withdrawal of registration of a TR should comprise:

  a. All outstanding SFTs, as well as any related lifecycle events, such as modifications, valuations, etc.

  b. All terminated and matured SFTs that are still subject to the requirement under Article 80(3) of EMIR, as cross-referred in Article 5(2) of SFTR, unless they have reached the ten-year limit for recordkeeping following the termination of those.

  c. All errored SFTs that are still subject to the requirement under Article 80(3) of EMIR, as cross-referred in Article 5(2) of SFTR, unless they have reached the ten-years limit for recordkeeping following the termination of those.

  d. The reporting log pertaining to the SFTs that are transferred; and

  e. All data on Rejections at file level and all data on Reconciliation for the purposes of the inter-TR reconciliation process at transaction level.

91. 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 5.1.11. The transfer of the rest of the SFTs should commence only when it is clear that this would not impact the transfer of outstanding SFTs.

> **Guideline 23.** **In the case of withdrawal of registration of a TR, the transfer of data should comprise all the details of SFTs reported to the TR, including the rejected ones, together with the relevant reporting log, and all data on rejections at file level and all data on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level. The order of data transfer set out in Guideline 15 should be followed.**

Q34. **Do you agree that in the case of withdrawal of registration of a TR, the transfer of data should comprise all the details of SFTs reported to the TR, including the rejected ones, together with the relevant reporting log, and all data on Rejections at file level and all data on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

5.3.2 Migration plan as part of the wind-down plan

92. 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, the migration plan(s)

referred to in Section 5.1.2 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.**

Q35. **Do you agree that 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? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

5.3.3 Withdrawal of registration requested by the TR - Article 10(1)(a) of SFTR

93. Article 10(1)(a) of SFTR envisages the possibility that a withdrawal of registration is requested by the TR, i.e. the TR "expressly renounces the registration". There is another possible reason for withdrawal in that sub-paragraph of EMIR related to the lack of provision of services by the TR in the preceding six months. In this respect, ESMA considers that there is no practical need to treat the two afore-mentioned reasons for withdrawal in a different manner for the purposes of data transfer.

94. Stemming from the requirement under Article 79(3) of EMIR, as cross-referred in Article 5(2) of SFTR, when the process for withdrawal of registration under Article 10(1)(a) of SFTR 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 5.3.1 would be transferred.

95. 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. 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.

96. 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.

97. When transferring the SFTs, the TRs should follow the protocol included in Annex IV - Procedure for migration in case of withdrawal of registration.

98. In the case of withdrawal of registration under Article 10(1)(a) of SFTR, ESMA proposes 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.

5.3.4 Withdrawal of registration not requested by the TR

99. Articles 10(1)(b)-(c) of SFTR provide that ESMA shall withdraw the registration of a TR where the TR (b) obtained the registration by making false statements or by any other irregular means, and (c) no longer meets the conditions under which it was registered. Article 73(1)(d) of EMIR and Article 9 and 10 of SFTR provide 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. The aforementioned situations should be treated in the same way for the purposes of transfer of data between TRs.

100. Stemming from the requirement under Article 79(3) of EMIR, as cross-referred in Article 5(2) of SFTR, 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 104 is proposed to be transferred.

101. 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.

102. 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 framework for the recovery and resolution of CCPs[7]. An entity designated by ESMA to receive a data transfer in the context of Article 79(3) of EMIR, as cross-referred in Article 5(2) of SFTR, 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.

103. 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 conditions of data transfer that are included in Section 5.1 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 5.2.

104. The Protocol included in Annex IV - Procedure for migration in case of withdrawal of registration should be followed.

105. In the case of withdrawal of registration under Article 10(1)(b)-(c) of SFTR, 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.

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[7] Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132, OJ L 22, 22.1.2021, p. 1

106. ESMA understands that one of the considerations when adopting the final decision on withdrawal of registration will be related to the full and complete transfer of the details of all SFTs reported to the old TR. With respect to the establishment of a transparent procedure, ESMA considers its function on deciding on the allocation of SFTs only a last resort one, as it is expected that the TR participants and the old TR are the ones responsible for ensuring that the reporting of SFTs 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 IV - 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.**

Q36. **Do you agree that where the data transfer is related to the withdrawal of registration of a TR, the procedure included in Annex IV - Procedure for migration in case of withdrawal of registration should be followed by the old TR and the new TR? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

5.3.5 Communication to authorities

107. Given that one of the objectives of SFTR 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.

108. 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, 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.

109. In order to comply with the requirements under Article 79(3) EMIR, as cross-referred in Article 5(2) of SFTR, 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 500 or with less than 500 TR participants, the advance notice should be at least six months.

110. 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.

111. As soon as the outstanding SFTs 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.

Q37. Do you agree that 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? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q38. Do you agree that 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? Which other aspects need to be considered? Please elaborate on the reasons for your response.

5.3.6 Recordkeeping of the transferred data

112. 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 no more than seven calendar days is ensured by the old TR.

113. 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.

114. 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.

Q39. Do you agree that 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? Which other aspects need to be considered? Please elaborate on the reasons for your response.

5.3.7   Fees in the case of withdrawal of registration

115. 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 5.3.5, 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.

116. 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 TRs would receive business without any particular effort on their side either.

117. Therefore, 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.

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

Q40. Do you agree that, in the case of withdrawal of registration, none of the TRs should charge fees for the transfer of data? Which other aspects need to be considered? Please elaborate on the reasons for your response.

5.4 Transfer of TR data on reconciliation and rejections

118. In the case of withdrawal of registration, statistics and data on reconciliation and rejections generated by the old TR should be kept for access by authorities as they provide useful supervisory information regarding the reporting by the counterparty.

Therefore, ESMA proposes that all statistics and data on Reconciliation and Rejections generated by the old TR related to a SFT subject to transfer should be transferred to the new TR.

> **Guideline 30.** In the case of withdrawal of registration, all data generated and recorded by the old TR on Rejections at file level and all data on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level relating to a SFT subject to transfer should be transferred by the old TR to the new TR.

Q41. Do you agree with the transfer of data generated and recorded by the old TR on Rejections and Reconciliation to the new TR in case of withdrawal of registration? Which other aspects need to be considered? Please elaborate on the reasons for your response.

5.5 Fees in the case of withdrawal of registration

119. Following the proportional allocation of non-outstanding SFT data not related to active clients by ESMA, it is the new TR who bears the cost for the implementation of a customised data query functionality and the handling of authorities' data queries. Currently, the TRs do not charge a fee for these services. In contrast to voluntary porting, the TR does not receive any fees in this case, although it incurs in costs. ESMA is therefore consulting on the possibility, but not obligation, of allowing the TRs that receive non-outstanding SFT data related to active clients after a TR wind-down to charge a cost-related fee to the TR participants for record-keeping and maintenance of derivatives data. This is specifically relevant to allow authorities having access to the SFT data at least until the end of the ten years minimum record-keeping period as enshrined in Article 80(3) EMIR, as referred to in Article 5(1) SFTR. ESMA considers that this will set proper and sound incentives for the TRs following such a data allocation.

120. Costs related to data transfer should adhere to the requirements set out in accordance with Article 5(2) of SFTR. Costs charged by TRs as set out in Guideline 31 should be justified.

> **Guideline 31.** In the case of withdrawal of registration, the new TR may charge fees to the TR participants for making available the transferred outstanding and non-outstanding SFTs to authorities.

Q42. Do you agree with that the new TR may charge fees to the TR participants for the transfer of outstanding and non-outstanding SFTs? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q43. Do you agree that costs should adhere to fee requirements and be justified by the TR? Which other aspects related to costs in this regard need to be considered? Please elaborate on the reasons for your response.

5.6 New XML schemas and varying degrees of data quality

121. As reporting rules and/or XML schemas will further on change on future occasions, not all outstanding SFTs may meet the most up to date reporting requirement, which is a necessary requirement to use the XML format to transfer outstanding SFTs as outlined in Guideline 5. Each time a new reporting requirement is introduced the updating of outstanding SFTs to the newest reporting rules will be required prior to transfer of data to enable porting data across TRs and seamless integration into their live databases and online systems (e.g. TRACE).

122. To ensure that all outstanding SFTs are upgraded to the newest reporting rules in a timely manner prior to porting, the relevant updates should be performed at the latest by 23:59:59 on the Thursday ahead of the weekend on which the porting takes place to allow for the final sign-offs to be done on the Friday before the porting weekend.

123. Any reports pertaining to outstanding SFTs that reporting counterparties have to submit later than 23:59:59 on the Thursday ahead of the weekend on which the porting takes place should be submitted to the new TR on the first business day following the data transfer to the new TR. This is to allow the reporting counterparty to verify and confirm the aggregate information of the SFTs subject to transfer on the last business day prior to porting as set out in Guideline 35.

Guideline 32. **Prior to the data transfer, TRs should ensure that TR participants upgrade the outstanding SFTs that are subject to data transfer to the most up to date reporting requirement at the latest by 23:59:59 on the Thursday ahead of the weekend on which the porting takes place.**

Guideline 33. **TR participants should submit reports to the new TR pertaining to the outstanding SFTs that are subject to data transfer on the first business day following the data transfer.**

Q44. **Do you agree with the upgrade of outstanding SFTs that are subject to transfer to the most up to date reporting requirement at the latest by 23:59:59 on the Thursday ahead of the weekend on which the porting takes place? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

Q45. **Do you agree that TR participants should submit reports pertaining to the outstanding SFTs that are subject to data transfer, which should be submitted no later than 23:59:59 on the Thursday ahead of the weekend on which the porting takes place, to the new TR on the first business day following the data transfer? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

5.7 Designation of back-stop TRs in the case of withdrawal of registration

124. In 2020, the TR landscape underwent fundamental changes as multiple withdrawals of registrations of TRs took place. In the case of the withdrawal of registration of one TR, the remaining TRs which were contacted by the TR, whose registration was to be withdrawn, refused to accept the data and subsequent data flow related to the non-outstanding data not related to active TR participants. Given that under Article 80(3) of EMIR, as cross-referred in Article 5(2) of SFTR, there is a requirement for the TRs to keep records of SFTs for at least 10 years after the termination of the SFT contract, ESMA should ensure compliance with this requirement by, where necessary, determining the TRs that would receive this data.

125. ESMA's experience to date is the one referred in paragraph 29 of this consultation paper. ESMA understands that this approach should be implemented for any future data transfers also under SFTR.

> **Guideline 34.** **In order to facilitate the orderly substitution (including the transfer of data to other TRs and the redirection of reporting flows to other TRs, ESMA could allocate the data based on a calculation in proportion to the new TRs' market share for a specific reference date.**

126. Non-outstanding SFTs, which do not meet the most up to date reporting requirement, that are to be transferred to the new TR in case of withdrawal of registration cannot be integrated into the new TR's live databases and online systems (e.g. TRACE). Therefore, ESMA proposes to include a new Guideline to enable the new TR to store the transferred non-outstanding data in separate databases/tables as long as it is still possible to make the data available to the authorities.

> **Guideline 35.** **In the case of withdrawal of registration, the new TR can store non-outstanding SFT data of varying data quality in separate databases/tables and/or in different formats in separate databases/tables. The new TR should respond to the queries of authorities on demand.**

> **Guideline 36.** **The TR, whose registration will be withdrawn, should provide the new TR with the necessary technical information on the data that is to be transferred to facilitate the data transfer to and the subsequent storage by the new TR. The old TR should provide the new TR with the before-mentioned information in a timely manner to allow the new TR to prepare as necessary.**

Q46. **Do you agree with the allocation of non-outstanding data not related to active TR participants to the new TR in proportion to its market share for a specific reference date? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

Q47. **Do you agree that the new TR can store non-outstanding SFT data of varying data quality and/or in different formats in separate databases/tables and should respond to the queries of authorities on demand? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

Q48. **Do you agree that the old TR should provide the new TR with the necessary technical information on the data that is to be transferred to facilitate the data transfer to and the subsequent storage by the new TR in a timely manner? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

5.8 Verification and confirmation of SFT records

127. 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 SFTs that they have reported prior to and after the transfer of data.

128. As part of the planning and preparation procedure described in Annex III – Procedure for transfer of data at the request of a TR participant, the TR participant is required to verify and confirm aggregate information of the SFT records as determined by the old TR prior to the data transfer.

129. Leveraging on the existing experience of ensuring the correctness of the data subject to transfer and in order to balance the burden on the transfer of data, ESMA believes it is important that the counterparties or the entities reporting on their behalf perform a verification and confirmation of the correctness of the aggregate information prior and after the transfer of data.

> Guideline 37. **Before and following the transfer of records of a TR participant, the TR participant should verify and confirm the correctness of the following aggregate information regarding the SFTs subject to transfer with the new and the old TR, in accordance with the timing detailed in Guideline 32 and Guideline 33, respectively:**
>
> > i. **The total number of outstanding SFTs, where each SFT is identified by the unique combination of the SFTR fields "Reporting counterparty", "Other counterparty", and "Unique Transaction Identifier", together with the corresponding collateral on net basis, margin reports and re-use reports;**
> >
> > ii. **The total number of reports relating to lifecycle events of these SFTs for transaction, margin, and re-use reports, where**

- **Each loan and collateral report is identified by the unique combination of the SFTR fields "Reporting counterparty", "Other counterparty", and "Unique Transaction Identifier" or "Master agreement type"**

- **Each margin report is identified by the unique combination of the SFTR fields "Reporting counterparty", "Other counterparty", and "Portfolio code"**

- **Each re-use report is identified by the unique combination of the SFTR fields "Reporting counterparty", "Collateral component", "Re-invested cash currency", and "Funding sources currency";**

iii. **The total number of records relating to terminated and matured SFTs (in case those are transferred) for loan and collateral, margin, and re-use reports**

iv. **The total number of records relating to errored SFTs (in case those are transferred) for loan and collateral, margin, and re-use reports.**

Q49. Do you agree with confirmation of the aggregate information by the TR participants or the entities reporting on their behalf prior and after the data transfer? Which other aspects need to be considered? Please elaborate on the reasons for your response.

5.9 Reporting of SFTs by the FC on behalf of the SME NFC

130. The case where an FC and a SME NFC report outstanding SFTs subject to transfer to two different TRs is addressed in SFTR TR Q&A 8(d). Given the different changes in status a SME NFC can undergo, SFTR TR Q&A 8(d) provides clarification as to when the outstanding SFTs of the SME NFC are to be transferred to the TR of the FC. ESMA believes these cases should be included in the guidelines. SFTR TR Q&A 8(d) will be removed from the TR Q&A once the guidelines are published.

131. For example, in the case of transfer from the TR of the SME NFC to the TR of the FC, the reference to the TR participant of the old TR should be read as a reference to the SME NFC, whereas the reference to the TR participant of the new TR – as a reference to the FC. Furthermore, the SME NFC should provide to the FC the relevant verifications regarding the outstanding SFTs subject to transfer included in Sections A and C of the Annex III to the Guidelines, when SFTs are transferred to the TR of the FC, and the FC should provide to the non-SME NFC those verifications, when SFTs are transferred to the TR of the non-SME NFC.

Guideline 38. Further to the provisions in Guideline 58 of the Guidelines on reporting under Article 4 and 12 of SFTR, in the case of an FC and a SME NFC that report to two different TRs for outstanding SFTs subject to transfer, the FC and the SME NFC should:

i. For any outstanding SFTs where a FC and a SME NFC report to two different TRs, and the SME NFC decides not to report itself, the outstanding SFTs of the SME NFC should be transferred to the TR of the FC, unless the FC decides to become client of the TR of the SME NFC and report the SFTs concluded with the SME NFC to that TR.

ii. Each time a NFC changes its status from non-SME NFC to SME NFC and decides not to report itself its SFTs, it should transfer its outstanding SFTs concluded with the FC to the TR of that FC as of the date of its changed status unless the FC decides to become client of the TR of the SME NFC and report the SFTs concluded with the SME NFC to that TR. Similarly, each time when NFC changes its status from SME NFC to non-SME NFC, the outstanding SFTs concluded with the FC should be transferred back to the TR of the NFC, unless the NFC decides to become client of the TR of the FC and report the SFTs concluded with the FC to that TR.

iii. For the performance of data transfer, neither the NFC nor the FC (or any report submitting entity reporting on their behalf) are expected to onboard to the TRs of the other counterparty.

Q50. Do you agree with the inclusion of the cases where an FC and a FC- report outstanding SFTs subject to transfer to two different TRs in the Guidelines? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q51. Should the requirement put forward in Guideline 37 be structured in a different manner? Which other aspects need to be considered? Please elaborate on the reasons for your response.

6 Annex I - Procedure for transfer of data at the request of a TR participant under EMIR (remains unchanged)

A. Planning and preparation
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. The new TR notifies by email the relevant authorities about the transfer.
The old TR determines and agrees with the TR participant the following aggregate information regarding the derivatives of the TR participant subject to transfer: o The total number of outstanding derivatives o The total number of reports relating to lifecycle events of these derivatives o The total number of records relating to terminated, compressed and matured derivatives (in case those are transferred) o The total number of records relating to errored derivatives (in case those are transferred)
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 records[8]. 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.*
B. Execution of transfer
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.
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. 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

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[8] 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.

The new TR should determine the following figures and information for the received records and verify the completeness of the transfer:
 	
    o The latest state of the outstanding derivatives received, i.e. the "trade state"
    o The total number of outstanding derivatives
    o The total number of records relating to lifecycle events corresponding to the outstanding derivatives
    o The total number of records relating to terminated, compressed and matured derivatives (in case those are transferred)
    o 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 records[9]. 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.

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[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." In the case of reporting TR participant that reports on behalf of others, it should use also their records.

7 Annex II - Procedure for migration in case of withdrawal of registration under EMIR

A. Initial notifications
(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).   Or   (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)
B. Planning and preparation
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.
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: o The total number of outstanding derivatives   o The total number of records relating to lifecycle events corresponding to the outstanding derivatives   o The total number of records relating to terminated, compressed, and matured derivatives   o The total number of records relating to errored derivatives   o The number of reporting log entries   o The number of data files on Rejections at file level and the number of data files on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level
C. Execution of transfer
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.   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.   The sequence prioritisation of derivatives and records included in Guideline 15 is followed.

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: o The latest state of the outstanding derivatives received, i.e. the "trade state" o The total number of outstanding derivatives o The total number of records relating to lifecycle events corresponding to the outstanding derivatives o The total number of records relating to terminated, compressed, and matured derivatives o The total number of records relating to errored derivatives o The number of reporting log entries o The total number of data files on Rejections at file level and the number of data files on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level
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.

8 Annex III - Procedure for transfer of data at the request of a TR participant under SFTR

A. Planning and preparation
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. The new TR notifies by email the relevant authorities about the transfer.

The old TR determines and agrees with the TR participant the following aggregate information regarding the SFTs of the TR participant subject to transfer:
 	
   o   The total number of outstanding SFTs
   o   The total number of reports relating to lifecycle events of these SFTs for transaction, margin, and re-use reports
   o   The total number of records relating to terminated and matured SFTs (in case those are transferred)
   o   The total number of records relating to errored SFTs (in case those are transferred)

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 records as per Guideline 34. In case of a mismatch, the old TR should reconcile the relevant numbers with the TR participant and agree on the final list of SFT reports that will be migrated. The old TR should solve all discrepancies *at the earliest convenience and in no later than five working days.*
B. Execution of transfer
Once the number of SFTs 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.
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. In case the volume of files is manageable, the old TR should transfer at the same time the outstanding SFT 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 SFTs 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: o The latest state of the outstanding SFTs received, i.e. the "trade state" o The total number of outstanding SFTs o The total number of records relating to lifecycle events corresponding to these SFTs for transaction, margin, and re-use reports o The total number of records relating to terminated and matured SFTs (in case those are transferred) o The total number of records relating to errored SFTs (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 records as per Guideline 34. 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 SFTs 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 SFTs involved.
E. Recordkeeping and secure data deletion
The old TR should remove the migrated outstanding SFTs from any data aggregations.
The old TR should maintain the data transferred for as long as prescribed by the general principles and according to SFTR 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.

Q52. **Do you agree with the procedure described in Annex III? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

9 Annex IV - Procedure for migration in case of withdrawal of registration under SFTR

A. Initial notifications
(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).   Or   (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)
B. Planning and preparation
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.
The old TR identifies the SFTs subject to transfer and provides ESMA and the other involved TRs (as part of the migration plan or separately) the following information regarding the SFTs subject to transfer per TR: o   The total number of outstanding SFTs   o   The total number of records relating to lifecycle events corresponding to these SFTs for transaction, margin, and re-use reports   o   The total number of records relating to terminated and matured SFTs   o   The total number of records relating to errored SFTs   o   The number of reporting log entries   o   The total number of data files on Rejections at file level and the number of data files on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level
C. Execution of transfer
Once the number of SFTs and records are confirmed, the old TR should proceed with generating the relevant file(s) in accordance with Guideline 5.   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.   The sequence prioritisation of SFTs and records included in Guideline 15 is followed.

If possible, outstanding SFTs should be transferred during and within a weekend, while corresponding lifecycle events to these SFTs for transaction, margin, and re-use reports at the earliest opportunity and no later than the week after.
If not possible, then outstanding SFTs 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 SFT batch.
The remaining SFTs should be transferred as soon as possible within a month after the conclusion of the transfer of outstanding SFTs. 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:
 	
    o   The latest state of the outstanding SFTs received, i.e. the "trade state"
    o   The total number of outstanding SFTs
    o   The total number of records relating to lifecycle events to these SFTs for transaction, margin, and re-use reports
    o   The total number of records relating to terminated and matured SFTs
    o   The total number of records relating to errored SFTs
    o   The number of reporting log entries
    o   The total number of data files on Rejections at file level and the number of data files on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level

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 SFTR 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.

Q53. **Do you agree with the procedure described in Annex IV? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

10 Guidelines

10.1 Amendments to Guidelines on transfer of data between Trade Repositories under EMIR

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 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 500 or with less than 500 TR participants, the advance notice should be at least six months.

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 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);

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; and

vii.   In the case of withdrawal of registration, all data on Rejections at file level and all data on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level.

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 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 and all data on Rejections at file level and all data on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level. The order of data transfer set out in Guideline 15 should be followed.

Guideline 30. In the case of registration withdrawal, all data generated and recorded by the old TR on rejections at file level and all data on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level relating to a derivative subject to transfer should be transferred by the old TR to the new TR.

Guideline 31. In the case of withdrawal of registration, the new TR may charge fees to the TR participants for record-keeping and maintenance of records of transferred outstanding and non-outstanding derivatives.

Guideline 32. Prior to the data transfer, TRs should ensure that TR participants upgrade the outstanding derivatives that are subject to data transfer to the most up to date reporting requirement at the latest by 23:59:59 on the Thursday ahead of the weekend on which the porting takes place.

Guideline 33. TR participants should submit reports to the new TR pertaining to the outstanding derivatives that are subject to data transfer to the new TR on the first business day following the data transfer.

Guideline 34. In order to facilitate the orderly substitution (including the transfer of data to other TRs and the redirection of reporting flows to other TRs), ESMA could allocate the data based on a calculation in proportion to the new TRs' market share for a specific reference date.

Guideline 35. In the case of withdrawal of registration, the new TR can store non-outstanding derivative data of varying data quality and/or in different formats in separate databases/tables. The new TR should respond to the queries of authorities on demand.

Guideline 36. In the case of withdrawal of registration, the TR, whose registration will be withdrawn, should provide the new TR with the necessary technical information on the data that is to be transferred to facilitate the data transfer to and the subsequent storage by the new TR. The old TR should provide the new TR with the before-mentioned information in a timely manner to allow the new TR to prepare as necessary.

Guideline 37. Before and following the transfer of records of a TR participant, the TR participant should verify and confirm the correctness of the following aggregate information regarding the derivatives subject to transfer with the new and the old TR, in accordance with the timing detailed in Guideline 32 and Guideline 33, respectively,:

i.   The total number of outstanding derivatives

ii.   The total number of reports relating to lifecycle events of these derivatives

iii.   The total number of records relating to terminated, compressed and matured derivatives (in case those are transferred)

iv.   The total number of records relating to errored derivatives (in case those are transferred.

Guideline 38. In the case of an FC and an NFC- that report to two different TRs outstanding OTC derivatives subject to transfer, the FC and the NFC- should:

i.   For any outstanding derivatives where an FC and an NFC- report to two different TRs, and the NFC- decides not to report itself, the outstanding derivatives of the NFC- should be transferred to the TR of the FC, unless the FC decides to become client of the TR of the NFC- and report the derivatives concluded with the NFC- to that TR.

ii.   Each time a NFC changes its status from NFC+ to NFC- and decides not to report itself its derivatives, it should request the transfer of its outstanding derivatives concluded with the FC to the TR of that FC as of the date of its changed status unless the FC decides to become client of the TR of the NFC- and report the derivatives concluded with the NFC- to that TR. Similarly, each time when NFC changes its status from NFC- to NFC+, the outstanding derivatives concluded with the FC should be transferred back to the TR of the NFC, unless the NFC decides to become client of the TR of the FC and report the derivatives concluded with the FC to that TR.

iii.   For the performance of data transfer, neither the NFC nor the FC (or any report submitting entity reporting on their behalf) are expected to onboard to the TRs of the other counterparty.

10.2 SFTR Guidelines

Guideline 1. Only the old TR and the new TR should carry out the transfer of SFT data. The new TR should not accept duplicate reports by TR participants relating to SFTs subject to transfer. The old TR should not accept reports with action types "ETRM" and "EROR" made by TR participants relating to SFTs 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), SFTs 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 SFTs 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 RTS 357/2019. Notwithstanding this, in the case of (i) SFTs that are not outstanding at the time of transfer, or (iii) rejected SFTs, 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 SFTs 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 SFTs 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 SFTs 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 SFTs is confirmed by the new TR, the old TR should not accept reports on lifecycle events and position data relating to the SFTs 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 SFTs subject to transfer. The data on outstanding SFTs 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 SFTs.

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 SFTs received, i.e. the "trade state";

ii.   The reports related to lifecycle events applicable to the outstanding SFTs;

iii.   All terminated and matured SFTs that are still subject to the requirement under Article 80(3) of EMIR, together with the relevant lifecycle events;

iv.   All errored SFTs that are still subject to the requirement under Article 80(3) of EMIR and cross-referred under Article 5(2) of SFTR together with the relevant lifecycle events;

v.   All rejected SFTs reported by the TR participant and that have not passed the data validations (only in the case of withdrawal of registration;

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 SFTs that are transferred; and

vii.   In the case of withdrawal of registration, all data on Rejections at file level and all data on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level.

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 SFTs 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 SFTs submitted on behalf of the non-reporting TR participant from the SFTs 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 SFTs of the TR participant or where the TR participant is an RSE, the SFTs of the clients of the TR participant that have confirmed to the TR participant their acceptance to transfer SFTs to another TR;

ii.   Any lifecycle events, such as modifications, valuations, etc. pertaining to the outstanding SFTs; and

iii.   The reporting log pertaining to the SFTs 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 the procedure contained in Annex III 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 SFTs 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 SFTs 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 SFT 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 SFTs reported to the TR, including the rejected ones, together with the relevant reporting log, and all data on rejections at file level and all data on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level. 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 IV - 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 500 or 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.

Guideline 30. In the case of withdrawal of registration, all data generated and recorded by the old TR on Rejections at file level and all data on reconciliation status for the purposes of the inter-TR reconciliation process at transaction level relating to a SFT subject to transfer should be transferred by the old TR to the new TR.

Guideline 31. In the case of withdrawal of registration, the new TR may charge fees to the TR participants for making available the transferred outstanding and non-outstanding SFTs to authorities.

Guideline 32. Prior to the data transfer, TRs should ensure that TR participants upgrade the outstanding SFTs that are subject to data transfer to the most up to date reporting requirement at the latest by 23:59:59 on the Thursday ahead of the weekend on which the porting takes place.

Guideline 33. TR participants should submit reports to the new TR pertaining to the outstanding SFTs that are subject to data transfer on the first business day following the data transfer.

Guideline 34. In order to facilitate the orderly substitution (including the transfer of data to other TRs and the redirection of reporting flows to other TRs, ESMA could allocate the data based on a calculation in proportion to the new TRs' market share for a specific reference date.

Guideline 35. In the case of withdrawal of registration, the new TR can store non-outstanding SFT data of varying data quality in separate databases/tables and/or in different formats in separate databases/tables. The new TR should respond to the queries of authorities on demand.

Guideline 36. The TR, whose registration will be withdrawn, should provide the new TR with the necessary technical information on the data that is to be transferred to facilitate the data transfer to and the subsequent storage by the new TR. The old TR should provide the new TR with the before-mentioned information in a timely manner to allow the new TR to prepare as necessary.

Guideline 37. Before and following the transfer of records of a TR participant, the TR participant should verify and confirm the correctness of the following aggregate information regarding the SFTs subject to transfer with the new and the old TR, in accordance with the timing detailed in Guideline 32 and Guideline 33, respectively:

i.   The total number of outstanding SFTs, where each SFT is identified by the unique combination of the SFTR fields "Reporting counterparty", "Other counterparty", and "Unique Transaction Identifier", together with the corresponding collateral on net basis, margin reports and re-use reports;

ii.   The total number of reports relating to lifecycle events of these SFTs for transaction, margin, and re-use reports, where

- Each loan and collateral report is identified by the unique combination of the SFTR fields "Reporting counterparty", "Other counterparty", and "Unique Transaction Identifier" or "Master agreement type"

- Each margin report is identified by the unique combination of the SFTR fields "Reporting counterparty", "Other counterparty", and "Portfolio code"

- Each re-use report is identified by the unique combination of the SFTR fields "Reporting counterparty", "Collateral component", "Re-invested cash currency", and "Funding sources currency";

iii.   The total number of records relating to terminated and matured SFTs (in case those are transferred) for loan and collateral, margin, and re-use reports

iv.   The total number of records relating to errored SFTs (in case those are transferred) for loan and collateral, margin, and re-use reports.

Guideline 38. Further to the provisions in Guideline 58 of the Guidelines on reporting under Article 4 and 12 of SFTR, in the case of an FC and a SME NFC that report to two different TRs for outstanding SFTs subject to transfer, the FC and the SME NFC should:

i.   For any outstanding SFTs where a FC and a SME NFC report to two different TRs, and the SME NFC decides not to report itself, the outstanding SFTs of the SME NFC should be transferred to the TR of the FC, unless the FC decides to become client of the TR o the SME NFC and report the SFTs concluded with the SME NFC to that TR.

ii.   Each time a NFC changes its status from non-SME NFC to SME NFC and decides not to report itself its SFTs, it should transfer its outstanding SFTs concluded with the FC to the TR of that FC as of the date of its changed status unless the FC decides to become client of the TR of the SME NFC and report the SFTs concluded with the SME NFC to that TR. Similarly, each time when NFC changes its status from SME NFC to non-SME NFC, the outstanding SFTs concluded with the FC should be transferred back to the TR of the NFC, unless the NFC decides to become client of the TR of the FC and report the SFTs concluded with the FC to that TR.

iii.   For the performance of data transfer, neither the NFC nor the FC (or any report submitting entity reporting on their behalf) are expected to onboard to the TRs of the other counterparty.

11 List of questions

Q1.   Do you agree with the analysis in paragraphs 9 to and the need to include the amendments in the Guidelines? Please detail the reasons for your response.

Q2.   What other issues related to transfer of data have been observed? Please elaborate on the reasons for your response.

Q3.   Do you agree with the inclusion of the on Reconciliation and Rejections data in the waterfall described in Guideline 15? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q4.   Do you agree with the transfer of data generated and recorded by the old TR on Rejections and Reconciliation to the new TR in case of withdrawal of registration? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q5.   Do you agree that the new TR may charge fees to the TR participants for the transfer of outstanding and non-outstanding derivatives? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q6.   Do you agree with the upgrade of outstanding derivatives that are subject to transfer to the most up to date reporting requirement latest by 23:59:59 on the Thursday ahead of the weekend on which the porting takes place? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q7.   Do you agree that TR participants should submit reports pertaining to the outstanding derivatives that are subject to data transfer to the new TR on the first business day following the data transfer? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q8.   Do you agree with the allocation of non-outstanding data not related to active TR participants to the new TR in proportion to its market share for a specific reference date? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q9.   Do you agree that the new TR can store non-outstanding derivative data of varying data quality and/or in different formats in separate databases/tables and should respond to the queries of authoriies on demand? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q10.   Do you agree that the old TR should provide the new TR with the necessary technical information on the data that is to be transferred to facilitate the data transfer to and the subsequent storage by the new TR in a timely manner? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q11.   Do you agree with confirmation of the aggregate information by the TR participants or the entities reporting on their behalf prior and after the data transfer? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q12.   Do you agree with that the inclusion of TR Q&A 54(d) in the guidelines? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q13. Should the requirement put forward in Guideline 38 be structured in a different manner? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q14. Do you agree with the proposal that only the old and the new TR should carry out the transfer of data? Please elaborate on the reasons for your response.

Q12. Do you agree with the proposal that the TRs should carry out the transfer of data in accordance with a mutually agreed migration plan? Please elaborate on the reasons for your response

Q15. Do you agree with the proposal that all TRs should use a standardised migration plan template mutually agreed across all TRs? Please elaborate on the reasons for your response.

Q16. Do you agree with the proposed information the migration plan should contain? What additional aspects should be specified? Please elaborate on the reasons for your response.

Q17. Do you agree with that TRs should use the XML format to transfer data to each other? Please elaborate on the reasons for your response.

Q18. Do you agree that TRs should use secure machine-to-machine protocols? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q19. Do you agree that TRs should use advanced encryption protocols and should exchange the relevant public information with their peers? Please elaborate on the reasons for your response.

Q20. Do you agree that TRs should calculate the number of SFTs and the number of corresponding lifecycle events, then request the participant's sign-off, and resolve all discrepancies at the earliest convenience? Please elaborate on the reasons for your response.

Q21. Do you agree that for every file generated and transferred, the old TR should generate and include a cryptographic checksum? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q22. Do you agree that the transfer of data requested by a TR participant should be carried out, as a general principle, on a non-working day? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q23. Do you agree that once the transfer of outstanding SFTs is confirmed by the new TR the old TR should not accept reports relating to the SFTs subject to the transfer to the new TR? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q24. Do you agree that the new TR should not accept lifecycle events and position data relating to the SFTs subject to transfer until the transfer of all the relevant files is completed? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q25. Do you agree that the new TR should make the data available to authorities, include the data subject to transfer in the relevant public and authority-only aggregations, and include the data in the inter-TR reconciliation process, once the transfer is completed? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q26.   Do you agree that the new TR should not charge any specific fees for the recordkeeping of non-outstanding SFTs? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q27.   Do you agree with the procedure set out in Guideline 15? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q28.   Do you agree with the specification of the process from the perspective of the old TR in Guideline 16? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q29.   Do you agree with the specification of the process from the perspective of the old TR in guideline 17? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q30.   Do you agree with the scope of data that should be transferred in the case of voluntary transfer of data as set out in Guideline 18? Please elaborate on the reasons for your response.

Q29.   Do you agree with the process described in Annex III? Which other aspects need to be considered? Please elaborate on the reasons for your response

Q31.   Do you agree with the communications foreseen in Guideline 20? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q32.   Do you agree with the handling of data by the old TR as described in Guideline 21? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q33.   Do you agree that any costs charged should be cost-related, non-discriminatory and included in the fee schedule of the relevant TRs? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q34.   Do you agree that in the case of withdrawal of registration of a TR, the transfer of data should comprise all the details of SFTs reported to the TR, including the rejected ones, together with the relevant reporting log, and all data on Rejections at file level and all data on Reconciliation status for the purposes of the inter-TR Reconciliation process at transaction level? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q35.   Do you agree that 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? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q36.   Do you agree that where the data transfer is related to the withdrawal of registration of a TR, the procedure included in Annex IV - Procedure for migration in case of withdrawal of registration should be followed by the old TR and the new TR? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q37.   Do you agree agree that 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? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q38.   Do you agree that 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? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q39.   Do you agree that 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? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q40.   Do you agree that, in the case of withdrawal of registration, none of the TRs should charge fees for the transfer of data? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q41.   Do you agree with the transfer of data generated and recorded by the old TR on Rejections and Reconciliation to the new TR in case of withdrawal of registration? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q42.   Do you agree with that the new TR may charge fees to the TR participants for the transfer of outstanding and non-outstanding SFTs? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q43.   Do you agree that costs should adhere to fee requirements and be justified by the TR? Which other aspects related to costs in this regard need to be considered? Please elaborate on the reasons for your response.

Q44.   Do you agree with the upgrade of outstanding SFTs that are subject to transfer to the most up to date reporting requirement latest by 23:59:59 on the Thursday ahead of the weekend on which the porting takes place? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q45.   Do you agree that TR participants should submit reports pertaining to the outstanding SFTs that are subject to data transfer, which should be submitted no later than 23:59:59 on the Thursday ahead of the weekend on which the porting takes place, to the new TR on the first business day following the data transfer? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q46.   Do you agree with the allocation of non-outstanding data not related to active TR participants to the new TR in proportion to its market share for a specific reference date? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q47.   Do you agree that the new TR can store non-outstanding SFT data of varying data quality and/or in different formats in separate databases/tables and should respond to the queries of authoriies on demand? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q48.   Do you agree that the old TR should provide the new TR with the necessary technical information on the data that is to be transferred to facilitate the data transfer to and the subsequent storage by the new TR in a timely manner? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q49.   Do you agree with confirmation of the aggregate information by the TR participants or the entities reporting on their behalf prior and after the data transfer? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q50.   Do you agree with the inclusion of the cases where an FC and a FC- report outstanding SFTs subject to transfer to two different TRs in the Guidelines? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q51.   Should the requirement put forward in Guideline 37 be structured in a different manner? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q52.   Do you agree with the procedure described in Annex III? Which other aspects need to be considered? Please elaborate on the reasons for your response.

Q53.   Do you agree with the procedure described in Annex IV? Which other aspects need to be considered? Please elaborate on the reasons for your response.