|  |
| --- |
| 24 May 2021 |

|  |
| --- |
| Reply form for the Consultation Paper on the Guidelines on transfer of data between Trade Repositories under EMIR and SFTR |
|  |

|  |
| --- |
| Date: 24 May 2021 |

Responding to this paper

ESMA invites comments on all matters in this paper and in particular on the specific questions summarised in Section 10 in the Consultation Paper on the Guidelines on transfer of data between Trade Repositories under EMIR and SFTR published on the ESMA website.

*Instructions*

Please note that, in order to facilitate the analysis of the large number of responses expected, you are requested to use this file to send your response to ESMA so as to allow us to process it properly. Therefore, ESMA will only be able to consider responses which follow the instructions described below:

* use this form and send your responses in Word format (pdf documents will not be considered except for annexes);
* do not remove the tags of type <ESMA\_QUESTION\_PORT\_1> - i.e. the response to one question has to be framed by the 2 tags corresponding to the question; and
* if you do not have a response to a question, do not delete it and leave the text “TYPE YOUR TEXT HERE” between the tags.

Responses 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.

**Naming protocol**

In order to facilitate the handling of stakeholders’ responses please save your document using the following format:

ESMA\_PORT\_NAMEOFCOMPANY\_NAMEOFDOCUMENT.

e.g. if the respondent were ESMA, the name of the reply form would be:

ESMA\_PORT\_ESMA\_REPLYFORM or

ESMA\_PORT\_ANNEX1

***Deadline***

Responses must reach us by 23 June 2021.

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

***Publication of responses***

All contributions received will be published following the close of the consultation, unless you request otherwise. Please clearly and prominently indicate in your submission any part you do not wish to be 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](http://www.esma.europa.eu) under the headings ‘Legal notice’ and ‘Data protection’.

# General information about respondent

|  |  |
| --- | --- |
| Name of the company / organisation | Click here to enter text. |
| Activity | Choose an item. |
| Are you representing an association? |  |
| Country/Region | Choose an item. |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_PORT\_1>

TYPE YOUR TEXT HERE

<ESMA\_COMMENT\_PORT\_1>

1. **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.**

<ESMA\_QUESTION\_PORT\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_1>

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

<ESMA\_QUESTION\_PORT\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_2>

1. **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.**

<ESMA\_QUESTION\_PORT\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_3>

1. **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.**

<ESMA\_QUESTION\_PORT\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_4>

1. **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.**

<ESMA\_QUESTION\_PORT\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_5>

1. **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.**

<ESMA\_QUESTION\_PORT\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_6>

1. **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.**

<ESMA\_QUESTION\_PORT\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_7>

1. **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.**

<ESMA\_QUESTION\_PORT\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_8>

1. **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.**

<ESMA\_QUESTION\_PORT\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_9>

1. **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.**

<ESMA\_QUESTION\_PORT\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_10>

1. **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.**

<ESMA\_QUESTION\_PORT\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_11>

1. **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.**

<ESMA\_QUESTION\_PORT\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_12>

1. **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.**

<ESMA\_QUESTION\_PORT\_13>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_13>

1. **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.**

<ESMA\_QUESTION\_PORT\_14>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_14>

1. **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.**

<ESMA\_QUESTION\_PORT\_15>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_15>

1. **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.**

<ESMA\_QUESTION\_PORT\_16>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_16>

1. **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.**

<ESMA\_QUESTION\_PORT\_17>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_17>

1. **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.**

<ESMA\_QUESTION\_PORT\_18>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_18>

1. **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.**

<ESMA\_QUESTION\_PORT\_19>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_19>

1. **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.**

<ESMA\_QUESTION\_PORT\_20>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_20>

1. **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.**

<ESMA\_QUESTION\_PORT\_21>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_21>

1. **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.**

<ESMA\_QUESTION\_PORT\_22>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_22>

1. **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.**

<ESMA\_QUESTION\_PORT\_23>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_23>

1. **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.**

<ESMA\_QUESTION\_PORT\_24>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_24>

1. **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.**

<ESMA\_QUESTION\_PORT\_25>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_25>

1. **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.**

<ESMA\_QUESTION\_PORT\_26>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_26>

1. **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.**

<ESMA\_QUESTION\_PORT\_27>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_27>

1. **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.**

<ESMA\_QUESTION\_PORT\_28>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_28>

1. **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.**

<ESMA\_QUESTION\_PORT\_29>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_29>

1. **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.**

<ESMA\_QUESTION\_PORT\_30>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_30>

1. **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.**

<ESMA\_QUESTION\_PORT\_31>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_31>

1. **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.**

<ESMA\_QUESTION\_PORT\_32>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_32>

1. **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.**

<ESMA\_QUESTION\_PORT\_33>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_33>

1. **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.**

<ESMA\_QUESTION\_PORT\_34>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_34>

1. **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.**

<ESMA\_QUESTION\_PORT\_35>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_35>

1. **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.**

<ESMA\_QUESTION\_PORT\_36>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_36>

1. **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.**

<ESMA\_QUESTION\_PORT\_37>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_37>

1. **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.**

<ESMA\_QUESTION\_PORT\_38>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_38>

1. **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.**

<ESMA\_QUESTION\_PORT\_39>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_39>

1. **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.**

<ESMA\_QUESTION\_PORT\_40>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_40>

1. **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.**

<ESMA\_QUESTION\_PORT\_41>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_41>

1. **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.**

<ESMA\_QUESTION\_PORT\_42>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_42>

1. **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.**

<ESMA\_QUESTION\_PORT\_43>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_43>

1. **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.**

<ESMA\_QUESTION\_PORT\_44>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_44>

1. **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.**

<ESMA\_QUESTION\_PORT\_45>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_45>

1. **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.**

<ESMA\_QUESTION\_PORT\_46>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_46>

1. **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.**

<ESMA\_QUESTION\_PORT\_47>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_47>

1. **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.**

<ESMA\_QUESTION\_PORT\_48>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_48>

1. **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.**

<ESMA\_QUESTION\_PORT\_49>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_49>

1. **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.**

<ESMA\_QUESTION\_PORT\_50>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_50>

1. **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.**

<ESMA\_QUESTION\_PORT\_51>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_51>

1. **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.**

<ESMA\_QUESTION\_PORT\_52>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_52>

1. **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.**

<ESMA\_QUESTION\_PORT\_53>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_53>

1. **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.**

<ESMA\_QUESTION\_PORT\_54>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_54>

1. [**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.**](#_Toc72505760)

<ESMA\_QUESTION\_PORT\_55>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_PORT\_55>