|  |
| --- |
| 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 | DDRIE |
| Activity | Other Financial service providers |
| Are you representing an association? |[ ]
| Country/Region | Europe |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_PORT\_1>

We believe that the guidelines applying SFTR transfers and EMIR transfers should be the same except from adjustments arising from the nature of the transactions under SFTR.

We would like to stress that the Guidelines address registered TRs, so a TR’s registration should not be withdrawn until the transfers have completed successfully. In reality, the situation in which a withdrawing TR is left in a legal limbo should be avoided. We believe that the necessary measures should be taken to provide for formerly registered TRs or the withdrawal of registration made contingent on the success of the transfer. Given the complexity and quantity of data, if there are tight timelines after which the Old TR will no longer be registered and issues experienced with the transfers, ceasing to be a TR would halt the process and render the Guidelines simply inapplicable.

We further believe that the Guidelines should not require a TR to accept a new TR Participant as a client or data reported for counterparties which would be rejected by the TR under its policies and procedures including as regards anti-money laundering and terrorist financing activities, to be clear this precludes any open positions forming part of the backstop.

<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>

Yes, we believe the broad objective is the alignment of EMIR and SFTR frameworks for transfers.

<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>

We have observed several issues:

1. Delays in transfers due to validation rules not allowing participants to update records to latest validation rules.

2. TRs have been applying different ways of understanding the latest validation rules with some applying on from RTS 2 go live in November 2017, while others taking the latest that are applicable at the time of the portability event.

3. Clients porting trades themselves and using an ETRM message, which does not break the reconciliation status, therefore the trades at the new TR could potentially not pair again.

4. Issues between the XML schema and Validation rules create DQ issues in reporting to NCAs.

5. Uncertainty as to which TR is responsible for the data during the transfer (it should remain Old TR) and if the transfer is not complete before withdrawal happens (e.g. it continues after the deadline due to issues or delay).

<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>

We believe that all points under the waterfall from ii) onwards should apply only in a withdrawal situation. If TRs are required to send data, the waterfall logic should the situation at the time and how the TRs agree to move the data.

<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>

The operational element of transferring rejection statistics could create huge challenges for TRs given the lack of standardised or agreed format for rejection data or transferring it/making it accessible to another party.

All TRs currently have differing rejection reasons stored in a many different ways; thus a TR trying to understand and extract any value from this data would find it extremely challenging. Reconciliation data must be the latest snapshot of stats at the point of porting otherwise this data transfer could run for weeks between TRs.

For reconciliation, we believe TRs should transfer the latest reconciliation statistics reports for EMIR as this includes all historical statistics and use the current FR8 template that provides the top break reasons, which can be stored offline. The report should then be run by the TR withdrawing once all Open trades have been transferred to the new TRs, so the report only shows non-outstanding trades.

We would like to ask ESMA to define which reports TRs should be used for the statistics files so these could be easily reviewed and extracted if an Authority asks for the data.

In DDRIE’s view, a rejected message is not Art. 4 or Art. 9 data meaning it has failed to meet the requirements of EMIR. However, we understand that ESMA prefers TRs have the ability to show by audit trail the reasons why a message was rejected. We would seek clarity on whether this would require the TR to keep the whole message and the rejection or just the rejection, if sufficiently detailed.

<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>

Yes. To begin with, TRs have not yet recovered the costs of data storage for 10 years for data they have not received from onboarded entities. Depending on the size of the TR, more storage will need to be purchased and the cost of ongoing maintenance of the data is gradually increasing.

We would like more clarity on the expectation for the non-outstanding data as well. We firmly believe more responsibility and cost should be borne by the Old TR, and perhaps ESMA should consider adding a withdrawal fee in this regard.

<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>

Yes. If this is not achieved, the TRs will have to cancel the portability event and reschedule for when the data can actually be updated.

<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>

Yes but only if they are required to do so for a lifecycle event.

<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>

We agree in principle with the allocation but would like further certainty on the allocations: we would prefer that the Guidelines were explicit about it rather than giving examples of how ESMA might do it. It would provide even greater certainty to the industry and to ESMA if the authority described in Guideline 34 were established in regulation. There is a legitimate expectation that the possibilities (which all have the potential to negatively impact the remaining TRs) should all be set out in advance and be exhaustive rather than examples and for instance.

<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>

Yes, we would agree with the storage dimension but we would disagree on the necessity of responding to queries on demand. Cost and time should be taken into account since responding to queries takes significant time and redirects resources. If a necessity to respond to queries arises, the TR should definitely be able to charge a small fee for this query. We believe that, in principle, TR Participant clients of a surviving TR should not be subsidising or bearing the cost arising from the withdrawing TR and its Participants other than sharing the cost of data storage between existing TRs where a TR withdraws from the market. Fees should be chargeable and cost-related to the requestor; this is because surviving TR has taken on data it would otherwise not have had to and will incur cost and expense which does not belong to the surviving TR or its clients. TRs store data in data files and should be able to return those data files, , the TR does not ingest and report on that data.

Moreover, ESMA should consider clarifying what is the exact meaning of ‘varying data quality’.

<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>

We believe that further clarity is necessary. Data needs to be converted/transferred in a format that are identifiable per counterparty. All necessary information from the Old TR to the new TR should be made available by the old TR in a format that facilitates the transfer of date and that eventually helps the new TR and - the authorities to ‘’read’’ the data.

<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>

We would generally agree with this Guideline. Currently, the total number of Outbound positions are confirmed by Client/other TR as of the date the report is generated & is signed off via the Portability Form by the client. The day of the porting the client will confirm final population prior to processing.

However, Point ii) should be updated to state “in case those are transferred”. The lifecycle events should only be transferred in a withdrawal of TR process. The TR participant should then review all open records and verify they are the correct records to be migrated.

As regards the number, they should be indeed be agreed upon by the participant on the portability day to old and new TR.

<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>

Yes, we should add that it might be helpful to have the TR Participant give notice to the TRs, not just the other reporting counterparty, in question of their decision to report / not report based on a change in status.

<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>

No

<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>

We would disagree. The introduction of portability action types to allow reporting counterparties to move records themselves would be the prefered option. This option would facilitate the cleanest possible data transfer with the reporting counterparties taking responsibility for their own trade population.

In fact, 5.1.1 (47) suggests that the Old TR and New TR should reject cancel and error messages where the TR Participant is using them to affect a transfer between TRs and that the TRs should block these messages. The Old and New TRs is not able to not know the purpose of such cancel or error messages or identify these from any other and therefore cannot block them.

<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>

Yes, ESMA should also provide detailed guidance on specific action types and expected controls. With regards to timeliness, currently the TRs work this out based on TR and client availability to support the porting requests, given the multiple steps arranging porting processing can take up to 2 weeks. In addition, porting is only supported 2 weekends every month. Regarding controls, we have created check out controls/sanity checks to ensure data transfers are complete and accurate.

<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>

Yes, we agree with this guideline. Further clarification is needed on specific action types, SFTs and controls

<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>

No, points iv), v) and vi) should be standardised in an agreement between TRs and not have to be replicated on all migration plans.

<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>

Yes

<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>

Yes. All file based communication transmissions between TRs should use SSH File Transport Protocols for file access, file transfer and file management. This ensures that all communications of confidential data between TRs are secure and encrypted end-to-end. Additionally, SFTP employs a hashing algorithm (SHA-2) that ensures data integrity is maintained from source to target. Since SFTP requires either a user ID / password combination and/or SSH keys to authenticate a policy/process need to be defined for the initial exchange and password / key lifecycle management between the TRs. The policy and process should ensure adherence to security best practices for password rotation and SSH key regeneration.

While the SFTP protocol allows for either user ID / password combination and/or SSH keys, the sole use of SSH keys would be advisable due to the additional overhead to rotate passwords without any additional security benefit. Other aspects that need to be considered are:

- SFTP doesn’t stop the unauthorized transfer of data. Upstream confidentiality controls need to be implemented to ensure that data is only transmitted to TRs that are meant to receive it.

- SFTP does not include a centralized auditable log or documentation – this needs to be maintained upstream in the appropriate application layer.

- SFTP is a transport mechanism and does not provide encryption at rest.

<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>

Yes. As per the answer to Q19, TRs should use SSH File Transport Protocols for all inter-TR file exchange and management. The SFTP protocol allows for varying encryption and hashing standards to be configured. It is advisable that SFTP is configured to use the latest and strongest encryption and hashing standards i.e. AES-256 and the SHA-2 family. Public-key cryptography is the current recommended best practice to securely exchange information between two parties over either secure (dedicated lines) or insecure (internet) communications. Making the public part of the key available to peers (other TRs) will facilitate establishing secure and encrypted file exchange between the TRs.

<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>

Whilst the number of outstanding SFTs should be clarified with the TR Participant ahead of the porting event, this may prove challenging as the number of outstanding SFTs will be a moving target up until the end of trading on the day before the porting event (which is likely to be a weekend). A better approach would be to clarify and verify the approximate number prior to the porting event and the final number post the porting event (if this cannot be clarified/verified over the weekend).

<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>

As outlined in Q19, if TRs implement the SSH File Transfer Protocol, we would not need an additional file-level cryptographic checksum. The SFTP protocol does a checksum on each data packet as it is sent, and includes that checksum along with that packet and because this is done on every packet, there is a very granular integrity checking that is accomplished as part of the transfer. The successful completion of a secure file transfer means that it has been transferred integrally and there is no need for an additional check.

<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>

Yes, as this allows for all parties to agree on the data transfer. Not all TRs have the same operational coverage. Currently the transfer of data is done during the weekend only, which has posed, however, a challenge due to limited resource availability, leading TRs to add costs to cover porting processing specifically. We believe that the process of data porting to take place after hours during weekdays (downtimes) subject to an agreement and capability from other TRs.

<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>

Yes, this could be enforced by using portability action types.

<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>

Yes, all data must be ingested ahead of the reporting channels being opened up so as not to break any sequences of reporting.

<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>

Yes. We would like ESMA to clarify that the data transferred should appear in the relevant activity reports for that reporting period.

<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>

The question asks the reverse from the guideline. We agree with Guideline 14 that suggests that the old TR should not charge any costs as the cost is covered within the new TR current pricing.In fact, pricing should not be part of the Guidelines, as TRs can make their own commercial decision on what pricing.

<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>

All points under the waterfall from ii) down should only be considered in a withdrawal situation.

If TRs were to transmit this data, then it would have to has to be included in the logic, but should depend on the situation at the time and how the TRs agree to move the data.

<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>

No. The old TR should not determine whether all or some of the SFTs should be transferred as this should come from the Reporting Counterparties or Entities Responsible for Reporting.

<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>

Yes. However, this will require a datafix and concice guidance from ESMA on which entity that should be populated in the report submitting entity and entity responsible for reporting fields.

<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>

ESMA should provide guidance on the format and data required within the Reporting Log.

<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>

No. Limiting the migration/processing of the porting to 5 business days is not currently feasible. Porting dates need to be mutually agreed by three parties (2 TRs and Client) as well as defining and reviewing the population of trades to port. Review of the form and having three parties sign off also takes significant time. Finally, porting processing dates are only supported two times a month. We recommend at least two weeks notification of a porting AFTER the date has been confirmed.

We have made clear our views on lifecycle events transfer in the case of non-withdrawals above.

<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>

We agree as this is what is currently happening for porting under EMIR.

<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>

Yes

<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>

Yes

<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>

No. We would disagree on the necessity to include rejected trades of SFTs. Storage and then report based on the LEI should suffice for inter TR-TR reconciliation purposes.

<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>

Yes. The Old TR must notify ESMA and the other TRs.

<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>

Yes we agree with the process outlined in Annex IV, and we have noted in our response in Guideline 15 that the order of data transfer (part D. Verification of data transfer) only applies to this withdrawal scenario, from ii) down. Other considerations are the cost associated to physically storing the data and code associated to integrate Trace reporting capabilities.

Currently the withdrawal data are stored and indexed at a basic level, and as we have previously communicated with ESMA, the infrastructure and support costs over a ten year period estimated at 1.4m for basic level, which gives us the ability to search by LEI and return all records. If we are expected to ingest the withdrawal and backstop data there is an associated cost to report on that data at a detailed level. That estimate does not include the additional logs and new requirements introduced under v. to vii. for the duration of the recordkeeping mandate.

<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>

Yes. We believe the Old TR should notify ESMA an relevant NCAs as soon as possible, and then ESMA, once it has reviewed the wind-down plan, it should share it with other TR participants for transparency purposes and formally notify all other TR participants. The timeframes of 6-9 months should start then. As noted above, however, the exact timing of withdrawal should not leave a withdrawing TR in legal limbo (i.e. withdrawal should not occur while transfers are occurring or of there are delays outside of the withdrawing TR’s control).

<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>

Yes

<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>

We believe that the withdrawing TR could certainly do this and therefore no (as defined) Art 4 or 9 data remains with the TR. The exact scope of what is to be deleted should be confirmed: if the TR is not entitled to retain a copy as part of its business records of certain data (subject to ongoing confidentiality and use restrictions) then it should be clear what are the responsibilities to the authorities in respect of this data under EMIR . Guidelines may wish to make clear the expunging of data here does not include TR Participant data (which would be dealt with under their contracts with the TR).

<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>

No. The remaining TR should be able to charge for the data transferred in. The fees should be at cost to cover the extra storage and maintenance of the records. If there is no charge, the viability and economic health of others TRs is truly affected.

<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>

Yes

<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>

Yes

<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>

Yes

<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>

Yes

<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>

Yes

<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>

Yes

<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>

Yes

<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>

Yes

<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>

Agree with the requirement to confirm prior and post porting of data by the TR participant. Details on scenarios should be defined by Product.

<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>

Yes

<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>

No

<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>