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| 24 May 2021 |

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

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| --- | --- |
| Name of the company / organisation | REGIS-TR |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Luxembourg |

# Introduction

Please make your introductory comments below, if any:

<ESMA\_COMMENT\_PORT\_1>

REGIS-TR is a European Trade Repository (TR) that centrally collects and maintains the records of transactions reported by market participants under EMIR[[1]](#footnote-2) and SFTR[[2]](#footnote-3). REGIS-TR appreciates the opportunity to participate in this consultation paper on Guidelines on transfer of data between Trade Repositories under EMIR and SFTR.

Due to the relevance of transfer of data between TRs, and in light of ESMA’s approach with other guidelines, REGIS-TR considers that it would be positive that ESMA opens up dialogue with TRs and continues gathering input in relation to this matter. It would also be appreciated that ESMA, acknowledging the times in which the consultation paper has taken place, considers any additional input that might be identified after the submission of this response form that have not been identified in advance with the aim to benefit the outcome of the Final Report guidelines.

<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. It is indeed necessary to amend the current EMIR Guidelines, firstly, to align them with the current Portability process, e.g., aspects related to data quality, and, secondly, to address shortcomings identified since the entry into force of the initial Guidelines. Both points are paramount to increase the efficiency of the transfer while ensuring high standards of data quality.

The inclusion of SFTR Guidelines will also benefit the transfer of data among TRs.

<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>

No further issues have been observed besides the ones raised throughout the response file.

<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>

No. At the time being, in case of voluntary porting, TRs only transfer the latest state of outstanding derivatives, whereas the new Guidelines 15 and 23 foresee the transfer of all data – except from Reconciliation and Rejection – in such Portability scenario. Including the lifecycle events, the errored, rejected, non-outstanding derivatives, and the reporting log, would significantly increase the complexity, the effort required, and, thus, the cost to move from one TR to another. This would ultimately hinder the consecution of one of the main goals of the Guidelines: remove the barriers to move from one TR to another.

In addition, given the incapacity to upgrade to the latest Data Quality Category (DQC) all data except from the latest state of outstanding derivative contracts, such additional data should be transferred in less restrictive formats (e.g. proprietary CSV files), and in a wide variety of data quality categories, which would have an impact on the capacity of the TRs to ensure data quality throughout the process. Ultimately this would have an impact on the usability of such data by Authorities.

Data availability is an additional point to be considered. Any data other than the latest state of outstanding derivative contracts would have less requirements related to data access in the ‘New TR’ than in the old one. In the ‘Old TR’, data such as lifecycle events can be queried by Authorities using standardized channels such as TRACE. That would not be the case should that data be transferred to a ‘New TR’ and stored in off-line databases.

The shortcomings mentioned above can be justified in case of TR license withdrawal, given that the ‘Old TR’ would cease its operations. However, in case of voluntary porting, where both the old and the new TR remain operative, the status quo (i.e. transfer of latest state in the highest DQC) would result on: (1) increased flexibility on moving from one TR to another; (2) reduced operational costs; (3) safeguard of data quality; (4) maintained level of data availability to Authorities.

Because of these reasons, Guideline 15 should be rephrased to refer to registration withdrawal for all cases, not only the Reconciliation and Rejections data.

The order defined in the waterfall approach seems appropriate.

<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>

No. Further technical implementation requirements are essential to transfer this data. Paragraph 20 describes the need to transfer, in case of license withdrawal, statistics and data on reconciliation and rejection, as they provide useful information to Authorities. However, such spirit is unclear from Guidelines 23 and 30, which refer to “rejection at file level and all data on reconciliation status” and do not mention any statistical information.

With regards to reconciliation data, Guideline 30 refers to the transfer of data on “reconciliation status for the purposes of the Inter-TR reconciliation process at transaction level”. This guideline could be interpreted as a requirement to transfer the latest state of derivative contracts, which include the reconciliation status. This interpretation, however, might not be aligned with the spirit of paragraph 20.

In addition, it is unclear how “rejection at file level” should be understood, as it could be interpreted as the actual files submitted by entities that, for instance, do not comply with format restrictions and are therefore rejected as a whole. Such interpretation, however, might not be aligned with paragraph 20, given the arguable usability of corrupted files.

Because of the above reasons, defining the scope of the reconciliation and rejection data to be transferred would benefit the common interpretation of these new requirements.

<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>

It seems appropriate to give new TRs the capacity to receive cost-related fees also after a withdrawal of registration. ESMA could be in a position to define if those fees should be charged to the ‘Old TR’ or to the TR participants. It should be noted that second option would only cover the costs associated to active TR participants, i.e., the costs of receiving, maintaining, giving access and safekeeping data from non active TR participants would need to be assumed by the ‘New TR’, receiving no cost-related fees in return.

<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>

The following aspects should be considered in the context of Guideline 32: (1) definition and identification of data quality; (2) assumption that all porting events take place during weekends; (3) roles and responsibilities on the process to upgrade the data.

To ensure common interpretation, there is a need to further define the concept of Data Quality Category as it could be understood as: (a) data that complies with the latest RTS standards, or (b) data that complies with the latest validation rules. Given that changes in the validation rules are significantly more frequent than changes in the RTS standards, option (b) would imply additional burden on both the TR Participant and the ‘Old TR’, as the volume of data subject to upgrade would be significantly larger. Given that the compliance with the latest RTS standards ensures a sufficient degree of data quality and also allows the generation and delivery of a correct XML file, option (a) seems to be the most pragmatic one.

In relation to the cut-off time, REGIS-TR would like to point out that Guideline 32 does not cover all potential scenarios presented in Guideline 10, which foresees the possibility of executing the transfer during a working day. Although Portability events normally take place during non-working days, it is preferrable to maintain the flexibility given by Guideline 10. Guideline 32 should therefore be updated and determine the cut-off time using relative time parameters.

With regards to the roles and responsibilities, Guideline 32 seems to allocate the TRs the responsibility of ensuring that TR participants upgrade the outstanding derivatives to the latest data quality category. However, it should be noted that the ‘Old TR’ can only act as a facilitator to that process.

<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>

From Guideline 33, it is unclear what would be expected behaviour of the TRs under these circumstances. In case the TR Participant submits, on the day preceding the transfer, reports pertaining to the outstanding derivatives, the ‘Old TR’ could be expected to: (1) reject such reports; (2) accept such reports and transfer them to the ‘New TR’; (3) accept such reports but do not transfer them to the ‘New TR’.

In order to follow approach (1), TRs would need to receive specific guidance from ESMA to be able to reject data reported by counterparties in line with EMIR requirements.

Following approach (2), the relevance of Guideline 33 would be very limited, and it would fail to comply with the objective set out in Paragraph 29: allow for the final sign-off to be done on the Friday before the porting weekend.

Approach (3) may lead to discrepancies on the data made available to Authorities, as they could receive different trade state information from the ‘Old TR’ and the ‘New TR’. If, for instance, the TR participant submits a modification message on the day preceding the transfer, and does not re-submit it the day following the transfer to the ‘New TR’, then the Authority would receive the following sequence of information:

* On Friday, the ‘Old TR’ would submit to the Authority the original, unmodified derivative contract, reflecting its status as of Thursday end of day.
* On Saturday, the ‘Old TR’ would submit to the Authority the modified derivative contract.
* On Tuesday, the ‘New TR’ would submit to the Authority the original, unmodified derivative contract.

It should be noted that the reconciliation process would be impacted in a similar manner.

Another implication of Guideline 33 is the fact that Authorities would receive the reports submitted on the first day following the data transfer as late reporting.

To resolve the shortcomings referred to above, Guidelines 32 and 33 could be updated to reflect the current practice:

* During the planning phase, the ‘Old TR’ and the TR participant agree on the tentative volumes to be transferred. Such volumes also allow both TRs and the TR Participant to agree on a date for the transfer.

On the transfer day, the ‘Old TR’ notify the TR participant and the ‘New TR’ on the exact number of derivative contracts to be transferred. Then, the ‘New TR’ notifies the TR participant and the ‘Old TR’ about the exact number of derivative contracts successfully transferred.

<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>

Yes, it seems appropriate.

In addition to the proportion of data to be allocated to each TR, previous experiences have proved that timeline is paramount. In that regard, the transfer of non-outstanding data related to non-active TR participants should only be initiated once the transfer of all the data corresponding to the active TR participants is complete.

Another aspect to be considered is that the reception of this data, the record-keeping and the maintenance of data received under this scenario, and the subsequent management of Authorities queries results in a non-negligible cost for TRs that is not recovered.

<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, it seems appropriate that all data apart from the latest state of the outstanding derivative contracts is stored in separate databased and queried upon Authorities demand.

<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>

The provision of technical information is only necessary if such data is transferred in a non-standardized manner. The definition by ESMA of a common CSV format, containing only regulatory fields would facilitate data transfer, subsequent storage, and provision of data access to Authorities. In addition, it would better preserve the quality of the data hold in the ‘Old TR’ and remove risks associated to potential different interpretations made by each TR on the technical information.

<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>

In line with the response provided for Questions 6-7 (Guideline 32 and Guideline 33), there are several shortcomings associated to the timeline proposed. In case that it is finally incorporated in the Guidelines, then it would be possible for the TR Participant to verify and confirm the correctness of the data ahead of the transfer.

While it can be reasonable for the TR Participant to confirm of the aggregate information regarding the total number of outstanding derivatives, the confirmation of items (ii) to (iv) listed in Guideline 37 may be challenging for TR Participants. Such difficulty would increase with time and volumes, which may lead to unnecessarily complex and costly data transfers.

In addition, the different record-keeping requirements that TR Participants and TRs have (e.g., five and ten years after the termination of the derivative contracts, respectively) will lead to the incapacity for TR Participants to confirm the aggregate information in many circumstances.

This Guideline should also foresee the expected procedure in case of data transfer from non-active TR Participants in case of license withdrawal.

<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>

No objection on the inclusion of TR Q&A 54(d) in the guidelines. Another aspect to be considered in the context of Guideline 38 is that, given the usually low volumes and the potential frequency of the transfer, it may be reasonable to reduce the administrative burden associated to these scenarios.

<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, the requirements are clear and sufficient.

<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>

Yes, the transfer should be carried out by both TRs. However, it is unclear from Guideline 1 what specific measures are expected from either the new or the old TRs to not accept SFT data related to the transfer.

Ahead of the Portability, the TR Participant needs to set-up a contractual relationship with the ´New TR´ and be able to report to that TR. However, the ‘New TR’ would have no capacity to determine if a new SFT submitted by such TR Participant relates to new reports or to reports subject to be transferred.

Similarly, upon reception of action types “ETRM” and “EROR”, the ‘Old TR’ would not have sufficient information to determine if such lifecycle events are submitted due to actual early terminations or errors in the reporting or as shortcuts to portability.

With the information available at the time of replying to the Consultation Paper, TRs are not able to comply with Guideline 1. Alternatively, the responsibility of ensuring that the SFTs subject to transfer are not cancelled and reinstructed could be transferred to the TR Participant.

<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. A mutually agreed action plan is necessary to ensure the timely, complete and an accurate transfer of data.

<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.The experience of EMIR validates the need of a standardized migration plan.

<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>

Yes. The proposed information is aligned with the one defined agreed among TRs for EMIR, and further adapted to SFTR.

However, REGIS-TR would like to note that the technical aspects of the porting specified under Guideline 4 point iv., v., and vi., are not part of the Inter-TR portability form to be filled by the 3 parties but are specified and described in the Inter-TR technical specification documentation as these are implementation requirements.

<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, when possible, data should be transferred using ISO20022 format. However, the benefits of using a standardized template as described in Paragraph 53 are also applicable to legacy data that cannot be transferred using ISO20022. For that reason, any data other than the latest state of outstanding SFTs that does not comply with the XML format should be transferred using standardized CSV formats.

The general rule of, when possible, data should be transferred using ISO20022 format, should also be valid for rejected SFTs. SFTs that meet the XML format standards but fail to pass logical or business validations should be transferred in XML.

It should also be noted that Guideline 5 does not foresee all types of data that could, potentially, be transferred using CSV format if it does not meet the latest ISO20022 standards. For instance, there is no reference to the transfer of lifecycle events, rejection and reconciliation data, reporting log, etc.

<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. No further considerations.

<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. No further considerations.

<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>

Yes, the ‘Old TR’ should calculate these figures, and the TR Participant verify and confirm them. However, the overall timeline is unclear, especially when reading Guideline 8 along with Guideline 37. According to Guideline 8, 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. According to Guideline 37, the scope of the data to be verified and confirmed ahead of the transferred also covers numbers related to terminated and matured SFTs or errored SFTs. As stated in Paragraph 61, the verification of such information might not be possible in all cases.

With regards to the timeline, Guideline 8 foresees the resolution of discrepancies at the earliest convenience and no later than in five working days. However, the timeline introduced by Guidelines 32 and 33 foresees the sign-off of the numbers on the day preceding the transfer.

In both cases (scope of data to be signed-off and timeline), REGIS-TR understands that Guideline 8 should prevail over Guidelines 32, 33 and 37, in line with the reasons given for Questions 7 and 11 for EMIR.

However, in terms of timeline, it would be convenient to have additional clarity in which the numbers are calculated by the ‘Old TR’ and, therefore, the initiation of the five working days timespan given to resolve any discrepancies.

Finally, it should be noted that Paragraph 62 may be contradictory with Guideline 38, as the transfer of NFC data is indeed an example of partial portability.

<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>

Yes. No further considerations.

<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. However, it does not seem to be covered in all scenarios (e.g., porting on weekdays) by the timeline described in Guidelines 32 and 33. For the shake of clarity, it should be noted that Guideline 10 should prevail, as it would also provide guidelines for those circumstances in which it is the most convenient set-up for all the stakeholders impacted by the transfer (Old TR, New TR and TR Participant).

<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. Once the ‘New TR’ has confirmed the successful transfer of data, the ‘Old TR’ should not accept lifecycle events related to the SFTs transferred. It should be noted that, once the ported records are moved out from the online systems, the ‘Old TR’ would be able to prevent the reporting of subsequent lifecycle events but not the incorrect re-submission of the initial record (e.g., action type ‘NEW’).

However, Paragraph 65 refers to the communication mentioned in Paragraph 79 which is not related to the confirmation of the successful portability event, but to the preliminary communications and agreement on the transfer plan. Should that be the spirit of Guideline 11, then the TR Participant would not be able to submit any lifecycle event between the date of the migration plan agreement and the actual day of the execution. Otherwise, references to Paragraph 79 should be reviewed.

<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>

In line with the response given to Question 1 it is unclear which specific measures are expected from the ‘New TR’ to not accept lifecycle events related to the transfer.

Ahead of the Portability, the TR Participant needs to set-up a contractual relationship with the ‘New TR’ and be able to report to that TR. However, the ‘New TR’ would have no capacity to determine if a new SFT submitted by such TR Participant relates to new reports or to reports subject to be transferred.]

Therefore, further specifications from ESMA would be required in order for the ‘New TR ‘to identify, and then start rejecting, those specific lifecycle events.

<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, the ‘New TR’ should make the data available to Authorities, include it in the relevant aggregations and in the Inter-TR reconciliation process as applicable. Guideline 13, however, should be extended to also cover the actions on the ‘Old TR’ side, i.e., the exclusion of the same data from the relevant aggregations, Inter-TR reconciliation process, etc.

<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>

No. Guideline 14 should be aligned with Guideline 31, whereby TRs are granted with sufficient flexibility to decide whether to charge cost-related fees after a withdrawal of registration.

<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>

In line with the response provided to Question 3 the waterfall approach proposed in Guideline 15 seems correct.

However, in line with the considerations made in previous responses, there are significant shortcomings derived from the transfer of additional data – besides the latest state of the outstanding SFTs – in case of license withdrawal.

Under these circumstances, the transfer of only latest state of the SFTs in the highest DQC would result on: (1) increased flexibility on moving from one TR to another; (2) reduced operational costs; (3) safeguard of data quality; (4) maintained level of data availability to Authorities.

Because of these reasons, Guideline 15 could be rephrased to refer to registration withdrawal for all cases, not only the Reconciliation and Rejections data.

In addition, in line with the response provided to Question 4, additional definition on the scope of the reconciliation and rejection data to be transferred would benefit the common interpretation of these new requirements.

<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>

In line with the responses provided to previous questions, the scope of the data to be transferred in case of voluntary porting should be reduced to the latest state of outstanding SFTs.

With regards to data transfer where the TR Participant is the Report Submitting Entity for different non-TR Participant counterparties, the ‘Old TR’ should rely on the Portability request received from its TR Participant, where it would be possible to request the data transfer from all its underlying customers (i.e., non-TR Participant reporting counterparties) or a subset of those.

<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. No further considerations.

<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>

No. As referred to in previous responses, only the latest state of outstanding SFTs should be subject to transfer for the voluntary scenario.

The inclusion of lifecycle events increases the complexity of the process for two main reasons: (1) the volumes associated to the transfer would significantly increase; (2) lifecycle events cannot be upgraded to the latest data quality category. Therefore, there would be instances that the information may not be transferred using the most updated ISO 20022 schema.

Given that there is not a standardized definition and format of the reporting log followed by all TRs, the use of such log by the ‘New TR’ would be very limited.

<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 further considerations besides the ones already made in previous responses in relation to the scope and timeline and verifications of the data subject to transfer.

<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>

Yes. No further considerations.

<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. The retrieval of data within seven calendar days shall be understood on a best effort basis as it will highly depend on the impacted volumes.

It is also understood that the requirement to keep the actual files generated and used for the porting for 3 months does not mean that ad-hoc queries will be executable on these files, but rather that the actual files will be available for potential data quality checks from the authorities.

<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. No further considerations.

<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>

In line with the response to Question 4 for EMIR, further defining the scope of the reconciliation and rejection data to be transferred would benefit the common interpretation of these new requirements.

<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. No further considerations.

<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>

No, Annex IV should be updated. According to Annex IV: “*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*”. However, from a practical perspective, in case of TR license withdrawal, the priority should be to facilitate the transfer of the outstanding records from active TR participants to ensure a smooth continuation of their reporting obligation. After that, the old and new TRs should initiate the transfer of the historical data, including lifecycle events, non-outstanding SFTs, etc. For that reason, it is proposed to remove from Annex IV the last part of the sentence “*and no later than the end of…*”

With regards to the verification of data transfer, it is unclear from Annex IV what should be the information determined by the ‘New TR’ to verify “the latest state of outstanding SFTs received”. For the rest of items in the list, the expectation is to provide a specific number, that should be consistent with the figure provided by the ‘Old TR’ during the planning and preparation phase. However, Annex IV does not specify any metric to be quantified by the ‘New TR’ as part of its verification process. For that reason, it is proposed to remove the first bullet point: “The latest state of the outstanding SFTs received, i.e., the “trade state” in Annex IV section D. Verification of data transfer.

<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>

No. The Guideline 26 requiring notifying ESMA, TR participants and relevant NCAs but not involved TRs is not aligned with Annex IV. According to Annex IV, the ‘Old TR’ whose license is being withdrawn should also notify other involved TRs. The notification to other TRs is paramount for them to initiate any preparatory activity that would allow the reception of significant volumes of data in a short period, e.g., to size any additional capacity needs. Therefore, the Guideline should be updated to align it with Annex IV.

<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. No further considerations.

<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>

Yes. No further considerations.

<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. In line with the response given for Question 27, Guideline 14 should be aligned with Guideline 31, whereby TRs are granted with sufficient flexibility to decide whether to charge cost-related fees after a withdrawal of registration. Such fees shall, of course, be cost-related, non-discriminatory, and public.

<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>

No. This adds significant complexity to the porting process. On the basis that a large portion of the reporting is done through counterparty or third-party delegation, rejections and reconciliation report XML files that have been generated at each point in time have not been generated explicitly at counterparty level, but rather at RSE level. This means that the ‘Old TR’ will have to regenerate all historical rejections and reconciliation XML reports.

For instance, in case a TR participant (RSE) reports on behalf of three different Reporting Counterparties (RC), where none of these RCs have a contractual relationship with the ‘Old TR’, all the rejections and reconciliation reports would only have been generated for the TR participant (the RSE).

In case of withdrawal where the records of RC1, RC2, RC3 are ported to different TRs, the Old TR would not be able to just retrieve the rejection and reconciliation reports previously generated (as these were generated at RSE level containing the results for all 3 RCs), but rather to generate new files for each past event. Considering the maximum 10-year period of safekeeping, this implies that a TR withdrawing would have to generate a huge number of files.

Also, rejection statistics at file level for individual RCs in the case above is not applicable as the rejection statistics at file level are generated for the TR participant (RSE).

In case of withdrawal, the latest state, lifecycle events and the reporting log shall allow for regulatory investigations to take place.

Nevertheless, if TRs are required to transfer these data, or the latest state of that data, then clear Technical Implementation requirements would be essential.

<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. No further considerations.

<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. No further considerations.

<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>

The following aspects should be considered in the context of Guideline 32: (1) definition and identification of data quality; (2) assumption that all porting events take place during weekends; (3) roles and responsibilities on the process to upgrade the data.

To ensure common interpretation, there is a need to further define the concept of Data Quality Category as it could be understood as: (a) data that complies with the latest RTS standards, or (b) data that complies with the latest validation rules. Given that changes in the validation rules are significantly more frequent than changes in the RTS standards, option (b) would imply additional burden on both the TR Participant and the ‘Old TR’, as the volume of data subject to upgrade would be significantly larger. Given that the compliance with the latest RTS standards ensures compliance with the XML format, and certain degree of data quality, option (a) seems to be the most pragmatic one.

In relation to the cut-off time, Guideline 32 fails to cover all potential scenarios from Guideline 10, which foresees the possibility of executing the transfer during a working day. Although Portability events normally take place during non-working days, it is preferrable to maintain the flexibility given by Guideline 10. Guideline 32 should, therefore, be updated and determine the cut-off time using relative time parameters.

With regards to the roles and responsibilities, according to Guideline 32, TRs should ensure that TR participants upgrade the outstanding derivatives to the latest data quality category, thus allocating the responsibility of the upgrade process to TRs. However, the ‘Old TR’ can only act as a facilitator to that process.

<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>

From Guideline 33, it is unclear what would be expected behaviour of the TRs under these circumstances. In case the TR Participant submits, on the day preceding the transfer, reports pertaining to the outstanding derivatives, the ‘Old TR’ could be expected to: (1) reject such reports; (2) accept such reports and transfer them to the ‘New TR’; (3) accept such reports but do not transfer them to the ‘New TR’.

In order to follow approach (1), TRs would need to receive specific guidance from ESMA to be able to reject data reported by counterparties in line with SFTR requirements.

Following approach (2), the relevance of Guideline 33 would be very limited, and it would fail to comply with the objective set out in Paragraph 29: allow for the final sign-off to be done on the Friday before the porting weekend.

Approach (3) may lead to discrepancies on the data made available to Authorities, as they could receive different trade state information from the ‘Old TR’ and the ‘New TR’. If, for instance, the TR participant submits a modification message on the day preceding the transfer, and does not re-submit it the day following the transfer to the ‘New TR’, then the Authority would receive the following sequence of information:

* On Friday, the ‘Old TR’ would submit to the Authority the original, unmodified derivative contract, reflecting its status as of Thursday end of day.
* On Saturday, the ‘Old TR’ would submit to the Authority the modified derivative contract.
* On Tuesday, the ‘New TR’ would submit to the Authority the original, unmodified derivative contract.

It should be noted that the reconciliation process would be impacted in a similar manner.

Another implication of Guideline 33 is the fact that Authorities would receive the reports submitted on the first day following the data transfer as late reporting.

To resolve the shortcomings referred to above, Guidelines 32 and 33 could be updated to reflect the current practice:

* During the planning phase, the ‘Old TR’ and the TR participant agree on the tentative volumes to be transferred. Such volumes also allow both TRs and the TR Participant to agree on a date for the transfer.

On the transfer day, the ‘Old TR’ notify the TR participant and the ‘New TR’ on the exact number of derivative contracts to be transferred. Then, the ‘New TR’ notifies the TR participant and the ‘Old TR’ about the exact number of derivative contracts successfully transferred.

<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, it seems appropriate.

In addition to the proportion of data to be allocated to each TR, previous experiences have proved that timeline is paramount. In that regard, the transfer of non-outstanding data related to non-active TR participants should only be initiated once the transfer of all the data corresponding to the active TR participants is complete.

Another aspect to be considered is that the reception of this data, the record-keeping and the maintenance of data received under this scenario, and the subsequent management of Authorities queries results in a non-negligible cost for TRs that is not recovered.

<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, it seems appropriate that all data apart from the latest state of the outstanding derivative contracts is stored in separate database and queried upon Authorities demand.

<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>

The provision of technical information is only necessary if such data is transferred in a non-standardized manner. The definition by ESMA of a common CSV format, containing only regulatory fields would facilitate data transfer, subsequent storage, and provision of data access to Authorities. In addition, it would better preserve the quality of the data hold in the ‘Old TR’ and remove risks associated to potential different interpretations made by each TR on the technical information. Should there be no definition of a common, standardized format, then the ‘New TR’ would need to receive all technical information as proposed in the Guidelines.

<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>

In line with the response provided for Guideline 32 and Guideline 33, there are several shortcomings associated to the timeline proposed. In case that it is finally incorporated in the Guidelines, then it would be possible for the TR Participant to verify and confirm the correctness of the data ahead of the transfer.

While it can be reasonable for the TR Participant to confirm of the aggregate information regarding the total number of outstanding derivatives, the confirmation of items (ii) to (iv) listed in Guideline 37 may be challenging for TR Participants. Such difficulty would increase with time and volumes, which may lead to unnecessarily complex and costly data transfers.

In addition, the different record-keeping requirements that TR Participants and TRs have (e.g., five and ten years after the termination of the derivative contracts, respectively) will lead to the incapacity for TR Participants to confirm the aggregate information in many circumstances.

Guideline 37 should also foresee the expected procedure in case of data transfer from non-active TR Participants in case of license withdrawal.

Additional clarification would be required for point ii concerning the unique key of reuse: "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", as it seems to contradict the Validation Rules where the unique key for reuse is considered to be: “Reporting counterparty” and "Entity Responsible for Reporting".

<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>

No objection on the inclusion of TR Q&A 54(d) in the guidelines. Another aspect to be considered in the context of Guideline 38 is that, given the usually low volumes and the potential frequency of the transfer, it may be reasonable to reduce the administrative burden associated to these scenarios.

<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>

Kindly refer to the comments provided in Q51.

<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>

In line with the comments provided in previous questions (e.g., Q28, 29, 31), unlike the details provided in the planning and preparation phase of Annex III, voluntary porting should only cover the transfer of the latest state of the outstanding SFTs.

Also, in line with previous comments, additional clarification would be needed to establish a clear trigger to initiate the “five working days” to resolve any discrepancies, especially in case that the final Guidelines include the timeline proposed in Guidelines 32, 33 and 37.

With regards to section C. ‘Verification of the data transferred”, additional clarification would be needed to determine a specific metric to quantify “the latest state of the outstanding SFTs received”, given that there is another metric related to the total number of outstanding SFTs. In addition, this point is not aligned with Guideline 37, which only considers the quantification (and subsequent confirmation) of the total number of outstanding SFTs.

<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>

Kindly refer to the comments provided in Q38 and Q39.

<ESMA\_QUESTION\_PORT\_55>

1. Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4th July 2012 on OTC derivatives, central counterparties, and trade repositories [↑](#footnote-ref-2)
2. 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 [↑](#footnote-ref-3)