



European Securities and
Markets Authority

Final report

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



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1 Legislative references, abbreviations and definitions

Legislative references

<i>SFTR</i>	Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 ¹
<i>EMIR</i>	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ²
<i>ESMA Regulation</i>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ³
<i>RTS on data aggregation (SFTR)</i>	Commission Delegated Regulation (EU) 2019/358 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on the collection, verification, aggregation, comparison and publication of data on securities financing transactions (SFTs) by trade repositories ⁴
<i>RTS on reporting (SFTR)</i>	Commission Delegated Regulation (EU) 2019/356 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of securities financing transactions (SFTs) to be reported to trade repositories ⁵
<i>ITS on reporting (SFTR)</i>	Commission Implementing Regulation (EU) 2019/363 of 13 December 2018 laying down implementing technical standards with regard to the format and frequency of reports on the details of securities financing transactions (SFTs) to trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council and amending Commission Implementing Regulation (EU) No

¹ OJ L 337, 23.12.2015, p.1

² OJ L 201, 27.7.2012, p.1

³ OJ L 331, 15.12.2010, p. 84–119

⁴ OJ L 81, 22.3.2019, p. 30–44

⁵ OJ L 81, 22.3.2019, p. 1–21

1247/2012 with regard to the use of reporting codes in the reporting of derivative contracts⁶

*RTS on reporting
(EMIR)*

Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, as amended by Commission Delegated Regulation (EU) 2017/104⁷

*Draft RTS on reporting
EMIR*

Commission Delegated Regulation (EU) No YYYY/XXX of ... supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the minimum details of the data to be reported to trade repositories and repealing Commission Delegated Regulation (EU) No 148/2013⁸

*ITS on reporting
(EMIR)*

Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, as amended by Commission Implementing Regulation (EU) 2017/105⁹

*RTS on registration
(EMIR)*

Commission Delegated Regulation (EU) No 150/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository, as amended by Commission Delegated Regulation (EU) 2019/362 of 13 December 2018¹⁰

⁶ OJ L 81, 22.3.2019, p. 85–124

⁷ OJ L 52, 23.2.2013, p. 1–10

⁸ 3 The Draft RTS on reporting, adopted by ESMA on 17/12/2020 (ESMA74-362-824), are submitted to the European Commission for endorsement.

⁹ OJ L 352, 21.12.2012, p. 20–29

¹⁰ OJ L 52, 23.2.2013, p. 25–32

<i>RTS on registration (SFTR)</i>	Commission Delegated Regulation (EU) 2019/359 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration and extension of registration as a trade repository ¹¹
<i>RTS on data access (EMIR)</i>	Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data, as amended by Commission Delegated Regulation (EU) 2017/1800 and by Commission Delegated Regulation (EU) 2019/361 ¹²
<i>RTS on data access (SFTR)</i>	Commission Delegated Regulation (EU) No 2019/357 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on access to details of securities financing transactions (SFTs) held in trade repositories ¹³
<i>SFTR Reporting Guidelines</i>	Guidelines on Reporting under Articles 4 and 12 SFTR ¹⁴
<i>Guidelines on positions (EMIR)</i>	Guidelines on position calculation by trade repositories under EMIR ¹⁵
<i>Guidelines on positions (SFTR)</i>	Guidelines on calculation of SFT positions by trade repositories under SFTR ¹⁶
<i>MiFIR</i>	Commission Delegated Regulation (EU) No 600/2014 of 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 ¹⁷

¹¹ OJ L 81, 22.3.2019, p. 45–57

¹² OJ L 52, 23.2.2013, p. 33–36

¹³ OJ L 81, 22.3.2019, p. 22–29

¹⁴ ESMA70-151-270

¹⁵ ESMA70-151-1350

¹⁶ ESMA74-362-1986

¹⁷ OJ L 173, 12.6.2014, p. 84

Abbreviations

<i>CP</i>	Consultation Paper
<i>CSV</i>	Comma-separated values
<i>ECB</i>	European Central Bank
<i>EEA</i>	European Economic Area
<i>EER</i>	Entity Responsible for Reporting
<i>ESMA</i>	European Securities and Markets Authority
<i>EU</i>	European Union
<i>FSB</i>	Financial Stability Board
<i>ISO</i>	International Organization for Standardization
<i>ITS</i>	Implementing Technical Standards
<i>LEI</i>	Legal Entity Identifier
<i>NCA</i>	National Competent Authority
<i>NCB</i>	National Central Bank
<i>Q&A</i>	Questions and Answers
<i>RSE</i>	Report Submitting Entity
<i>RTS</i>	Regulatory Technical Standards
<i>SFT</i>	Securities Financing Transaction
<i>SFTP</i>	SSH File Transfer Protocol
<i>SLA</i>	Service Level Agreement
<i>TR</i>	Trade Repository
<i>TRACE</i>	System for single access to TR data
<i>XML</i>	Extensible Mark-up Language

Glossary of concepts and terms

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

For the purpose of these Guidelines the following terms have been defined/described:

- “active client” means a TR participant that has outstanding derivatives and/or SFTs at a TR.
- “compressed derivatives” means derivatives that were terminated due to compression as defined in Article 2(1)(47) of MiFIR and derivatives included in a position. Therefore, compressed derivatives refers to a set of derivatives between a pair of counterparties which have been terminated before their initially established maturity date by the two counterparties and are identified with action type “Z” or “P” under the current RTS on reporting (EMIR). In addition, under the draft RTS on reporting (EMIR), such a set of derivatives are identified with a combination of action type “TERM” and event type “COMP”, a combination of action type “TERM” and event type “INCP”, or action type “POSC”.
- “entity responsible for the report” (ERR, hereinafter), which is one of the counterparty fields of the RTS on reporting (SFTR), should be understood as the financial counterparty which is responsible for reporting on behalf of the other counterparty.
- “errored derivative” means a derivative which is reported to a TR as a result of a mistake. It is identified with action type “E” under the current RTS on reporting (EMIR) and “EROR” under the draft RTS on reporting (EMIR).
- “errored SFT” means a SFT which is reported to a TR as a result of a mistake. It is identified with action type “EROR”.
- “life-cycle events” comprise all action types reported for a given derivative or SFT.
- “matured derivative” means a derivative which is reported to a TR and at a given point in time has reached its contractually-agreed maturity date.
- “matured SFT” means a SFT which is reported to a TR and at a given point in time has reached its contractually-agreed maturity date.
- “new TR” means a TR to which a TR participant has started or intends to start reporting derivatives under Article 9 of EMIR and reporting SFT contracts under Article 4 of SFTR, although initially that entity was reporting, either directly or through an RSE, to the old TR.
- “non-active client” means a TR participant that no longer has outstanding derivatives or SFTs at a TR.

- “old TR” means a TR to which a TR participant was reporting or to which the derivatives of a TR participant were reported by an RSE under Article 9 of EMIR and reporting SFT contracts under Article 4 of SFTR, but (i) the TR participant decided to discontinue its contractual arrangement reporting or (ii) the registration of the TR was withdrawn.
- “outstanding derivative” means such a derivative, including CCP-cleared derivatives, which is reported to a TR and has not matured and has not been subject of a report with action types “E”, “C”, “P” or “Z” under the current RTS on reporting (EMIR). In addition, under the draft RTS on reporting (EMIR), “outstanding derivative” means a derivative that has not matured or which has not been the subject of reports with action types “TERM”, “EROR”, or “POSC”. Furthermore, under the draft RTS on reporting (EMIR), “outstanding derivative” means a derivative that has been subject to a report with the action type “REVI” not followed by another report with the action type “TERM” or “EROR”.
- “outstanding SFT” means a SFTs that has not matured or which has not been the subject of reports with action types “EROR”, “ETRM”, or “POSC” as referred to in Field 98 of Table 2 of Annex I to ITS on reporting (SFTR).
- “portability” means the possibility to transfer records relating to details of derivatives reported under Article 9 of EMIR and records relating to details of SFTs reported under Article 4 of SFTR from the old TR to the new TR, as those are defined in these guidelines.
- “positions” means the representation of exposures between a pair of counterparties as included in the Guidelines on positions (EMIR) and in the Guidelines on positions (SFTR)
- “reconciliation” means the process through which TRs confirm that the two sides of a derivative or an SFT have been reported with the same information by each ERR.
- “rejections” means derivatives or SFTs that have been rejected by a TR due to errors in the information reported by an ERR or RSE.
- “report submitting entity” (RSE, hereinafter), which is one of the counterparty fields of the technical standards on reporting¹⁸, should be understood as the entity which has entered in a contractual relationship with a registered or recognised TR and it:
 - reports only derivatives where it is one of the counterparties, in which case it would coincide with either the reporting counterparty of the contract or the other counterparty, or
 - reports derivatives where it might be or might not be one of the counterparties.
- “terminated derivatives”, under the RTS on reporting (EMIR), means derivatives which have been terminated before their contractually-agreed maturity date by the

¹⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0104>

two counterparties and are identified with action type “C”. In addition, under the draft RTS on reporting (EMIR), such a set of derivatives are identified with a combination of action type “TERM” or action type “POSC”. Under the draft RTS on reporting (EMIR), “terminated derivatives” also comprise the above mentioned compressed derivatives.

- “terminated SFTs” means SFTs which have been terminated before their contractually-agreed maturity date by the two counterparties and are identified with action type “ETRM”.
- “transfer” or “transfer (of details) of derivatives” or “transfer (of details) of SFTs” means an act or process of moving the records of the derivatives or the SFTs, respectively, from the old TR to the new TR.
- “TR participant”¹⁹ means an entity which has a contractual arrangement for the purpose of reporting derivative contracts under Article 9 of EMIR and reporting SFT contracts under Article 4 of SFTR with at least one registered or recognised TR. The TR participant may be an RSE, an ERR, a reporting counterparty or a CCP.

¹⁹ Some TRs might further specify the types of TR participants such as reporting, general reporting, non-reporting, etc. participants. These sub-categories are transparent from the perspective of these guidelines.

2 Executive Summary

Reasons for publication

This Final Reports contains two different sets of Guidelines: firstly, amendments to the existing Guidelines on transfer of data between Trade Repositories under EMIR (ESMA70-151-552) and, secondly, the new Guidelines on transfer of data between Trade Repositories under SFTR. Regarding the Guidelines under EMIR, this Final report introduces certain amendments and clarifications to the existing Guidelines on transfer of data between Trade Repositories in order to to maintain and strengthen the existing framework to port records from one Trade Repository (TR) to another under EMIR. The Guidelines under SFTR are new Guidelines regarding SFTR reporting requirements in the context of porting to set up a framework to enable market participants to safely transfer data from one TR to another under SFTR.

On 28 May 2021, ESMA published a CP on the Guidelines on transfer of data between Trade Repositories under EMIR and SFTR. The consultation closed on 27 August 2021. ESMA received seven responses, mostly from trade repositories. The answers received are available on ESMA's website unless respondents requested otherwise. ESMA also sought the advice of the Securities and Markets Stakeholder's Group (SMSG).

This Final Report summarises the feedback received on the public consultation on the draft Guidelines aiming to establish a consistent and harmonised process to transfer records from one TR to another TR and support the continuity of reporting and reconciliation in all cases including the withdrawal of registration of a TR, to preserve a competitive TR environment, and to ensure that high quality data is available to authorities, including the aggregations carried out by TRs.

Contents

Section 3 provides a summary of the responses and is split in several subsections which contain the detailed assessment on the feedback received to the 55 questions. In particular, Section 3.1 contains the feedback received on the changes to the Guidelines on transfer of data between TRs under EMIR. The proposed amendments mainly propose the inclusion of a number of new Guidelines which compile the additional clarifications based on the experience gathered and the on-going guidance provided by ESMA to TRs and market participants, e.g.: porting only outstanding reports that have been updated to the latest reporting requirement under the voluntary porting; in the case of withdrawal of registration, the porting of reconciliation and rejection data generated by the TR, the storage of non-outstanding data of lower quality in separate databases, and the possibility to receive a fee for non-outstanding data from active clients. Section 3.2 details the feedback received on the new Guidelines under SFTR. As the draft Guidelines in the Consultation paper contained Annexes with certain procedures, the feedback on these Annexes is summarised in Sections 3.3 to 3.6. Section 4 contains the cost-benefit analysis. Section 6 refers to the advice of the SMSG. Finally, Annex I presents the amended Guidelines on transfer of data between Trade Repositories under EMIR and Annex II presents the Guidelines on transfer of data between Trade Repositories under SFTR.



Next steps

ESMA will publish the Final report and the sets of Guidelines on ESMA's website. The amendments to the Guidelines under EMIR and the new Guidelines under SFTR will be translated into all official languages of the European Union and will become applicable on 3 October 2022.

3 Summary of feedback received to public consultation

1. This Section provides a summary of the responses received to the CP on the two separate sets of draft guidelines containing (i) changes to the existing Guidelines on data transfer under EMIR which include amendments by replacement of three already existing guidelines and the inclusion of nine new guidelines and (ii) new Guidelines on data transfer under SFTR.
2. While changes to Guidelines 11, 18, and 19 of the existing Guidelines on transfer of data between TRs under EMIR were not initially foreseen in the CP, based on the consultation comments, ESMA undertook some amendments thereof to ensure alignment between the existing Guidelines under EMIR and the new Guidelines under SFTR.
3. The CP contained 55 questions covering all aspects of the proposed changes to the existing Guidelines on data transfer under EMIR and the new draft Guidelines on data transfer under SFTR.
4. The consultation ran from 28 May 2021 to 27 August 2021. ESMA received 7 responses. Respondents included 4 TRs, one central bank, one banking association, and one association representing the interest of market participants.

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

5. In the mentioned paragraphs, ESMA described the status quo with respect to the Guidelines on transfer of data between TRs and the changing TR landscape. In line with the regulatory requirements under EMIR and SFTR, reporting counterparties and RSEs have been reporting their outstanding derivative contracts to TRs. To enable TR participants to transfer their reported contracts from one TR to another and to provide a for the possibility of withdrawal of registration in the competitive TR environment, ESMA published the existing Guidelines on transfer of data between TRs under EMIR on 24 August 2017. Following major changes in the TR landscape since 2018 due to multiple TR registration withdrawals, ESMA needed to formulate expectations and provide guidance for TRs with regards to issues not covered in the existing Guidelines. Furthermore, reporting under SFTR began in July 2020, entailing the need for ESMA to establish a porting framework under SFTR.
6. All respondents agreed with the analysis presented in paragraphs 5 to 9 and generally supported the proposal to include the amendments in the EMIR Guidelines.
7. Three TRs welcomed the amendments to the existing Guidelines as they provide clarification on certain aspects related to the withdrawal of registration, alignment with portability practices in place, and the handling of non-outstanding data.

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

8. Four respondents replied to this question, three respondents reported a number of issues related to the transfer of data.
9. One TR mentioned issues related to the common understanding of the latest validation rules and their application across TRs, the cancellation of reports by TR participants outside the portability processes, data quality issues caused by discrepancies between the XML schemas and the validation rules, and uncertainty related to the responsibility for the data during the transfer process and its completion between the old and the new TR.
10. One respondent observed issues related to the data transfer of NFCs and issues related to appearance of unpaired transactions following a TR withdrawal.
11. One central bank reported that not all TRs inform authorities of porting cases and that there is no common format for announcing data transfers across TRs. The respondent also observed inconsistencies related to the reporting of derivative reports subject to transfer by the new and the old TR, such as (i) the new TR reporting those derivatives with the Action type “New”, (ii) the early termination of derivatives by the old TR on the date of the transfer, etc.
12. In ESMA’s view, the above mentioned issues do not require specific Guidelines, but ESMA will follow up on this with TRs.
13. The central bank also proposed the introduction of two new EMIR fields to the regulatory TRACE reports to indicate the previous TR and the date of the last data transfer to allow authorities to monitor data consistency when historical reports are revised.
14. ESMA clarifies that until the data transfer process has been successfully completed, the old TR is responsible to store the data subject to transfer consistent with the relevant Guidelines. Once the data transfer has been completed, the new TR is responsible for the data that has been transferred.
15. In this regard, ESMA clarifies that in the voluntary scenario, all historical data remains with the old TR as only the last state of a derivative is ported as clarified in Guideline 18. Under this scenario, historical reports covering data prior to the data transfer are available at the old TR. In the withdrawal of registration scenario, all data is ported to the new TR and hence all historical data pertaining to the transferred data are available only at the new TR. Furthermore, the introduction of additional data fields can only be instrumented through an amendment to the technical standards on reporting and not through guidelines.

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

3.1.1 Communication with Authorities

16. ESMA proposed that for a TR requesting a withdrawal of registration the notification period is associated to the number of TR participants.
17. No comments were received for this proposal.

3.1.2 Transfer of TR data on reconciliation and rejections

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

18. In the CP, ESMA proposed that all data on reconciliation and rejections generated by the old TR related to a derivative subject to transfer should be transferred to the new TR.
19. Six replies were received for this question.
20. All six respondents agreed to the general idea of the proposal. However, some respondents were not supportive of the idea of the transfer of rejection and reconciliation data for various reasons, i.e., efficiency of the data transfer process, financial costs for the new TR, providing data access for authorities, different data formats for reconciliation and rejection data etc..
21. The majority of respondents proposed to only port outstanding derivatives in the case of the voluntary scenario which reflects the current practice for voluntary porting.
22. One respondent stated that the transfer of data per se might affect the reconciliation status, e.g.: the other leg of the derivative being transferred has been already reported to the receiving TR, the status of the incoming derivative should change from “single sided” to “dual sided” and the matching process should be re-run. Moreover, the respondent remarked that if two legs of the derivatives had been reported to the withdrawing TR and they were ported to two different TRs, their status should change from “dual side” to “single sided” and they should be included in the derivatives submitted to the inter-TR reconciliation process.
23. One banking association argued that the TR participant should be able to choose whether all rejections and reconciliation data should be transferred to the new TR or whether this should be limited to a specific period. In addition, the banking association argued that only outstanding data should be transferred.
24. For the case of voluntary porting, one TR observed that the old TR had already charged a fee for historic data and consequently argued that all data should remain with the old TR to set proper incentives.

25. Some respondents also pointed out further advantages if only latest states of outstanding derivatives are ported in the voluntary scenario, such as the availability of the historic data through TRACE to authorities. The respondents also emphasised the difficulty the new TR would face when retrieving historical data from an offline database whereas the old TR could include these reports in TRACE.
26. Some TRs remarked that ESMA should provide more details regarding various aspects related to the transfer of data on rejections and reconciliation status, such as the incorporation of such data in the new TR's database, how the new TR is to grant access to such data to authorities, etc.
27. Some TRs asked for further clarifications regarding the format and content of the reporting log.
28. While ESMA understands the added complexity of transferring rejection and reconciliation data generated by the TR, this data is supervisory data which authorities need to retain access to. ESMA therefore clarifies that only outbound reports generated by the TR itself are subject to porting, meaning outbound reports for authorities pertaining to rejections and reconciliation status, respectively, in the XML format. With reference to the TRACE reports only the auth.092 and the auth.091 reports at NCA and client level are to be transferred.
29. ESMA clarifies that information in the ported files is up to that date and that the TRs are obliged to then update accordingly as set out in the technical standards.
30. ESMA therefore clarifies that only outbound reports generated by the TR itself are subject to porting, meaning outbound reports for authorities pertaining to rejections and reconciliation status, respectively, in the XML format. With reference to the TRACE reports only the auth.092 and the auth.091 reports at NCA and client level are to be transferred.
31. Implementation of data transfer in the case of withdrawal of registration needs to be made on a case-by-case basis. The technical aspects depend on the withdrawing TR itself, the data in question, and many other factors specific to each individual withdrawal. For future withdrawals, ESMA and the TRs will benefit from the existing infrastructures built by the TRs to store data from withdrawing TRs and the experience gained by all stakeholders through the diverse withdrawals of registration in the past three years.
32. ESMA therefore clarifies that the reporting log is a document which should contain all modifications a TR has performed on a specific derivative record, e.g. in the context of a TR Q&A 40 update. The Reporting Log of the old TR is to be transferred to the new TR in the machine readable format of the old TR as set out in the final Guideline 15 and can be stored in an offline database.
33. ESMA has adapted the Guideline to reflect that only the latest state is ported under the voluntary scenario. ESMA has clarified that all data besides the latest state of outstanding derivatives is only to be transferred in the case of withdrawal of registration.

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

34. ESMA proposed to include data generated and recorded by the old TR on rejections and reconciliation to be transferred to the new TR in case of withdrawal of registration.
35. Six respondents agreed and one respondent disagreed with the proposal.
36. Some TRs remarked that ESMA should provide more details regarding various aspects related to the transfer of data on rejections and reconciliation status, such as the meaning of “data at file level”, incorporation of such data in the new TR’s database, how the new TR is to grant access to such data to authorities, etc..
37. Multiple respondents asked for clarification as to which files exactly needed to be transferred in the case of rejection and reconciliation data. One respondent stated the necessity to align Guideline 23 and draft Guideline 30 with Guideline 15 with regards to the exact wording and furthermore to align paragraph 20 and wording in Guideline 23.
38. Some TRs stated that operational aspects related to the transfer and storage of rejection and reconciliation data could create huge challenges for TRs given the lack of standardisation of this data and the different ways rejections are stored by TRs.
39. One banking association argued that the transfer of such data did not seem in the interest of and without benefit to the users. Therefore, it asked ESMA to consider limiting the data to be transferred to rejection and reconciliation data relating to outstanding data.
40. ESMA acknowledges the need for more detailed information and has aligned Guidelines 15 and 23. Finally, ESMA has removed draft Guideline 30.

3.1.3 Fees in the case of withdrawal of registration

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

41. ESMA proposed that TRs can charge a fee to TR participants for the maintenance and the recordkeeping in the case of withdrawal of registration.
42. Seven answers were received.
43. Five respondents supported the proposal whereas two disagreed with the proposal.
44. One TR welcomed the proposal as TRs incur costs for e.g. storage, ongoing maintenance, but required more clarity on the expectation for the non-outstanding data.
45. The respondents brought forwards several ideas with regards to the fee setting, such as differentiating and keeping fee values for transfer of non-outstanding data between

TRs confidential to ensure fair market competition, taking in to account the size of a TR, and setting a standard price per reports given that a TR participant may not be able to choose the new TR and may therefore not have the fairest price.

46. One banking association did not see any reason why the TR participants should bear the costs and also argued that non-outstanding derivatives data were not of interest for authorities. It asked ESMA to provide more information on the benefits of this proposal.
47. One respondent proposed a withdrawal fee to be charged to the old TR as the decision to withdraw had been taken by the old TR. The respondent also remarked that the new TR may be incentivised to inflate costs as participants' individual surcharge would remain limited.
48. Record-keeping and maintenance of non-outstanding derivative data are of utter importance as to allow authorities to have access to the data until the end of the ten years minimum record-keeping period as set out in Article 80(3) of EMIR. In this way, the costs incurred by the remaining TRs could be covered.
49. Three respondents believed that the old TR or ESMA and the NCAs should bear the cost. However, in accordance with Article 78(8) of EMIR, fees are to be charged for services provided by the TR under EMIR. ESMA would like to remind that the access to data by a public authority is not a service referred to in the above mentioned Article. On the contrary, TRs are under the legally binding obligation to provide access to the necessary information to authorities to enable them to fulfil their respective responsibilities and mandates as set out in Article 81(3) of EMIR. Finally, a withdrawing TR should not pay a fee as this could impose barriers to exiting a market. Based on the consultation feedback, ESMA has adapted the wording to reflect that only active clients should pay such a fee.
50. ESMA believes that, on the contrary, following the transfer of data to the new TRs(s), the possibility of setting such fees only for active clients would cover the costs at the TRs and would set the proper and sound incentives for the TRs to proactively engage in the transfer of data from a withdrawing TR.
51. Regarding the difference in rationale behind Guideline 29 and 30, ESMA clarifies the following: as the withdrawal of registration is outside of the discretion of the TR participant and the new TRs receive business without any particular effort on their side, the TR participant should not incur fees for the data transfer. In contrast, TRs, who receive non-outstanding data related to active clients after a TR wind-down, have the right to charge fees for the services provided under this Regulation in line with Article 78(8) of EMIR. The rationale for Guideline 30 is based on the obligation of a TR participant to report the details of his derivatives to a TR as set out in Article 9(1) of EMIR and to keep a record of them for five years as required by Article 9(2) of EMIR. Furthermore, the TR is obliged to record the information provided by its participant and maintain the information for at least 10 years in accordance with Article 80(3) of EMIR.
52. As stated in the CP, costs related to the non-outstanding data of active participants should adhere to the requirements set out under Article 78(8) of EMIR. Costs charged by TRs as clarified in Guideline 30 should be justified.

53. Based on the feedback received, the wording of the Guideline was updated to reflect that only active clients can be charged a fee for their non-outstanding derivatives.

3.1.4 New XML schemas and varying degrees of data quality

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

54. ESMA proposed that TR participants upgrade outstanding derivatives subject to porting to the most up to date reporting requirement prior to the porting on a weekend.

55. Seven responses were received.

56. Six respondents agreed with the proposal, one respondent disagreed with the proposal.

57. All TRs agreed that data must be updated prior to transfer as is the current practice. The TRs explained that it is not possible to take in the data subject to transfer if it is not updated prior to transfer.

58. One respondent argued that the effort undertaken to port data should be reasonable. The respondent stated that upgrading outstanding derivatives that are subject to the transfer is very cost-intensive and burdensome for counterparties, especially NFCs.

59. Another respondent asked ESMA to delay the entry into force of this Guideline until after the EMIR REFIT RTS Level-2 will have been implemented by users.

60. Some TRs asked to change the wording of the Guideline to reflect that it is the responsibility of the TR participant to upgrade the derivatives prior to porting.

61. The respondents asked to align draft Guideline 32 with the possibility to port on working days as foreseen in Guideline 10.

62. ESMA therefore clarifies that upgrading the derivatives subject to transfer is necessary to port them to the new TR. If outstanding reports are not upgraded prior to porting, the new TR will reject these.

63. Based on the consultation feedback, ESMA will remove draft Guideline 32 and integrate the feedback received into the updated Guideline 11. ESMA included a distinction between porting on weekends and working days and introduced a cut-off time for porting on weekends Friday evening.

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

64. In the CP, ESMA proposed that TR participants submit new reports relating to outstanding derivatives to the new TR on the first business day following the porting.

65. Seven responses were received.
66. Six respondents agreed with the proposal, one respondent disagreed with the proposal.
67. Several respondents stated that they observed cases where reports were still submitted to the old TR.
68. Several TRs asked how to proceed if a TR participant reports a new derivative or a modification to an existing derivative on the Friday prior to the weekend porting in line with EMIR requirements. One TR suggested to include this report in the data to be ported on the weekend.
69. The TR also required a clarification from ESMA as to which TR would need to respond to the ad-hoc query of an authority asking for a report relating to the pre-porting period of a ported derivative.
70. One TR mentioned that lifecycle events would be received as late reporting in the reports of the new TR as a consequence of draft Guideline 33.
71. One TR asked whether the old TR, in case it received reports from a TR participant after the beginning of the transfer, should reject these, accept them and transfer them to the new TR, or accept them but not transfer them to the new TR. The respondent proposed to change draft Guidelines 32 and 33 to allow the old TR and the TR participant to agree on “tentative volumes” to be transferred during the planning phase and then have the old TR confirm these to the TR participant and the new TR on the transfer day. Finally, the new TR should notify the old TR and the TR participant as to how many reports were successfully transferred.
72. Another TR inquired whether the introduction of the cut-off time grants an exemption of the T+1 obligation for derivatives executed on the Thursday. The reporting of derivatives is a legally binding obligation set out in Article 9 of EMIR, while Guidelines are not legally binding. Consequently, entities are required to report in accordance with Article 9 of EMIR. ESMA therefore clarifies that the introduction of the cut-off time in the Guidelines cannot grant an exemption from the T+1 reporting obligation.
73. Although ESMA believes that TR participants will adhere to this cut-off time, ESMA expects TRs to reject reports relating to derivatives subject to transfer after the cut-off time.
74. For any ad-hoc request for access to data relating to a period prior to the transfer of a derivative on the request of a TR participant, the old TR should provide the authority with the respective report. For any ad-hoc request for access to data relating to a period following the transfer of a derivative on the request of a TR participant, the new TR should provide the authority with the respective report.
75. ESMA clarifies that the new TR is to reject all reports related to data subject to transfer until the successful porting in of the data.
76. Based on the consultation feedback, ESMA will remove draft Guideline 33. With regards to the reporting responsibility of the TR participant for partial porting, ESMA clarifies that the TR participant must ensure accurate reporting of lifecycle events relating to the SFTs to the relevant TRs in the updated Guideline 11.

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

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

77. For the case of withdrawal of registration, ESMA proposed to allocate data, for which no back-stop TR had been designated, to the remaining TRs based on a calculation in proportion to the new TR's market share for a specific reference date.
78. Six responses were received.
79. All respondents generally supported the proposal.
80. One TR stated that it preferred that the Guidelines were explicit about ESMA allocating the data rather than giving examples of how ESMA might do it as it would provide even greater certainty to the industry.
81. The TRs asked for clarifications of many technical aspects, such as definition of dormant reporting counterparties or similar cases; reference date; split of derivative data (e.g. per TR participant); allocation of historical data of dormant reporting counterparties or such that have transferred to another TR; the reference date etc.
82. One TR asked to detail the definition of active and inactive client for the allocation of non-outstanding data. It proposed that the active client be replaced by the reporting counterparty on whose behalf the RSE changing TR is responsible to report or the reporting counterparty that has delegated reporting to that RSE to ensure an appropriate allocation relating to the size of the receiving TR. ESMA would like to note in this respect that it provides a definition of active and inactive client in Section 1 of this Final Report.
83. Some TRs asked ESMA to detail the timeline of the allocation process.
84. One banking association proposed that ESMA and the relevant NCAs bear the cost associated with the allocation for the case of non-outstanding data. While ESMA understands the rationale of this statement, it clarifies that the costs should not be borne by the ESMA or the competent authorities: in accordance with Article 78(8) of EMIR, fees are to be charged for services provided by the TR under EMIR. ESMA would like to remind that the access to data by a public authority is not a service as referred to in the above mentioned Article. On the contrary, TRs are under the legally binding obligation to provide access to the necessary information to authorities to enable them to fulfil their respective responsibilities and mandates as set out in Article 81(3) of EMIR.
85. Regarding the detail of the timeline of the allocation process, ESMA believes that this depends on the specific case of withdrawal. ESMA would like to emphasise that it is rather important to adhere to the logical chain of events that a TR who wishes to withdraw from the TR community should follow. The steps should follow the relevant Guidelines, e.g. Guidelines 23 to 29, 31, and 32.

86. ESMA clarifies it is the withdrawing TR who prepares the data to be transferred to each TR based on the allocation proposed by ESMA, taking into account factors such as all reports of the same reporting counterparty going to the same TR, etc..
87. While ESMA acknowledges that many details need to be clarified, it would like to remind the TRs that these are different for each withdrawal case and depend on the withdrawing TR, the data itself and many other factors. Therefore, ESMA cannot provide clarifications of a general nature on technical aspects which are rather case specific. However, ESMA has provided more insight as to the technical details as necessary in the context of each withdrawal.
88. Following the assessment of the feedback received to the consultation and taking into account the specificities of each withdrawal, ESMA has removed this Guideline.
- Q9. Do you agree that the new TR can store non-outstanding derivative data of varying data quality and/or in different formats in separate databases/tables and should respond to the queries of authorities on demand? Which other aspects need to be considered? Please elaborate on the reasons for your response.**
89. In the CP, ESMA proposed that the new TR could store non-outstanding derivative data of varying data quality in separate databases and to respond to the queries of authorities on demand.
90. Six responses were received.
91. All respondents generally supported the proposal.
92. One central bank did not agree with the storage of non-outstanding derivatives in an offline database but rather proposed to ingest whenever possible data of good quality into the live system.
93. Due to the varying degrees of data quality of non-outstanding derivative data, it is currently not possible for TRs to ingest historical data into their live systems. Also they cannot distinguish the quality of historical data upon reception.
94. TRs welcomed the possibility to store data of varying data quality in an offline database.
95. Some TRs mentioned the costs incurred through data intake, responding to queries etc. One TR argued that TRs should be allowed to charge a small fee for queries to the requesting authority as responding to these would take a significant amount of time and require redirection of resources. In accordance with Article 78(8) of EMIR, fees are to be charged for services provided by the TR under EMIR. ESMA would like to remind that the access to data by a public authority is not a service as referred to in the above mentioned Article. On the contrary, TRs are under the legally binding obligation to provide access to the necessary information to authorities to enable them to fulfil their respective responsibilities and mandates as set out in Article 81(3) of EMIR.
96. To conclude and to address the above raised aspects, it is worth noting that for the previous TR withdrawals, ESMA provided the new TRs with its expectations that were adapted to the specificities of each withdrawing TR and the capacities of the receiving TRs at that point in time. ESMA believes it is more prudent to retain this flexibility and will therefore not include any clarification on the above as part of the Guidelines.

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

97. For the case of withdrawal of registration, ESMA proposed that the old TR should provide the new TR with the necessary technical information on the data subject to transfer in a timely manner to allow the new TR to prepare as necessary.

98. Six responses were received.

99. All respondents were in favour of the proposed Guideline.

100. While all respondents agreed that the old TR should provide the new TR with the necessary technical information on the data subject to transfer, the respondents asked for certain clarifications.

101. Some respondents inquired what the definition of “timely manner” were for the provision of the necessary technical information.

102. In addition, one respondent mentioned difficulties in past withdrawals when the withdrawing TR did not provide such necessary technical specification of the data. Therefore, the respondent proposed to precisely define the expectation of the content for such documentation. In particular, the TR stated that a mapping and field explanations for Comma-separated values (CSV) files with historical transactions should be included.

103. Some respondents proposed the definition of a standardised format that would facilitate the transfer process, the subsequent storage and the provision of the data to authorities. One respondent added that this would also mitigate risks associated to different interpretations by each TR on the data itself and enhance the readability of the data by TRs and authorities.

104. TRs proposed that ESMA define a common CSV format containing only regulatory fields for the purpose of such data transfer. One TR detailed that the data needed to be converted into a format that would be identifiable per counterparty.

105. ESMA therefore has included its expectation that the withdrawing TR is to provide the new TRs with all the necessary technical information to facilitate the data transfer and subsequent storage in Guideline 32. The technical documentation mentioned in Guideline 32 should at least cover the following aspects: (i) mapping of the fields to EMIR fields; and (ii) technical explanations for each field.

3.1.6 Verification and confirmation of derivative records

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

106. ESMA proposed that the counterparties or the entities reporting on their behalf perform a verification and confirmation of the correctness of the aggregate information prior and after the transfer of data.
107. Seven responses were received.
108. Six respondents generally supported the proposal, one respondent rejected the proposal.
109. One participant could not see any benefit in this validation process by the TR participant and asked ESMA to explain the benefits.
110. Several TRs remarked that data under (ii) to (iv) should only be ported in the case of withdrawal of registration.
111. Some TRs expressed their concern that a TR participant only has one day to verify the data, which may prove difficult, e.g. for NFC- entities with limited resources dedicated to reporting. The TR asked for clarification whether it should proceed with the porting processes in case it does not receive a confirmation by the TR participant or not.
112. One TR claimed that differences in record-keeping requirements for TR Participants and TRs after the termination of the derivative contracts (5 vs. 10 years, respectively) may result in the incapacity of TR Participants to confirm the aggregate information in many circumstances. ESMA has consequently adapted the Guideline.
113. Given that the update of the details of derivative contracts as referred to in Article 9(1) of EMIR is the responsibility of the respective TR participant, NFC- etc., ESMA believes that the old TR should not proceed with porting related processes if it has not received a confirmation as set out in Guideline 33.
114. ESMA reminds that the counterparties or the entities reporting on their behalf should perform a verification and confirmation of the correctness of the aggregate information prior and after the transfer of data to ensure the correctness of the data subject to transfer as required under Article 9(1)(e) of EMIR and that TRs shall ensure the integrity of the data subject to transfer in accordance with Article 80(1) of EMIR. ESMA has clarified this aspect in Guideline 33.
115. ESMA has updated Guideline 33 to reflect the amendments made to Guidelines 15 and 11.

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

- Q12. Do you agree with 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.**
116. ESMA proposed to include the clarification provided in ESMA EMIR TR Q&A 54(d) as a Guideline.
 117. Six respondents agreed with the proposal, one respondent disagreed.

118. One TR remarked that it may be helpful to have the TR Participant give notice to the TRs, not just the other reporting counterparty in question, of its decision to report or not to report based on a change in its status.
119. One TR mentioned that there should be an additional clarification in the Guidelines as to who is expected to update NFC- transactions to the latest technical standards. The TR added that in its opinion the NFC- remained responsible for reporting the transactions until their update.
120. One TR proposed to update the porting form used by the TRs to make the process clearer for execution purposes. ESMA welcomes this initiative and urges TRs to update all porting related documentation etc. to reflect the final Guidelines.
121. One TR mentioned that the usually low volumes associated with such cases and the potential frequency of such cases makes it reasonable to reduce the administrative burden associated to these scenarios.
122. One respondent argued that transfer of data to the TR of the FC were complex and burdensome for an NFC-, especially, if the legacy contracts have to be transferred to different TRs. However, the respondent further stated that rejecting the transfer for cost reasons would result in a situation where the NFC- would have to continue to report its legacy contracts by itself. The respondent argued that this would entail large operational costs and efforts for the NFC-, contradicting the aim of EMIR REFIT to reduce the costs for the NFC-. The respondent concluded that ESMA should allow an NFC- to stop reporting for derivatives outstanding before 18/06/2020. Given that FCs have all necessary information available and should report them to the TRs, the respondent concluded that there would be no loss of information for supervisory purposes. It was also emphasised that derivatives used by an NFC- accounted only for a small subset of derivatives and were mainly used for hedging purposes, therefore would not increase risk in the financial system. ESMA confirms that this aspect has already been clarified in the existing Q&A. With a view to achieving further convergence of the reporting framework, ESMA thus considered appropriate to include this clarification in the present Guidelines.
123. ESMA therefore clarifies that the NFC- is responsible for updating the details on the reported, outstanding derivatives so that they are compliant with the applicable reporting requirements in order to be transferred to the TR of the FC.
124. Given that the Guidelines on reporting under EMIR REFIT, which are expected to be finalised in 2022, provide the guidance on the arrangements between an NFC- and a FC in the case of allocation of responsibility for reporting, the clarifications necessary to ensure data quality when an NFC- ports to the TR of an FC will be covered in those Guidelines.
- Q13. Should the requirement put forward in Guideline 34 be structured in a different manner? Which other aspects need to be considered? Please elaborate on the reasons for your response.**

125. Given the proposed inclusion of TR Q&A 54(d), ESMA asked whether this proposal should be structured differently than proposed in the CP.
126. All five respondents supported the proposal.
127. All five respondents agreed that the Guideline does not need to be restructured and is complete.
128. One respondent mentioned that the GL represented an extreme case.
129. One respondent mentioned that they had no further comments unless it could be forced that both NFC+/NFC- and the FC were to be participants of the same TR to save the burden of transferring the outstanding derivatives back and forth. ESMA believes that the choice of TR should not be imposed. To conclude, ESMA expects the FC and NFC+/NFC- to agree on a way forward and to ensure that they fulfil their reporting obligation under Article 9 of EMIR.

3.2 SFTR Guidelines

3.2.1 Conditions of transfer of data

3.2.1.1 Entities involved in the transfer

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

130. In the CP, ESMA proposed that only the old and the new TR carry out the transfer of data, the new TR rejects duplicate reporting and the old TR rejects reports with certain action types.
131. Four respondents answered this question.
132. Three respondents supported the proposal, one rejected the proposal.
133. One banking association argued that TR participants would need to be informed of the progress of the data transfer to enable them to manage the reporting of lifecycle events. ESMA believes the Guidelines provide sufficient guidance for the TR participants in this regard.
134. Two TRs remarked that it is difficult for the old and the new TR to identify whether a TR participant is transferring SFT reports from one TR to another by cancelling/erroring out the SFTs at the old TR and submitting them with Action Type “New” at the new TR instead of adhering to the porting process as set out in the Guidelines.
135. The TR that rejected the proposal in the CP proposed the inclusion of specific portability action types so that the reporting counterparties would be directly responsible for the ported SFTs. ESMA believes the introduction of the new Guidelines sufficiently clarifies the responsibilities of the reporting counterparties in the porting process.

136. One central bank remarked that the transfer process and the related responsibilities of the involved TRs should overall be better explained, especially to clarify which records are available at the old and the new TR under each of the two porting scenarios, respectively. ESMA has provided further indications in this regard in Guideline 15 and other relevant Guidelines, such as Guideline 11 and 34.

137. One TR mentioned that, given the above, TRs were unable to comply with the requirement in this regard and proposed to change the Guideline to reflect that the responsibility of not conducting such a transfer consistent with the relevant Guidelines lies with the reporting counterparty. ESMA believes it has sufficiently clarified the responsibilities of the TR participants throughout the Guidelines. In particular, ESMA has addressed the case of partial porting in Guideline 11.

3.2.1.2 Migration plan

Q15. 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.

138. In the CP, ESMA proposed that only the new and the old TR carry out the transfer of the data. In addition, ESMA proposed that the new TR should not accept duplicate reports by TR participants relating to data subject to transfer and that the old TR should not accept that TR participants cancel out reports relating to data subject to transfer by using action types “ETRM” and “EROR”.

139. Two respondents answered this question.

140. Both respondents acknowledged the importance of a timeline including a mutually agreed action plan. One TR explained that TRs work out the timelines based on TR and client availability, which may take up to two weeks given the multiple steps involved. The TR further added that it only supported porting activities on two weekends per month.

141. One respondent asked that ESMA provides detailed guidance on specific action types and expected controls.

142. While acknowledging the need for specific guidance, ESMA believes that the Guidelines provide a sufficient level of detail and guidance to allow TRs to mutually agree a migration plan.

143. ESMA does not believe that the introduction of specific portability action types would enhance the existing portability processes.

3.2.1.2.1 Content of the migration plan

Q16. 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.

144. ESMA proposed that all TRs should use a standardised migration plan template that should be mutually agreed across all TRs and that should be compliant with the content included in Guideline 4.
145. Both respondents agreed with the proposed Guideline.
146. One TR stated that the experience of data transfer under EMIR validated the need for a standardised migration plan.
147. One TR asked to add further clarifications on specific action types, SFTs, and controls.
148. ESMA does not believe further guidance would enhance the existing portability processes that are already in place and have been agreed by all TRs.
- Q17. 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.**
149. In Guideline 4, ESMA proposed the information that should be contained in the migration plan, such as scope of the data to be transferred, the timeline, the controls required, etc. ESMA asked whether further aspects should be clarified in the Guideline.
150. Three responses were received. Two respondents agreed with the proposal, one respondent did not support the proposal.
151. One TR does not support the proposal and proposed that points iv., v. and vi should be standardised in an agreement between TRs and not have to be replicated on all migration plans.
152. Another TR added that the technical aspects of the porting specified under points iv., v. and vi. are specified and described in the Inter-TR technical specification documentation as these are implementation requirements.
153. One respondent asked to set up an operational communication plan as part of the migration plan to inform the TR participants of the progress of the transfer data. ESMA believes that TR participants and TRs successfully exchange in the current set-up without operational communication plans.
154. ESMA believes that TRs can integrate the above into the inter-TR agreement and/or the migration plans as necessary, but sees no necessity to add these points to the Guideline.

3.2.1.3 Format of the data

Q18. 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.

155. In draft Guideline 5, ESMA proposed that SFT data is transferred using the XML format and template defined in accordance with Article 4 of the RTS on data access (SFTR). In addition, ESMA proposed that non-outstanding and rejected SFTs can be transferred using CSV files.

156. All three respondents supported the proposed Guideline.
157. The central bank remarked that the XML format should also be used for non-outstanding SFTs as CSV files were not suitable for SFT data reporting.
158. One TR remarked that rejected SFTs, which meet the XML format standards but fail to pass logical or business validations, should be transferred in the XML format.
159. The TR further argued that any SFT data incompliant with the XML format should be transferred using a standardised CSV file in view of the benefits attributed to standardised templates.
160. The TR also remarked that the Guideline did not cover all data types that may not meet the latest ISO20022 standards and may therefore have to be transferred using a CSV file.
161. While acknowledging the need for specific guidance on the data to be transferred, ESMA believes that the existing Guideline provides a sufficient level of detail. However, ESMA therefore clarifies that the Reporting Log should be transferred in the machine readable format of the old TR.

3.2.1.4 Secure machine-to-machine connection

Q19. 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.

162. ESMA proposed the use of secure machine-to-machine protocols.
163. Two TRs responded to the question.
164. All respondents were in favour of the proposed Guideline.
165. One TR remarked that all file-based communication transmissions between TRs should use SSH File Transport Protocols for file access, file transfer, and file management to ensure that all communications of confidential data between TRs are secure and encrypted end-to-end.
166. The TR also elaborated on further beneficial aspects of SFTP that ensure that data integrity is maintained from the old to the new TR, such as hashing algorithms. The TR also discussed further functional aspects, such as the usage of either a user ID / password combination and/or SSH keys to authenticate, the necessity of defining a policy/process for the initial exchange and password / key lifecycle management between the TRs etc..
167. The TR stated that the sole use of SSH keys would be advisable due to the additional overhead to rotate passwords without any additional security benefit. Further aspects would need to be considered, e.g. implementation of upstream confidentiality controls, a centralised auditable log or documentation, encryption etc.
168. To ensure alignment with the existing EMIR Guidelines that were not subject to this consultation, ESMA retains this Guideline as proposed.

3.2.1.5 Data security

Q20. 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.

169. In the CP, ESMA proposed the usage of advanced encryption protocols and exchange of relevant public keys between TRs in addition to testing the encryption and decryption processes.
170. Two responses to the question were received.
171. All respondents were in favour of the proposed Guideline.
172. One TR remarked that it would be advisable to use the proposed SFTP configured to use the latest and strongest encryption and hashing standards, i.e. AES-256 and the SHA-2 family.
173. With regards to public-key cryptography, the TR mentioned that this is the current recommended best practice to securely exchange information between two parties over either secure (dedicated lines) or insecure (internet) communications. Furthermore, the TR stated that making the public part of the key available to peers (other TRs) would facilitate establishing secure and encrypted file exchange between the TRs.
174. To ensure alignment with the existing EMIR Guidelines that were subject to this consultation, ESMA retains this Guideline as proposed in the CP.

3.2.1.6 Data completeness

Q21. 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.

175. ESMA proposed that the old TR calculates the number of SFTs and the number of corresponding lifecycle events subject to transfer. ESMA further proposed that the old TR requests the TR participant's sign-off of the numbers related to outstanding SFTs and resolves all discrepancies at the earliest convenience and no later than in five working days.
176. Three respondents generally supported ESMA's proposal.
177. Nevertheless, the market participants brought attention to the following issues:
- a. Calculating and receiving sign-off from the TR participant may pose a challenge as the number of outstanding SFTs may change until the end of the trading day prior to the porting date (most likely a weekend).

- b. The possibility of blocked transfers if discrepancies are not resolved before the transfer.
 - c. It is not clear how the requirement to request sign-off regarding the numbers of reports subject to transfer as set out in Guideline 8 and the possibility to allow up to five days for the resolution of potential discrepancies interplays with the requirements introduced by draft Guidelines 32 and 33 which foresee the sign-off of the numbers on the day preceding the transfer.
178. ESMA believes that the above-mentioned issues can be resolved by ensuring that all involved stakeholders timely undertake the necessary actions and do not require a change of the proposed Guidelines.

3.2.1.7 Data integrity

Q22. 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.

179. In the CP, ESMA proposed that for each file generated and transferred a cryptographic checksum is generated according to a mutually agreed hashing algorithm and included by the old TR in the files subject to transfer.
180. One respondent agreed with the proposed Guideline, one respondent disagreed with the proposed Guideline.
181. One TR stated that if TRs implement the SSH File Transfer Protocol, they would not need an additional file-level cryptographic checksum as the SFTP already foresees a checksum on each data packet. Consequently, there is a very granular integrity checking that is accomplished as part of the transfer and no additional check is needed.
182. To ensure alignment with the existing EMIR Guidelines that were subject to this consultation, ESMA retains this Guideline as proposed in the CP.

3.2.1.8 Timeliness of the data transfer

Q23. 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.

183. ESMA proposed that data transfers should generally be carried out on a non-working day, but could also be carried out on working days depending on the volume.
184. All respondents were supportive of the of the proposed Guideline, hence ESMA retains it as is.
185. One TR pointed out that the current practice of weekend data transfers poses challenges to TRs due to limited resource availability and increased costs. In addition,

the TR stated that to perform data transfers during downtime on working days would be subject to other TRs' capabilities and specific agreements.

186. One banking association pointed out that the ability of TR participants to report new operations and update outstanding SFTs needs to be taken into account, when data transfer is carried out on a working day.
187. One TR suggested to reflect data transfers carried out on working days in the timelines set out in draft Guidelines 32 and 33.
188. ESMA agrees that porting on working days needs to be reflected in the relevant Guidelines and has therefore included this update in Guideline 11.

Q24. 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.

189. In the CP, ESMA proposed that the old TR should not accept lifecycle events and position data relating to the SFTs subject to transfer as soon as the transfer of the outstanding SFTs is confirmed by the new TR.
190. Three respondents supported this proposal.
191. One banking association stated that there was an inconsistency between Guideline 11 and 12 as the TR participant would not be able to submit reports to either TR until the completion of the transfer process. The respondent also asked for clarification as to where new SFTs should be submitted to.
192. One TR noted that once a report is transferred, the old TR cannot prevent a TR participant of incorrectly re-submitting the initial record, i.e., with action type "NEW", but can reject associated life-cycle events.
193. One TR proposed the introduction of specific portability action types to ensure the implementation of Guideline 10. However, ESMA does not see the benefit of introducing action types for portability. In addition, such change cannot be introduced in the Guidelines.
194. As Guidelines 11 and 12 detail, ESMA expects the old and the new TR not to accept lifecycle reports during the transfer time.

3.2.1.9 Data availability

Q25. 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.

195. ESMA proposed 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 subject to the transfer is completed. In addition, it was proposed that the data on outstanding SFTs is made available to the relevant authorities by the old TR.

196. Two TRs replied to this question.
197. Both respondents agreed with the proposal.
198. One TR remarked that all SFT data needed to be ingested before the new TR provides data to the relevant authority to maintain reporting sequences.
199. Another TR asked ESMA to detail which specific measures the new TR is expected to have in place to ensure that lifecycle events related to SFTs subject to transfer are not accepted prior to the completion of the porting process. The TR further remarked that the new TR were unable to determine whether a new SFT submitted by a new TR participant related to a new SFT or an SFT subject to transfer.
200. While ESMA understands the difficulties the new TR may experience in such a situation, it believes that it is the responsibility of the TR participant to adhere to the Guidelines setting out the reporting requirements for each case. To identify whether new TR participants are also reporting to other TRs or whether they plan full or partial porting, the new TR could include such question as part of the onboarding process of new TR participants and subsequently use this information together with the information provided on the reports that are to be ported in to reject lifecycle events and position data relating to SFTs subject to transfer.
- Q26. 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.**
201. In Guideline 13, ESMA proposed that the new TR makes the data available to authorities; includes the transferred data in the relevant public and authorities-only aggregations; and includes the data in the inter-TR reconciliation process, once the data transfer is completed.
202. Two responses were received.
203. Both respondents agreed with the proposed Guideline.
204. One TR asked that the Guideline should be extended to describe the actions that the old TR should perform, such as exclusion of the mentioned data from the relevant reports.
205. One TR asked ESMA to clarify that the data transferred should appear in the relevant activity reports for the relevant reporting period. ESMA would like to emphasise that the new TR is to make the data transferred available to authorities once the porting process has been completed. All reports relating to data transferred and received after the completion of the porting process should be made available to the authorities by the new TR.
206. Given the positive formulation of the Guideline, ESMA believes it is clear that the old TR should, in reaction, remove the transferred data from the relevant reports.

3.2.1.10 Fees

3.2.1.10.1 Recordkeeping of non-outstanding SFTs up to 10 years

Q27. Do you agree that the old 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.

207. In the CP, ESMA proposed that no fees should be charged by the old TR for the record-keeping of non-outstanding SFTs following voluntary porting.

208. Two responses were received.

209. One respondent agreed with the proposed Guideline, while another respondent disagreed.

210. One TR agreed that the old TR should not charge fees and remarked that, generally, pricing should not be addressed in the Guidelines as TRs were able to make their own commercial decisions.

211. Another TR argued that Guideline 14 should be aligned with Guideline 30 which addresses fees in the case of withdrawal of registration.

212. ESMA therefore clarifies that the two Guidelines are very different in nature and should therefore be considered separately: in the case of Guideline 14, the transfer of outstanding SFTs to a new TR is undertaken at the request of a participant and all other data remains at the old TR as outlined in Guideline 15. As the recordkeeping obligation of non-outstanding SFTs after the termination of the SFT up to 10 years is a requirement under Article 80(3) EMIR, as cross-referenced in Article 5(2) of SFTR, the old TR should not charge fees after the transfer has been completed as further explained in paragraph 72 of the CP.

213. In contrast, regarding fees in the case of withdrawal of registration addressed in Guideline 30: ESMA believes that TRs, who receive non-outstanding data related to active clients after a TR wind-down, should have the right to charge a cost-related fee for record keeping and maintenance of SFT data. As set out in Article 78(8) of EMIR, as cross-referenced in Article 5(2) of SFTR, TRs have the right to charge fees for services provided under SFTR. This is based on the obligation of a TR participant to report the details of his SFTs to a TR as set out in Article 4(1) of SFTR and to keep a record of them for five years as required by Article 4(4) of SFTR. Furthermore, the TR is obliged to record the information provided by its participant and maintain the information for at least 10 years in accordance with Article 80(3) of EMIR, as cross-referenced in Article 5(2) of SFTR.

3.2.1.11 Prioritisation of data to be transferred

Q28. 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.

214. ESMA proposed a procedure detailing the order in which the data should be transferred, in case all the data in the scope of the migration plan cannot be ported in a single instance.
215. The four respondents agreed with the proposal.
216. The majority of respondents proposed to only port outstanding SFTs in the case of the voluntary scenario which reflects the current practice for voluntary porting. The respondents added that data mentioned under (ii) to (vii) should only be transferred in the case of withdrawal of registration. ESMA has adapted the Guideline to reflect this.
217. One respondent asked for further clarification of the rejection and reconciliation data that is to be transferred in the case of withdrawal of registration. ESMA therefore clarifies that only outbound reports generated by the TR itself are subject to porting, meaning outbound reports for authorities pertaining to rejections and reconciliation status, respectively, in the XML format. With reference to the TRACE reports only the auth.084 and the auth.080 reports at NCA or client level are to be transferred.
218. ESMA clarifies that the reporting log is a document which should contain all modifications a TR has performed on a specific SFT record, e.g. in the context of a TR Q&A 40 update. The Reporting Log of the old TR is to be transferred to the new TR in the machine readable format of the old TR as set out in the final Guideline 15 and can be stored in an offline database.
219. ESMA has adapted the Guideline to reflect that only the latest state is ported under the voluntary scenario. ESMA has clarified that all data besides the latest state of outstanding derivatives is only to be transferred in the case of withdrawal of registration.

3.2.2 Transfer of data requested by a TR participant

3.2.2.1 Scope of the data subject to transfer

- Q29. 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.**
220. For the case of voluntary porting, ESMA proposed that the old TR determines whether all or some of the SFTs pertaining to counterparties that are non-reporting TR participants and which were reported by the TR participant should be transferred to the new TR or not.
221. Three responses were received.
222. Two respondents supported the proposal, one respondent did not support the proposal.

223. One TR stated that the reporting counterparties or ERR should determine whether all or some of the SFTs should be transferred and that this should not be undertaken by the TR.
224. One respondent stated that it was not clear why the transfer of SFT data reported by a TR participant as an RSE were subject to the approval of the non-reporting counterparty as this were a business choice of the RSE. The respondent argued that the provisions of Guidelines 16 and 17 are likely to pose problems in the management of the TR participants' processes.
225. One TR stated that for cases where the TR participant is an RSE for different non-TR participant counterparties, the old TR should rely on the portability request received by the RSE. In the request, the RSE can provide data on all its underlying non-TR reporting counterparties or any subset of these.
226. ESMA would like to remind that the old TR proceeds to select the SFTs that are to be ported consistent with Guideline 16 based on the portability request that has been received by the reporting counterparty or the RSE. ESMA understands that the reporting counterparty or the RSE will contact its non-reporting counterparties prior to submitting the porting request to the old TR to clarify how the latter would like to proceed.
- Q30. 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.**
227. ESMA proposes that for voluntary porting, where a non-reporting TR participant decides to remain with the old TR although its reporting TR participant has requested a transfer to another TR, the old TR should strip the SFTs submitted on behalf of the non-reporting TR participant from the SFTs that are transferred.
228. All three respondents supported the proposal.
229. One TR stated that this would require guidance from ESMA as to which entity should be populated in the SFTR Fields "Report submitting entity" and "Entity responsible for the report". ESMA clarifies that the TR should include the information that is in the SFTs submitted to it.
230. One respondent stated that it was not clear why the transfer of SFT data reported by a TR participant as an RSE were subject to the approval of the non-reporting counterparty as this were a business choice of the RSE. The respondent argued that the provisions of Guidelines 16 and 17 are likely to pose problems in the management of the TR participants' processes.
231. ESMA would like to remind that the reporting obligation lies with the counterparty and with the ERR, and a non-reporting counterparty or a non-reporting ERR does not have to port out of the old TR. It can instead either decide to report directly or delegate its reporting to a new RSE at the old TR.

Q31. 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.

232. In the CP, ESMA proposed a Guideline detailing the scope of the minimum data that should be transferred in the case of voluntary porting.

233. One respondent agreed with the proposal, one respondent disagreed with the proposal.

234. One TR disagreed with the proposed Guideline as they argue that only the latest state of outstanding SFTs should be subject to transfer for the voluntary scenario. They argue that the inclusion of lifecycle events would increase the complexity of the process due to volume increases and the impossibility to upgrade these to the latest data quality.

235. One TR indicated the need for more information on the format and content of the reporting log.

236. ESMA has updated the Guideline to reflect that only the latest state of outstanding SFTs is to be transferred under a voluntary porting scenario as is the current practice.

237. ESMA has provided further information on the format of the reporting log in Guideline 15.

3.2.2.2 Initiation of the process

Q32. Do you agree with the procedure described in Annex I? Which other aspects need to be considered? Please elaborate on the reasons for your response.

238. ESMA asked whether the respondents agreed with the proposed procedure described in Annex I, which details the procedures to be followed by the involved TRs in the case of voluntary porting. ESMA also proposed that the migration plan for a given TR participant is agreed as soon as possible and no later than five working days after the request is received.

239. Three responses were received.

240. While the majority of the respondents support the proposal, the respondents clearly point out that the migration plan cannot be agreed upon by all involved stakeholders within five working days after the request has been received. One respondent pointed out that the porting cases under EMIR supported this claim.

241. The respondents emphasised the difficulty of reaching a mutual agreement regarding the porting dates between the various stakeholders, reviewing the population of SFTs to be ported, and obtaining sign-offs within the five working days. Respondents proposed to extend this limit to at least ten days or two weeks.

242. ESMA has changed the wording of the draft Guideline to reflect an extension of the limitation from five working days to ten working days.

3.2.2.3 Communications

Q33. 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.

243. For voluntary porting, ESMA proposed that the new TR confirms that the outstanding SFTs of a TR participant are transferred to the TR participant, the old TR, the rest of the TRs and the relevant authorities.

244. All respondents agreed with the proposed Guideline.

3.2.2.4 Recordkeeping of the transferred data

Q34. 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.

245. In the CP, ESMA proposed that, in the case of voluntary porting, the old TR isolates and keeps safely the transferred data, by applying the same recordkeeping policies, procedures and safeguards to the transferred data as to the rest of SFT data reported to that TR, for at least three months. In addition, ESMA proposed that the old TR should ensure the retrieval of data in no more than seven calendar days.

246. All respondents were in favour of the proposal.

247. One TR mentioned that it understood the requirement to retrieve data in no more than seven calendar days on a “best effort basis” and that the transferred data would be made available for the authorities for potential data quality checks.

248. ESMA therefore clarifies that the TR is expected to retrieve data in no more than seven calendar days and this expectation is result orientated, rather than “on a best effort basis.”

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

Q35. 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.

249. For voluntary porting, ESMA proposed that any fees charged by the old or the new TR are to be cost-related, non-discriminatory and included in the fee schedule of the relevant TRs, which is to be made public.

250. All respondents agreed with the proposed Guideline.

3.2.3 Transfer of data in the case of withdrawal of registration

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

Q36. 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.

251. For the case of withdrawal of registration, ESMA proposed that the data transfer 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 and on reconciliation generated by the old TR.

252. Three responses were received.

253. All respondents disagreed with the proposal as regards the inclusion of rejected SFTs and/or reconciliation data.

254. One TR argued that the storage and reporting based on the LEI of a rejected SFT would be sufficient for the inter-TR reconciliation process.

255. Another TR stated that the effort of storing rejected SFTs reconciliation data outweighed the benefits.

256. ESMA therefore clarifies that only outbound reports generated by the TR itself are subject to porting, meaning outbound reports for authorities pertaining to rejections and reconciliation status, respectively, in the XML format. With reference to the TRACE reports only the auth.084 and the auth.080 reports at NCA or client level are to be transferred.

3.2.3.2 Migration plan as part of the wind-down plan

Q37. 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.

257. ESMA proposed that the migration plan is included in the wind-down plan presented by the TR that is winding down its operations.

258. All respondents agreed with the proposal.

3.2.3.3 Withdrawal of registration not requested by the TR

Q38. Do you agree that where the data transfer is related to the withdrawal of registration of a TR, the procedure included in Annex II - 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.

259. For withdrawal of registration, ESMA asked whether the respondents agreed with the proposed procedure described in Annex II, which details the procedures to be followed by the involved TRs. ESMA also proposed that the migration plan for a given TR participant is agreed as soon as possible and no later than five working days after the request is received.
260. One respondent agreed with the proposal, another respondent disagreed with the proposal.
261. One TR mentioned that the costs associated with the different aspects of the data transfer process needed to be carefully considered in relation to the mandatory 10-year storage of SFTR data, such as physical storage of the data, development of functionalities to integrate data into and to maintain data in the TR's infrastructure, etc..
262. One TR observed that Annex II had to be updated to facilitate the transfer of the outstanding reports from active TR participants to ensure a smooth continuation of their reporting obligation, following which the transfer of the remainder of the data as set out in Guideline 15 should be initiated.
263. One TR pointed out that the expectation to transfer the lifecycle events corresponding to outstanding SFTs for transaction, margin, and re-use reports at latest a week after the porting out of the relating outstanding SFT should be removed as the priority should be on the porting out of outstanding SFTs.
264. Regarding the verification of the data subject to transfer, one TR remarked that it were not clear what information and/or metric the new TR should use to verify the "the latest state of outstanding SFTs received. ESMA believes that the TRs have sufficient experience with the transfer of data to enable them to apply appropriate metrics.
265. ESMA would like to emphasise that although the new TR indeed faces costs associated with the data transfer process, the new TR also gains new clients and therefore realises an increase in revenue upon the transferal of the new TR participant's SFTs to the new TR.
266. ESMA has adapted the draft Annex II to reflect the changes in relevant Guidelines. In addition, ESMA has removed the expectation to transfer the lifecycle events corresponding to outstanding SFTs for transaction, margin, and re-use reports at latest a week after the porting out of the relating outstanding SFT as this does not reflect current porting practices in the case of withdrawal of registration.

3.2.3.4 Communication to authorities

- Q39. 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.

267. ESMA proposed that a withdrawing TR notifies ESMA in advance of the intended date of cessation of operations and then immediately notifies the TR participants and the relevant NCAs. For TRs with more than 500 TR participants, ESMA proposed that the advance notice is at least nine months, while for TRs with 500 or with less than 500 TR participants, the advance notice is at least six months.
268. Two responses were received.
269. One respondent supported the proposed Guideline, one respondent did not support the proposed Guideline.
270. The feedback overall was supportive of the proposed sequence, but both respondents remarked that the withdrawing TR should also inform the other TRs of its withdrawal intention. One TR added that Guideline 26 was not aligned with Annex II, which states that the old TR should notify the other TRs. The respondent argued that this was necessary for the other TRs 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.
271. One TR argued that the size of a TR should not be measured by the number of its participants. The TR stated that one major TR participant could submit as many reports as the remaining 499 TR participants. The TR proposed to use different measures, e.g. the number of reporting counterparties. The TR added that the timeline of 6 months may be too short.
272. ESMA's recent experience with the various TR withdrawals has shown that the number of participants is a well adapted measure and "500 participants" is a well adapted threshold. In addition, the period of 6 months refers to a minimum period of time and as each TR withdrawal is different, more time may be allocated.
273. ESMA agrees that Guideline 26 should be aligned with Annex II and has therefore included the expectation that the old TR should notify other TRs in Guideline 26.
- Q40. 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.**
274. For withdrawal of registration, ESMA proposed that the new TR confirms the completion of the data transfer(s) to the TR participants, all the remaining TRs, and the respective NCAs.
275. Two respondents supported the proposed Guideline.
276. No additional comments were received.

3.2.3.5 Recordkeeping of the transferred data

Q41. 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.

277. ESMA proposed that the old TR isolates and keeps safely the transferred data until the date of actual cessation of operations and ensures the timely retrieval of data in no more than seven calendar days. In addition, ESMA proposed that ,at the date of actual cessation of operations, the old TR performs a secure deletion so that the data cannot be recovered.

278. Two responses supporting the proposal were received.

279. One TR remarked that the exact scope of the data to be deleted should be confirmed, e.g. in the respondent's opinion the data falling under Guideline 28 does not include TR participant data. The respondent argued that TR participant data would be dealt with as specified in the contract with the TR.

280. The TR also stated that if the TR were not entitled to retain a copy of certain data as part of its business records, its responsibilities towards the authorities should be mentioned in Guideline 28.

281. ESMA therefore clarifies that all SFTR data and all data on TR participants is to be deleted as described in Guideline 28 prior to the cessation of operations. Withdrawal of registration will only be granted by ESMA upon confirmation that the data has been deleted and cannot be recovered by any means.

3.2.3.6 Fees in the case of withdrawal of registration

Q42. 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.

282. ESMA proposed that in the case of withdrawal of registration no fees should be charged for data transfer.

283. Three responses were received.

284. The majority of the respondents did not support the proposal.

285. Two respondents stated that the remaining TR should be able to charge a fee for the data transferred.

286. One TR stated that these fees should cover the cost for the storage and maintenance of the records. The TR argued that if there was no charge, the viability and economic health of the remaining TRs could be affected.

287. Another TR added that fee related Guidelines should be aligned to allow TRs to charge fees and to give TRs enough flexibility to charge fees to cover costs after the withdrawal of registration of a TR.

288. ESMA believes that the new TRs should not charge any fees for the transfer as they will receive new clients generating new business without any effort on their side. However, as included in Guideline 30, the new TR may charge fees for the uptake and storage of non-oustanding data pertaining to active TR participants.

3.2.4 Transfer of TR data on reconciliation and rejections

Q43. 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.

289. In the CP, ESMA proposed that all data on reconciliation and rejections generated by the old TR related to a SFT subject to transfer should be transferred to the new TR.

290. Four responses were received.

291. Two respondents were in favour of the proposal, two did not support the proposal.

292. One correspondent proposed to only transfer statistics on reconciliation and rejections.

293. One TR argued that such transfer and related processes, e.g. providing NCAs with access to the data, format related issues etc., would pose many difficulties.

294. Another TR stated that this would increase the complexity of the porting process, especially as the files were not always explicitly generated at counterparty level, but in some cases at RSE level. The TR mentioned the example of a TR participant, who is an RSE reporting on behalf of three counterparties that do not have a contractual relationship with the withdrawing TR. The TR argues that in such a case the rejection and reconciliation reports would have only been generated for the RSE. If the three counterparties would port to three different TRs, the withdrawing TR would have to regenerate rejection and reconciliation files for each counterparty, resulting in a great number of reports the withdrawing TR would have to regenerate.

295. ESMA therefore clarifies that only outbound reports generated by the TR itself are subject to porting, meaning outbound reports for authorities pertaining to rejections and reconciliation status, respectively, in the XML format. With reference to the TRACE reports only the auth.084 and the auth.080 reports at NCA or client level are to be transferred.

296. The recent withdrawal process of a TR registered under SFTR has shown that in practice there are multiple solutions that can be envisaged, e.g. porting the files at NCA level or building a functionality to generate the files at counterparty level, which

can be adapted according to the characteristics of a withdrawal and the capacities of the withdrawing TR. ESMA therefore believes that a certain level of flexibility will be helpful for all involved stakeholders. The level at which the relevant files will be ported out will therefore be determined on a case-by-case basis.

297. ESMA acknowledges the need for more detailed information and has aligned Guidelines 15 and 23. Finally, ESMA has removed draft Guideline 30.

3.2.5 Fees in the case of withdrawal of registration

Q44. Do you agree that the new TR may charge fees to the active TR participants for maintenance and the recordkeeping of their non-outstanding SFTs? Which other aspects need to be considered? Please elaborate on the reasons for your response.

298. ESMA proposed that TRs can charge a fee to TR participants for the maintenance and the recordkeeping of their non-outstanding SFTs in the case of withdrawal of registration.

299. One respondent remarked that smaller TRs may be less competitive if they introduce a fee and asked that ESMA clarify how the fee should be calculated.

300. One respondent argued that the rationale behind Guideline 30 was not clear when considering Guideline 29.

301. Regarding the difference in rationale behind Guideline 29 and 30, ESMA clarifies the following: as the withdrawal of registration is outside of the discretion of the TR participant and the new TRs receive business without any particular effort on their side, the TR participant should not incur fees for the data transfer. In contrast, TRs, who receive non-outstanding data related to active clients after a TR wind-down, have the right to charge fees for the provision of services in line with Article 78(8) of EMIR, as cross-referenced in Article 5(2) of SFTR. The rationale for Guideline 30 is based on the obligation of a TR participant to report the details of his SFTs to a TR as set out in Article 4(1) of SFTR and to keep a record of them for five years as required by Article 4(4) of SFTR. Furthermore, the TR is obliged to record the information provided by its participant and maintain the information for at least 10 years in accordance with Article 80(3) of EMIR, as cross-referenced in Article 5(2) of SFTR.

302. As stated in the CP, costs related to the non-outstanding data of active participants should adhere to the requirements set out under Article 5(2) of SFTR and Article 78(8) of EMIR, which sets out the disclosure and fee setting requirements for the services the TR provides under the regulation. Costs charged by TRs as clarified in Guideline 30 should be justified.

303. Based on the feedback received, the wording of the Guideline was updated to reflect that only active clients can be charged a fee for their non-outstanding SFTs.

Q45. 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.

304. Both respondents agreed that costs should adhere to fee requirements and be justified by the TR.
305. No comments were provided.

3.2.6 New XML schemas and varying degrees of data quality

Q46. 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.

306. ESMA proposed that TR participants upgrade outstanding SFTs subject to porting to the most up to date reporting requirement prior to the porting on a weekend.
307. All respondents supported the proposed Guideline.
308. Two TRs asked to embed the responsibility of the TR participant to update reports prior to porting and to make explicit that not-updated SFTs are not eligible for voluntary porting and will remain in the old TR.
309. Regarding the cut-off time, one respondent pointed out that draft Guideline 32 needed to be altered to include porting on working days and determine the cut-off for this case using relative time parameters.
310. Another TR asked for clarification whether the “most up to date reporting requirement” meant that the data update is to be done to the latest validation rules or the latest RTS standards? The respondent argued that updating to the latest RTS standards seemed the most pragmatic choice as this would ensure compliance with the XML format. According to the respondent, updating to the latest validation rules would result in an additional burden for the TR participant and the withdrawing TR as validation rules were changing more frequently. ESMA therefore clarifies that TR participants should update the outstanding reports subject to porting to the latest reporting requirements as specified in RTS on reporting (SFTR) and ITS on reporting (SFTR), and as clarified in Guideline 11 and validation rules.
311. Based on the consultation feedback, ESMA will remove draft Guideline 32 and integrate the feedback received into the updated Guideline 11. ESMA included a distinction between porting on weekends and working days, moved the cut-off time for porting on weekends to Friday evening, and also clarified the responsibilities of the TR participant for partial porting.

Q47. 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.

312. In the CP, ESMA proposed that TR participants submit new reports relating to outstanding SFTs to the new TR on the first business day following the porting.
313. Five responses were received.
314. All respondents supported the proposal.
315. One respondent inquired whether draft Guideline 33 were to complement the content of Guidelines 11 and 12 and how this procedure were to extend beyond working days.
316. One TR asked how to proceed if a TR participant reports a new SFT or a modification to an existing SFT on the Friday prior to the weekend porting in line with EMIR requirements.
317. One TR mentioned that lifecycle events would be received as late reporting in the reports of the new TR as a consequence of draft Guideline 33.
318. One TR asked whether the old TR, in case it received reports from a TR participant after the beginning of the transfer, should reject these, accept them and transfer them to the new TR, or accept them but not transfer them to the new TR. The respondent proposed to change draft Guidelines 32 and 33 to allow the old TR and the TR participant to agree on “tentative volumes” to be transferred during the planning phase and then have the old TR confirm these to the TR participant and the new TR on the transfer day. Finally, the new TR should notify the old TR and the TR participant as to how many reports were successfully transferred.
319. Another TR inquired whether the introduction of the cut-off time grants an exemption of the T+1 obligation for SFTs executed on the Thursday. The reporting of SFTs is a legally binding obligation set out in Article 4 of SFTR, while Guidelines are not legally binding. Consequently, entities are required to report in accordance with Article 4 of SFTR. ESMA clarifies that the introduction of the cut-off time in the Guidelines cannot grant an exemption from the T+1 reporting obligation.
320. ESMA clarifies that the new TR is to reject all reports related to data subject to transfer until the successful porting in of the data
321. As Guidelines 11 and 12 detail that the old and the new TR should not accept lifecycle reports during the transfer time, ESMA clarifies that draft Guideline 33 complements these by setting out that TR participants should submit lifecycle events on the first business day following the transfer.
322. Based on the consultation feedback, ESMA will remove draft Guideline 33. ESMA outlined the responsibilities of the TR participant for partial porting in Guideline 11 with regards to the submission of reports pertaining to outstanding SFTs subject to transfer.

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

Q48. 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.

323. For the case of withdrawal of registration, ESMA proposed to allocate data, for which no back-stop TR had been designated, to the remaining TRs based on a calculation in proportion to the new TR's market share for a specific reference date.

324. Three responses in support of the proposal were received.

325. One TR asked to detail the definition of active and inactive client for the allocation of non-outstanding data. It proposed that the active client be replaced by the reporting counterparty on whose behalf the RSE changing TR is responsible to report or the reporting counterparty that has delegated reporting to that RSE.

326. The TRs asked for clarification of many technical aspects, such as definition of dormant reporting counterparties or similar cases; split of SFT data (e.g. per TR participant); allocation of historical data of dormant reporting counterparties or such that have transferred to another TR; the reference date etc.

327. Some TRs asked ESMA to detail the timeline of the allocation process. However, ESMA believes that this depends on the specific case of withdrawal. ESMA would like to emphasise that it is rather important to adhere to the logical chain of events that a TR who wishes to withdraw from the TR community should follow. The steps should follow the relevant Guidelines, e.g. Guidelines 23 to 29, 31, and 32.

328. While ESMA acknowledges that many details need to be clarified, it would like to remind the TRs that these are different for each withdrawal case and depend on the TR who withdraws, the data itself and many other factors. Therefore, ESMA will not clarify these rather detailed technical aspects.

329. Following the assessments of the feedback received to the consultation, ESMA has removed this Guideline.

Q49. 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.

330. In the CP, ESMA proposed that the new TR could store non-outstanding SFT data of varying data quality in separate databases and to respond to the queries of NCAs on demand.

331. The respondents all agreed with ESMA's proposal.

332. Some TRs asked to clarify ESMA's expectations with regards to the response time to authorities' queries, the relevant format of the data etc. For the previous TR withdrawals, ESMA provided the new TRs with its expectations that were adapted to the specificities of each withdrawing TR and the capacities of the receiving TRs at that

point in time. ESMA believes it is more prudent to retain this flexibility and will therefore not clarify the above as part of the Guidelines. ESMA also notes that the requirements on timeline to provide access to data are specified in detail in the RTS on data access (SFTR).

Q50. 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.

333. For the case of withdrawal of registration, ESMA proposed that the old TR should provide the new TR with the necessary technical information on the data subject to transfer in a timely manner to allow the new TR to prepare as necessary.

334. Three responses in favour of the proposal were received.

335. One respondent inquired what the definition of “timely manner” were for the provision of the necessary technical information.

336. In addition, one respondent mentioned difficulties in past withdrawals when the withdrawing TR did not provide such necessary technical specification of the data. Therefore, respondents proposed to precisely define the expectation of the content for such documentation. In particular, the TR stated that a mapping and field explanations for CSV files with historical transactions should be included.

337. One TR proposed that ESMA define a common CSV format containing only regulatory fields for the purpose of such data transfer.

338. ESMA expects the withdrawing TR to provide the new TRs with all the necessary technical information to facilitate the data transfer and subsequent storage. The technical documentation should at least cover the following aspects: (i) mapping of the fields to SFTR fields; and (ii) technical explanations for each field. ESMA has amended the Guidelines to reflect this.

3.2.8 Verification and confirmation of SFT records

Q51. 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.

339. ESMA proposed that the counterparties or the entities reporting on their behalf perform a verification and confirmation of the correctness of the aggregate information prior and after the transfer of data.

340. All four respondents agreed with the proposed Guideline.

341. One TR proposed that details on scenarios should be defined by products.

342. Another respondent requested further clarifications on the relationship between Guideline 33 and Guideline 8.

343. Two TRs remarked that the unique identification of reports should be done differently.
344. One TR stated that the timeline would need to be reconsidered and that this would be difficult for participants.
345. One TR mentioned that the differences in record keeping requirements for TR participants (5 years) and TRs (10 years) may result to the incapacity for TR Participants to confirm the aggregate information in many circumstances.
346. ESMA does not believe that the differences in record keeping requirements for TR participants and TRs hinder TR participants to confirm aggregate information as described in Guideline 33.
347. ESMA clarifies that Guideline 8 details the TR processes related to the verification of the completeness of the data subject to transfer. In contrast, Guideline 33 details the verifications and confirmation of the aggregate information prior and after the transfer of data by the counterparties or the entities reporting on their behalf.
348. ESMA reminds that the counterparties or the entities reporting on their behalf should perform a verification and confirmation of the correctness of the aggregate information prior and after the transfer of data to ensure the correctness of the data subject to transfer as required under Article 4(1) of SFTR and that TRs should ensure the integrity of the data subject to transfer in accordance with Article 80(1) of EMIR, as cross-referenced in Article 5(6) of SFTR. ESMA has clarified this aspect in Guideline 33.
349. ESMA has updated the Guideline to reflect the amendments made to Guidelines 15 and 11.

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

- Q52. Do you agree with the inclusion of the cases where an FC and an NFC-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.**
350. ESMA proposed to include SFTR TR Q&A 8(d) addressing cases where an FC and a SME NFC report outstanding SFTs subject to transfer to two different TRs as Guideline 34.
351. The inclusion of this Guideline was supported by the two respondents to this question.
352. One TR mentioned that the usually low volumes associated with such cases and the potential frequency of such cases makes it reasonable to reduce the administrative burden associated to these scenarios. While ESMA understands the voiced concerns, the Guideline is retained as is to ensure the completeness, accuracy, and integrity of the data, as to cover all use cases.

Q53. Should the requirement put forward in Guideline 34 be structured in a different manner? Which other aspects need to be considered? Please elaborate on the reasons for your response.

353. ESMA asked whether Guideline 34 should be structured differently.

354. The inclusion of this Guideline was supported by the three respondents to this question.

355. One TR stated that Guideline 34 represented an extreme case.

356. One respondent mentioned that they had no further comments unless it could be forced that both the SME NFC/ non-SME NFC and the FC were to be participants of the same TR to save the burden of transferring the outstanding SFTs back and forth. ESMA believes that the choice of TR should not be imposed.

3.3 Annex I - Procedure for transfer of data at the request of a TR participant under EMIR

357. In the CP, ESMA presented Annex I detailing the various steps the involved stakeholders are to follow as part of the procedure for data transfer in the case of voluntary porting.

358. No comments were received for this proposal.

359. ESMA adapted the procedure to account for the changes in Guidelines 18, 15, and 11.

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

360. In the CP, ESMA presented Annex II detailing the various steps the involved stakeholders are to follow as part of the procedure for data transfer in the case of withdrawal of registration.

361. No comments were received for this proposal.

362. ESMA adapted the procedure to account for the changes in Guidelines 15 and 11.

3.5 Annex I - Procedure for transfer of data at the request of a TR participant under SFTR

Q54. Do you agree with the procedure described in Annex I? Which other aspects need to be considered? Please elaborate on the reasons for your response.

363. ESMA asked whether the respondents agreed with the procedure described in Annex I and which other aspects needed to be considered.
364. One answer in favour of the proposal was received.
365. The TR remarked that the procedure should only cover the transfer of the latest state of outstanding SFTs. In addition, the respondent asked for providing a clear 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. ESMA clarifies that “the latest state of the outstanding SFTs received” is the most up-to-date expression of each of the reportable details of a SFT, hence it is a qualitative characteristic.
366. The participant also observed that this point is not aligned with Guideline 33, which only considers the quantification (and subsequent confirmation) of the total number of outstanding SFTs.
367. ESMA agrees with the observations and has adapted Annex I accordingly.
368. ESMA adapted the procedure to account for the changes in Guidelines 18, 15, and 11.

3.6 Annex II - Procedure for migration in case of withdrawal of registration under SFTR

- Q55. Do you agree with the procedure described in Annex II? Which other aspects need to be considered? Please elaborate on the reasons for your response.**
369. ESMA asked whether the respondents agreed with the procedure described in Annex II and which other aspects needed to be considered.
370. One answer was received.
371. One respondent did not agree with the procedure.
372. One TR observed that Annex II needed to be updated to facilitate the transfer of the outstanding reports from active TR participants to ensure a smooth continuation of their reporting obligation, following which the transfer of the remainder of the data as set out in Guideline 15 should be initiated.
373. Regarding the verification of the data subject to transfer, one TR remarked that it were not clear what information and/or metric the new TR should use to verify the latest state of outstanding SFTs received. ESMA believes that the TRs have sufficient experience with the transfer of data to enable them to apply appropriate metrics.
374. ESMA has updated Annex II to reflect the changes in Guidelines 15 and 11.

4 Cost-benefit analysis

As indicated in Section 4 of this Final Report, the amended Guidelines on transfer of data between TRs under EMIR and the new Guidelines on transfer of data between TRs under SFTR have the aim to (i) remove portability obstacles from the competitive TR environment, and ensure that TR participants can benefit from the multi-TR environment; (ii) to ensure the quality of data available to authorities, including the aggregations carried out by TRs, even when the TR participant changes the TR to which it reports and irrespective of the reason for such a change; and (iii) to ensure that there is a consistent, standardised and harmonised way to transfer records from one TR to another TR and support the continuity of reporting and reconciliation in all cases including the withdrawal of registration of a TR.

The guidelines cover the transfer of data at the request of a TR participant and the transfer of data due to withdrawal of TR registration. ESMA is including a few cost-benefit aspects outlining the qualitative assessment of the impact of the guidelines to market participants and TRs.

The amendments to the existing Guidelines under EMIR and the new Guidelines under SFTR provide clear instructions to TRs who are legally required to enable TR participants to port from one TR to another TR under EMIR and SFTR. They leverage on the already existing Guidelines on transfer of data under EMIR (ESMA70-151-552), the infrastructure already in place, and the operational experience of TRs gained through the past years for both the voluntary porting and porting due to a withdrawal of registration. As some of the amendments are already implemented in the porting processes, this may reduce additional implementation costs. In addition, regarding the new Guidelines on transfer of data under SFTR, the additional costs are reduced as the porting infrastructure can also be used for porting under SFTR.

The amendments to the Guidelines under EMIR are mostly formalising already existing porting practices that are already implemented and well established. Therefore, there will be minimal additional costs for TRs arising from these. The proposed amendments to the Guidelines under EMIR also leverage on the lessons learnt in the implementation of data transfers since 2017. To account for the principle of proportionality and taking into consideration the relevant costs for all stakeholders involved, ESMA has limited the scope of the data to be ported under the voluntary scenario so that only the “last state”, instead of all data, relating to a derivative subject to transfer is ported. To ensure that the new TR can ingest the incoming data without major data quality issues, ESMA has included the expectation that entities update reports subject to transfer to the latest reporting requirement prior to porting. These considerations are also relevant for the new Guidelines under SFTR.

By setting equivalent framework for data transfers under EMIR and SFTR, ESMA also minimises additional operational costs for market participants, builds on pre-existing infrastructures, operational processes and formats which have been introduced with regard to reporting derivative contracts to trade repositories and avoids inconsistencies.

Guideline 31

<p>Benefits</p>	<p>ESMA foresees that this Guideline will benefit the EU registered TRs under EMIR and SFTR as well as NCAs as follows:</p> <ul style="list-style-type: none"> -Formalisation of ESMA’s expectations already voiced to TRs in previous withdrawals providing certainty to TRs -Data storage infrastructure and related functionalities will exist for future withdrawals and may be adapted -Clarity for NCAs on storage of and access to regulatory non-outstanding data of lower quality
<p>Costs</p>	<p>ESMA foresees that this Guideline will entail the following costs for the EU registered TRs under EMIR and SFTR :</p> <ul style="list-style-type: none"> -Initial costs for setting up data storage and implementing functionalities to enable data maintenance and retrieval for the TRs -Lower costs for future withdrawals as infrastructure and functionalities in place

Guideline 32

<p>Benefits</p>	<p>ESMA foresees that this Guideline will benefit the EU registered TRs under EMIR and SFTR :</p> <ul style="list-style-type: none"> -New TR will not have to assign resources to explore the data -Certainty as to the data quality of the overall data received -Information provided will enable the new TRs to adapt the existing functionalities to the new data
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Costs	ESMA foresees that this Guideline will entail the following costs for the EU registered TRs under EMIR and SFTR: -Lower costs for future withdrawals as infrastructure and functionalities in place can be adapted
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5 Advice of the Securities and Markets Stakeholder Group

In accordance with Article 16 of ESMA Regulation ESMA requested the advice of the ESMA Securities and Markets Stakeholder Group (SMSG). The SMSG decided not to provide an advice.

Annex I: Amendments to Guidelines on transfer of data between Trade Repositories under EMIR

1 Scope

Who?

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

What?

2. The adopted guidelines apply in relation to:
 - a. the reporting without duplication of details of derivatives by counterparties and CCPs under Article 9(1) of EMIR;
 - b. the procedures for portability under Article 78(9) of EMIR;
 - c. the transfer of derivatives between TRs at the request of the counterparties, or the entity reporting on their behalf, or in the situation where the registration of a TR has been withdrawn covered by Article 79(3) of EMIR;
 - d. the record-keeping of details of derivatives in accordance with Article 80(3) of EMIR; and
 - e. Article 21(2) of RTS on registration (EMIR).

When?

3. The existing guidelines on data transfer under EMIR apply as of 16 October 2017. The amendments to these Guidelines apply as of 3 October 2022.

2 Legislative references, abbreviations and definitions

Legislative references

<i>EMIR</i>	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ²⁰
<i>ESMA Regulation</i>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ²¹
<i>RTS on reporting</i>	Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, as amended by Commission Delegated Regulation (EU) 2017/104 ²²
<i>Draft RTS on reporting</i>	Commission Delegated Regulation (EU) No YYYY/XXX of ... supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the minimum details of the data to be reported to trade repositories and repealing Commission Delegated Regulation (EU) No 148/2013 ²³
<i>ITS on reporting</i>	Commission Implementing Regulation (EU) No 1247/2012 of 19 December 2012 laying down implementing technical standards with regard to the format and frequency of trade reports to trade repositories according to Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, as amended by Commission Implementing Regulation (EU) 2017/105 ²⁴

²⁰ OJ L 201, 27.7.2012, p.1

²¹ OJ L 331, 15.12.2010, p. 84–119

²² OJ L 52, 23.2.2013, p. 1–10

²³ 3 The Draft RTS on reporting, adopted by ESMA on 17/12/2020 (ESMA74-362-824), are submitted to the European Commission for endorsement.

²⁴ OJ L 352, 21.12.2012, p. 20–29

<i>RTS on registration</i>	Commission Delegated Regulation (EU) No 150/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository, as amended by Commission Delegated Regulation (EU) 2019/362 of 13 December 2018 ²⁵
<i>RTS on data access</i>	Commission Delegated Regulation (EU) No 151/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories, with regard to regulatory technical standards specifying the data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data, as amended by Commission Delegated Regulation (EU) 2017/1800 and by Commission Delegated Regulation (EU) 2019/361 ²⁶
<i>Guidelines on positions</i>	Guidelines on position calculation by trade repositories under EMIR ²⁷
<i>MiFIR</i>	Commission Delegated Regulation (EU) No 600/2014 of 15 May 2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 ²⁸

Abbreviations

<i>CP</i>	Consultation Paper
<i>CSV</i>	Comma-separated values
<i>ECB</i>	European Central Bank
<i>EEA</i>	European Economic Area
<i>EER</i>	Entity Responsible for Reporting

²⁵ OJ L 52, 23.2.2013, p. 25–32

²⁶ OJ L 52, 23.2.2013, p. 33–36

²⁷ ESMA70-151-1350

²⁸ OJ L 173, 12.6.2014, p. 84



<i>ESMA</i>	European Securities and Markets Authority
<i>EU</i>	European Union
<i>FSB</i>	Financial Stability Board
<i>ISO</i>	International Organization for Standardization
<i>ITS</i>	Implementing Technical Standards
<i>LEI</i>	Legal Entity Identifier
<i>NCA</i>	National Competent Authority
<i>NCB</i>	National Central Bank
<i>Q&A</i>	Questions and Answers
<i>RSE</i>	Report Submitting Entity
<i>RTS</i>	Regulatory Technical Standards
<i>SLA</i>	Service Level Agreement
<i>TR</i>	Trade Repository
<i>TRACE</i>	System for single access to TR data
<i>XML</i>	Extensible Mark-up Language

Glossary of concepts and terms

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

For the purpose of these Guidelines the following terms have been defined/described:

- “active client” means a TR participant that has outstanding derivatives at a TR.
- “compressed derivatives” means derivatives that were terminated due to compression as defined in Article 2(1)(47) of MiFIR and derivatives included in a position. Therefore, compressed derivatives refers to a set of derivatives between a pair of counterparties which have been terminated before their initially established maturity date by the two counterparties and are identified with action type “Z” or “P” under the current RTS on reporting. In addition, under the draft RTS on reporting, such a set of derivatives are identified with a combination of action type “TERM” and event type “COMP”, a combination of action type “TERM” and event type “INCP”, or action type “POSC”.
- “errored derivative” means a derivative which is reported to a TR as a result of a mistake. It is identified with action type “E” under the current RTS on reporting and “EROR” under the draft RTS on reporting.
- “life-cycle events” comprise all action types reported for a given derivative.
- “matured derivative” means a derivative which is reported to a TR and at a given point in time has reached its contractually-agreed maturity date.
- “new TR” means a TR to which a TR participant has started or intends to start reporting derivatives under Article 9 of EMIR, although initially that entity was reporting, either directly or through an RSE, to the old TR.
- “non-active client” means a TR participant that no longer has outstanding derivatives at a TR.
- “old TR” means a TR to which a TR participant was reporting or to which the derivatives of a TR participant were reported by an RSE under Article 9 of EMIR, but (i) the TR participant decided to discontinue its contractual arrangement reporting or (ii) the registration of the TR was withdrawn.
- “outstanding derivative” means such a derivative, including CCP-cleared derivatives, which is reported to a TR and has not matured and has not been subject of a report with action types “E”, “C”, “P” or “Z” under the current RTS on reporting. In addition, under the draft RTS on reporting, “outstanding derivative” means a derivative that has not matured or which has not been the subject of reports with action types “TERM”, “EROR”, or “POSC”. Furthermore, under the draft RTS on reporting, “outstanding derivative” means a derivative that has been subject to a report with the action type “REVI” not followed by another report with the action type “TERM” or “EROR”.

- “portability” means the possibility to transfer records relating to details of derivatives reported under Article 9 of EMIR from the old TR to the new TR, as those are defined in these guidelines.
- “positions” means the representation of exposures between a pair of counterparties as included in the Guidelines on positions.
- “reconciliation” means the process through which TRs confirm that the two sides of a derivative have been reported with the same information by each ERR.
- “rejections” means derivatives that have been rejected by a TR due to errors in the information reported by an ERR or RSE.
- “report submitting entity” (RSE, hereinafter), which is one of the counterparty fields of the technical standards on reporting²⁹, should be understood as the entity which has entered in a contractual relationship with a registered or recognised TR and it:
 - reports only derivatives where it is one of the counterparties, in which case it would coincide with either the reporting counterparty of the contract or the other counterparty, or
 - reports derivatives where it might be or might not be one of the counterparties.
- “terminated derivatives”, under the RTS on reporting, means derivatives which have been terminated before their contractually-agreed maturity date by the two counterparties and are identified with action type “C”. In addition, under the draft RTS on reporting, such a set of derivatives are identified with a combination of action type “TERM” or action type “POSC”. Under the draft RTS on reporting, “terminated derivatives” also comprise the above mentioned compressed derivatives.
- “transfer” or “transfer (of details) of derivatives” means an act or process of moving the records of the derivatives, respectively, from the old TR to the new TR.
- “TR participant”³⁰ means an entity which has a contractual arrangement for the purpose of reporting derivative contracts under Article 9 of EMIR with at least one registered or recognised TR. The TR participant may be an RSE, an ERR, a reporting counterparty or a CCP.

3 Purpose

4. The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure the common, uniform and

²⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0104>

³⁰ Some TRs might further specify the types of TR participants such as reporting, general reporting, non-reporting, etc. participants. These sub-categories are transparent from the perspective of these guidelines.

consistent application of by providing clarification for TRs, reporting counterparties and ERR on how to ensure compliance at all time with the following EMIR provisions:

- a. Article 9(1) (e) of EMIR which provides that “Counterparties and CCPs that are required to report the details of derivative contracts shall ensure that such details are reported correctly and without duplication.”;
 - b. Article 80(3) of EMIR which provides that “A trade repository shall promptly record the information received under Article 9 and shall maintain it for at least 10 years following the termination of the relevant contracts. It shall employ timely and efficient record keeping procedures to document changes to recorded information.”;
 - c. Article 79(3) of EMIR which provides that “A trade repository from which registration has been withdrawn shall ensure orderly substitution including the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories.”; and
 - d. The procedures for portability under Article 78(9) of EMIR.
5. The Guidelines are based on Article 16(1) of ESMA Regulation, which provides that “The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines addressed to all competent authorities or all financial market participants and issue recommendations to one or more competent authorities or to one or more financial market participants.”.
6. The purpose of the amended Guidelines on transfer of data under EMIR is threefold:
- a. Remove portability obstacles from the competitive TR environment, and ensure that TR participants can benefit from the multi-TR environment;
 - b. Ensure the quality of data available to authorities, including the aggregations carried out by TRs, even when the TR participant changes the TR to which it reports and irrespective of the reason for such a change;
 - c. Ensure that there is a consistent, standardised and harmonised way to transfer records from one TR to another TR and support the continuity of reporting and reconciliation in all cases including the withdrawal of registration of a TR.
7. The need to transfer data to another TR may arise for different reasons. The Guidelines therefore address separately the situations where (i) the transfer is due to withdrawal of registration of the TR from the cases in which (ii) the transfer is done on a voluntary basis and under normal market conditions. Guidelines 1 to 15 and Guidelines 33 and 34 apply to both situations; Guidelines 16 to 22 apply only to voluntary porting; and Guidelines 23 to 32 apply only to withdrawal of registration of a TR. The incentives and motivations for the relevant parties in each of the two cases would be different and therefore there is a need for a specific approach in each particular situation.
8. The Guidelines establish high-level principles that would need to be followed by the TR participants, e.g. RSE, counterparties and CCPs, on the one hand, and the TRs on the other. Those principles are complemented by specific procedures, set out to ensure

the timely and robust transfer of details of derivatives. These Guidelines however do not cover situations that do not require transfer of data, such as reporting counterparties that have decided to report to two or more TRs at the same time.

4 Compliance and reporting obligations

Status of the guidelines

9. In accordance with Article 16(3) of the ESMA Regulation, national competent authorities, TRs, reporting counterparties and entities responsible for the report must make every effort to comply with these guidelines.
10. Competent authorities to which these guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate, including where particular guidelines are directed primarily at financial market participants. In this case, competent authorities should ensure through their supervision that financial market participants comply with the guidelines.
11. ESMA will assess the application of these guidelines by TRs through its ongoing direct supervision.

Reporting requirements

12. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
13. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines.
14. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.
15. TRs are not required to report whether they comply with these guidelines.
16. Reporting counterparties and entities reporting on their behalf are not required to report whether they comply with these guidelines.

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

17. Guidelines 11, 15, 18, 19, 23 and 26 of the existing Guidelines on transfer of data between Trade Repositories under EMIR are replaced as follows:

Guideline 11. Prior to the data transfer on non-working day, TRs should ensure that TR participants modify the outstanding derivatives that are subject to data transfer to comply with the most up to date reporting requirement at the latest by 23:59:59 on the Friday ahead of the weekend on which the porting takes place and

- (i) in the case of full porting, from the start of the data transfer, the old TR should not accept reports on lifecycle events and position data relating to the derivatives subject to transfer;
- (ii) and in addition, in the case of partial porting, the TR participant should ensure accurate reporting of lifecycle events relating to the derivatives to the relevant TRs.

For transfers on working days, the old TR and the new TR are to agree upon a time, prior to the data transfer, by which the modifications of the outstanding derivatives that are subject to data transfer should be completed by the TR participant. For transfers on working days, (i) and (ii) should be followed by the old TR and the TR participant.

Guideline 15. In case all the data in the scope of the migration plan cannot be transferred in a single instance, the TRs should transfer the data in accordance with the following order:

- (i) the latest state of the outstanding derivatives received, i.e. the “trade state”;
- (ii) in the case of withdrawal of registration, the reports related to lifecycle events applicable to the outstanding derivatives;
- (iii) in the case of withdrawal of registration, all terminated, compressed and matured derivatives that are still subject to the requirement under Article 80(3) of EMIR, together with the relevant lifecycle events;
- (iv) in the case of withdrawal of registration, all errored derivatives that are still subject to the requirement under Article 80(3) of EMIR together with the relevant lifecycle events;
- (v) in the case of withdrawal of registration, all rejected derivatives reported by the TR participant and that have not passed the data validations;
- (vi) in the case of withdrawal of registration, the reporting log in a machine readable format of the old TR which records the reason or reasons for a modification, the date, timestamp and a clear description of the changes (including the old and new contents of the relevant data) pertaining to the derivatives that are transferred ; and
- (vii) in the case of withdrawal of registration, all data on rejections, meaning the outbound reports for authorities pertaining to rejections in the XML format, and all data on reconciliation, meaning the outbound reports for authorities pertaining to reconciliation status in the XML format.

Guideline 18. In the case of transfer of data requested by a TR participant, and when the registration of the old TR is not withdrawn nor in the process to be withdrawn, only the latest state of the outstanding derivatives, i.e. the “trade state”, is to be transferred.

Guideline 19. In the case of transfer of data requested by a TR participant, the process described in the procedure contained in Annex I for transfer of data at the request of a TR participant under EMIR should be followed by the old and the new TR. The TRs should agree the migration plan for the data transfer of a given TR participant as soon as possible and no later than in ten working days after the request is received.

Guideline 23. In the case of withdrawal of registration of a TR, the transfer of data should comprise all the details of derivatives reported to the TR, including the rejected ones, together with the relevant reporting log and all data on rejections, meaning the outbound reports for authorities pertaining to rejections in the XML format, and all data on reconciliation, meaning the outbound reports for authorities pertaining to reconciliation status in the XML format. The order of data transfer outlined in Guideline 15 should be followed.

Guideline 26. In the case of withdrawal of registration at the request of a TR, it should notify ESMA in advance of the intended date of cessation of operations and should then immediately notify the TR participants, the other TRs, and the relevant NCAs by electronic means. For TRs with more than 500 TR participants the advance notice should be at least nine months, while for TRs with 500 or with less than 500 TR participants, the advance notice should be at least six months.

18. New Guidelines 30 to 34 are added to the existing Guidelines on transfer of data between Trade Repositories under EMIR as follows:

Guideline 30. In the case of withdrawal of registration, the new TR may charge fees to the active TR participants for their non-outstanding derivative data.

Guideline 31. In the case of withdrawal of registration, the new TR can store non-outstanding derivative data of varying data quality and/or in different formats in separate databases/tables. The new TR should respond to the queries of authorities on demand.

Guideline 32. In the case of withdrawal of registration, the TR whose registration will be withdrawn, should provide the new TR with the necessary technical information on the data that is to be transferred to facilitate the data transfer to and the subsequent storage by the new TR. The old TR should provide the new TR with the before-mentioned information in a timely manner to allow the new TR to prepare as necessary. The technical documentation should at least cover the following aspects:

- (i) mapping of the fields to EMIR fields; and
- (ii) technical explanations for each field.

Guideline 33. Before and following the transfer of records of a TR participant, the TR participant should verify and confirm with the new and the old TR the correctness of the following aggregate information regarding the derivatives subject to transfer, consistent with the timing detailed in Guideline 11:

- (i) the total number of outstanding derivatives, where each derivative is identified by the unique combination of the fields “Reporting counterparty”, “Other counterparty”, and “Unique Transaction Identifier”, together with the corresponding margin reports;
- (ii) the total number of reports relating to lifecycle events of these derivatives (in case those are transferred);
- (iii) the total number of records relating to terminated, compressed and matured derivatives in the last five years, for which there is record keeping obligation in accordance with Article 9(2) of EMIR (in case those are transferred);
- (iv) the total number of records relating to errored derivatives in the last five years, for which there is a record keeping obligation in accordance with Article 9(2) of EMIR (in case those are transferred).

Guideline 34. Where an FC and an NFC- report to two different TRs outstanding OTC derivatives subject to transfer:

- (i) if the NFC- decides not to report itself, the outstanding derivatives of the NFC- should be transferred to the TR of the FC, unless the FC decides to become client of the TR of the NFC- and report the derivatives concluded with the NFC- to that TR.
- (ii) each time an NFC changes its status from NFC+ to NFC- and decides not to report itself its derivatives, it should request the transfer of its outstanding derivatives concluded with the FC to the TR of that FC as of the date of its changed status unless the FC decides to become client of the TR of the NFC- and to report the derivatives concluded with the NFC- to that TR. Similarly, each time an NFC changes its status from NFC- to NFC+, the outstanding derivatives concluded with the FC should be transferred back to the TR of the NFC, unless the NFC decides to become client of the TR of the FC and to report the derivatives concluded with the FC to that TR.
- (iii) For the performance of data transfer, neither the NFC nor the FC (or any report submitting entity reporting on their behalf) are expected to onboard to the TRs of the other counterparty.

5.1.1 Annex I - Procedure for transfer of data at the request of a TR participant under EMIR

A. Planning and preparation
<p>After signing the relevant contractual agreement with the TR participant, the new TR communicates to and agrees with the old TR the migration plan elaborated consistent with Guideline 3.</p> <p>The new TR notifies by email the relevant authorities about the transfer.</p>
<p>The old TR determines and agrees with the TR participant the following aggregate information regarding the derivatives of the TR participant subject to transfer:</p> <ul style="list-style-type: none"> ○ The latest state of the outstanding derivatives received, i.e. the “trade state” ○ The total number of outstanding derivatives
<p>The old TR should request the TR participant’s confirmation of the accuracy of the information above vis-à-vis the TR participant’s own records³¹ as per Guideline 8. In case of a mismatch, the old TR should reconcile the relevant numbers with the TR participant and agree on the final list of derivative reports that will be migrated. The old TR should solve all discrepancies <i>at the earliest convenience and in no later than five working days</i>.</p>
B. Execution of transfer
<p>Once the number of derivatives and records are confirmed, the old TR should proceed with generating the relevant file(s) consistent with Guideline 5 Error! Reference source not found.and the relevant generic principles.</p>
<p>The old and new TRs execute the migration plan. The old TR should transfer the files generated to the new TR which acknowledges the file transfer.</p> <p>In this respect the outstanding derivatives should be transferred within a predetermined weekend or on an agreed working day.</p>
C. Verification of the data transferred
<p>The new TR should determine the following figures and information for the received records and verify the completeness of the transfer:</p> <ul style="list-style-type: none"> ○ The latest state of the outstanding derivatives received, i.e. the “trade state” ○ The total number of outstanding derivatives

³¹ As per Article 9(2) EMIR “Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract.” In the case of reporting TR participant that reports on behalf of others, it should use also their records.

<p>The new TR should request the TR participant's confirmation of the accuracy of the information above vis-à-vis the TR participant's own records³² as per Guideline 33. In case there is a mismatch, the two TRs should try to reconcile the relevant numbers with the TR participant until an agreement is achieved.</p>
<p>D. Final notifications</p>
<p>The new TR should inform all the TRs that the reporting participant has switched to it. This information should be used to facilitate the reconciliation process for the relevant derivatives which have been migrated to the new TR.</p>
<p>The new TR should inform the relevant NCA(s) and ESMA about the finalisation of the transfer of data of the TR participant and identify the types of derivatives involved.</p>
<p>E. Recordkeeping and secure data deletion</p>
<p>The old TR should remove the migrated outstanding derivatives from any data aggregations.</p>
<p>The old TR should maintain the data transferred for as long as prescribed by the general principles and according to EMIR requirements as before the transfer.</p>
<p>The old TR should retain the reporting log for at least 10 years following the termination of the relevant contracts.</p>
<p>The old TR will destroy/delete the transferred data when this is permitted by following the relevant general principles for secure deletion/destruction.</p>

³² As per Article 9(2) EMIR "Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract." In the case of reporting TR participant that reports on behalf of others, it should use also their records.

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

<p>A. Initial notifications</p> <p>(Voluntary withdrawal) The TR notifies ESMA, TR participants, other involved TRs and NCAs of its request to withdraw its registration at least in advance (as per Guideline 26) of the intended date of cessation of operations (in case withdrawal is requested by the TR).</p> <p>Or</p> <p>(Non-voluntary withdrawal) ESMA notifies the new TR(s) and the NCAs that the new TR(s) should receive data that was originally reported to the old TR (in the event that withdrawal is not requested by the TR)</p>
<p>B. Planning and preparation</p> <p>The old TR informs the TR participants of its intention to cease operations. The TR(s) prepare(s) the migration plan, as detailed in Guideline 3, and submit it to ESMA and the new TR(s). ESMA and the other involved TRs raise any potential objections or concerns and after resolving them all parties agree on the migration plan details.</p> <p>The old TR identifies the derivatives subject to transfer and provides ESMA and the other involved TRs (as part of the migration plan or separately) the following information regarding the derivatives subject to transfer per TR:</p> <ul style="list-style-type: none"> ○ The latest state of the outstanding derivatives received, i.e. the “trade state” ○ The total number of outstanding derivatives ○ The total number of records relating to lifecycle events corresponding to the outstanding derivatives ○ The total number of records relating to terminated, compressed, and matured derivatives ○ The total number of records relating to errored derivatives ○ The total number of records relating to rejected derivatives reported by the TR participant and that have not passed the data validations ○ The number of reporting log entries ○ The number of outbound reports for authorities pertaining to rejections in the XML format and the number outbound reports for authorities pertaining to reconciliation status in the XML format
<p>C. Execution of transfer</p> <p>Once the number of derivatives and records are confirmed, the old TR should proceed with generating the relevant file(s) consistent with Guideline 5.</p> <p>The old TR and new TR(s) execute the migration plan. Generated files are transferred from the old TR to the new TR(s) which acknowledge each transfer.</p>

<p>The sequence prioritisation of derivatives and records included in Guideline 15 is followed.</p> <p>If possible, outstanding derivatives should be transferred during and within a weekend or on an agreed working day, while corresponding lifecycle events and valuations/collaterals at the earliest opportunity.</p> <p>If not possible, then outstanding derivatives should be segmented, per TR participant, to two or more batches to be transferred during consequent weekends or on agreed working days. The corresponding lifecycle events per batch should be transferred at the earliest opportunity.</p>
<p>The remaining derivatives should be transferred as soon as possible.</p> <p>Any issues identified and progress made are reported regularly to ESMA in a timely manner.</p>
<p>D. Verification of data transfer</p>
<p>The new TR(s) should determine the following figures and information for the received records and verify the completeness of the transfer:</p> <ul style="list-style-type: none"> ○ The latest state of the outstanding derivatives received, i.e. the “trade state” ○ The total number of outstanding derivatives ○ The total number of records relating to lifecycle events corresponding to the outstanding derivatives ○ The total number of records relating to terminated, compressed, and matured derivatives ○ The total number of records relating to errored derivatives ○ The total number of records relating to rejected derivatives reported by the TR participant and that have not passed the data validations ○ The number of reporting log entries ○ The total number of outbound reports for authorities pertaining to rejections in the XML format and the number of outbound reports for authorities pertaining to reconciliation status in the XML format
<p>The new TRs should notify ESMA and the old TR of the result of the verification. In case of verification failure, the root cause is investigated by both parties (old and new TRs) and the transfer process is repeated until the data transfer is successful.</p>
<p>E. Final notifications</p>
<p>The new TRs should notify the relevant TR participants, all the remaining TRs and the respective NCAs (by email) of the successful conclusion of the transfer.</p>
<p>F. Recordkeeping and secure data deletion</p>
<p>The old TR should maintain the data transferred for as long as detailed in Guideline 28 and according to EMIR requirements as before the transfer.</p>
<p>The old TR should destroy/delete the transferred data when this is permitted and following the relevant principles for secure deletion/destruction included in Guideline 28.</p>

Annex II: Guidelines on transfer of data between Trade Repositories under SFTR

1 Scope

Who?

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

What?

2. The adopted guidelines apply in relation to:
 - a. The reporting of details of SFTs by counterparties or entities reporting on their behalf under Article 4(1) of SFTR;
 - b. The procedures for portability under Article 78(9) of EMIR, as cross-referred to in Article 5(2) of SFTR;
 - c. The transfer of SFT data between TRs at the request of the counterparties, or the entity reporting on their behalf, or in the situation where the registration of a TR has been withdrawn covered by Article 79(3) of EMIR as cross-referred to in Article 5(2) of SFTR;
 - d. The record-keeping of details of SFTs in accordance with Article 80(3) of EMIR as cross-referred to in 5(2) of SFTR; and
 - e. Article 21(2) of RTS on registration under SFTR.

When?

3. These guidelines apply as of 3 October 2022.

2 Legislative references, abbreviations and definitions

Legislative references

<i>SFTR</i>	Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 ³³
<i>EMIR</i>	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ³⁴
<i>ESMA Regulation</i>	Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC ³⁵
<i>RTS on data aggregation</i>	Commission Delegated Regulation (EU) 2019/358 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on the collection, verification, aggregation, comparison and publication of data on securities financing transactions (SFTs) by trade repositories ³⁶
<i>RTS on reporting</i>	Commission Delegated Regulation (EU) 2019/356 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of securities financing transactions (SFTs) to be reported to trade repositories ³⁷
<i>ITS on reporting</i>	Commission Implementing Regulation (EU) 2019/363 of 13 December 2018 laying down implementing technical standards with regard to the format and frequency of reports on the details of securities financing transactions (SFTs) to trade repositories in accordance with Regulation (EU) 2015/2365 of the European Parliament and of the Council and

³³ OJ L 337, 23.12.2015, p.1

³⁴ OJ L 201, 27.7.2012, p.1

³⁵ OJ L 331, 15.12.2010, p. 84–119

³⁶ OJ L 81, 22.3.2019, p. 30–44

³⁷ OJ L 81, 22.3.2019, p. 1–21

amending Commission Implementing Regulation (EU) No 1247/2012 with regard to the use of reporting codes in the reporting of derivative contracts³⁸

<i>RTS on registration</i>	Commission Delegated Regulation (EU) 2019/359 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the application for registration and extension of registration as a trade repository ³⁹
<i>RTS on data access</i>	Commission Delegated Regulation (EU) No 2019/357 of 13 December 2018 supplementing Regulation (EU) 2015/2365 of the European Parliament and of the Council with regard to regulatory technical standards on access to details of securities financing transactions (SFTs) held in trade repositories ⁴⁰
<i>SFTR Reporting Guidelines</i>	Guidelines on Reporting under Articles 4 and 12 SFTR ⁴¹
<i>Guidelines on positions</i>	Guidelines on calculation of SFT positions by trade repositories under SFTR ⁴²

Abbreviations

<i>CP</i>	Consultation Paper
<i>CSV</i>	Comma-separated values
<i>ECB</i>	European Central Bank
<i>EEA</i>	European Economic Area
<i>EER</i>	Entity Responsible for Reporting
<i>ESMA</i>	European Securities and Markets Authority

³⁸ OJ L 81, 22.3.2019, p. 85–124

³⁹ OJ L 81, 22.3.2019, p. 45–57

⁴⁰ OJ L 81, 22.3.2019, p. 22–29

⁴¹ ESMA70-151-270

⁴² ESMA74-362-1986

<i>EU</i>	European Union
<i>FSB</i>	Financial Stability Board
<i>ISO</i>	International Organization for Standardization
<i>ITS</i>	Implementing Technical Standards
<i>LEI</i>	Legal Entity Identifier
<i>NCA</i>	National Competent Authority
<i>NCB</i>	National Central Bank
<i>Q&A</i>	Questions and Answers
<i>RSE</i>	Report Submitting Entity
<i>RTS</i>	Regulatory Technical Standards
<i>SFT</i>	Securities Financing Transaction
<i>SFTP</i>	SSH File Transfer Protocol
<i>SLA</i>	Service Level Agreement
<i>TR</i>	Trade Repository
<i>TRACE</i>	System for single access to TR data
<i>XML</i>	Extensible Mark-up Language

Glossary of concepts and terms

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

For the purpose of these Guidelines the following terms have been defined/described:

- “active client” means a TR participant that has outstanding SFTs at a TR.
- “entity responsible for the report” (ERR, hereinafter), which is one of the counterparty fields of the RTS on reporting (SFTR), should be understood as the financial counterparty which is responsible for reporting on behalf of the other counterparty.
- “errored SFT” means a SFT which is reported to a TR as a result of a mistake. It is identified with action type “EROR”.
- “life-cycle events” comprise all action types reported for a given SFT.
- “matured SFT” means a SFT which is reported to a TR and at a given point in time has reached its contractually-agreed maturity date.
- “new TR” means a TR to which a TR participant has started or intends to start reporting reporting SFT contracts under Article 4 of SFTR, although initially that entity was reporting, either directly or through an RSE, to the old TR.
- “non-active client” means a TR participant that no longer has outstanding SFTs at a TR.
- “old TR” means a TR to which a TR participant was reporting or to which the SFT contracts of a TR participant were reported by an RSE under Article 4 of SFTR, but (i) the TR participant decided to discontinue its contractual arrangement reporting or (ii) the registration of the TR was withdrawn.
- “outstanding SFT” means a SFTs that has not matured or which has not been the subject of reports with action types “EROR”, “ETRM”, or “POSC” as referred to in Field 98 of Table 2 of Annex I to ITS on reporting (SFTR).
- “portability” means the possibility to transfer records relating to details of of SFTs reported under Article 4 of SFTR from the old TR to the new TR, as those are defined in these guidelines.
- “positions” means the representation of exposures between a pair of counterparties as included in the Guidelines on positions (SFTR)
- “reconciliation” means the process through which TRs confirm that the two sides of a SFT have been reported with the same information by each ERR.
- “rejections” means SFTs that have been rejected by a TR due to errors in the information reported by an ERR or RSE.

- “report submitting entity” (RSE, hereinafter), which is one of the counterparty fields of the technical standards on reporting⁴³, should be understood as the entity which has entered in a contractual relationship with a registered or recognised TR and it:
 - reports only SFTs where it is one of the counterparties, in which case it would coincide with either the reporting counterparty of the contract or the other counterparty, or
 - reports SFTs where it might be or might not be one of the counterparties.
- “terminated SFTs” means SFTs which have been terminated before their contractually-agreed maturity date by the two counterparties and are identified with action type “ETRM”.
- “transfer” or “transfer (of details) of SFTs” means an act or process of moving the records of the SFTs, respectively, from the old TR to the new TR.
- “TR participant”⁴⁴ means an entity which has a contractual arrangement for the purpose of reporting SFT contracts under Article 4 of SFTR with at least one registered or recognised TR. The TR participant may be an RSE, an ERR, a reporting counterparty or a CCP.

⁴³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32017R0104>

⁴⁴ Some TRs might further specify the types of TR participants such as reporting, general reporting, non-reporting, etc. participants. These sub-categories are transparent from the perspective of these guidelines.

3 Purpose

4. The objectives of these guidelines are to establish consistent, efficient and effective supervisory practices within the ESFS and to ensure the common, uniform and consistent application of by providing clarification for TRs, reporting counterparties and ERR on how to ensure compliance at all times with the following SFTR provisions:
 - a. Article 4(1) of SFTR which provides “Counterparties to SFTs shall report the details of any SFTs they have concluded, as well as any modification or termination thereof to a trade repository registered in accordance with Article 5 or recognised in accordance with Article 19. Those details shall be reported no later than the working day following the conclusion, modification or termination of the transaction.”,
 - b. Article 80(3) of EMIR which provides that “A trade repository shall promptly record the information received under Article 9 and shall maintain it for at least 10 years following the termination of the relevant contracts. It shall employ timely and efficient record keeping procedures to document changes to recorded information.”, as cross-referred to in Article 5(2) of SFTR;
 - c. Article 79(3) of EMIR which provides that “A trade repository from which registration has been withdrawn shall ensure orderly substitution including the transfer of data to other trade repositories and the redirection of reporting flows to other trade repositories.” as cross-referred to in Article 5(2) of SFTR, and
 - d. The procedures for portability under Article 78(9) of EMIR as cross-referred to in Article 5(2) of SFTR.
5. The Guidelines are based on Article 16(1) of ESMA Regulation, which provides that “The Authority shall, with a view to establishing consistent, efficient and effective supervisory practices within the ESFS, and to ensuring the common, uniform and consistent application of Union law, issue guidelines addressed to all competent authorities or all financial market participants and issue recommendations to one or more competent authorities or to one or more financial market participants.”
6. The purpose the new Guidelines on transfer of data under SFTR is threefold:
 - a. Remove portability obstacles from the competitive TR environment, and ensure that TR participants can benefit from the multi-TR environment;
 - b. Ensure the quality of data available to authorities, including the aggregations carried out by TRs, even when the TR participant changes the TR to which it reports and irrespective of the reason for such a change;
 - c. Ensure that there is a consistent, standardised and harmonised way to transfer records from one TR to another TR and support the continuity of reporting and reconciliation in all cases including the withdrawal of registration of a TR.
7. The need to transfer data to another TR may arise for different reasons. The Guidelines therefore address separately the situations where (i) the transfer is due to withdrawal of registration of the TR from the cases in which (ii) the transfer is done on a voluntary

basis and under normal market conditions. Guidelines 1 to 15 and Guidelines 33 and 34 apply for both situations; Guidelines 16 to 22 apply only to voluntary porting; and Guidelines 23 to 32 apply only to withdrawal of registration of a TR. The incentives and motivations for the relevant parties in each of the two cases would be different and therefore there is a need for a specific approach in each particular situation.

8. The Guidelines establish high-level principles that would need to be followed by the TR participants, e.g. RSE, ERRs, counterparties and CCPs, on the one hand, and the TRs on the other. Those principles are complemented by specific procedures, set out to ensure the timely and robust transfer of details of SFTs. These Guidelines however do not cover situations that do not require transfer of data, such as reporting counterparties that have decided to report to two or more TRs at the same time.

4 Compliance and reporting obligations

Status of the guidelines

9. In accordance with Article 16(3) of the ESMA Regulation, national competent authorities, TRs, reporting counterparties and entities responsible for the report must make every effort to comply with these guidelines.
10. Competent authorities to which these guidelines apply should comply by incorporating them into their national legal and/or supervisory frameworks as appropriate, including where particular guidelines are directed primarily at financial market participants. In this case, competent authorities should ensure through their supervision that financial market participants comply with the guidelines.
11. ESMA will assess the application of these guidelines by TRs through its ongoing direct supervision.

Reporting requirements

12. Within two months of the date of publication of the guidelines on ESMA's website in all EU official languages, competent authorities to which these guidelines apply must notify ESMA whether they (i) comply, (ii) do not comply, but intend to comply, or (iii) do not comply and do not intend to comply with the guidelines.
13. In case of non-compliance, competent authorities must also notify ESMA within two months of the date of publication of the guidelines on ESMA's website in all EU official languages of their reasons for not complying with the guidelines
14. A template for notifications is available on ESMA's website. Once the template has been filled in, it shall be transmitted to ESMA.
15. TRs are not required to report whether they comply with these guidelines.
16. Reporting counterparties and entities reporting on their behalf are not required to report whether they comply with these guidelines.

5 Guidelines on transfer of data between Trade Repositories under SFTR

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

Guideline 2. The transfer of data should be carried out by the TRs in accordance with a mutually agreed migration plan. The migration plan should contain the detailed planning (timeline) and a description of the required controls in place to ensure the timely, complete and accurate transfer of data.

Guideline 3. All TRs should use a standardised migration plan template mutually agreed across all TRs and that is compliant with the content included in Guideline 4.

Guideline 4. The migration plan should contain the following information:

- (i) the scope of the data transfer (e.g. the TR participant(s), SFTs involved, etc.);
- (ii) detailed roles and responsibilities of the involved entities;
- (iii) timeline and relevant milestones for the transfer;
- (iv) the controls required to ensure the confidentiality of the transferred data (e.g. type of encryption used);
- (v) the controls required to ensure the integrity and accuracy of the transferred data (e.g. cryptographic checksums and hashing algorithms);
- (vi) the controls required to ensure continuity of operations and the inter-TR reconciliation status of the SFTs under transfer;
- (vii) cut-off time and data availability; and
- (viii) Any other information that will facilitate and secure the smooth transfer of data.

Guideline 5. TRs should transfer data to each other by using the XML format and template defined in accordance with Article 4 of the RTS on data access. Notwithstanding this, in the case of (i) SFTs that are not outstanding at the time of transfer, or (iii) rejected SFTs, the TRs could use comma separated value (csv) files. In the files that will be transferred, the old TR should include all the relevant details of the SFTs subject to transfer.

Guideline 6. The TRs should use secure machine-to-machine protocols, including the SSH File Transfer Protocol, to transfer data between each other.

Guideline 7. The TRs should use advanced encryption protocols and should exchange the relevant public encryption keys with their peers. To ensure the seamless functioning of data encryption, the TRs should test in advance that they are able to encrypt and decrypt each one's data files.

Guideline 8. The old TR should calculate the number of SFTs and the number of corresponding lifecycle events that will be transferred to the new TR. The old TR should request the TR participant's sign-off of the numbers related to outstanding SFTs and should resolve all discrepancies at the earliest convenience and no later than in five working days.

Guideline 9. For every file generated and transferred, the old TR should generate and include in the data transfer a cryptographic checksum according to a mutually agreed hashing algorithm.

Guideline 10. The transfer of data requested by a TR participant should be carried out, as a general principle, on a non-working day. The old and the new TR can however agree on carrying it out on a working day depending on the expected volume of the transfer.

Guideline 11. Prior to the data transfer on non-working day, TRs should ensure that TR participants modify the outstanding SFTs that are subject to data transfer to comply with the most up to date reporting requirement at the latest by 23:59:59 on the Friday ahead of the weekend on which the porting takes place and

- (i) in the case of full porting, from the start of the data transfer, the old TR should not accept reports on lifecycle events and position data relating to the SFTs subject to transfer;
- (ii) and in addition, in the case of partial porting, the TR participant should ensure accurate reporting of lifecycle events relating to the SFTs to the relevant TRs.

For transfers on working days, the old TR and the new TR are to agree upon a time, prior to the data transfer, by which the modifications of the outstanding SFTs that are subject to data transfer should be completed by the TR participant. For transfers on working days, (i) and (ii) should be followed by the old TR and the TR participant.

Guideline 12. Until the transfer of all the relevant files subject to the transfer is completed, the new TR should not accept lifecycle events and position data relating to the SFTs subject to transfer. The data on outstanding SFTs should be made available to the relevant authorities by the old TR.

Guideline 13. Once the data transfer is completed, the new TR should:

- (i) make the data available to the authorities;
- (ii) include the data subject to transfer in the relevant public and authorities-only aggregations;
- (iii) include the data in the inter-TR reconciliation process, as applicable.

Guideline 14. Following the transfer of records of a TR participant to another TR, the old TR should not charge any specific fees for the recordkeeping of non-outstanding SFTs.

Guideline 15. In case all the data in the scope of the migration plan cannot be transferred in a single instance, the TRs should transfer the data in accordance with the following order:

- (i) the latest state of the outstanding SFTs received, i.e. the "trade state";

- (ii) in the case of withdrawal of registration, the reports related to lifecycle events applicable to the outstanding SFTs;
- (iii) in the case of withdrawal of registration, all terminated and matured SFTs that are still subject to the requirement under Article 80(3) of EMIR, as cross-referred in Article 5(2) of SFTR, together with the relevant lifecycle events;
- (iv) in the case of withdrawal of registration, all errored SFTs that are still subject to the requirement under Article 80(3) of EMIR, as cross-referred in Article 5(2) of SFTR together with the relevant lifecycle events;
- (v) in the case of withdrawal of registration, all rejected SFTs reported by the TR participant and that have not passed the data validations;
- (vi) in the case of withdrawal of registration, the reporting log in a machine readable format of the old TR which records the reason or reasons for a modification, the date, timestamp and a clear description of the changes (including the old and new contents of the relevant data) pertaining to the SFTs that are transferred; and
- (vii) in the case of withdrawal of registration, all data on rejections, meaning the outbound reports for authorities pertaining to rejections in the XML format, and all data on reconciliation, meaning the outbound reports for authorities pertaining to reconciliation status in the XML format.

Guideline 16. In the case of transfer of data requested by a TR participant, the old TR should determine whether all or some of the SFTs pertaining to counterparties that are non-reporting TR participants and which were reported by the TR participant should be transferred to the new TR.

Guideline 17. Where, in the case of transfer of data requested by a TR participant, a non-reporting TR participant decides to remain with the old TR although its reporting TR participant has requested a transfer to another TR, the old TR should strip the SFTs submitted on behalf of the non-reporting TR participant from the SFTs that are transferred.

Guideline 18. In the case of transfer of data requested by a TR participant, and when the registration of the old TR is not withdrawn nor in the process to be withdrawn, only the latest state of the outstanding SFTs, i.e. the “trade state”, is to be transferred.

Guideline 19. In the case of transfer of data requested by a TR participant, the process described in the procedure contained in Annex I for transfer of data at the request of a TR participant under SFTR should be followed by the old and the new TR. The TRs should agree the migration plan for the data transfer of a given TR participant as soon as possible and no later than in ten working days after the request is received.

Guideline 20. In the case of transfer of data requested by a TR participant, as soon as the outstanding SFTs of a TR participant are transferred to the new TR, the new TR should confirm this to the TR participant, the old TR, the rest of the TRs and the relevant authorities accessing SFTs reported by the TR participant.

Guideline 21. In the case of transfer of data requested by a TR participant, the old TR should isolate and keep safely the transferred data, by applying the same recordkeeping policies, procedures and safeguards to the transferred data as to the rest of SFT data reported to that TR, for at least three months and should ensure the retrieval of data in no more than seven calendar days.

Guideline 22. In the case of transfer requested by a TR participant, any fees charged by the old or the new TR should be cost-related, non-discriminatory and included in the fee schedule of the relevant TRs, which is made public.

Guideline 23. In the case of withdrawal of registration of a TR, the transfer of data should comprise all the details of SFTs reported to the TR, including the rejected ones, together with the relevant reporting log, and all data on rejections, meaning the outbound reports for authorities pertaining to rejections in the XML format, and all data on reconciliation, meaning the outbound reports for authorities pertaining to reconciliation status in the XML format. The order of data transfer outlined in Guideline 15 should be followed.

Guideline 24. In the case of withdrawal of registration of a TR, the migration plan(s) for data transfer should be included as part of the wind-down plan presented by the TR.

Guideline 25. Where the data transfer is related to the withdrawal of registration of a TR, the procedure contained in Annex II for migration in case of withdrawal of registration under SFTR should be followed by the old TR and the new TR. The order of data transfer indicated in Guideline 15 should be followed. The old TR, i.e. the one whose registration is to be withdrawn, should provide to ESMA enough evidence that all the transfers have been successful.

Guideline 26. In the case of withdrawal of registration at the request of a TR, it should notify ESMA in advance of the intended date of cessation of operations and should then immediately notify the TR participants, the other TRs, and the relevant NCAs by electronic means. For TRs with more than 500 TR participants the advance notice should be at least nine months, while for TRs with 500 or with less than 500 TR participants, the advance notice should be at least six months.

Guideline 27. In the case of withdrawal of registration, once the transfer(s) has been completed, the new TR should confirm it to the TR participants, all the remaining TRs and the respective NCAs.

Guideline 28. In the case of withdrawal of registration, the old TR should isolate and keep safely the transferred data, by applying the same recordkeeping policies, procedures and safeguards to the transferred data as to the rest of the data, until the date of actual cessation of operations and should ensure the timely retrieval of data in no more than seven calendar days. At the date of actual cessation of operations, the old TR should perform a secure destruction/deletion, in accordance with leading practices and most reliable techniques available, ensuring that data could not be undeleted or recovered after that date.

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

Guideline 30. In the case of withdrawal of registration, the new TR may charge fees to the active TR participants for their non-outstanding SFT data.

Guideline 31. In the case of withdrawal of registration, the new TR can store non-outstanding SFT data of varying data quality and/or in different formats in separate databases/tables. The new TR should respond to the queries of authorities on demand.

Guideline 32. In the case of withdrawal of registration, the TR whose registration will be withdrawn, should provide the new TR with the necessary technical information on the data that is to be transferred to facilitate the data transfer to and the subsequent storage by the new TR. The old TR should provide the new TR with the before-mentioned information in a timely manner to allow the new TR to prepare as necessary. The technical documentation should at least cover the following aspects:

- (i) mapping of the fields to SFTR fields; and
- (ii) technical explanations for each field.

Guideline 33. Before and following the transfer of records of a TR participant, the TR participant should verify and confirm with the new and the old TR the correctness of the following aggregate information regarding the SFTs subject to transfer consistent with the timing detailed in Guideline 11:

- (i) the total number of outstanding SFTs, where each SFT is identified by the unique combination of the fields “Reporting counterparty”, “Other counterparty”, and “Unique Transaction Identifier”, together with the corresponding collateral on net basis, margin reports and re-use reports;
- (ii) the total number of reports relating to lifecycle events of these SFTs for transaction, margin, and re-use reports (in case those are transferred), where
 - each loan and collateral report is identified by the unique combination of the SFTR fields “Reporting counterparty”, “Other counterparty”, and “Unique Transaction Identifier” or “Master agreement type”;
 - each margin report is identified by the unique combination of the SFTR fields “Reporting counterparty”, “Other counterparty”, and “Portfolio code”;
 - each re-use report is identified by the unique combination of the SFTR fields “Reporting counterparty” and “Entity responsible for the report”;
- (iii) the total number of records relating to terminated and matured SFTs for loan and collateral, margin, and re-use reports in the last five years, for which there is record keeping obligation in accordance with Article 4(4) of SFTR (in case those are transferred);
- (iv) the total number of records relating to errored SFTs for loan and collateral, margin, and re-use reports in the last five years, for which there is record keeping obligation in accordance with Article 4(4) of SFTR (in case those are transferred).

Guideline 34. Further to Guideline 58 of the Guidelines on reporting under Article 4 and 12 of SFTR, where an FC and a SME NFC report to two different TRs outstanding SFTs subject to transfer:

- (i) if the SME NFC decides not to report itself, the outstanding SFTs of the SME NFC should be transferred to the TR of the FC, unless the FC decides to become client of the TR of the SME NFC and report the SFTs concluded with the SME NFC to that TR.

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

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

5.1.1 Annex I - Procedure for transfer of data at the request of a TR participant under SFTR

A. Planning and preparation
<p>After signing the relevant contractual agreement with the TR participant, the new TR communicates to and agrees with the old TR the migration plan elaborated consistent with Guideline 3.</p> <p>The new TR notifies by email the relevant authorities about the transfer.</p>
<p>The old TR determines and agrees with the TR participant the following aggregate information regarding the SFTs of the TR participant subject to transfer:</p> <ul style="list-style-type: none"> ○ The latest state of the outstanding SFTs received, i.e. the “trade state” ○ The total number of outstanding SFTs
<p>The old TR should request the TR participant’s confirmation of the accuracy of the information above vis-à-vis the TR participant’s own records⁴⁵ as per Guideline 8. In case of a mismatch, the old TR should reconcile the relevant numbers with the TR participant and agree on the final list of SFT reports that will be migrated. The old TR should solve all discrepancies <i>at the earliest convenience and in no later than five working days</i>.</p>
B. Execution of transfer
<p>Once the number of SFTs and records are confirmed, the old TR should proceed with generating the relevant file(s) consistent with Guideline 5 and the relevant generic principles.</p>
<p>The old and new TRs execute the migration plan. The old TR should transfer the files generated to the new TR which acknowledges the file transfer.</p> <p>In this respect the outstanding SFTs should be transferred within a predetermined weekend or on an agreed working day.</p>
C. Verification of the data transferred
<p>The new TR should determine the following figures and information for the received records and verify the completeness of the transfer:</p> <ul style="list-style-type: none"> ○ The latest state of the outstanding SFTs received, i.e. the “trade state” ○ The total number of outstanding SFTs

⁴⁵ As per Article 4(4) SFTR “Counterparties shall keep a record of any SFT that they have concluded, modified or terminated for at least five years following the termination of the transaction.” In the case of reporting TR participant that reports on behalf of others, it should use also their records.

<p>The new TR should request the TR participant's confirmation of the accuracy of the information above vis-à-vis the TR participant's own records⁴⁶ as per Guideline 33. In case there is a mismatch, the two TRs should try to reconcile the relevant numbers with the TR participant until an agreement is achieved.</p>
<p>D. Final notifications</p>
<p>The new TR should inform all the TRs that the reporting participant has switched to it. This information should be used to facilitate the reconciliation process for the relevant SFTs which have been migrated to the new TR.</p>
<p>The new TR should inform the relevant NCA(s) and ESMA about the finalisation of the transfer of data of the TR participant and identify the types of SFTs involved.</p>
<p>E. Recordkeeping and secure data deletion</p>
<p>The old TR should remove the migrated outstanding SFTs from any data aggregations.</p>
<p>The old TR should maintain the data transferred for as long as prescribed by the general principles and according to SFTR requirements as before the transfer.</p>
<p>The old TR should retain the reporting log for at least 10 years following the termination of the relevant contracts.</p>
<p>The old TR will destroy/delete the transferred data when this is permitted by following the relevant general principles for secure deletion/destruction.</p>

⁴⁶ As per Article 4(4) SFTR "Counterparties shall keep a record of any SFT that they have concluded, modified or terminated for at least five years following the termination of the transaction." In the case of reporting TR participant that reports on behalf of others, it should use also their records.

5.1.2 Annex II - Procedure for migration in case of withdrawal of registration under SFTR

<p>A. Initial notifications</p> <p>(Voluntary withdrawal) The TR notifies ESMA, TR participants, other involved TRs and NCAs of its request to withdraw its registration at least in advance (as per Guideline 26) of the intended date of cessation of operations (in case withdrawal is requested by the TR).</p> <p>Or</p> <p>(Non-voluntary withdrawal) ESMA notifies the new TR(s) and the NCAs that the new TR(s) should receive data that was originally reported to the old TR (in the event that withdrawal is not requested by the TR)</p>
<p>B. Planning and preparation</p> <p>The old TR informs the TR participants of its intention to cease operations. The TR(s) prepare(s) the migration plan, as detailed in Guideline 3, and submit it to ESMA and the new TR(s). ESMA and the other involved TRs raise any potential objections or concerns and after resolving them all parties agree on the migration plan details.</p> <p>The old TR identifies the SFTs subject to transfer and provides ESMA and the other involved TRs (as part of the migration plan or separately) the following information regarding the SFTs subject to transfer per TR:</p> <ul style="list-style-type: none"> ○ The latest state of the outstanding SFTs received, i.e. the “trade state” ○ The total number of outstanding SFTs ○ The total number of records relating to lifecycle events corresponding to these SFTs for transaction, margin, and re-use reports ○ The total number of records relating to terminated and matured SFTs ○ The total number of records relating to errored SFTs ○ The total number of records relating to rejected SFTs reported by the TR participant and that have not passed the data validations ○ The number of reporting log entries ○ The total number of outbound reports for authorities pertaining to rejections in the XML format and the number of outbound reports for authorities pertaining to reconciliation status in the XML format
<p>C. Execution of transfer</p> <p>Once the number of SFTs and records are confirmed, the old TR should proceed with generating the relevant file(s) consistent with Guideline 5.</p> <p>The old TR and new TR(s) execute the migration plan. Generated files are transferred from the old TR to the new TR(s) which acknowledge each transfer.</p> <p>The sequence prioritisation of SFTs and records included in Guideline 15 is followed.</p>

<p>If possible, outstanding SFTs should be transferred during and within a weekend or on an agreed working day, while corresponding lifecycle events to these SFTs for transaction, margin, and re-use reports at the earliest opportunity.</p> <p>If not possible, then outstanding SFTs should be segmented, per TR participant, to two or more batches to be transferred during consequent weekends or on agreed working days. The corresponding lifecycle events per batch should be transferred at the earliest opportunity.</p>
<p>The remaining SFTs should be transferred as soon as possible.</p> <p>Any issues identified and progress made are reported regularly to ESMA in a timely manner.</p>
<p>D. Verification of data transfer</p>
<p>The new TR(s) should determine the following figures and information for the received records and verify the completeness of the transfer:</p> <ul style="list-style-type: none"> ○ The latest state of the outstanding SFTs received, i.e. the “trade state” ○ The total number of outstanding SFTs ○ The total number of records relating to lifecycle events to these SFTs for transaction, margin, and re-use reports ○ The total number of records relating to terminated and matured SFTs ○ The total number of records relating to errored SFTs ○ The total number of records relating to rejected SFTs reported by the TR participant and that have not passed the data validations ○ The number of reporting log entries ○ The total number of outbound reports for authorities pertaining to rejections in the XML format and the number of outbound reports for authorities pertaining to reconciliation status in the XML format
<p>The new TRs should notify ESMA and the old TR of the result of the verification. In case of verification failure, the root cause is investigated by both parties (old and new TRs) and the transfer process is repeated until the data transfer is successful.</p>
<p>E. Final notifications</p>
<p>The new TRs should notify the relevant TR participants, all the remaining TRs and the respective NCAs (by email) of the successful conclusion of the transfer.</p>
<p>F. Recordkeeping and secure data deletion</p>
<p>The old TR should maintain the data transferred for as long as detailed in Guideline 28 and according to SFTR requirements as before the transfer.</p>
<p>The old TR should destroy/delete the transferred data when this is permitted and following the relevant principles for secure deletion/destruction included in Guideline 28.</p>