Guidelines

on transfer of data between Trade Repositories

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1 Scope

Who?

1. These guidelines apply to Trade Repositories (TRs) registered or recognised under EMIR.

What?

2. These 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 transfer of derivatives data between trade repositories at the request of the counterparties to a derivative, or the entity reporting on their behalf, or in the situation covered by Article 79(3) of EMIR, and

   c. The record keeping of details of derivatives under Article 80(3) of EMIR.

When?

3. These guidelines apply as of 16 October 2017.

2 Glossary of concepts and terms

4. All the definition, concepts and terms that are used in EMIR, in the current RTS and ITS on reporting[1], in the amended RTS and ITS on reporting[2], in the Q&As and in these guidelines are used with the same meaning.

5. Furthermore, for the purpose of these guidelines, ESMA defines the following concepts that would be used to better illustrate the different situations that might take place.

6. "Report submitting entity" (RSE, hereinafter) which is one of the counterparty fields of the amended technical standards on reporting[3] should be understood as the entity which has entered in a contractual relationship with a registered or recognised TR and it:

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

    b. Reports only derivatives where it is one of the counterparties, in which case it would coincide with either the reporting counterparty of the contract or the other counterparty, and

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

7. "TR participant"[4] is 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, or a reporting counterparty or a CCP, which has a "view-only" access to a TR.

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[1] 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, L52. OJ 23.2.2013, p.1
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, L352, OJ 21.12.2012, p. 20
[2] COMMISSION DELEGATED REGULATION (EU) 2017/104 of 19 October 2016 amending Delegated Regulation (EU) No 148/2013 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, L17, OJ 21.1.2017, p.1
COMMISSION IMPLEMENTING REGULATION (EU) 2017/105 of 19 October 2016 amending Implementing Regulation (EU) No 1247/2012 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 L17, OJ 21.1.2017, p.17
[3] https://www.esma.europa.eu/system/files_force/library/2015/11/2015-esma-1645_-_final_report_emir_article_9_rts_its.pdf
[4] 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 Acronyms used

CCP	Central Counterparty
EMIR	European Market Infrastructures Regulation – Regulation (EU) 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories – also referred to as "the Regulation"
ESMA	European Securities and Markets Authority
EU	European Union
ISO	International Organization for Standardization
ITS	Implementing Technical Standards
LEI	Legal entity identifier
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation).
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012
MMSR	Regulation (EU) No 1333/2014 of the European Central Bank of 26 November 2014 concerning statistics on the money markets
NCA	National Competent Authority
OJ	The Official Journal of the European Union
OTC	Over-the-counter
Q&A	Questions and Answers
RTS	Regulatory Technical Standards
SFTR	Regulation (EU) No 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
TR	Trade repository

UTI	Unique Transaction Identifier
XML	Extensible Mark-up Language
XSD	XML Schema Definition

4 Purpose

8. The purpose of these guidelines therefore is threefold:

   a. Remove portability obstacles from the competitive TR environment underpinning EMIR, 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 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.

9. The need to transfer data to another TR may arise for different reasons. The guidelines therefore address separately the situations where (i) the transfer is due to withdrawal of registration of the TR from the cases in which (ii) the transfer is done on a voluntary basis and under normal market conditions. The incentives and motivations for the relevant parties in each of the two cases would be different and therefore there is a need for a specific approach in each particular situation.

10. 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, included in sections 7 and 8 of this document, set out to ensure the timely and robust transfer of details of derivatives.

11. 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.

5 Compliance

12. This document contains guidelines issued under Article 16 of the ESMA Regulation. In accordance with Article 16(3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with guidelines and recommendations.

6 Guidelines

1. Only the old TR and the new TR should carry out the transfer of derivatives data. The new TR should not accept duplicate reports by TR participants relating to derivatives subject to transfer. The old TR should not accept reports with action types "Cancelation" and "Error" made by TR participants relating to derivatives subject to transfer.

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.

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.

4. The migration plan should contain the following information:

    i. The scope of the data transfer (e.g. the TR participant(s), derivatives 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 derivatives under transfer

    vii. Cut-off time and data availability

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

5. TRs should transfer data to each other by using the XML format and template defined in accordance with Article 4 of the amended RTS 151/2013. Notwithstanding this, in the case

of (i) derivatives that are not outstanding at the time of transfer, (ii) outstanding derivatives that have not been amended after the date of application of the amended Commission Delegated Regulation 148/2013 or (iii) rejected derivatives, 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 derivatives subject to transfer.

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

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.

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

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.

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.

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

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

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.

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 derivatives.

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

    i.   The latest state of the outstanding derivatives received, i.e. the "trade state";

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

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

    iv. All errored derivatives that are still subject to the requirement under Article 80(3) of EMIR together with the relevant lifecycle events, ;

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

    vi. The reporting log which records the reason or reasons for a modification, the date, timestamp and a clear description of the changes (including the old and new contents of the relevant data) pertaining to the derivatives that are transferred.

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

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 derivatives submitted on behalf of the non-reporting TR participant from the derivatives that are transferred.

18. In the case of transfer of data requested by a TR participant, and when the registration of the old TR is not withdrawn nor in the process to be withdrawn, the scope of the data should comprise at least:

    i.   All outstanding derivatives of the TR participant or where the TR participant is an RSE, the derivatives of the clients of the TR participant that have confirmed to the TR participant their acceptance to transfer derivatives to another TR;

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

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

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

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

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

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

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.

23. In the case of withdrawal of registration of a TR, the transfer of data should comprise all the details of derivatives reported to the TR, including the rejected ones, together with the relevant reporting log. The order of data transfer set out in Guideline 15 should be followed.

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.

25. 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. The order of data transfer included in Guideline 15 should be duly followed. The old TR, i.e. the one whose registration is to be withdrawn, should provide to ESMA enough evidence that all the transfers have been successful.

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

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.

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.

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

7 Annex I – Procedure for transfer of data at the request of TR participant

A. Planning and preparation
After signing the relevant contractual agreement with the TR participant, the new TR communicates to and agrees with the old TR the migration plan elaborated in accordance with Guideline 3. The new TR notifies by email the relevant authorities about the transfer.

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

The old TR should request the TR participant's confirmation of the accuracy of the information above vis-à-vis the TR participant's own records[5]. In case of a mismatch, the old TR should reconcile the relevant numbers with the TR participant and agree on the final list of derivative reports that will be migrated. The old TR should solve all discrepancies at the earliest convenience and in no later than five working days.
B. Execution of transfer
Once the number of derivatives and records are confirmed, the old TR should proceed with generating the relevant file(s) in accordance with Guideline 5 and the relevant generic principles.

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[5] As per Article 9.2 EMIR "Counterparties shall keep a record of any derivative contract they have concluded and any modification for at least five years following the termination of the contract." In the case of reporting TR participant that reports on behalf of others, it should use also their records.

The old and new TRs execute the migration plan. The old TR should transfer the files generated to the new TR which acknowledges the file transfer.
In case the volume of files is manageable, the old TR should transfer at the same time the outstanding derivatives file(s) as well as the corresponding lifecycle activity file(s).
In case the volume of files does not allow the simultaneous transfer, the sequence included in Guideline 15 should be followed.
In this respect the outstanding derivatives should be transferred within a predetermined weekend while lifecycle events at the earliest opportunity within the next calendar week.

C. Verification of the data transferred

The new TR should determine the following figures and information for the received records and verify the completeness of the transfer: ○ 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 (in case those are transferred) ○ The total number of records relating to errored derivatives (in case those are transferred)
The new TR should request the TR participant's confirmation of the accuracy of the information above vis-à-vis the TR participant's own records[6]. In case there is a mismatch, the two TRs should try to reconcile the relevant numbers with the TR participant until an agreement is achieved.

D. Final notifications

The new TR should inform all the TRs that the reporting participant has switched to it. This information should be used to facilitate the reconciliation process for the relevant derivatives which have been migrated to the new TR.
The new TR should inform the relevant NCA(s) and ESMA about the finalisation of the transfer of data of the TR participant and identify the types of derivatives involved.

E. Recordkeeping and secure data deletion

The old TR should remove the migrated outstanding derivatives from any data aggregations.
The old TR should maintain the data transferred for as long as prescribed by the general principles and according to EMIR requirements as before the transfer.
The old TR should retain the reporting log for at least 10 years following the termination of the relevant contracts.
The old TR will destroy/delete the transferred data when this is permitted by following the relevant general principles for secure deletion/destruction.

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[6] 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.

8 Annex II – Procedure for migration in case of withdrawal of registration

A. Initial notifications
(Voluntary withdrawal) The TR notifies ESMA, TR participants, other involved TRs and NCAs of its request to withdraw its registration at least in advance (as per Guideline 25) of the intended date of cessation of operations (in case withdrawal is requested by the TR). Or (Non-voluntary withdrawal) ESMA notifies the new TR(s) and the NCAs that the new TR(s) should receive data that was originally reported to the old TR (in the event that withdrawal is not requested by the TR)
B. Planning and preparation
The old TR informs the TR participants of its intention to cease operations. The TR(s) prepare(s) the migration plan, as detailed in Guideline 3 and submit it to ESMA and the new TR(s). ESMA and the other involved TRs raise any potential objections or concerns and after resolving them all parties agree on the migration plan details.

The old TR identifies the derivatives subject to transfer and provides ESMA and the other involved TRs (as part of the migration plan or separately) the following information regarding the derivatives subject to transfer per TR:
 	
   o   The total number of outstanding derivatives
   o   The total number of records relating to lifecycle events corresponding to the outstanding derivatives
   o   The total number of records relating to terminated, compressed and matured derivatives
   o   The total number of records relating to errored derivatives
   o   The number of reporting log entries

C. Execution of transfer
Once the number of derivatives and records are confirmed, the old TR should proceed with generating the relevant file(s) in accordance with Guideline 5. The old TR and new TR(s) execute the migration plan. Generated files are transferred from the old TR to the new TR(s) which acknowledge each transfer. The sequence prioritisation of derivatives and records included in Guideline 15 is followed. If possible, outstanding derivatives should be transferred during and within a weekend, while corresponding lifecycle events and valuations/collaterals at the earliest opportunity and no later than the week after.

If not possible, then outstanding derivatives should be segmented, per TR participant, to two or more batches to be transferred during consequent weekends. The corresponding lifecycle events per batch should be transferred at the earliest opportunity and no later than the end of the week that follows the transfer of the relevant outstanding derivatives batch.
The remaining derivatives should be transferred as soon as possible within a month after the conclusion of the transfer of outstanding derivatives. Any issues identified and progress made are reported regularly to ESMA in a timely manner.
D. Verification of data transfer

The new TR(s) should determine the following figures and information for the received records and verify the completeness of the transfer:
 	
    o The latest state of the outstanding derivatives received, i.e. the "trade state"
    o The total number of outstanding derivatives
    o The total number of records relating to lifecycle events corresponding to the outstanding derivatives
    o The total number of records relating to terminated, compressed and matured derivatives
    o The total number of records relating to errored derivatives
    o The number of reporting log entries

The new TRs should notify ESMA and the old TR of the result of the verification. In case of verification failure, the root cause is investigated by both parties (old and new TRs) and the transfer process is repeated until the data transfer is successful.
E. Final notifications
The new TRs should notify the relevant TR participants, all the remaining TRs and the respective NCAs (by email) of the successful conclusion of the transfer.
F. Recordkeeping and secure data deletion
The old TR should maintain the data transferred for as long as detailed in Guideline 28 and according to EMIR requirements as before the transfer.
The old TR should destroy/delete the transferred data when this is permitted and following the relevant principles for secure deletion/destruction included in Guideline 28.