

Public Notice

REGIS TR, S.A. ('REGIS-TR') is a trade repository ('TR') headquartered in Luxembourg, with a branch in Spain, and registered with the European Securities and Markets Authority ('ESMA') under 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 ('EMIR') since 14 November 2013. On 7 May 2020, the registration was extended to include all types of securities financing transactions ('SFTs') reported under 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 ('SFTR').

EMIR and SFTR lay down obligations for TRs in the conduct of their activities. In its role as supervisor of TRs under EMIR and SFTR, ESMA is empowered to take enforcement actions in relation to infringements of EMIR and SFTR by TRs.

EMIR and SFTR constitute two separate legal regimes with separate legal obligations and REGIS-TR is registered under both of them. Thus, a failure by REGIS-TR to meet legal obligations under EMIR and the parallel legal obligations under SFTR can lead to two separate infringements: one under EMIR and one under SFTR, and the imposition of fines under both regimes.

Under EMIR and SFTR where relevant, TRs must ensure that they have adequate policies and procedures in place, maintain and operate adequate organisational structure for business continuity, identify and minimise sources of operational risk and take all reasonable steps to prevent any misuse of the information maintained in their systems. TRs must also ensure the protection of the integrity and confidentiality of data received by them.

TRs have an important role in EU securities markets, and the financial system more generally by ensuring transparency on derivatives and SFTs. It is thus important that they comply with all the requirements of the applicable legislations.

This case stems from long-standing serious overarching issues identified at REGIS-TR. Over a significant period of time, there were many incidents reported to ESMA as well as numerous supervisory engagements with a view to ensure REGIS-TR effectively addresses deficiencies identified. In 2024, following preliminary investigations, ESMA's Supervisors found that there remained serious indications of the possible existence of facts with respect to REGIS-TR liable to constitute one or more of the infringements listed in Annex I to EMIR.

The matter was then referred to an Independent Investigating Officer ('IIO') who, after having conducted an investigation, submitted his findings to the Board of Supervisors ('the Board').

Having considered the evidence, the Board found that REGIS-TR committed the following seven infringements under EMIR and SFTR.

First Infringement - REGIS-TR committed an infringement of EMIR by not establishing adequate policies and procedures leading inter alia to unclarity regarding the roles and responsibilities of the governing bodies

A) Relevant legal provisions

Article 78(3) of EMIR provides:

“A trade repository shall establish adequate policies and procedures sufficient to ensure its compliance, including of its managers and employees, with all the provisions of this Regulation.”

Point (c) of Section I of Annex I to EMIR provides:

“A trade repository infringes Article 78(3) by not establishing adequate policies and procedures sufficient to ensure compliance, including that of its managers and employees, with all the provisions of this Regulation.”

B) Factual findings

A number of REGIS-TR's policies and procedures applicable to its EMIR activities were not adequate to ensure compliance with EMIR for several reasons: they covered the same topics, complemented, or supplemented each other, but without clarifying their respective scopes and relationships to one another; some procedures were inconsistent with others covering the same topics, including regarding the roles and responsibilities of important bodies such as the Board of Directors and CEO; some policies and procedures provided for processes and arrangements that were not complete or not sufficiently detailed and clear; and the dates of application of some policies and procedures were ambiguous.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised by REGIS-TR in its written submissions, the Board found that REGIS-TR failed to comply with Article 78(3) of EMIR, by not establishing adequate policies and procedures sufficient to ensure its compliance, including of its managers and employees, with all the provisions of EMIR. Therefore, it committed the infringement set out at Point (c) of Section I of Annex I to EMIR.

Furthermore, the Board found that REGIS-TR did not meet the special care expected from a TR as a professional firm in the financial services sector. Therefore, the Board found that REGIS-TR had committed the infringement negligently and was liable to a fine.

The basic amount of the fine was calculated pursuant to Article 65 of EMIR (in its version as applicable when the breach started). In addition, the Board applied the relevant aggravating factors (the infringement has been committed for more than six months; the infringement has revealed systemic weaknesses in the organisation of the TR in particular in its procedures, management systems or internal controls) prescribed by Annex II to EMIR and therefore fined REGIS-TR EUR 54,000.

D) Supervisory measures

Public notice and Requirement to bring the infringement to an end

Pursuant to Article 73 of EMIR, the Board decided that the infringement warranted two supervisory measures in the form of a public notice and a requirement to bring the infringement to an end.

Fine

The fine imposed on REGIS-TR is EUR 54,000.

Second Infringement – REGIS-TR committed an infringement of SFTR by not establishing adequate policies and procedures, leading inter alia to unclarity regarding the roles and responsibilities of the governing bodies

A) Relevant legal provisions

Article 78(3) of EMIR provides:

“A trade repository shall establish adequate policies and procedures sufficient to ensure its compliance, including of its managers and employees, with all the provisions of this Regulation.”

Article 5(1) of SFTR provides:

“A trade repository shall register with ESMA for the purposes of Article 4 ...”.

Article 5(2) of SFTR provides:

“To be eligible to be registered under this Article, a trade repository shall be a legal person established in the Union, apply procedures to verify the completeness and correctness of the details reported to it under Article 4(1), and meet the requirements laid down in Articles 78, 79 and 80 of Regulation (EU) No 648/2012. For the purposes of this Article, references in Articles 78 and 80 of Regulation (EU) No 648/2012 to Article 9 thereof shall be construed as references to Article 4 of this Regulation.”

Article 5(4) of SFTR provides:

“A registered trade repository shall comply at all times with the conditions for registration. A trade repository shall, without undue delay, notify ESMA of any material changes to the conditions for registration.”

Article 9(1) of SFTR provides:

“The powers conferred on ESMA in accordance with Articles 61 to 68, 73 and 74 of Regulation (EU) No 648/2012, in conjunction with Annexes I and II thereto, shall also be exercised with respect to this Regulation. References to Article 81(1) and (2) of Regulation (EU) No 648/2012

in Annex I to that Regulation shall be construed as references to Article 12(1) and (2) of this Regulation respectively.”

Point (c) of Section I of Annex I to EMIR provides:

“A trade repository infringes Article 78(3) by not establishing adequate policies and procedures sufficient to ensure compliance, including that of its managers and employees, with all the provisions of this Regulation.”

B) Factual findings

Following its registration under SFTR, REGIS-TR must ensure that it has adequate policies and procedures. A number of REGIS-TR's policies and procedures applicable to its SFTR activities were not adequate to ensure compliance with EMIR in conjunction with SFTR for several reasons: they covered the same topics, complemented, or supplemented each other, but without clarifying their respective scopes and relationships to one another; some procedures were inconsistent with others covering the same topics, including regarding the roles and responsibilities of important bodies such as the Board of Directors and CEO; some policies and procedures provided for processes and arrangements that were not complete or not sufficiently detailed and clear; and the dates of application of some policies and procedures were ambiguous.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised by REGIS-TR in its written submissions, the Board found that REGIS-TR failed to comply with Article 78(3) of EMIR, in conjunction with Article 9(1) of SFTR by not establishing adequate policies and procedures sufficient to ensure its compliance. Therefore, it committed the infringement set out at Point (c) of Section I of Annex I to EMIR, in conjunction with Article 9(1) of SFTR.

Furthermore, the Board found that REGIS-TR did not meet the special care expected from a TR as a professional firm in the financial services sector. Therefore, the Board found that REGIS-TR had committed the infringement negligently and was liable to a fine.

The basic amount of the fine was calculated pursuant to Article 65 of EMIR. In addition, the Board applied the relevant aggravating factors (the infringement has been committed for more than six months; the infringement has revealed systemic weaknesses in the organisation of the TR in particular in its procedures, management systems or internal controls) prescribed by Annex II to EMIR and therefore fined REGIS-TR EUR 540,000.

D) Supervisory measures

Public notice and Requirement to bring the infringement to an end

Pursuant to Article 73 of EMIR, the Board decided that the infringement warranted two supervisory measures in the form of a public notice and a requirement to bring the infringement to an end.

Fine

The fine imposed on REGIS-TR is EUR 540,000.

Third Infringement – REGIS-TR committed an infringement of SFTR by failing to maintain and operate an adequate organisational structure to ensure continuity and orderly functioning

A) Relevant legal provisions

Article 78(4) of EMIR provides:

“A trade repository shall maintain and operate an adequate organisational structure to ensure continuity and orderly functioning of the trade repository in the performance of its services and activities. It shall employ appropriate and proportionate systems, resources and procedures.”

Article 5(1) of SFTR provides:

“A trade repository shall register with ESMA for the purposes of Article 4 ...”.

Article 5(2) of SFTR provides:

“To be eligible to be registered under this Article, a trade repository shall be a legal person established in the Union, apply procedures to verify the completeness and correctness of the details reported to it under Article 4(1), and meet the requirements laid down in Articles 78, 79 and 80 of Regulation (EU) No 648/2012. For the purposes of this Article, references in Articles 78 and 80 of Regulation (EU) No 648/2012 to Article 9 thereof shall be construed as references to Article 4 of this Regulation.”

Article 5(4) of SFTR provides:

“A registered trade repository shall comply at all times with the conditions for registration. A trade repository shall, without undue delay, notify ESMA of any material changes to the conditions for registration.”

Article 9(1) of SFTR provides:

“The powers conferred on ESMA in accordance with Articles 61 to 68, 73 and 74 of Regulation (EU) No 648/2012, in conjunction with Annexes I and II thereto, shall also be exercised with respect to this Regulation. References to Article 81(1) and (2) of Regulation (EU) No 648/2012 in Annex I to that Regulation shall be construed as references to Article 12(1) and (2) of this Regulation respectively.”

Point (d) of Section I of Annex I to EMIR provides:

“A trade repository infringes Article 78(4) by not maintaining or operating an adequate organisational structure to ensure continuity and orderly functioning of the trade repository in the performance of its services and activities.”

B) Factual findings

REGIS-TR received an extension of authorisation from ESMA for SFTR-related activities on 29 April 2020, effective as of 7 May 2020. To carry out activities as authorised under SFTR, REGIS-TR had to employ appropriate and proportionate systems, resources and procedures. However, it did not do so due to oversights during the preparation phase and following the reporting start date, including late preparation; inefficiencies in the system development framework, management constraints, inadequacy in testing methodology and quality of the deliveries; and issues with the allocation of resources.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised by REGIS-TR in its written submissions, the Board found that REGIS-TR failed to comply with Article 78(4) of EMIR, in conjunction with SFTR, because it did not maintain and operate an adequate organisational structure to ensure continuity and orderly functioning of the TR in the performance of its SFTR services and activities. Therefore, it committed the infringement set out at Point (d) of Section I of Annex I to EMIR, in conjunction with Article 9(1) of SFTR.

Furthermore, the Board found that REGIS-TR did not meet the special care expected from a TR as a professional firm in the financial services sector. Therefore, the Board found that REGIS-TR had committed the infringement negligently and was liable to a fine.

The basic amount of the fine was calculated pursuant to Article 65 of EMIR. In addition, the Board applied the relevant aggravating factors (the infringement has been committed for more than six months; the infringement has revealed systemic weaknesses in the organisation of the TR in particular in its procedures, management systems or internal controls; the infringement has had a negative impact on the quality of the data the TR maintains) prescribed by Annex II to EMIR and therefore fined REGIS-TR EUR 320,000.

D) Supervisory measures

Public notice and Requirement to bring the infringement to an end

Pursuant to Article 73 of EMIR, the Board decided that the infringement warranted two supervisory measures in the form of a public notice and a requirement to bring the infringement to an end.

Fine

The fine imposed on REGIS-TR is EUR 320,000.

Fourth Infringement – REGIS-TR committed an infringement of EMIR by not identifying sources of operational risk and minimising them through the development of appropriate systems, controls and procedures

A) Relevant legal provisions

Article 79(1) of EMIR in force at the time when the infringement was committed provided:

“A trade repository shall identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures. Such systems shall be reliable and secure and have adequate capacity to handle the information received.”

Point (a) of Section II of Annex I to EMIR in force at the time when the infringement was committed provided:

“A trade repository infringes Article 79(1) by not identifying sources of operational risk or by not minimising those risks through the development of appropriate systems, controls and procedures”.

B) Factual findings

REGIS-TR had obligations to properly minimise operational risk. However, it did not do so: REGIS-TR failed to mitigate risks related to confidentiality breaches after Brexit and did not put in place appropriate systems, controls and procedures to restrict access to a particular folder for TRs, which were no longer registered in the EU after the UK's exit from the EU.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised by REGIS-TR in its written submissions, the Board found that REGIS-TR failed to comply with Article 79(1) of EMIR, because it did not identify sources of operational risk and did not minimise them through the development of appropriate systems, controls and procedures. Therefore, it committed the infringement set out at Point (a) of Section II of Annex I to EMIR.

Furthermore, the Board found that REGIS-TR did not meet the special care expected from a TR as a professional firm in the financial services sector. Therefore, the Board found that REGIS-TR had committed the infringement negligently and was liable to a fine.

The basic amount of the fine was calculated pursuant to Article 65 of EMIR. In addition, the Board applied the relevant aggravating (the infringement has been committed for more than six months) and mitigating (the TR has voluntarily taken measures to ensure that similar infringement cannot be committed in the future) factors prescribed by Annex II to EMIR and therefore fined REGIS-TR EUR 110,000.

Nevertheless, the Board considered that this infringement and the infringements set out at Point (c) of Section II of Annex I to EMIR and Point (h) of Section II of Annex I to EMIR, despite being autonomous, stem from the same act or omission. In accordance with Article 65(4) of

EMIR, only the highest fine should be applied, and in this case only one fine of EUR 220,000 is to be applied for the three mentioned infringements.

D) Supervisory measures

Public notice

Pursuant to Article 73 of EMIR, the Board decided that the infringement warranted a supervisory measure in the form of a public notice.

Fine

Further to the application of Article 65(4) of EMIR, no fine is applied.

Fifth Infringement – REGIS-TR committed an infringement of SFTR by not identifying sources of operational risk and minimising them through the development of appropriate systems, controls and procedures

A) Relevant legal provisions

Article 79(1) of EMIR in force at the time when the infringement was committed provided:

“A trade repository shall identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures. Such systems shall be reliable and secure and have adequate capacity to handle the information received.”

Article 5(1) of SFTR provides:

“A trade repository shall register with ESMA for the purposes of Article 4 ...”.

Article 5(2) of SFTR provides:

“To be eligible to be registered under this Article, a trade repository shall be a legal person established in the Union, apply procedures to verify the completeness and correctness of the details reported to it under Article 4(1), and meet the requirements laid down in Articles 78, 79 and 80 of Regulation (EU) No 648/2012. For the purposes of this Article, references in Articles 78 and 80 of Regulation (EU) No 648/2012 to Article 9 thereof shall be construed as references to Article 4 of this Regulation.”

Article 5(4) of SFTR provides:

“A registered trade repository shall comply at all times with the conditions for registration. A trade repository shall, without undue delay, notify ESMA of any material changes to the conditions for registration.”

Article 9(1) of SFTR provides:

“The powers conferred on ESMA in accordance with Articles 61 to 68, 73 and 74 of Regulation (EU) No 648/2012, in conjunction with Annexes I and II thereto, shall also be exercised with respect to this Regulation. References to Article 81(1) and (2) of Regulation (EU) No 648/2012 in Annex I to that Regulation shall be construed as references to Article 12(1) and (2) of this Regulation respectively.”

Point (a) of Section II of Annex I to EMIR in force at the time when the infringement was committed provided:

“A trade repository infringes Article 79(1) by not identifying sources of operational risk or by not minimising those risks through the development of appropriate systems, controls and procedures”.

B) Factual findings

REGIS-TR had obligations to properly minimise operational risk related to its SFTR activities. However, in two areas, it did not do so: REGIS-TR did not identify and minimise the risks related to the procedure to ensure a change in the LEI when a counterparty undergoes a corporate action, commonly known as a “LEI update” and the risks related to the transfer of records of transactions from REGIS-TR to another TR, known as “port-out”.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised by REGIS-TR in its written submissions, the Board found that REGIS-TR failed to comply with Article 79(1) of EMIR, in conjunction with SFTR because it did not identify sources of operational risk related to its SFTR activities and did not minimise them through the development of appropriate systems, controls and procedures. Therefore, it committed the infringement set out at Point (a) of Section II of Annex I to EMIR, in conjunction with Article 9(1) of SFTR two times.

Furthermore, the Board found that REGIS-TR did not meet the special care expected from a TR as a professional firm in the financial services sector. Therefore, the Board found that REGIS-TR had committed the infringement negligently and was liable to a fine.

The basic amount of the fine was calculated pursuant to Article 65 of EMIR. In addition, the Board applied the relevant aggravating (the infringement has been committed repeatedly; the infringement has been committed for more than six months; the infringement revealed systemic weaknesses in the organisation of the TR in particular in its procedures, management systems or internal controls) and mitigating (the TR has voluntarily taken measures to ensure that similar infringement cannot be committed in the future) factors prescribed by Annex II to EMIR and therefore fined REGIS-TR EUR 240,000.

D) Supervisory measures

Public notice

Pursuant to Article 73 of EMIR, the Board decided that the infringement warranted a supervisory measure in the form of a public notice.

Fine

The fine imposed on REGIS-TR is EUR 240,000.

Sixth Infringement – REGIS-TR committed an infringement of EMIR by not ensuring the confidentiality, integrity and protection of the information received

A) Relevant legal provisions

Article 80(1) of EMIR in force at the time when the infringement was committed provided:

“A trade repository shall ensure the confidentiality, integrity and protection of the information received under Article 9”.

Point (c) of Section II of Annex I to EMIR in force at the time when the infringement was committed provided:

“A trade repository infringes Article 80(1) by not ensuring the confidentiality, integrity or protection of the information received under Article 9.”

B) Factual findings

REGIS-TR had important obligations to control access to the information it holds; linked to this are obligations to protect the confidentiality of that information. Following the end of the transition period of the UK's withdrawal from the EU on 31 December 2020, ESMA withdrew the registration of UK-based TRs. Despite the withdrawal of registration of two TRs, REGIS-TR did not control the access to information received and failed to disable their access to its inter-TR data folder.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised by REGIS-TR in its written submissions, the Board found that REGIS-TR failed to comply with Article 80(1) of EMIR, because it did not ensure the confidentiality, integrity and protection of the information received under Article 9 of EMIR. Therefore, it committed the infringement set out at Point (c) of Section II of Annex I to EMIR.

Furthermore, the Board found that REGIS-TR did not meet the special care expected from a TR as a professional firm in the financial services sector. Therefore, the Board found that REGIS-TR had committed the infringement negligently and was liable to a fine.

The basic amount of the fine was calculated pursuant to Article 65 of EMIR. In addition, the Board applied the relevant aggravating (the infringement has been committed for more than six months) and mitigating (the TR has voluntarily taken measures to ensure that similar infringement cannot be committed in the future) factors prescribed by Annex II to EMIR and therefore fined REGIS-TR EUR 220,000.

D) Supervisory measures

Public notice

Pursuant to Article 73 of EMIR, the Board decided that the infringement warranted a supervisory measure in the form of a public notice.

Fine

The fine imposed on REGIS-TR is EUR 220,000.

Seventh Infringement – REGIS-TR committed an infringement of EMIR by not taking all reasonable steps to prevent any misuse of the information maintained in its system

A) Relevant legal provisions

Article 80(6) of EMIR provides:

“A trade repository shall take all reasonable steps to prevent any misuse of the information maintained in its systems.

A natural person who has a close link with a trade repository or a legal person that has a parent undertaking or a subsidiary relationship with the trade repository shall not use confidential information recorded in a trade repository for commercial purposes.”

Point (h) of Section II of Annex I to EMIR provides:

“A trade repository infringes Article 80(6) by not taking all reasonable steps to prevent any misuse of the information maintained in its systems.”

B) Factual findings

REGIS-TR had an obligation to take all reasonable steps to prevent any misuse of the information maintained in its systems. However, it failed to take such steps in relation to the information in a data folder following the UK's exit from the EU. Following the end of the transition period of the UK's withdrawal from the EU on 31 December 2020, ESMA withdrew the registration of UK-based TRs. Despite the withdrawal of registration of two TRs, REGIS-TR failed to take all reasonable steps to prevent any misuse of the information it maintained and to disable the de-registered TRs' access to its inter-TR data folder.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised by REGIS-TR in the written submissions, the Board found that REGIS-TR failed to comply with Article 80(6) of EMIR, because it did not take all reasonable steps to prevent any misuse of the information maintained in its systems. Therefore, it committed the infringement set out at Point (h) of Section II of Annex I to EMIR.

Furthermore, the Board found that REGIS-TR did not meet the special care expected from a TR as a professional firm in the financial services sector. Therefore, the Board found that REGIS-TR had committed the infringement negligently and was liable to a fine.

The basic amount of the fine was calculated pursuant to Article 65 of EMIR. In addition, the Board applied the relevant aggravating (the infringement has been committed for more than six months) and mitigating (the TR has voluntarily taken measures to ensure that similar infringement cannot be committed in the future) factors prescribed by Annex II to EMIR and therefore fined REGIS-TR EUR 110,000.

Nevertheless, the Board considered that this infringement and the infringements set out at Point (a) of Section II of Annex I to EMIR and Point (c) of Section II of Annex I to EMIR, despite being autonomous, stem from the same act or omission. In accordance with Article 65(4) of EMIR, only the highest fine should be applied, and in this case only one fine of EUR 220,000 is to be applied for the three mentioned infringements.

D) Supervisory measures

Public notice

Pursuant to Article 73 of EMIR, the Board decided that the infringement warranted a supervisory measure in the form of a public notice.

Fine

Further to the application of Article 65(4) of EMIR, no fine is applied.

Overall fine

The overall fine to be imposed on REGIS-TR for seven infringements committed with negligence amount to **EUR 1,374,000**.