

Public Notice

REGIS-TR S.A. ('REGIS-TR') is a registered trade repository ('TR'), having its headquarters in Luxembourg and a branch in Spain.

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') lays down obligations for a TR in the conduct of its activities. In conjunction with its role of supervisor of TRs under EMIR, the European Securities and Markets Authority ("ESMA") has functions and powers to take enforcement actions in relation to infringements of EMIR by TRs.

EMIR provides that in order to ensure transparency and the availability of information, that TR's shall ensure that specified Authorities and Regulators have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

In March 2018, ESMA's Supervisory Department formed the view that there were serious indications of possible infringements of EMIR by REGIS-TR.

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

Having considered the evidence, the Board of Supervisors has found that REGIS-TR negligently committed one infringement of EMIR as follows.

Infringement

REGIS-TR negligently committed the infringement set out set out at Point (b) of Section III of Annex I of EMIR by not ensuring that the entities referred in Article 81(3) of EMIR have direct and immediate access to the details of derivatives contracts they need to fulfil their respective supervisory responsibilities and mandates.

A) Relevant legal provisions

EMIR

Article 81(2) – (3) (*Transparency and data availability*)

(...)

(2) A trade repository shall collect and maintain data and shall ensure that the entities referred to in paragraph 3 have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

(3) A trade repository shall make the necessary information available to the following entities to enable them to fulfil their respective responsibilities and mandates:

(a) ESMA;

(b) the ESRB;

(c) the competent authority supervising CCPs accessing the trade repository;

(d) the competent authority supervising the trading venues of the reported contracts;

(e) the relevant members of the ESCB;

(f) the relevant authorities of a third country that has entered into an international agreement with the Union as referred to in Article 75;

(g) supervisory authorities appointed under Article 4 of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids;

(h) the relevant Union securities and market authorities;

(i) the relevant authorities of a third country that have entered into a cooperation arrangement with ESMA as referred to in Article 76;

(j) the Agency for the Cooperation of Energy Regulators;

(k) the resolution authorities designated under Article 3 of Directive 2014/59/EU of the European Parliament and the Council.

Annex I (*List of infringements*)

Section III *Infringements relating to transparency and the availability of information*

Point (b). A trade repository infringes Article 81(2) by not allowing the entities referred to in Article 81(3) direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

According to Article 81(2) – (3) of EMIR, a TR has the obligation to ensure that specified Authorities and Regulators have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates

B) Factual findings and analysis of the Board

In April 2013, REGIS-TR filed its application for registration under EMIR. On 14 November 2013, REGIS-TR was registered to provide trade repository services for all derivative asset classes.

During the registration process, REGIS-TR assured ESMA that it will provide direct and immediate access to the details of derivatives contracts reported to it in the form of transaction level reports.

Starting from 12 February 2014¹, counterparties and CCPs had to report **modifications and terminations** to a trade repository of their choice. Starting from 12 August 2014, counterparties and CCPs had to report **valuations and collateral updates** to a trade repository of their choice. ESMA and the other Regulators mentioned in Article 81 (3) of EMIR should have direct and immediate access to all these transactional data reported to REGIS-TR.

The Board found that between 12 February 2014 until 24 October 2016, REGIS-TR did not provide direct and immediate access to Regulators to:

Trade Terminations: 3.719.011.631 (out of 4.351.869.402) – which represents 85,46% of the data reported to REGIS-TR by counterparties and CCPs

Trade Modifications: 15.470.184 (out of 946.803.851) – which represents 1,63% of the data reported to REGIS-TR by counterparties and CCPs

In addition, during the period between 12 August 2014 and 24 October 2016, REGIS-TR did not provide to Regulators access to:

Valuations: 2.898.122.455, which represents 100% of the data reported to REGIS-TR by counterparties and CCPs

Collateral updates: 22.154.249, which represents 100% of the data reported to REGIS-TR by counterparties and CCPs.

¹ See 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 to Regulation (EU) No 648/2012 of the European Parliament and Council on OTC derivatives, central counterparties and trade repositories, OJ L 352, 21.12.2012, P.29

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO, the Board found that REGIS-TR failed to comply with the requirements of Article 81(2) of EMIR, and thus, it committed the infringement set out at Point (b) of Section III of Annex I of 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. In calculating the fine, the Board took account of the applicable aggravating and mitigating factors provided for in EMIR and has therefore fined REGIS-TR EUR 56 000.

D) Supervisory measure and fine

Public notice

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

Fine

The fine imposed on REGIS-TR is EUR 56 000.