17 February 2026
ESMA43-857238790-1634

Decision of the Board of Supervisors

To adopt supervisory measures and impose fines in respect of infringements committed by REGIS-TR S.A.

The Board of Supervisors ('Board'),

Having regard to the Treaty on the Functioning of the European Union,

Having regard to 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)[1], as amended ('ESMA Regulation'), and in particular Article 43(1) thereof,

Having regard to 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] ('EMIR'), as amended, and in particular Articles 65 and 73 thereof,

Having regard to 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')[3], as amended, and in particular Article 9 thereof,

Having regard to Commission Delegated Regulation (EU) No 667/2014 supplementing Regulation No 648/2012 of the European Parliament and of the Council with regard to rules of procedure for penalties imposed on trade repositories by the European Securities and Markets Authority including rules on the right of defence and temporal provisions[4], as amended, and in particular Article 3 thereof,

Whereas:

i. Following preliminary investigations, ESMA's Supervisors found in the Supervisory Report dated 14 June 2024 with respect to REGIS-TR S.A. ('REGIS-TR', 'RTR' or the 'PSI') that there were serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annex I to EMIR, including some in conjunction with Article 9 of SFTR.

ii. On 17 June 2024, ESMA's Executive Director appointed an independent investigating officer ('IIO') pursuant to Article 64(1) of EMIR, including in

[1] OJ L 331, 15.12.2010, p. 84.
[2] OJ L 201, 27.07.2012, p. 1.
[3] OJ L 337, 23.12.2015, p. 1.
[4] OJ L 179, 19.6.2014, p. 31.

conjunction with Article 9 of SFTR where appropriate.

iii. On 8 April 2025, the IIO sent to the PSI his initial Statement of Findings, which found that the entity had committed one or more of the infringements listed in Annex I to EMIR, including some in conjunction with Article 9 of SFTR.

iv. In response to the IIO's initial Statement of Findings, written submissions dated 6 June 2025 were made by the PSI.

v. Following the receipt of written submissions from the PSI, the IIO amended his initial Statement of Findings and incorporated those amendments into the Statement of Findings dated 10 July 2025.

vi. On 10 July 2025, the IIO submitted to the Board his file relating to the PSI, which included the initial Statement of Findings dated 8 April 2025, the written submissions made by the PSI on 6 June 2025 and the Statement of Findings dated 10 July 2025.

vii. On 29 July 2025, the Chair, after having assessed the file submitted by the IIO on 10 July, concluded that the file was complete.

viii. The Board thoroughly discussed the case at its meeting on 7 October 2025 and expressed agreement with most but not all the IIO's findings.

ix. On 7 October 2025, the Board adopted its initial Statement of Findings.

x. On 8 October 2025, the Board's initial Statement of Findings was sent to the PSI.

xi. On 6 November 2025, the PSI provided its written submissions in respect of the Board's initial Statement of Findings.

xii. The Board discussed the case further at its meeting on 17 February 2026.

xiii. Pursuant to Article 65 of EMIR (in conjunction with Article 9 of SFTR where relevant), where ESMA finds that a trade repository has, intentionally or negligently, committed one of the infringements listed in Annex I, it shall adopt a decision imposing a fine.

xiv. Pursuant to Article 73 of EMIR (in conjunction with Article 9 of SFTR where relevant), where ESMA finds that a trade repository has committed one of the infringements listed in Annex I, it shall take a supervisory measure, taking into account the nature and seriousness of the infringement.

Having considered the IIO's Statement of Findings, the material in the complete file and the written submissions made on behalf of the PSI, the Board sets out below its findings.

STATEMENT OF FINDINGS OF THE BOARD OF SUPERVISORS

1 Background

1. The PSI is a public limited liability company established and registered in Luxembourg[5], with a branch in Spain.

2. The PSI has been registered as Trade Repository ("TR") with ESMA since 14 November 2013[6] to provide TR services for all derivative asset classes under EMIR. Further, the PSI was granted an extension of authorisation by ESMA on 29 April 2020 (effective from 7 May 2020)[7] to perform TR services pertaining to SFTR, for all types of securities financing transactions ("SFTs").

3. Under EMIR, TRs centrally collect and maintain data on over-the-counter derivatives transactions, and under SFTR they collect and maintain records of securities financing transactions. TRs therefore play a crucial role in enhancing the transparency of derivative markets and reducing risks to financial stability[8].

4. There are currently four registered EU TRs under EMIR and three under SFTR. As regards the provision of TR services in the EU, in 2024 the PSI ranked first among EU-based TRs in terms of volume of reported trades under EMIR representing a 42% market share, and second under SFTR representing a 13% market share. The PSI ranked second in terms of numbers of reporting counterparties under EMIR and second under SFTR; it therefore holds a significant share of reports received under EMIR and SFTR.

5. In 2024, the PSI had an annual turnover of EUR [25-30] million[9]. For 2023, the turnover of the PSI was EUR [15-20] million for activities under EMIR, EUR [1-5] million for activities under SFTR and EUR [1-5] million for other activities[10], giving a total turnover of EUR [25-30] million.

6. On 31 December 2023, the PSI had 81 employees[11].

7. It is relevant to note for the present case that Brexit led to changes for TRs. On 11 March 2019, an entity called REGIS-TR UK Limited was incorporated in the United Kingdom and registered with the Financial Conduct Authority ("FCA") to operate under UK EMIR[12] in that

[5] Supervisory Report, Exhibit 39, 'Regis-TR_Articles of Incorporation_18.09.2015', Supervisory Report, Exhibit 40, 'RTR_Articles of Association_Consolidated__ 31-07-2019', p. 2, and Supervisory Report, Exhibit 41, 'RTR_Articles of Association_Consolidated_01_09_2022', p. 2.
[6] Supervisory Report, Exhibit 3, '2013-ESMA-1596 - Regis TR Registration Decision'.
[7] Supervisory Report, Exhibit 4, 'ESMA80-192-8618 REGIS-TR - Decision on SFTR registration, dated 29 April 2020'.
[8] https://www.esma.europa.eu/data-reporting/emir-reporting.
[9] Regis-TR S.A. Annual Financial Statements as at 31 December 2024, p. 3.
[10] Exhibit 2, PSI's Response to the IIO's RFI, p. 2.
[11] Exhibit 2, PSI's Response to the IIO's RFI, p. 2.
[12] Following Brexit, EMIR was onshored into UK legislation via a number of UK statutory instruments (SIs) and Binding Technical Standards (BTS) known as 'UK EMIR'.

jurisdiction. REGIS-TR UK Limited has allowed its clients to perform UK EMIR regulatory reporting services since the first business day after Brexit: 4 January 2021[13].

8. This decision outlines the facts of the case, applicable legal provisions and a legal assessment of all the established infringements. In this respect, the Board having regard to the duty to state reasons and the applicable case law, has assessed all the arguments made in the case and further to this, provides in this decision the main reasons for its findings.

2 The Facts

9. In relation to the case, the Board considered the below facts as particularly pertinent to its findings.

2.1 Management and control functions of the PSI

10. The **Board of Directors** of the PSI ("BoD") is charged with administering the company and is "vested with the broadest powers to perform all acts of administration or useful to accomplish [the PSI]'s interests". It comprises at least four permanent members, elected by the shareholders of the PSI[14].

11. The **Group Executive Management** of the PSI ("GEM") is appointed by the BoD and oversees the day-to-day management and representation of the PSI. The GEM reports to the BoD[15]. During the period from January 2018 to October 2022, the GEM comprised three members:

    - the Chief Executive Officer (CEO),
    - the Chief Financial Officer (CFO) / Chief Commercial Officer (CCO) / Chief Regulatory officer (CRO) (as the same individual executed these three functions); and
    - the Chief Operating Officer (COO).

12. Among other tasks, the CEO leads the PSI's strategy, the CFO establishes the yearly budget, the CCO implements the PSI's commercial strategy, the CRO defines the

[13] Exhibit 1, Supervisory Report, pp. 7, 27-28.
[14] Supervisory Report, Exhibit 39, 'Regis-TR_Articles of Incorporation_18.09.2015', pp. 5 and 6, Supervisory Report, Exhibit 40, 'RTR_Articles of Association_Consolidated__ 31-07-2019', paras. 9.1.1 and 9.1.2, p. 4 and para. 11.2, p. 6, and Supervisory Report, Exhibit 41, 'RTR_Articles of Association_Consolidated_01_09_2022', paras. 9.1.1 and 9.1.2, p. 4 and para. 11.2, p. 6.
[15] Supervisory Report, Exhibit 39, 'Regis-TR_Articles of Incorporation_18.09.2015', Article 12, p. 8, Supervisory Report, Exhibit 40, 'RTR_Articles of Association_Consolidated__ 31-07-2019', para. 12.3, p. 6, and Supervisory Report, Exhibit 41, 'RTR_Articles of Association_Consolidated_01_09_2022', para. 12.3, p. 6.

regulatory strategy, and the COO ensures the deployment and production of new products and services[16]. The CEO is also a member of the BoD.

13. The BoD approved the creation of an IT subcommittee and a Risk and Compliance subcommittee in October 2017[17]. Both subcommittees are advisory in nature and prepare IT, risk and compliance discussions before BoD meetings. Both subcommittees meet twice a year[18]. Members of the GEM are invited as "permanent guests" at these subcommittee meetings and experts can be invited as appropriate[19].

2.2 Policies and procedures

2.2.1 Approval process

14. Before 12 September 2019, there was no policy or procedure in place for the approval and entry into force of policies and procedures. Before this date, the BoD was "vested with the broadest powers to perform all acts of administration and disposition necessary or useful to accomplish the Company's interest"[20].

15. The first version of the Internal Governance Policy[21] was approved by the BoD on 12 September 2019. Pursuant to this policy, final versions of policies to be approved were to be notified to BoD members for their approval and final versions of procedures were to be notified to GEM members and approved by them, and approval dates were to be included in the history log of each corresponding policy/procedure[22]. The same provisions applied in later versions[23].

16. Further, the first version of the Procedure for Policies and Procedures[24] was approved by the GEM on 29 November 2019. It defined a policy as a set of principles, rules, guidelines to be followed to achieve the strategy of the PSI. It specified that once a policy was approved by the GEM, it was to be approved by the BoD[25], and provided that a procedure should describe "who, what, where, when, and why", to establish accountability for

[16] Supervisory Report, Exhibit 42, '1.6.1 2018 REGIS-TR Roles and Responsibilities matrix.xlsx', pp. 1-2, Supervisory Report, Exhibit 43, '1.6.2 2019 REGIS-TR Roles and Responsibilities matrix.xlsx', pp. 1-2, Supervisory Report, Exhibit 44, '1.6.3 2020 REGIS-TR Roles and Responsibilities matrix.xlsx', Supervisory Report, pp. 1-2, Exhibit 45, '1.6.4 2021 REGIS-TR Roles & Responsibilities Matrix.xlsx', pp.1-2, and Supervisory Report, Exhibit 46, '1.6.5 2022 REGIS-TR Roles & Responsibilities matrix.xlsx', pp.1-3.
[17] Supervisory Report, Exhibit 29, 'Second Reply to RFI, Question 37.C', p. 55 – see also in Supervisory Report, Exhibit 47, 'Board of Directors meeting 02 - 19.12.2017, approved minutes of the BoD meeting of 25 September 2017', p. 15.
[18] Supervisory Report, Exhibit 47, 'Board of Directors meeting 02 - 19.12.2017', pp. 119 and 120.
[19] Supervisory Report, Exhibit 5, 'TRRGS_BOTH_PR_FU_PD_ITEM14_20230630', p. 9 (p. 65 of the file).
[20] Supervisory Report, Exhibit 39, 'Regis-TR_Articles of Incorporation_18.09.2015', p. 7, Supervisory Report, Exhibit 55, 'IRR BoD – REGIS-TR_March 2014', p. 3.
[21] Supervisory Report, Exhibit 50, 'RTR Internal Governance Policy – v1.0'.
[22] Supervisory Report, Exhibit 50, 'RTR Internal Governance Policy – v1.0', p. 12.
[23] Supervisory Report, Exhibit 51, 'RTR Internal Governance Policy – v2.0', p. 13, Supervisory Report, Exhibit 52, 'RTR SA Internal Governance Policy – v3.0', p. 13.
[24] Supervisory Report, Exhibit 53, 'RTR Procedure for Policies and Procedures – v1.0'.
[25] Supervisory Report, Exhibit 53, 'RTR Procedure for Policies and Procedures – v1.0', pp. 4 and 7.

supporting the implementation of a "policy"[26]. The later version of the Procedure sets out a substantively unchanged process of approval[27].

2.2.2 Relevant policies and procedures

17. The PSI provided to ESMA numerous policies and procedures during ESMA's supervisory and enforcement investigations. These policies and procedures covered several different areas of its business. Of relevance to the legal assessment are the policies and procedures[28] on:

- System Development Life Cycle
- Project Management
- Version Release and Change Management
- Functional Design
- Product Management
- Business continuity
- Crisis Management
- Conflicts of interest

2.3 The Brexit project

18. Following a referendum, the UK left the EU on 31 January 2020. There followed a transition period that ended on 31 December 2020.

19. Before the end of the Brexit transition period on 31 December 2020, the PSI had to implement the migration of its UK EMIR activities to a UK-registered entity incorporated under UK law[29]; this implementation was the "Brexit migration project".

20. As part of its activities, the PSI maintains a secure file transfer protocol ("inter-TR SFTP") folder for TRs registered in the EU, which allows EU-registered TRs and regulators to access necessary information. One important aspect of the Brexit migration project was to ensure that TRs no longer registered in the EU would be unable to access this folder as of 1 January 2021.

[26] Supervisory Report, Exhibit 53, 'RTR Procedure for Policies and Procedures – v1.0', p. 4, Supervisory Report, Exhibit 54, 'RTR Procedure for Policies and Procedures – v2.0', p. 6.
[27] Supervisory Report, Exhibit 54, 'RTR Procedure for Policies and Procedures – v2.0', p. 9.
[28] Exhibit 16, Table of relevant policies and procedures.
[29] REGIS-TR UK Limited was incorporated in the UK on 11 March 2019. See also Exhibit 1, Supervisory Report, pp. 27-28.

2.3.1 Policies and procedures relevant to the Brexit migration project

21. For the Brexit migration project, the PSI established and followed two procedures: [Procedure 1: redacted due to confidentiality] and [Procedure 2: redacted due to confidentiality][30]. [Procedure 1: redacted due to confidentiality][31] described the steps to be followed for Brexit migration. [Procedure 2: redacted due to confidentiality][32], meanwhile, described steps for data migration in the context of Brexit and focused on the data to be migrated to the new entity: REGIS-TR UK TR[33]. [Procedure 1: redacted due to confidentiality] mentions disabling the access of the FCA and of the Bank of England ("BoE") to the data to which they previously had access but does not refer to disabling access for TRs no longer registered in the EU. With regards to [Procedure 2: redacted due to confidentiality], this document focuses on the data to be migrated to the REGIS-TR UK TR; no reference is made therein to disabling access by TRs no longer registered in the EU or by the FCA and BoE.

22. For Brexit migration, the PSI relied on a checklist comprising two documents[34]: [Document 1: redacted due to confidentiality][35], and [Document 2: redacted due to confidentiality].[36] The former document detailed the tasks to be carried out for Brexit migration between 30 December 2020 and 4 January 2021, their allocation to functions and individuals, and their deadlines. As to access, the checklist focused on disabling access by the FCA and BoE and did not refer to ending access to the inter-TR SFTP folder for TRs no longer registered in the EU. [Document 2: redacted due to confidentiality] is a synthesis of [Document 1: redacted due to confidentiality]; while it mentioned disabling access for the FCA and BoE[37], it did not refer to disabling access by TRs no longer registered in the EU.

23. In addition to the documentation specifically developed for the purpose of the Brexit migration project, the PSI's general information security documentation was relevant to Brexit migration[38], including [Guidelines: redacted due to confidentiality] [39] and [Policy: redacted due to confidentiality][40]. While these policies provided general guidance on controlling access rights to information (including by de-registering users that no longer require access) and controls necessary to manage access to systems and data, they did not refer specifically to controlling access to the inter-TR SFTP folder.

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[30] Supervisory Report, Exhibit 8, 'First Reply to RFI', Question B(25)', p. 46.
[31] Supervisory Report, Exhibit 82, [Procedure 1: redacted due to confidentiality], dated 7 December 2020.
[32] Supervisory Report, Exhibit 83, [Procedure 2: redacted due to confidentiality], dated 7 December 2020.
[33] Supervisory Report, Exhibit 83, [Procedure 2: redacted due to confidentiality], p. 4.
[34] Supervisory Report, Exhibit 29, 'Second Reply to RFI, Question 32.A.1', p. 48.
[35] Supervisory Report, Exhibit 84, [Document 1: redacted due to confidentiality], dated 22 December 2020.
[36] Supervisory Report, Exhibit 85, [Document 2: redacted due to confidentiality], dated 30 December 2020.
[37] Supervisory Report, Exhibit 85, [Document 2: redacted due to confidentiality].
[38] Supervisory Report, Exhibit 29, 'Second Reply to RFI', Question 31.A, p. 47.
[39] Supervisory Report, Exhibit 86, [Guidelines: redacted due to confidentiality], approved by the GEM on 30 August 2019.
[40] Supervisory Report, Exhibit 87, [Policy: redacted due to confidentiality].

2.3.2 Project meetings on the Brexit migration project

24. As part of the PSI's Brexit migration project management, regular meetings were held involving the compliance function, risk management function and the Chief Information Security Officer (CISO)[41]. The Brexit migration project team issued several reports, named [Report 1: redacted due to confidentiality], dated between October 2020 and February 2021 and [Report 2: redacted due to confidentiality][42]. The project manager shared [Report 1: redacted due to confidentiality] reports with the GEM; the PSI also said that those reports were also periodically shared with the control functions (without detailing the control function with which they were shared) and that those control functions could request meetings[43].

25. [Report 2: redacted due to confidentiality][44] monitored the risks related to the Brexit migration project; the version dated 3 February 2021 noted "everything goes as expected" in relation to inter TR-reconciliation[45].

2.3.3 Compliance monitoring in the Brexit migration project

26. Alongside the meetings mentioned above, there was regular reporting to the BoD on the Brexit migration project, some of which mentioned the risks in relation to reconciliation and the inter-TR SFTP folder.

27. Notably, the CCO reported to the BoD on the Brexit migration in the Annual Compliance Reports for the years 2019 and 2020[46]. The 2019 Annual Compliance Report, presented to the BoD during the meeting dated 10 March 2020[47], refers to ESMA concerns about the "lack of clarity with regards to operational separation between REGIS-TR UK and the PSI, with ESMA requesting information in relation to technical documentation that would evidence the effective separation between the two systems and different environments"[48].

28. Further to the Compliance Report for the year 2020[49], submitted to the BoD meeting of 12 April 2021, the PSI Compliance function decided as part of its monitoring activity to evaluate the operational separation and compliance with EMIR requirements, once services commenced in 2021[50]. In the section related to the PSI's arrangements for Brexit,

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[41] Supervisory Report, Exhibit 8, 'First Reply to RFI', Question B(25), p. 46.
[42] Exhibit 1, Supervisory Report, Supervisory Report, Exhibit 29, 'Second Reply to RFI', Question 31.B, p. 47.
[43] Supervisory Report, Exhibit 29, 'Second Reply to RFI', Question 31.B, p. 47.
[44] Supervisory Report, Exhibit 29, 'Second Reply to RFI', Question 31.B, p. 47.
[45] Supervisory Report, Exhibit 93, [Report 2: redacted due to confidentiality].
[46] Supervisory Report, Exhibit 29, 'Second Reply to RFI', Question 31.C, p. 47.
[47] Supervisory Report, Exhibit 94, 'BoD 10 03 2020 Documentation pack', topic 9, p. 83.
[48] Supervisory Report, Exhibit 94, 'BoD 10 03 2020 Documentation pack', topic 9, p. 142.
[49] Supervisory Report, Exhibit 95, '2020 Annual Compliance Report'.
[50] Supervisory Report, Exhibit 95, '2020 Annual Compliance Report', p. 65.

this report does not mention the need to end access to the inter-TR SFTP folder for TRs no longer registered in the EU[51].

29. The 2019 Annual Risk Report[52] mentioned a risk of "not properly execut[ing] the transfer of the UK data from EMIR Database to Online FCA database"[53] and a risk related to the "wrong execution of Inter-TR reconciliation"[54] but nothing more specific.

30. The COO presented three Project Status Updates to the BoD,[55] between May and December 2020. The Project Status Update dated 19 May 2020 only mentions the resumption of the Brexit migration project[56]. The Project Status Update dated 2 October 2020[57] details the ongoing status, costs and risks related to the Brexit migration project. This update classifies "Inter-TR reconciliation not available in time before [the reporting start date] as it was not in the initial scope" as a "serious risk" and proposes a solution: "analyse copy of existing functionality from EMIR EU"[58].

2.3.4 Confidentiality incident linked to Brexit

31. At the end of the transition period, ESMA de-registered all UK-based TRs under EMIR, including [TR 1: redacted due to confidentiality] and [TR 2: redacted due to confidentiality], as of 1 January 2021[59]. The cut-off of service to the TRs who were no longer authorised in the EU under EMIR should have included the disabling of the access of [TR 1: redacted due to confidentiality] and [TR 2: redacted due to confidentiality][60] to the PSI's EMIR inter-TR SFTP folder. However, as noted above, the disabling of access to EMIR inter-TR SFTP folder for those two TRs was not foreseen in the set of documentation prepared by the PSI for Brexit activities[61] and therefore not performed[62]. [TR 1: redacted due to confidentiality] and [TR 2: redacted due to confidentiality] could still access the PSI's EMIR inter-TR SFTP folder in the first months of 2021[63].

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[51] Supervisory Report, Exhibit 95, '2020 Annual Compliance Report', p. 67.
[52] Supervisory Report, Exhibit 96, '31.C.1 - REGIS-TR Annual Risk Report 2019'.
[53] Supervisory Report, Exhibit 96, '31.C.1 - REGIS-TR Annual Risk Report 2019', p. 130.
[54] Supervisory Report, Exhibit 96, '31.C.1 - REGIS-TR Annual Risk Report 2019', pp. 16 and 78, Supervisory Report, Exhibit 97, '31.C.2 - RTR Risk profile update - status as of Q3 2020'.
[55] Supervisory Report, Exhibit 29, 'Second Reply to RFI', Question 31.C, p. 47.
[56] Supervisory Report, Exhibit 98, '31.C.3 TOPIC 9 BoD May 2020 - Project Status update', p. 5 for the only sentence mentioning Brexit migration.
[57] Supervisory Report, Exhibit 99, '31.C.4 TOPIC 6 RTR-PM - Project Status update 20201002 1.1'.
[58] Supervisory Report, Exhibit 99, '31.C.4 TOPIC 6 RTR-PM - Project Status update 20201002 1.1', p. 9.
[59] See the press release "Brexit: ESMA withdraws the registrations of six UK-based credit rating agencies and four trade repositories", 04 January 2021 at https://www.esma.europa.eu/press-news/esma-news/brexit-esma-withdraws-registrations-six-uk-based-credit-rating-agencies-and.
[60] [TR 1: redacted due to confidentiality] and [TR 2: redacted due to confidentiality] were de-registered by as EMIR TR on 1 January 2021. [TR 3: redacted due to confidentiality] remained an EU TR and was not concerned by the cut-off of the access to EU inter-TR SFTP folder. For the purpose of Brexit, a new [TR 4: redacted due to confidentiality] entity was created.
[61] Supervisory Report, Exhibit 29, 'Second Reply to RFI', Question 32.A.2, p. 48.
[62] Supervisory Report, Exhibit 103, 'B-26-2 - Minutes_call_ESMA_20210913_INC-485', Supervisory Report, Exhibit 104, 'B-26-4 - Email to ESMA Re INC-485'.
[63] Supervisory Report, Exhibit 82, [Procedure 1: redacted due to confidentiality], pp. 5, 13.

32. The PSI discovered this issue while performing a manual review of the EMIR inter-TR SFTP folder[64] on 7 July 2021[65]. After detecting the problem, the PSI disabled the accounts of [TR 1: redacted due to confidentiality][66] and [TR 2: redacted due to confidentiality][67] for access to EMIR inter-TR SFTP folder.

33. As to the consequences of the failure to disable access, the PSI said that [TR 2: redacted due to confidentiality] did not connect to the RTR EMIR inter-TR SFTP folder after the Brexit go-live date[68]. By contrast, a user from [TR 1: redacted due to confidentiality] was able to connect to the folder and to download data from it daily between 4 January 2021 and 7 July 2021[69]. The PSI declared that this confidentiality incident was not immediately identified because "the system was working as expected … there was no system error or alert triggered"[70].

34. The PSI said that "it was decided to contact [TR 1: redacted due to confidentiality] and request a comfort letter confirming the deletion of the retrieved data after the Brexit go-live"[71]. The PSI received confirmation that [TR 1: redacted due to confidentiality] deleted the downloaded EMIR files from its server once it was notified about the error [72].

2.4 The SFTR project

35. SFTR entered into force on 12 January 2016 with different phase-in periods, including most notably a reporting start date of 13 July 2020[73].

36. The PSI was granted an extension of authorisation by ESMA on 29 April 2020 (which entered into force on 7 May 2020)[74] to enable it to perform TR services pertaining to SFTR.

37. Several aspects of this extension of authorisation are relevant to the assessment of infringements in the present case, which are covered below: reporting by the PSI's internal control functions including internal audit and compliance; oversight by the PSI's management and monitoring of the implementation of SFTR obligations by the PSI; and SFTR-related testing.

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[64] Supervisory Report, Exhibit 8, 'First Reply to RFI', Question B(26)(b), p. 47.
[65] Supervisory Report, Exhibit 105, 'B-26-1 - INC-485 Incident Report'.
[66] Supervisory Report, Exhibit 105, 'B-26-1 - INC-485 Incident Report'.
[67] Supervisory Report, Exhibit 104, 'B-26-4 - Email to ESMA Re INC-485'.
[68] Supervisory Report, Exhibit 104, 'B-26-4 - Email to ESMA Re INC-485'.
[69] Supervisory Report, Exhibit 105, 'B-26-1 - INC-485 Incident Report'.
[70] Supervisory Report, Exhibit 8, 'First Reply to RFI', Question B(26)b), p. 47.
[71] Supervisory Report, Exhibit 104, 'B-26-4 - Email to ESMA Re INC-485'.
[72] Supervisory Report, Exhibit 106, 'B-26-3 -Email to ESMA with [TR 1: redacted due to confidentiality]'s confirmation'.
[73] Reporting start date under SFTR, Supervisory Report, Exhibit 107, 'esma80-191-995_public_statement'.
[74] Supervisory Report, Exhibit 4, 'ESMA80-192-8618 REGIS-TR - Decision on SFTR registration', dated 29 April 2020.

2.4.1 SFTR-related reporting by internal control functions

38. From at least 2019 onwards, the senior management of the PSI was aware of numerous risks and issues with the performance of services pertaining to SFTR. A short summary of relevant reporting from the compliance, internal audit and risk functions of the PSI is set out below.

Compliance

39. In the 2020 Annual Compliance Report, submitted to the BoD meeting of 12 April 2021[75] the Compliance function noted several issues that arose in the management of the implementation project, which showed problems that resulted in many bugs, incidents and problems on the reporting start date. It also stated the lack of an effective control framework. It added that the PSI lacks, for certain areas, the expertise and knowledge required for a highly regulated service as the one offered by TRs. It mentioned that the shortcomings shown in certain areas during the implementation of SFTR demonstrated the need to improve resources with the right knowledge and expertise.

40. Further concerns were outlined in subsequent reports, including in the 2021 Annual Compliance Report submitted to the BoD meeting of 10 March 2022[76], in which the Compliance function noted regarding the PSI's SFTR activities that portability of data (transfer of records of transaction between TRs) was one of the regulatory requirements that was not ready on the reporting start date and was under development during 2021. Although the PSI put in place the port-in part of the portability solution (transfer of records of transaction from another TR to the PSI), the port-out (transfer of records of transaction from the PSI to another TR) was not in place by end of 2021, making the PSI unable to arrange the transfer to another TR should a client have wished to leave[77]. It also noted that Legal Entity Identifier ("LEI") update arrangements to allow the PSI to update the LEI of counterparties, in the context of mergers, acquisitions and other corporate events was under development during 2021 but was not fully deployed due to the re-arrangement of resource planning to dedicate to other aspects of SFTR implementation[78].

41. In its 2022 Annual Compliance Report[79] submitted to the BoD meeting of 2 March 2023[80], the Compliance function noted regarding the PSI's SFTR activities that the port-out functionality for portability of data between TRs had been delayed due to the re-allocation of resources to other projects[81] and that the LEI update arrangements had suffered

[75] Supervisory Report, Exhibit 95, 'TOPIC 6 Compliance Status Update_Annual Compliance Report'.
[76] Supervisory Report, Exhibit 110, '2021_REGIS-TR Annual Compliance Report'.
[77] Supervisory Report, Exhibit 110, '2021_REGIS-TR Annual Compliance Report', Section 4.4.3.1, p 19.
[78] Supervisory Report, Exhibit 110, '2021_REGIS-TR Annual Compliance Report', Section 4.4.3.2, p. 20.
[79] Supervisory Report, Exhibit 111, 'REGIS-TR 2022_Annual Compliance Report'.
[80] Supervisory Report, Exhibit 112, '0. REGIS-TR S.A. BoD minutes - 2023.03.02.Approved +signed'.
[81] Supervisory Report, Exhibit 111, 'REGIS-TR 2022_Annual Compliance Report', Section 3.2.3.1. p. 17.

numerous delays, due to re-prioritisation among other functionalities under SFTR and a high number of bugs identified during the testing phase. A solution was deployed in production environment in December 2022, but was postponed to 2023 for the execution ("due to an issue")[82]. Further, the deployment of SFTR activity by the PSI provoked several incidents and bugs in the system that needed long periods to be fixed. The main root causes identified were "the capacity management of constraints", "inefficiencies in the SDLC [System Development Life Cycle] framework", "testing methodology" and "quality of the deliveries"[83].

42. Further, in December 2022, the PSI's project manager reported to ESMA during a general update on the implementation of its [Internal project 1: redacted due to confidentiality], that as of October 2022, the implementation of portability and the LEI update under SFTR were "still in progress"[84].

Internal audit

43. In the Internal Audit Report on Business Operating Processes, dated 27 April 2021[85], distributed to the GEM[86] and BoD[87], the PSI's Internal Audit highlights the existence of weaknesses and potential inadequate and unauthorised access to details of SFTs by authorities. In the Internal Audit Report on LEI Updates, dated 7 June 2022[88], the PSI's Internal Audit highlights that for EMIR and SFTR activities, there was a delay, due to the PSI, on LEI updates requiring a country change[89].

Risk

44. There is no risk specifically related to SFTR in the 2018 Annual Risk Report, but it refers to a general risk in relation to project management for considering budget and resources (staff) allocation[90].

45. In the 2019 Annual Risk Report[91], presented on 10 March 2020[92], the PSI's Chief Risk Officer raised a general "risk of having misalignments between business needs and resources/expertise available." This risk was ascribed to the PSI hiring a high number of

[82] Supervisory Report, Exhibit 111, 'REGIS-TR 2022_Annual Compliance Report', Section 3.2.3.1. p. 17.
[83] Supervisory Report, Exhibit 111, REGIS-TR 2022_Annual Compliance Report, Section 3.2.3.1. p. 17.
[84] Supervisory Report, Exhibit 113, '[Internal project 1: redacted due to confidentiality] Status – 2022.10', in Supervisory Report, Exhibit 114, 'email from RTR to ESMA 'Monitoring of [Internal project 1: redacted due to confidentiality] implementation (30.11.2022)' dated 1 December 2022.
[85] Supervisory Report, Exhibit 116, 'RTR-2020-AR02 - Business Operating Processes', 27 April 2021.
[86] Supervisory Report, Exhibit 117, '20210205 GEM Meeting Minutes', p. 1.
[87] Supervisory Report, Exhibit 118, 'BoD 22 September 2021 Documentation Pack', approved minutes of BoD 18 May 2021, Topic 8, p. 10 (p. 15 of the file).
[88] Supervisory Report, Exhibit 119, 'RTR-2021-AR01 - LEI Updates', 7 June 2022 (distributed to BoD and GEM).
[89] Supervisory Report, Exhibit 119, 'RTR-2021-AR01 - LEI Updates', Section 3.1, p. 6.
[90] Supervisory Report, Exhibit 120, 'C-32-4 ANNUAL RISK REPORT 2018', Section 4 – submitted to the BoD of 17 September 2019, Supervisory Report, Exhibit 121, 'RTR BoD 10.12.2019 Documentation Pack F', p. 12.
[91] Supervisory Report, Exhibit 122, 'A-15-17 RTR Annual Risk Report 2019', p. 195.
[92] Supervisory Report, Exhibit 123, '35.A.3.1 TOPIC 10 REGIS-TR Annual Risk Report_Presentation'.

external staff, with high turnover, which made it difficult to consolidate and transfer knowledge adequately between team members[93].

46. In the 2020 Annual Risk Report[94], submitted to the BoD meeting of 12 April 2021[95], the Chief Risk Officer raised the same general risk as in the 2019 Annual Risk Report, stating that there was an imbalance between the expertise of the current resources and the business requirements to cover the activities performed. This resulted "in delays in the processes execution and a potential lower quality in the services offered." The Chief Risk Officer mentioned that the PSI did not perform an evaluation of the adequacy of expertise of the resources given the business requirements[96]. Finally, the Chief Risk Officer mentioned that the LEI update project was late due to a lack of resources but that there was a possibility to perform a LEI update manually[97].

2.4.2 Management oversight of SFTR preparation, risks and activities

47. As alluded to above, the various management bodies of the PSI (BoD, GEM and Subcommittees) were informed about issues regarding registration under SFTR and the implementation of the project. Brief summaries of those matters are set out below.

Board of Directors

Meeting date	Summary
23 May 2019	The then COO presented an update on SFTR registration for RTR and mentioned that "the level of confidence for delivery is currently quite low especially due to lack of educated resources to complete the work needed in due time"[98].
17 September 2019	The BoD members discussed the prioritisation of fixing existing bugs under EMIR activities versus developing the SFTR project. The high level of resources required for the SFTR project and the other projects ongoing were highlighted as a factor explaining why bugs were not resolved[99].
19 May 2020	The BoD members discussed the overrun costs on all activities estimated at EUR 600,000. The CEO expressed concern that any significant reduction in costs could jeopardise SFTR rollout[100].

[93] Supervisory Report, Exhibit 122, 'A-15-17 RTR Annual Risk Report 2019', p. 195.
[94] Supervisory Report, Exhibit 124, 'A-15-18 - REGIS-TR Annual Risk Report 2020'.
[95] Supervisory Report, Exhibit 125, 'TOPIC 7 REGIS-TR Annual Risk Report 2020_Presentation'.
[96] Supervisory Report, Exhibit 124, 'A-15-18 - REGIS-TR Annual Risk Report 2020.pdf', p. 122.
[97] Supervisory Report, Exhibit 124, 'A-15-18 - REGIS-TR Annual Risk Report 2020.pdf', p. 151.
[98] Supervisory Report, Exhibit 127, 'BoD Documentation Pack 17 September 2019 updated 16.09.2019', p. 12.
[99] Supervisory Report, Exhibit 121, 'RTR BoD 10.12.2019 Documentation Pack F', Topic 5, p. 9 (p. 12 of the file).
[100] Supervisory Report, Exhibit 100, 'REGIS-TR Board pack_02.10.2020', Topic 6, p. 10 (p. 13 of the file).

9 July 2020	A general presentation from the project manager on the start of provision of services under SFTR was submitted[101], highlighting to the BoD the late and incomplete execution of the testing plan, the late onboarding of authorities and the limited knowledge of SFTR systems by the PSI's resources.
18 May 2021	Internal Audit presented the conclusions of the 'Audit on the Authorities Onboarding Processes under EMIR, FinfraG and SFTR reporting' (from a design and operating perspective); they identified several weaknesses and raised four findings, in particular one high severity finding related to the SFTR access matrix template, leading to authorities having access to too much or insufficient details of SFTs[102].
22 September 2021	The delays in other projects due to the reallocation of resources to SFTR were highlighted. At that point the next SFTR release was postponed to 2022 and had an amber status; one board member said the status should be red given the various delays in reporting and the LEI update[103].
16 December 2021	The BoD members noted a lack of testing of bugs but received a commitment from the COO that by mid-April 2022 there should be zero incidents in the system[104]; it is of note in this context that 14 incidents were notified to ESMA under SFTR from May 2022 to September 2022[105].
10 March 2022	The COO reported that the start of the development of port-out under SFTR was delayed due to resources assignment to other projects. He mentioned that it would be implemented by end of July 2022. He also acknowledged the high ratio of bugs found post-implementation versus in testing (25%), noting that the quality of the SFTR release was not optimal due to the limited testing time and should improve with the June 2022 release[106].

48. In October 2022, the implementation of both portability and the LEI update under SFTR were still in progress at the PSI[107]. According to the PSI, "the system for the automatic

[101] Supervisory Report, Exhibit 100, 'REGIS-TR Board pack_02.10.2020', Topic 3, pp. 17 to 20 (pp. 20 to 23 of the file).
[102] Supervisory Report, Exhibit 118, 'BoD 22 September 2021 Documentation Pack', Topic 8, pp. 10 and 11 (pp. 16 and 17 of the file).
[103] Supervisory Report, Exhibit 129, 'BoD 16th December 2021 Documentation Pack', Topic 6, p. 7 (p. 12 of the file).
[104] Supervisory Report, Exhibit 130, 'TOPIC 2 - REGIS-TR S.A. BoD - 2021.12.16 Minutes', Topic 6, p. 6.
[105] Supervisory Report, Exhibit 131, 'D-35-1 ESMA83-357-34514 Regis-Log_Rfi_18.01.23', spreadsheet named "log_ESMA".
[106] Supervisory Report, Exhibit 132, 'TOPIC 2a - REGIS-TR S.A. BoD - 2022.03.10 – minutes', Topic 6, pp. 5 and 6.
[107] Supervisory Report, Exhibit 113, '[Internal project 1: redacted due to confidentiality] Status – 2022.10', p. 2, in Supervisory Report, Exhibit 114, 'Monitoring of [Internal project 1: redacted due to confidentiality] implementation', email from RTR to ESMA dated 1 December 2022.

update of LEIs was put in place in 2023 and the new port-out system was also fully operational that same year"[108].

Subcommittees

49. The Risk and Compliance subcommittee[109] (composed of members from the BoD, GEM members and Compliance, Internal Audit and Risk officers) and the IT subcommittee[110] (composed of members of the BoD and GEM Members) discussed the implementation of SFTR.

50. During its meeting in May 2019, the Risk and Compliance subcommittee discussed what was considered a considerable backlog on SFTR[111].

51. In the IT subcommittee, there were three meetings where SFTR implementation was discussed: (i) on 1 March 2019[112], where SFTR was considered a priority, (ii) on 16 June 2020[113], where an update on testing was provided informing of a failure rate of 15%, and (iii) on 17 September 2020[114] providing an update on tests and incidents.

GEM

52. The implementation of SFTR was also discussed at GEM meetings[115]: there were general updates in the GEM meetings of 8 June 2018[116], 20 July 2018[117], 16 November 2018[118], 23 November 2018[119], 14 December 2018[120], 14 June 2019[121].

53. There were also discussions on the allocation of resources to the SFTR project at the GEM meetings on 24 January 2018[122], 19 March 2018[123], 11 April 2018[124], 7 May 2018[125], 23

[108] Exhibit 23, Response to the Initial SoF, paragraph 381.
[109] Supervisory Report, Exhibit 29, 'Second Reply to RFI', Question 4, p. 10.
[110] Supervisory Report, Exhibit 29, 'Second Reply to RFI', Question 5, p. 9.
[111] Supervisory Report, Exhibit 133, '5.3 RTR SA – RCSC 20201103' – Minutes, p. 3.
[112] Supervisory Report, Exhibit 134, '4.4 IT SC Minutes 01.03.2019', p. 3.
[113] Supervisory Report, Exhibit 135, '4.7 Regis TR IT SC Minutes 16.06.20', p. 4.
[114] Supervisory Report, Exhibit 136, '4.8 IT Subcommittee 17.09.2020 – Minutes', p. 4.
[115] As provided under Exhibit 3 GEM meeting minutes in the Supervisory Report, Exhibit 29, 'Second Reply to RFI', p. 8.
[116] Supervisory Report, Exhibit 137, '20180608 GEM Meeting Minutes'.
[117] Supervisory Report, Exhibit 138, '20180702 GEM Meeting Minutes'.
[118] Supervisory Report, Exhibit 139, '20181116 GEM Meeting Minutes'.
[119] Supervisory Report, Exhibit 140, '20181123 GEM Meeting Minutes'.
[120] Supervisory Report, Exhibit 141, '20181214 GEM Meeting Minutes'.
[121] Supervisory Report, Exhibit 143, '20190614 GEM Meeting Minutes'.
[122] Supervisory Report, Exhibit 144, '20180124 GEM Meeting Minutes'.
[123] Supervisory Report, Exhibit 145, '20180319 GEM Meeting Minutes'.
[124] Supervisory Report, Exhibit 146, '20180411 GEM Meeting Minutes'.
[125] Supervisory Report, Exhibit 147, '20180507 GEM meeting Minutes'.

May 2018[126], 29 March 2019[127], 2 August 2019[128], 5 February 2020[129] and 21 January 2022[130].

54. Notably, during the GEM meeting on 10 January 2020[131], the CEO of the PSI mentioned that the documentation submitted to ESMA for registration under SFTR included "wrong documentation missing the four eyes principle" and that "the documents for Non-Functional requirement sent [were] suboptimal".

2.4.3 Incidents under SFTR

55. From 13 July 2020[132] to 21 October 2022[133], the PSI notified ESMA of 158 incidents in relation to its activities under SFTR that occurred between 13 July 2020 and 20 September 2022[134]. Of those:

- There were 88 incidents notified from 13 July 2020 to 31 December 2020. Among these incidents, one impacted confidentiality of data, 36 impacted the integrity of data, 18 impacted the availability of data and 33 impacted the availability and integrity of data.

- There were 44 incidents notified from 1 January 2021 to 31 December 2021. Among these incidents, one impacted confidentiality of data alone, six impacted the integrity of data alone, 23 impacted the availability of data alone, two impacted the availability and confidentiality of data, and 12 impacted the availability and integrity of data.

- There were 26 incidents notified from 1 January 2022 to 20 September 2022. Among these incidents, eight impacted the availability of data, four impacted the availability and integrity of data, 12 impacted the integrity of data, and two impacted the integrity and availability of the data.

3 Applicable Legal Provisions

56. In relation to these facts, the Board recalls the following provisions of EMIR[135] and SFTR.

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[126] Supervisory Report, Exhibit 148, '20180523 GEM Meeting Minutes'.
[127] Supervisory Report, Exhibit 149, '20190329 GEM Meeting Minutes'.
[128] Supervisory Report, Exhibit 150, '20190802 GEM Meeting Minutes'.
[129] Supervisory Report, Exhibit 117, '20210205 GEM Meeting Minutes'.
[130] Supervisory Report, Exhibit 151, '20220121 GEM Meeting Minutes'.
[131] Supervisory Report, Exhibit 152, '20200110 GEM Meeting Minutes', p. 3; see also clarification by the PSI on these matters in Exhibit 2, PSI's response to the IIO's RFI, pp. 16-17.
[132] Reporting start date under SFTR, Supervisory Report, Exhibit 107, 'esma80-191-995_public_statement'.
[133] Supervisory Report, Exhibit 131, 'D-35-1 - ESMA83-357-34514 Regis_log_Rfi_18.01.23' (this document is based on an excel spreadsheet submitted by ESMA to the PSI in the First RFI and includes the PSI's comments and modification in pp.15-21).
[134] Supervisory Report, Exhibit 131, 'D-35-1 ESMA83-357-34514 Regis-Log_Rfi_18.01.23', spreadsheet named "log_ESMA", pp. 1-14.
[135] References to EMIR in this decision refer to the text of Regulation (EU) No 648/2012 (as amended where relevant) in force at all material times in relation to the matters which are the subject of this case.

57. Pursuant to Article 9 of SFTR, the powers conferred on ESMA in accordance with Articles 61 to 68, 73 and 74 of EMIR, in conjunction with Annexes I and II thereto, shall also be exercised with respect to SFTR. Thus, where specified, the references to these articles of EMIR are to be read in conjunction with Article 9 of SFTR.

58. EMIR lays down the rules to which TRs are subject. In particular, Article 1 of EMIR states: "This Regulation lays down clearing and bilateral risk-management requirements for over-the-counter ('OTC') derivative contracts, reporting requirements for derivative contracts and uniform requirements for the performance of activities of central counterparties ('CCPs') and trade repositories".

59. In this respect, it should be noted that besides the provisions of the (initial) Regulation, which entered into force on 16 August 2012, account must also be taken of the amendments to EMIR introduced by SFTR (Regulation (EU) 2015/2365[136]), which entered into force on 12 January 2016 and the amendments to EMIR introduced by Regulation (EU) 2019/834[137], which entered into force on 17 June 2019[138].

60. In addition, the following EMIR Level 2 measures should be considered:

61. Delegated Regulation (EU) No 150/2013[139], which entered into force on 15 March 2013. It supplements EMIR and sets out regulatory technical standards (RTS) specifying the information to be provided to ESMA as part of an application for registration as a TR.

62. The Procedural Regulation: Delegated Regulation (EU) No 667/2014[140], which entered into force on 22 June 2014. It has been amended by Delegated Regulation (EU) 2021/732[141].

63. Moreover, SFTR lays down further rules to which TRs registered under SFTR are subject.

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[136] 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, OJ L 337, 23.12.2015.
[137] Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 648/2012 as regards the clearing obligation, the suspension of the clearing obligation, the reporting requirements, the risk-mitigation techniques for OTC derivative contracts not cleared by a central counterparty, the registration and supervision of trade repositories and the requirements for trade repositories, OJ L 141, 28.5.2019.
[138] To be noted that some of the provisions of Regulation (EU) 2019/834 had a different date of application. Pursuant to Article 2 of Regulation (EU) 2019/834: "This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.
It shall apply from the date of entry into force, except for the following:
(a) provisions set out in points (10) and (11) of Article 1 of this Regulation, as regards Articles 38(6) and (7) and 39(11) of Regulation (EU) No 648/2012, shall apply from 18 December 2019.
(b) provisions set out in point (7)(b) of Article 1 of this Regulation, as regards Article 9(1a) to (1d) of Regulation (EU) No 648/2012, shall apply from 18 June 2020.
(c) provisions set out in points (2)(b) and (20) of Article 1 of this Regulation, as regards Articles 4(3a) and 78(9) and (10) of Regulation (EU) No 648/2012, shall apply from 18 June 2021."
[139] 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, OJ L 52, 23.2.2013.
[140] Commission Delegated Regulation (EU) No 667/2014 of 13 March 2014 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to rules of procedure for penalties imposed on trade repositories by the European Securities and Markets Authority including rules on the right of defence and temporal provisions, OJ L 179, 19.6.2014.
[141] Commission Delegated Regulation (EU) 2021/732 of 26 January 2021 amending Delegated Regulation (EU) No 667/2014 with regard to the content of the file to be submitted by the investigation officer to the European Securities and Markets Authority, the right to be heard with regard to interim decisions and the lodging of fines and periodic penalty payments.

64. Article 9(1) of SFTR states: “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.”

65. Article 5(1) of SFTR states that: “A trade repository shall register with ESMA for the purposes of Article 4 …”.

66. 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.”

3.1 Relevant legal provisions regarding policies and procedures

67. Article 78(3) of EMIR states that: “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.”

68. The corresponding infringement is set out at Point (c) of Section I of Annex I to EMIR and states that: “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.”

3.2 Relevant legal provisions regarding organisational structure

69. 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.”

70. The corresponding infringement is set out at Point (d) of Section I of Annex I to EMIR and states that: “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.”

71. With regards to the Delegated Regulations, the following provisions should be taken into consideration:

72. Article 5 of the Delegated Regulation 150/2013 states: “An application for registration as a trade repository shall contain the organisational chart detailing the organisational structure of the applicant, including that of any ancillary services.” The paragraph further states “That

chart shall include information about the identity of the person responsible for each significant role, including senior management and persons who direct the activities of any branches."

73. Article 16 of the Delegated Regulation 150/2013 provides: "An application for registration as a trade repository shall contain the following information relating to information technology resources: (a) a detailed description of the information technology system including the relevant business requirements, functional and technical specifications, system architectural and technical design, data model and data flows, and operations and administrative procedures and manuals; (b) user facilities developed by the applicant in order to provide services to the relevant users, including a copy of any user manual and internal procedures; (c) the investment and renewal policies on information technology resources of the applicant;"

3.3 Relevant legal provisions regarding operational risks

74. Article 79(1) of EMIR read as follows until 17 January 2025: "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."

75. On 17 January 2025, Article 79(1) was amended and the version in force reads as follows: "A trade repository shall identify sources of operational risk and minimise them also through the development of appropriate systems, controls and procedures, including ICT systems managed in accordance with Regulation (EU) 2022/2554 [DORA]"[142].

76. The corresponding infringement was set out at Point (a) of Section II of Annex I to EMIR and states that: "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."

77. The infringement was also amended on 17 January 2025 and now states that: "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 including ICT systems managed in accordance with [DORA]".

[142] In this case, this amendment is not relevant for the breach under EMIR because the relevant facts occurred before the amendment to the legislation. As to the breach under SFTR, the new text is relevant as the breach is ongoing and it began before the text was amended. However, this change does not affect the reasoning or conclusions because the requirements of reliability, security and adequate capacity are ongoing, as they are ordinary features of appropriate systems, controls and procedures.

3.4 Relevant legal provisions regarding confidentiality, integrity and protection of information

78. During the period relevant to the infringement in the present case, Article 80(1) of EMIR read as follows: “A trade repository shall ensure the confidentiality, integrity and protection of the information received under Article 9.”

79. The corresponding infringement was set out at Point (c) of Section II of Annex I to EMIR and states that: “a trade repository infringes Article 80(1) by not ensuring the confidentiality, integrity or protection of the information received under Article 9.”

80. The abovementioned provisions were removed from EMIR by DORA on 17 January 2025 but this has no effect on the present case, as the relevant facts took place before the amendment was made.

3.5 Relevant legal provisions regarding misuse of information

81. Article 80(6) of EMIR reads as follows: “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.”

82. The corresponding infringement is set out at Point (h) of Section II of Annex I to EMIR and states that: “a trade repository infringes Article 80(6) by not taking all reasonable steps to prevent any misuse of the information maintained in its systems.”

4 Legal assessment

83. Taking into account the facts of the case, the relevant legal provisions and the submissions of the PSI, the Board sets out below its findings.

4.1 General legal considerations

84. Before analysing and coming to any conclusion regarding the specific infringements in the case, it is necessary for the Board to set out its views in four areas: legitimate expectation, the interaction between infringements under SFTR and EMIR and factual overlap between infringements, the principle of legality and speciality, and the calculation of the proposed sanctions. These points were raised by the PSI in relation to more than one infringement and are therefore covered in this initial subsection.

4.1.1 Legitimate expectation

85. As part of its defence, the PSI invoked the principle of protection of legitimate expectation[143], arguing that its set-up and behaviour leading to the finding of infringements set out below had previously been "duly and expressly approved by ESMA" [144] and thus should not be the basis for finding "regulatory breaches"[145].

86. Specifically, given that the PSI was successful in being registered under both regimes[146], the PSI claimed that it was given a legitimate expectation that its policies and procedures were compliant, and that ESMA was thereby barred from relying upon those policies and procedures in finding infringements established.

87. The Board considered these arguments and dismisses them as flawed. Thus, the concerned policies and procedures can form part of the evidence in the case.

88. In its assessment the Board considered the following.

89. The Board recalls that the respect for legitimate expectations is a longstanding principle in common and civil law systems. According to settled CJEU case-law, the right to rely on the principle of legitimate expectation extends to any person in a situation where an EU authority has caused him or her to have justified expectations and where three conditions are satisfied cumulatively:

90. First, **precise, unconditional and consistent assurances** originating from authorised and reliable sources must have been given to the person concerned by the EU authorities.

91. Second, those **assurances must be such as to give rise to a legitimate expectation** on the part of the person to whom they are addressed.

92. Third, the assurances given must be **consistent with the applicable rules**[147].

93. However, while the possibility of relying on the protection of legitimate expectation, as a fundamental principle of EU law, is available to any economic operator, **where a prudent and circumspect economic operator is able to foresee the adoption of an EU measure likely to affect his or her interests, he or she cannot rely on that principle if the measure is adopted**[148].

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[143] See Response to the Board's initial Statement of Findings, p. 7-14.
[144] See Response to the Board's initial Statement of Findings, p. 7.
[145] See Response to the Board's initial Statement of Findings, p. 7.
[146] Supervisory Report, Exhibit 3, '2013-ESMA-1596 - Regis TR Registration Decision', Supervisory Report, Exhibit 4, 'ESMA80-192-8618 REGIS-TR - Decision on SFTR registration'.
[147] See Cases T-351/18 and T-584/18, Ukrselhosprom PCF and Versobank v ECB [2021], ECLI:EU:T:2021:669 para. 359 and the case-law cited.
[148] See Cases T-351/18 and T-584/18, Ukrselhosprom PCF and Versobank v ECB [2021] ECLI:EU:T:2021:669 para. 360 and the case-law cited.

94. Finally, the principle of the protection of legitimate expectations **cannot be relied on by a person who has infringed the legislation in force**[149].

First limb: assurances creating legitimate expectations

95. Turning to the first limb and the three cumulative condition regarding assurances, the PSI's argument essentially relied on the contention that the initial registration of the PSI under EMIR and then SFTR, along with the ongoing supervisory dialogue between ESMA and the PSI, constituted precise, unconditional, and consistent assurances that the PSI's policies, procedures, internal controls and structures were compliant, and therefore ESMA cannot take enforcement action in relation to those shortcomings.

96. In this respect, regarding the registration, the PSI claimed that its "registration under EMIR (14 November 2013) and extension under SFTR (7 May 2020) constitute administrative acts of an authorising nature that validate [the PSI's] compliance with Articles 78-81 EMIR. Both registration processes involved extensive dialogue with ESMA —over six months for EMIR registration and multiple requests for information for SFTR extension— during which ESMA conducted exhaustive assessments of [the PSI's…], policies, procedures and organisational structure in accordance with Delegated Regulation 150/2013 […]. ESMA's fully reasoned registration decisions constitute precise, unconditional assurances from an authorised source that RTR's governance arrangements as a whole complied with regulatory requirements"[150].

97. The PSI further attempted to draw a distinction "between structural elements (which create legitimate expectations) and dynamic conduct (which do not)"[151]. It argued that while "dynamic elements of [the PSI's] conduct — that is, operational breaches that occur during the course of activity when a TR departs from prescribed regulatory conduct […do not create] legitimate expectations that shield it from enforcement action for such operational failures […; for] structural elements that remain unchanged throughout [the PSI's] activity, specifically, […] policies, procedures and organisational structure that existed at the time of registration by ESMA"[152], there would be legitimate expectations established.

98. Regarding the "structural elements" the PSI specified that only very limited changes were made to the […] policies and procedures and that these could not "reasonably be characterised as a failure to have […] adequate policies and procedures"[153].

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[149] See Cases T-351/18 and T-584/18, Ukrselhosprom PCF and Versobank v ECB [2021] ECLI:EU:T:2021:669 para. 361 and the case-law cited.
[150] See Response to the Board's initial Statement of Findings, p. 7. See also Exhibit 23, Response to the Initial SoF, paragraph 16.
[151] See Response to the Board's initial Statement of Findings, p. 13.
[152] See Response to the Board's initial Statement of Findings, pp. 8-9. The PSI also included evidence on exchanges in Exhibit 24, Exhibit 1 to the PSI's Response to the Initial SoF, EMIR exchanges application and Exhibit 25, Exhibit 2 to the PSI's Response to the Initial SoF - SFTR exchanges pre-licence.
[153] See Response to the Board's initial Statement of Findings, p. 9.

99. Moreover, the PSI argued that unless the registration process created legitimate expectations, it "would render the entire registration framework meaningless. The EMIR and SFTR registration procedures are not mere formalities, but rather substantive legal processes designed to ensure that only TRs with adequate governance, policies, procedures and organisational structures are authorised to operate"[154].

100. The PSI's arguments cannot be accepted.

101. According to the case law cited above, the person asserting a legitimate expectation must be given precise, unconditional and consistent assurance from the authority. Considering the facts in the case, it becomes clear that the PSI was not given precise, unconditional, and consistent assurances about its compliance with Articles 78 to 81 of EMIR neither at the time of registration under EMIR in November 2013 and SFTR in May 2020, nor through ongoing supervision up to the present.

102. ESMA's actions registering and supervising the PSI did not amount to assurances that could create legitimate expectations that enforcement action would not be taken in relation to its compliance failures under SFTR or EMIR. To cite the case-law relied upon by the PSI, it never received anything resembling "precise assurances by the administration"[155]. Registration and supervision of the PSI cannot represent precise and unconditional assurances from ESMA such as to give rise to a legitimate expectation, particularly when one examines those registration processes and ongoing supervision in detail. Further, if this were the case, ESMA would never be able to impose sanctions on registered entities that it supervises in relation to matters relevant to registration, which would be contrary to the letter and the spirit of the regulatory system.

103. In this respect regarding registration, the purpose of registration is to assess whether at that point in time an entity met the requirements[156] for registration and thus allow it to operate on a regulated market under ESMA's supervision. The decisions do not contain any assurances relevant to the specifics of the infringements, such as for example statements about particular policies or procedures.

104. In addition, exchanges of correspondence via email at the time of registration do not refer at any point to the specific matters giving rise to the infringements set out below

[154] See Response to the Board's initial Statement of Findings, p. 10. See also Exhibit 23, Response to the Initial SoF, paragraphs 22 to 23.
[155] Exhibit 23, Response to the Initial SoF, paragraph 2.
[156] Indeed, both the EMIR and SFTR registration decisions state that (1) ESMA must examine the compliance of the information given in the registration procedure with EMIR / SFTR, and (2) that after having assessed all the relevant documentation received from the applicant during the registration process, ESMA finds that the PSI has met the requirements for registration set out in EMIR / SFTR and the relevant delegated regulations and implementing acts. See, Supervisory Report, Exhibit 3, '2013-ESMA-1596 - Regis TR Registration Decision', p. 2, Supervisory Report, Exhibit 4, 'ESMA80-192-8618 REGIS-TR - Decision on SFTR registration', p. 2.

either[157], nor are the documents relevant to establishing the infringements named in those email chains, contrary to the PSI's assertion[158].

105. Contrary to the PSI's assertions, registration is meaningful, as it allows an entity to operate on a regulated market, and at the same time does not create a legitimate expectation that no enforcement on any of the documents submitted would follow. Registration is the entry point, once this is achieved day-to-day supervision begins, which may reveal failures in the entity's operations. It is the prerogative of a supervisor to sanction non-compliant conduct when it becomes aware of it. Indeed, a supervisor cannot be barred from taking enforcement action because it made authorisation decisions many years previously.

106. With this in mind, registration did not create legitimate expectations and the supervisory dialogue following registration, certainly did not either.

107. Subsequent correspondence referred by the PSI does not offer any assurance that would come close to that necessary to give rise to a legitimate expectation[159]. Indeed, contrary to any "precise, unconditional, and consistent assurances about its compliance" ESMA communicated its concerns to the PSI in a letter from ESMA's Executive Director which stated in its conclusion that "ESMA is not confident that Regis-TR is able to successfully deliver against its compliance obligations under EMIR and SFTR … at the current time"[160]. Further, the letter made the assertion that the situation is "no longer sustainable".

Second limb: Foreseeability by prudent and circumspect economic operator

108. Pursuant to the abovementioned case-law, one cannot rely on legitimate expectations where a prudent and circumspect economic operator is able to foresee the adoption of an EU measure likely to affect his or her interests[161]. In the present case, given the long history

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[157] Exhibit 24, Exhibit 1 to the PSI's Response to the Initial SoF, EMIR exchanges application and Exhibit 25, Exhibit 2 to the PSI's Response to the Initial SoF - SFTR exchanges pre-licence.
[158] Exhibit 23, Response to the Initial SoF, paragraphs 29 to 32.
[159] Exhibit 23, Response to the Initial SoF, paragraphs 33(ii) and (iii).
[160] Supervisory Report, Exhibit 10, 'ESMA74-426-8 Letter from Verena Ross to [CEO] of REGIS', pp.3-4. See further: "Despite the above, **we do not see progress in addressing many of the risks identified**. It is apparent from the same control function reports that several risks and related recommendations remain unaddressed. This ultimately also impairs the effectiveness of the activity of the control functions, considering that their recommendations appear not to be sufficiently followed up. Against this background, **I would like to reiterate that ESMA is not confident that Regis-TR is able to successfully deliver against its compliance obligations under EMIR and SFTR and to meet our supervisory expectations at the current time.** Our experience so far, especially since 2017, on taking timely action to resolve identified issues, reveal systemic weaknesses within Regis-TR.
We believe that this situation is no longer sustainable. I would therefore invite you to have a discussion at your board as soon as possible on a possible way forward to address these serious issues and to present to us a credible plan in this respect. My colleagues are happy to engage with you and your board further at any time and in the setting you consider most appropriate."
[161] In *Ukrselhosprom PCF and Versobank AS v ECB*, the court found that the financial institution could not rely on the expectation that the registration would not be withdrawn, given that prior to the withdrawal the national authority raised concerns as regards compliance with the rules on several occasions and repeatably gave warning that the entity had to change its governance arrangements and procedures and that, if the breaches continued, any supervisory measure could be adopted or the entity's

of ESMA raising concerns about the PSI's compliance with EMIR and SFTR obligations (e.g. already in the above-mentioned letter from the ESMA Executive Director dated 18 May 2021[162] as well as exchanges between the PSI and ESMA mentioned therein, the [Internal project 2: redacted due to confidentiality] from 2018[163] which includes action in relation to policies and procedures (such as the policy on conflicts of interest and the Business Continuity Policy), the [Internal project 1: redacted due to confidentiality] 2020-2023 with the objective to address the points raised by ESMA[164] and in several RFIs from ESMA's Supervisors, wherein ESMA asked about policies and procedures[165]) as well as the fact that the PSI has already been subject to enforcement decisions by ESMA, the PSI should have been able to foresee enforcement action by ESMA on the basis of shortcomings in its policies and procedures.

109. In this respect, the PSI claimed that the letter[166] did "not identify any specific deficiencies"[167] in relation to the infringements identified in this case and only referred broadly to issues regarding "(i) governance and internal control; (ii) operational risk and business continuity; (iii) incident management; (iv) data quality; (v) access to data; and (vi) regulatory reporting" [168], arguing that thus this letter could not "serve as grounds for removing the effects of the legitimate expectations principle with respect to all infringements"[169]. The PSI also claimed in relation to the infringements in the case that ESMA "had ample opportunity to raise these concerns during the extensive supervisory dialogue from 2018-2021"[170].

110. Similarly, the PSI asserted that ESMA was not permitted to revise the legal assessment it made at the time of authorisation and that this is "even less admissible that this change should be introduced after seven years of supervisory dialogue, during which many of the issues now raised […] were never addressed (let alone considered to be infringements of the seriousness now alleged) and throughout which RTR has consistently acted in full accordance with the guidance provided by ESMA to improve its activities"[171].

111. As a preliminary point and as already set out above there was no legitimate expectation established by the registration decision in the first place. The process of registration cannot establish legitimate expectations of no future enforcement actions, not for dynamic nor

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registration could be withdrawn. See Cases T-351/18 and T-584/18, Ukrselhosprom PCF and Versobank v ECB [2021], ECLI:EU:T:2021:669 para. 364, see also dismissed appeal decision, Case C-803/21 P, Ukrselhosprom PCF and Versobank v ECB [2023], ECLI:EU:C:2023:630.

[162] Supervisory Report, Exhibit 10, 'ESMA74-426-8 Letter from Verena Ross to [CEO] of REGIS'.

[163] Supervisory Report, Exhibit 7, [Internal project 2: redacted due to confidentiality].

[164] Supervisory Report, Exhibit 13, 'A-9-1 - [Internal project 1: redacted due to confidentiality] 2020 – 2023', p. 3.

[165] Supervisory Report, Exhibit 8, 'First Reply to RFI', pp. 3, 6, 24, 26, 32, 36, 37, 41, Supervisory Report, Exhibit 36, 'Clarification 26 January 2024', Supervisory Report, Exhibit 38, 'Clarification 20 March 2024'.

[166] Supervisory Report, Exhibit 10, 'ESMA74-426-8 Letter from Verena Ross to [CEO] of REGIS'.

[167] See Response to the Board's initial Statement of Findings, p. 11.

[168] See Response to the Board's initial Statement of Findings, p. 11.

[169] See Response to the Board's initial Statement of Findings, p. 11.

[170] See Response to the Board's initial Statement of Findings, p. 12.

[171] Exhibit 23, Response to the Initial SoF, paragraphs 53 to 55.

structural aspects of the PSI's organisation. Moreover, it is clear from the evidence in the file that no legitimate expectations were created by the on-going supervisory interaction either (rather the contrary). Thus, the PSI's arguments hold no ground, as legitimate expectations had never been established.

112. Regarding what the PSI as a prudent and circumspect economic operator should have foreseen and despite the PSI's assertions, the issues raised in the letter[172] in fact concerned shortcomings closely linked to the infringements analysed in the below and "serious issues with the SFTR system which went live on 13 July 2020 … serious concerns over Regis-TR's information security incident management process … increasing concerns over the information security control framework and the delays in identifying and addressing material deficiencies in this area"[173] were raised. The PSI also omitted to mention that the letter raised concerns regarding the PSI's SDLC framework, which is important in the context of the analysis of the infringement regarding its policies and procedures.

113. Further, the fact that ESMA's Supervisors did not mention precisely the same infringements as an IIO after investigation or the Board in its final decision is due to the set-up of the enforcement procedure. ESMA's Supervisors refer cases to an IIO further to identifying "serious indications of the possible existence of facts liable to constitute one or more […] infringements"[174] under EMIR (in conjunction with SFTR). They are not charged with the precise legal analysis of the infringements.

114. From the evidence in the file, it also seems that despite the arguments raised by the PSI during the case, at the time, the PSI's CEO and Managing Directors understood that the PSI was not meeting ESMA's regulatory expectations, as they wrote in response: "It is our firm commitment to fully address these concerns in an appropriate manner, in order to ensure alignment with regulatory and supervisory expectations, through satisfactory remediation within an adequate timeframe"[175].

115. Finally, the PSI argued that extensive supervisory dialogue is not a sign for shortcomings at the PSI, which should have meant that the PSI could foresee enforcement action but rather that "ESMA was engaging constructively with [the PSI] to address supervisory concerns through dialogue and voluntary improvements, not through punitive enforcement."[176] It goes on to claim that where "ESMA identifies structural deficiencies during supervisory dialogue, it should articulate those deficiencies clearly, provide the TR with an opportunity to remedy them, and only resort to enforcement if the TR fails to do so.

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[172] Supervisory Report, Exhibit 10, 'ESMA74-426-8 Letter from Verena Ross to [CEO] of REGIS'.
[173] Supervisory Report, Exhibit 10, 'ESMA74-426-8 Letter from Verena Ross to [CEO] of REGIS'
[174] See Article 64(1) EMIR.
[175] Supervisory Report, Exhibit 11, 'ESMA74-426-8 Letter from Verena Ross to [CEO] of REGIS_response_coverletter'.
[176] See Response to the Board's initial Statement of Findings, p. 13. See also Exhibit 23, Response to the Initial SoF, paragraph 47.

ESMA did not follow this approach"[177]. It further claimed that not doing so would have "a chilling effect on future supervisory relationships. If TRs cannot engage openly with ESMA about areas for improvement without fear that such dialogue will later be used as evidence of infringements, they will be incentivised to be less transparent and less cooperative with supervisors" [178].

116. Independent of the PSI's general requirement to comply with the regulations, including on cooperation with ESMA, it is true that ESMA engages constructively with the firms it supervises. In this case, the approach proposed by the PSI was exactly the supervisory approach ESMA took, before undertaking enforcement action: many rounds of interactions with ESMA's Supervisors, followed by [Internal project 2: redacted due to confidentiality] in May 2018[179] focused on improvements to be implemented in the area of governance (*inter alia*); exchanges throughout 2018 and 2019 between the PSI and ESMA including with the PSI's BoD to discuss different topics including resource issues, software, timely delivery of projects, the high level of incidents reported to ESMA, effective oversight by the BoD, and the need for improving internal control[180]; a call between ESMA's Supervisors and the PSI on 7 April 2020 during which the former expressed concerns about the PSI's readiness to operate properly when the reporting obligation under SFTR was to start [181]; the aforementioned letter from the ESMA Executive Director of 18 May 2021[182]; the PSI's July 2021 "[Internal project 1: redacted due to confidentiality] 2020-2023"[183] as approved and presented to ESMA, which contained different "Improvement Programs" in relation to IT and business, technology and system architecture, operations, application lifecycle management and system development lifecycle, information security, and regulatory compliance[184] (this plan was amended by the PSI in 2022[185]). Nevertheless, several of the infringements are still on-going.

117. In addition, this supervisory engagement in no way represents a pre-requisite to enforcement nor does it prevent ESMA from taking enforcement action when the legislation is infringed. There is no obligation for ESMA to first engage in supervisory dialogue[186], before taking enforcement action. ESMA does not have to try to "resolve" issues with supervised entities. In line with the applicable legislation, ESMA "shall" take supervisory measures when a TR infringes EMIR and SFTR. Further, entities usually remediate

[177] See Response to the Board's initial Statement of Findings, p. 13.
[178] See Response to the Board's initial Statement of Findings, p. 13.
[179] Supervisory Report, Exhibit 7, [Internal project 2: redacted due to confidentiality].
[180] See Exhibit 1, Supervisory Report, p. 8 and references in Supervisory Report, Exhibit 8,First Reply to RFI', pp. 4, 6, 24, 27-28, 50.
[181] Exhibit 1, Supervisory Report, p. 8.
[182] Supervisory Report, Exhibit 10, 'ESMA74-426-8 Letter from Verena Ross to [CEO] of REGIS'.
[183] Supervisory Report, Exhibit 12, 'CR# 03 - RTR ESMA [Internal project 1: redacted due to confidentiality] Budget Approval_signed' and Supervisory Report, Exhibit 13, 'A-9-1 - [Internal project 1: redacted due to confidentiality] 2020 – 2023'.
[184] Supervisory Report, Exhibit 13, 'A-9-1 - [Internal project 1: redacted due to confidentiality] 2020 – 2023', p. 5-6.
[185] Supervisory Report, Exhibit 14, 'REGIS-TR [Internal project 1: redacted due to confidentiality] (incl. REFIT) Status Update'.
[186] ESMA is not obliged to use any other measures before the appointment of an IIO, contrary to what was implied by the PSI in Exhibit 23, Response to the Initial SoF, paragraph 41. See also paragraph 47 regarding "coercive fines".

infringements before an enforcement decision is issued (as did the PSI in two previous cases). The present case is the first case where (as set out below) the Board sees the need to impose a supervisory measure requesting an entity to bring infringements to an end.

Third limb: infringement of the legislation in force and further considerations

118. Finally, while at no point can the PSI have had a legitimate expectation that no enforcement action would be taken on the basis of breaches of EMIR and / or SFTR; given the nature of the exchanges with ESMA, the Board notes for completeness that the principle of the protection of legitimate expectation is not an absolute principle and must be balanced with other factors, such as for example the fact that it cannot be relied on by a person who has infringed the legislation in force[187]. Consideration must also be given to the public interest, the need for regulatory compliance, and a supervisor's duty to ensure the effectiveness of supervision. These considerations confirm the interpretation adopted by the Board. From a public interest perspective, in circumstances where there has been a lengthy supervisory dialogue covering many shortcomings, ESMA should "be able to impose fines on trade repositories where it finds that they have committed, intentionally or negligently, an infringement …"[188].

119. In this respect, the PSI claimed that an enforcement action in relation to its policies and procedures would amount to a "retroactive alteration of the standard of legality"[189] and that ESMA "cannot apply new criteria retroactively to structural elements it previously approved"[190]. It argued that invoking "public interest [to justify] the ability to sanction entities for arrangements that existed during the authorization process —without any change in law, circumstances, or conduct—, even when they have not been materially changed over time, would create a regulatory environment of perpetual uncertainty where no authorisation decision can be relied upon. This uncertainty would affect not only authorised entities, but also the market itself. Market participants might doubt the validity of authorisations granted by ESMA, or question whether they are subject to ongoing permanent review. It is this, rather than [the PSI]'s position on this issue, that would have a significant impact on public interest" [191]. In contrast, according to the PSI "the public interest requires, reasonably, legal certainty, effective supervision, proportionality and regulatory integrity. In this context, the public interest identified […] —regulatory compliance and effective supervision— is fully aligned with [the PSI's] legitimate expectations, not opposed to them"[192].

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[187] See Cases T-351/18 and T-584/18, Ukrselhosprom PCF and Versobank v ECB [2021], ECLI:EU:T:2021:669 para. 361.
[188] Recital 83 of EMIR.
[189] See Response to the Board's initial Statement of Findings, p. 11. See also Exhibit 23, Response to the Initial SoF, paragraph 40.
[190] See Response to the Board's initial Statement of Findings, p. 11.
[191] See Response to the Board's initial Statement of Findings, p. 14.
[192] See Response to the Board's initial Statement of Findings, p. 14.

120. However, ESMA is not seeking to alter the standard of legality it applied in the past; rather, the Board comes to a decision about the relevant infringements given the particular facts of the present case. There has not been a "change in the interpretation of existing rules by [ESMA]"[193] but rather an extensive, intensive and ongoing attempt by ESMA to achieve an acceptable degree of compliance by the PSI with the relevant provisions of EMIR and SFTR, which remains unsuccessful as long as infringements are still ongoing.

121. The PSI's argument that arrangements that existed during the registration process should not be amenable to supervision must be dismissed, taking into account a teleological approach to the relevant legislation. If the submission of policies or procedures in a successful registration process always led to a legitimate expectation on the part of the registered entity of compliance of those policies or procedures with EMIR or SFTR, this would bar ESMA from taking subsequent enforcement action in reliance on that evidence, even if it detected flaws later on. This would run counter to the need for effective supervision and regulatory compliance, especially considering that the procedures and policies which are relevant to registration are often the most important ones from a compliance perspective.

122. This is all the more so considering the fact that, when the PSI was first registered under EMIR in 2013, the regulatory framework was new, and many TRs had to be registered before the reporting start date. Moreover, supervisory authorities such as ESMA accumulate knowledge over time about the applicable requirements and the interpretation of legislation (amongst other matters) and therefore, while the assessment of the policies and procedures "on paper" during the registration process might lead to the assumption of them being compliant with EMIR or SFTR, the outcome "in practice" might lead to a different conclusion. Further, it is of course the case that ESMA's role when registering a TR *ex ante* is different from ESMA's role when supervising and sanctioning *ex post*.

123. In the circumstances, the other factors to weigh in the balance go clearly against a finding that there was a legitimate expectation: the public interest dictates that persistent and widespread wrongdoing should be punished by regulators, the need for regulatory compliance implies the need for an effective deterrent, and a supervisor's duty to ensure the effectiveness of supervision means the use of enforcement powers where necessary.

124. Given the foregoing, the Board finds that the PSI cannot rely upon the principle of the protection of legitimate expectation in seeking to bar ESMA from relying upon any documents provided to it when the latter was carrying out its registration and supervisory functions.

[193] Exhibit 23, Response to the Initial SoF, paragraph 50.

4.1.2 Interaction between infringements under SFTR and EMIR

125. The PSI also raised arguments in relation to the interaction between infringements under SFTR and EMIR. As noted above, the PSI is a TR registered with ESMA under EMIR since 14 November 2013[194] and under SFTR since 7 May 2020[195]. This decision concerns several incidents and structural shortcomings, either solely related to the PSI's activities under EMIR, or solely related to the PSI's activities under SFTR, or related to the PSI's activities under both EMIR and SFTR.

126. EMIR and SFTR constitute two separate legal regimes, with separate legal obligations. Hence, a failure by an entity such as the PSI to meet a legal obligation under EMIR and the parallel legal obligation under SFTR can lead to two separate infringements: one under EMIR and one under SFTR.

127. It also means that where a TR infringes obligations under both regimes (EMIR and SFTR), ESMA may require the TR to bring infringements under EMIR and SFTR to an end and even, if necessary, withdraw both registrations, and not just one.

128. In this respect, the PSI raised two main objections. First, it opposed the fact that EMIR and SFTR constitute separate legal regimes and second, it argued for protection from being fined twice under the two regimes by invoking the principle of ne bis in idem.

129. The Board dismisses these claims as without merit and concludes that infringements under EMIR and SFTR must be sanctioned separately.

130. In this respect the Board, taking into account that there are no prior decisions by ESMA sanctioning infringements under EMIR and SFTR, provides its thorough analysis of the main arguments and relevant legislative provisions and jurisprudence below.

EMIR and SFTR constitute two separate legal regimes leading to separate sanctions

131. The PSI opposed the understanding that EMIR and SFTR constitute two separate legal regimes leading to separate sanctions on the basis that "SFTR does not establish separate legal obligations—it expressly incorporates EMIR's requirements by reference through Article 5(2) SFTR […] Recital (10) of SFTR expressly recognises that both regulations not only have to be coordinated to the extent possible, but, above all, must be "the same""[196].

[194] Supervisory Report, Exhibit 3, '2013-ESMA-1596 - Regis TR Registration Decision'.
[195] Supervisory Report, Exhibit 4, 'ESMA80-192-8618 REGIS-TR - Decision on SFTR registration'. Note that the decision is dated 29 April; the registration was effective from 7 May 2020.
[196] See Response to the Board's initial Statement of Findings, p. 16.

132. To support this claim, the PSI relied on the text and objective of SFTR, the consequences of treating EMIR and SFTR as separate regimes and proposed its own understanding of how they should interact.

133. The Board takes all of these arguments in turn.

134. First, regarding the text and the objective of SFTR, the PSI took the wording of the legislations to mean that "SFTR simply extends the application of EMIR's TR requirements to a different type of transaction (SFTs instead of derivatives)"[197] because "the same provisions […] are invoked for both EMIR and SFTR infringements" [198]. The PSI also referred to the fact that no new authorisation is needed to operate under SFTR, but only an extension of the EMIR authorisation [199]. The PSI also noted that for certain infringements, the policies and procedures forming the evidence in the case are the same[200].

135. According to the PSI, "[t]he text of SFTR is unambiguous: Article 5(2) SFTR requires TRs to 'meet the requirements laid down in Articles 78, 79 and 80 of [EMIR]', it does not establish parallel requirements. Recital (10) of SFTR instructs that 'the legal framework laid down by this Regulation should, to the extent possible, be the same as that of [EMIR]' and that ESMA should 'minimise overlaps and avoid inconsistencies'. Article 9(1) SFTR incorporates EMIR's entire enforcement framework (Articles 61-68, 73-74 and Annexes I-II) for SFTR purposes" [201].

136. However, when carefully reading the two legislations, it becomes clear that SFTR and EMIR are independent legal texts, one of them regulating market structure elements regarding SFTs, while the other deals with derivatives. Financial market participants may register under one or the other or both legal texts. For procedural efficiency and to enhance unity of rules across European financial markets, the regimes are linked together, this does however in no way remove the fact that they are based on different legal texts.

137. For context: SFTR came into force on 12 January 2016, with a reporting start date of 13 July 2020. As a preliminary observation, the Board notes that an infringement under SFTR can only be established on the basis of the PSI's acts or omissions on or after its registration under SFTR (i.e. 7 May 2020)[202].

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[197] See Response to the Board's initial Statement of Findings, p. 18. See also Exhibit 23, Response to the Initial SoF, paragraphs 66-69.
[198] See Response to the Board's initial Statement of Findings, p. 17.
[199] Exhibit 23, Response to the Initial SoF, paragraphs 76 and 77.
[200] Exhibit 23, Response to the Initial SoF, paragraph 83.
[201] See Response to the Board's initial Statement of Findings, p. 18.
[202] In some parts of the legal assessment below, the decision sets out information that predates the PSI's registration under SFTR, this is done only for context and / or to assist a proper analysis of negligence; this is particularly true of the infringements in relation to organisational structure and operational risks because these rely upon evidence from the SFTR project. The information about the PSI's preparation for registration under SFTR is essential to a proper understanding of the infringements and a comprehensive assessment of negligence.

138. Recital 10 (cited in part above) of SFTR provides:

> "The new rules on transparency should therefore provide for the reporting of details regarding SFTs concluded by all market participants, whether they are financial or non-financial entities, including the composition of the collateral, whether the collateral is available for reuse or has been reused, the substitution of collateral at the end of the day and the haircuts applied. In order to minimise additional operational costs for market participants, the new rules and standards should build on pre-existing infrastructures, operational processes and formats which have been introduced with regard to reporting derivative contracts to trade repositories. In that context, the European Supervisory Authority (European Securities and Markets Authority) ('ESMA') established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council should, to the extent feasible and relevant, minimise overlaps and avoid inconsistencies between the technical standards adopted pursuant to this Regulation and those adopted pursuant to Article 9 of Regulation (EU) No 648/2012. The legal framework laid down by this Regulation should, to the extent possible, be the same as that of Regulation (EU) No 648/2012 in respect of the reporting of derivative contracts to trade repositories registered for that purpose. This should also enable trade repositories registered or recognised in accordance with that Regulation to fulfil the repository function assigned by this Regulation, if they comply with certain additional criteria, subject to completion of a simplified registration process."

139. Recital 36 of SFTR provides (emphasis added):

> "This Regulation respects the fundamental rights and observes the principles recognised in the Charter of Fundamental Rights of the European Union, in particular …, the rights of the defence and **the principle of ne bis in idem** …. This Regulation must be applied according to those rights and principles."

140. In addition to Articles 5(1), 5(2) and 9(1) of SFTR (cited above), Article 5(4) of SFTR provides (emphasis added): "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."

141. The reference to EMIR in Article 5(2) of SFTR, which states that to be registered TRs must "meet the requirements laid down in Articles 78, 79 and 80 of [EMIR]", read together with Article 5(4) of SFTR clearly mandate that TRs registered for SFTR purposes must comply at all times with the requirements set out in Articles 78, 79 and 80 of EMIR.

142. Furthermore, Article 9(1) of SFTR provides that ESMA's supervisory and enforcement powers under Articles 61 to 68, 73 and 74 of EMIR in conjunction with the infringements and aggravating or mitigating factors listed in Annexes I and II are applicable vis-à-vis TRs registered under SFTR.

143. This means that the infringements in Annex I to EMIR apply to activities under SFTR; when a TR fails to meet its obligations (such as those under Articles 78 to 80 of EMIR) in carrying out SFTR activities, these acts or omissions constitute infringements and may lead to enforcement action by ESMA.

144. Consequently, for the PSI, which is registered under both regimes, where the acts or omissions evidencing infringements are related to activities under SFTR, these can lead to infringements and supervisory measures under SFTR. Similarly, and perhaps to state the obvious, acts or omissions of the PSI related to EMIR activities can lead to infringements under EMIR.

145. The abovementioned result is obvious where the evidence for the infringements is either solely related to EMIR activities or solely related to SFTR activities. However, given the extensive overlap between requirements for TRs under EMIR and SFTR[203] and the fact that the PSI is registered under both regimes, infringements based on overlapping facts (because the PSI decided to use similar / common systems, policies, procedures and resources for EMIR and SFTR) might be established and lead to fines and supervisory measures under both regimes.

146. It is clear that the PSI argued from a position of its own set-up, another entity might have been registered only under one of the regimes (which is the case for some of the other TRs). Where entities are registered under both regimes they could have put in place specific governance, controls and policies in relation to each regime. Here the set-up of the PSI affected all transactions.

147. The cross-references to EMIR in SFTR, upon which much reliance is placed by the PSI, are only made for reasons of efficiency. There was an existing TR regulatory framework which could be used to fulfil the objectives of the new SFTR regime; this is clear from the reference to technical standards in Recital 13 of SFTR, by way of example: “ESMA should take into consideration the technical standards adopted pursuant to Article 81 of Regulation (EU) No 648/2012 regulating trade repositories for derivative contracts and the future development of those technical standards when drawing up or proposing to revise the regulatory technical standards provided for in this Regulation”. Indeed, the fact that some of the documents are the same in the case is a consequence of the expedient approach that is the hallmark of SFTR, as stated in Recital 10 of that act.

148. Moreover, the PSI further claimed that “both regulations have the same objective and purpose: whilst Recital (9) of SFTR stresses transparency in SFTR markets and EMIR

[203] As evident from Recital 10 of SFTR, the references to the requirements in Articles 78 – 80 of EMIR in Article 5 of SFTR and to ESMA’s powers in Articles 61-68 and 73-74 of EMIR in 9 of SFTR, the fact that the regulatory technical standards specifying the requirements for registration under SFTR are almost identical to the ones stating the requirements for the registration under EMIR as well as Article 5(5)(b) of SFTR in conjunction with Article 26 of Delegated Regulation (EU) 2019/359 providing for a simplified procedure for extension of registration under SFTR for TRs already registered under EMIR.

Recital (4) addresses derivative transparency and systemic risk mitigation, both frameworks protect market integrity and supervisory transparency through the same TR requirements concretised in EMIR" [204] and thus protect the same legal interest"[205]. The fact that EMIR applies to derivatives transactions and SFTR applies to securities financing transactions does not create different legal interests for purposes of how TRs must be governed and operated. […] The policies and procedures that ensure data quality for derivatives are the same policies and procedures that ensure data quality for SFTs. The operational risk controls that protect derivative data are the same controls that protect SFT data"[206].

149. The PSI argued that there is "no distinction in the nature of the activities carried out by Trade Repositories, the function remains the same. The only difference lies in the type of transaction being reported"[207]. Where "different risks arise if a TR infringes obligations under both regimes and […] that ESMA could withdraw both registrations [… the PSI considered that] citing different legislative backgrounds and objectives (recitals) does not transform identical obligations, applied to the same infrastructure and processes, into two autonomous offences for the same facts" [208].

150. These contentions are problematic and the logic behind them must be rejected. Indeed, if it is accepted that the legal interest at stake is the stability of the financial system, all legal acts establishing direct supervision by ESMA[209] would broadly amount to the same legal regime. However, this would undermine the supervisory regime in place.

151. The obligations set out in SFTR have a different background and relate to different types of transaction compared to EMIR[210]. EMIR aims to regulate TRs carrying out

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[204] See Response to the Board's initial Statement of Findings, p. 17.
[205] See also Exhibit 23, Response to the Initial SoF, paragraph 82.
[206] See Response to the Board's initial Statement of Findings, p. 19. See also Exhibit 23, Response to the Initial SoF, paragraph 83.
[207] Exhibit 23, Response to the Initial SoF, paragraph 69. See also Response to the Board's initial Statement of Findings, p. 19.
[208] Response to the Board's initial Statement of Findings, p. 23.
[209] See for instance Recital 7 of the Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies and Recital 55 of Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014.
[210] This can for example be seen in Recitals 2, 3, 4 and 5 of SFTR, which set out the background to the act, including work by the Financial Stability Board on non-centrally cleared SFTs and the European Commission Green Paper on Shadow Banking. This background is distinct from that in EMIR (which references the broader aims of the High-Level Group chaired by Jacques de Larosière and the G20 Summit of September 2009). The central objective of SFTR is set out in its Recital 7: "This Regulation responds to the need to enhance the transparency of securities financing markets and thus of the financial system. In order to ensure equivalent conditions of competition and international convergence, this Regulation follows the FSB Policy Framework. It creates a Union framework under which details of SFTs can be efficiently reported to trade repositories and information on SFTs and total return swaps is disclosed to investors in collective investment undertakings." The background to SFTR and the objective as set out above are distinct from EMIR, which states the following in its Recital 4: "Over-the-counter derivatives ('OTC derivative contracts') lack transparency as they are privately negotiated contracts and any information concerning them is usually only available to the contracting parties. They create a complex web of interdependence which can make it difficult to identify the nature and level of risks involved. The financial crisis has demonstrated that such characteristics increase uncertainty in times of market stress and, accordingly, pose risks to financial stability. This Regulation lays down conditions for mitigating those risks and improving the transparency of derivative contracts."

activities under EMIR, while SFTR aims to regulate TRs carrying out activities under SFTR. Even though the obligations under EMIR and SFTR are similar, and many TRs are registered under both regimes and decided to reemploy EMIR's systems, policies, procedures and resources for SFTR purposes, EMIR and SFTR have different scopes and objectives. Further, as recognised by the PSI itself "SFTR transactions are significantly different from EMIR derivatives transactions in nature, scope, and complexity" [211]. A TR that only infringes obligations under one regime creates different risks as compared to a TR that infringes obligations under both regimes. Thus, where infringements under EMIR and SFTR occur, the enforcement powers of ESMA aim at restoring regulatory compliance under both regimes and limiting the risks for the financial markets related to EMIR activities on the one hand and SFTR activities on the other. In cases where a TR infringes obligations under both regimes, these different objectives can only be ensured if ESMA is allowed to impose two separate fines. The latter becomes obvious when picturing cases, where a TR infringes obligations under both regimes egregiously, ESMA would have the power to withdraw both registrations, and not just one of the two registrations. It also becomes obvious when picturing that a TR only registered under one regime, e.g. EMIR, and committing the same infringement as a TR registered under both regimes would be subject to the same fine, even though the wrongdoing of the TR registered only under EMIR does not present the same level of risk.

152. Even in less severe cases, where infringements under EMIR and SFTR occur, the enforcement powers of ESMA must aim to restore regulatory compliance under both regimes and limit the risks for the financial markets related to EMIR activities *and* SFTR activities. Therefore, in cases such as this, where a TR infringes under both regimes, these different objectives can only be met if ESMA is allowed to sanction under both regimes.

153. The correct basis for enforcement action is whether or not an entity was registered under a specific act. In this case the PSI was registered both under EMIR as well as SFTR.

154. Second, regarding the consequences, the PSI proposed that if EMIR and SFTR were separate regimes, "it would lead to absurd results. Suppose the EU legislator enacts additional reporting regimes for other asset classes (bonds, equities, commodities), each incorporating Articles 78-80 EMIR by reference. […] ESMA could sanction the same […] deficiencies five or six times —once under each regime—simply because the regimes apply to different types of transactions. This cannot be correct as a matter of law" [212].

155. This contention cannot be accepted, clearly the co-legislators could have simply amended the existing EMIR legislation, but they chose instead to establish a distinct SFTR regime, albeit one which relies in part on the existing structure established by EMIR. This

[211] See Response to the Board's initial Statement of Findings, p. 67 and also Exhibit 23, Response to the Initial SoF, paragraph 297.
[212] See Response to the Board's initial Statement of Findings, p. 19.

was an entirely sensible approach which sought, as noted in Recital 10 of SFTR, to "build on pre-existing infrastructures, operational processes and formats which have been introduced with regard to reporting derivative contracts to trade repositories." This does not undermine the fact that the two regimes are distinct and sanctions can be imposed for infringements under both acts. The PSI's claim that this approach could have also been applied to several asset classes and would lead to absurd results is moot, as it is not what the legislator has done.

156. Indeed, the PSI is registered under EMIR for several asset classes, the same for SFTR, where the PSI is also registered for several asset classes. In this case, the legislator did not apply different regimes for different asset classes but did indeed create a separate reporting regime for different types of transactions.

157. Third, regarding the PSI's own reading of the interaction between EMIR and SFTR, the PSI suggested that the establishment of an infringement under SFTR and EMIR could be treated as an aggravating factor. "If greater gravity is warranted due to multi-regime scope, the proper mechanism is the system of aggravating factors, not duplicating the classification and fine. Article 65(3) EMIR provides for aggravating factors that can increase the fine to reflect greater severity"[213].

158. This argumentation betrays a lack of understanding of the rules in place. In the relevant framework, the aggravating facts are clearly and completely set out in Annex II to EMIR (read in conjunction with SFTR) and do not include the suggested feature[214]. The absence of the proposed factor is a further indication that the PSI's position is incorrect, and that the co-legislators intended to establish two regimes.

159. Finally in this respect, it is of note that the PSI did not address the central conceptual problem of its suggested approach: namely the need to impose supervisory measures to end infringements (including potentially the withdrawal of the registration) under both EMIR and SFTR.

160. On this basis, the Board dismisses the PSI's arguments and finds that in this case, infringements can be established and separate and distinct fines and supervisory measures can be imposed under both EMIR and SFTR.

Ne bis in idem does not apply

[213] See Response to the Board's initial Statement of Findings, p. 23.
[214] See Annex II to EMIR.

161. Regarding the second set of arguments, the PSI claimed that "sanctioning […] the same alleged policy deficiencies under both regimes […] — violates the principle of non bis in idem by imposing multiple punitive sanctions for the same conduct" [215].

162. In this respect, as to the principle of ne bis in idem (or 'double jeopardy' in common parlance), having examined the principle closely, the Board finds that it does not bar the establishment of breaches and the imposition of fines or supervisory measures for the same act or omission under SFTR and EMIR.

163. The principle of ne bis in idem is a fundamental EU law principle enshrined in Article 50 of the EU Charter of Fundamental Rights and provides that "no one shall be liable to be tried or punished again in criminal[216] proceedings for an offence for which he or she has already been finally acquitted or convicted within the Union in accordance with the law"'. The principle therefore bars a duplication of proceedings and penalties for the same acts and against the same person[217]. Article 50 of the Charter requires cumulatively that there are (i) two sets of proceedings or penalties, (ii) concerning the same facts, (iii) against the same offender, and (iv) an earlier final decision.

164. In the present case, while in some instances the same facts concern the same offender, the other conditions are not met. Indeed, the infringements under SFTR and EMIR only lead to one administrative proceeding. The Board thus finds that the principle is not applicable.

165. The PSI challenged this and put forward the request to consider the "material or substantive" aspect of the principle of ne bis in idem. It argued that ESMA is "establishing […] separate infringements […] based on identical conduct and identical legal requirements"[218].

166. The Board agrees that in relation to certain infringements, the same facts are relied on, and the same entity (namely the PSI, though with two separate licences) is subject to sanctions. However, clearly in each case there are two separate (EMIR or SFTR) requirements at stake, and this can lead to separate infringements.

167. Moreover, infringements under EMIR and SFTR do not protect the same legal interest, for the reasons set out above. The principle of ne bis in idem does not prevent parallel proceedings regarding the same infringement if the different sets of legislation underlying

[215] See Response to the Board's initial Statement of Findings, p. 15.
[216] Incidentally, the Board notes in this respect that Article 68(2) of EMIR explicitly refer to administrative fines: "Fines and periodic penalty payments imposed pursuant to Articles 65 and 66 shall be of an administrative nature." Nevertheless, in this decision, the substance of the PSI's claims is assessed for completeness.
[217] See Case C-117/20, bpost [2022], ECLI:EU:C:2022:202, para. 24 and the case-law cited.
[218] See Response to the Board's initial Statement of Findings, p. 17.

the proceedings pursue distinct, legitimate, and complementary objectives[219], which is the case for EMIR and SFTR.

168. In the present case, the Board finds that there is one set of proceedings by one supervisor protecting two distinct legal interests. Given the foregoing, separate infringements and fines and supervisory measures can be established under SFTR and EMIR in instances where the relevant acts and omissions are the same for both infringements.

4.1.3 The principles of legality and speciality

169. Regarding the principles of legality and speciality, the PSI submitted that the below findings of infringements violated "the principle of legality by: (i) broadly interpreting infringement types in Annex I to EMIR […], equating formal or minor deficiencies with structural failures ("not having" robust mechanisms) without demonstrating the required threshold of seriousness; and (ii) subsuming the same facts under multiple types (including under both EMIR and SFTR), violating the principle of speciality and, alternatively, Article 65(4) EMIR"[220].

170. On this basis, it claimed that this "completely invalidates the conclusions reached and prevents any administrative liability for [the PSI]"[221].

171. The Board carefully considered the position of the PSI and comes to the conclusion that the principle of legality is not brought in question in the case and that the arguments of the PSI in this regard must be dismissed.

The principle of legality and legal certainty[222]

172. The Board recalls that "where [an EU] rule imposes or permits the imposition of penalties, that rule must be clear and precise, so that the persons concerned may be able to ascertain unequivocally what their rights and obligations are and take steps accordingly"[223].

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[219] See Case C-117/20, bpost [2022], ECLI:EU:C:2022:202, paras. 43-47.
[220] Response to the Board's initial Statement of Findings, p. 24. See also Exhibit 23, Response to the Initial SoF, paragraphs 140-148.
[221] Exhibit 23, Response to the Initial SoF, paragraph 140.
[222] While the principle of legality is reserved to criminal offences, as a corollary to the principle of legal certainty, which is a fundamental principle of law in the EU, the Board considers its application in the below for completeness. See for example CJEU, Case T-43/02, Jungbunzlauer v Commission, EU:T:2006:270, paras. 71 and 72 and CJEU, Case C-177/96, Belgian State and Banque Indosuez and Others, 16 October 1997, para. 27. Indeed, as set out above Article 68(2) of EMIR explicitly refer to administrative fines: "Fines and periodic penalty payments imposed pursuant to Articles 65 and 66 shall be of an administrative nature."
[223] See Jungbunzlauer v Commission (T-43/02) EU:T:2006:270, para. 71.

173. In this respect, the PSI's claim that the interpretation of the infringements assessed in this decision was unforeseeably broad and captured minor failures[224], relied on the assertion that the breach of the rule must be clear and evident[225].

174. First, it proposed that for the correct interpretation one had to "look to the most relevant past activity: ESMA's approval of [the PSI]'s registration under EMIR in 2013 and extension under SFTR in 2020. [...] ESMA would have identified these alleged deficiencies at registration and extension and required [the PSI] to remedy them before granting approval. The fact that ESMA did not do so demonstrates that [it] is applying a different or more stringent interpretation than ESMA applied at authorisation" [226].

175. These arguments have already been addressed above in relation to legitimate expectations. In short, registration and enforcement have different scopes and in the case at hand, the Board concentrates on the evidence in the file and comes to a decision on that basis. The correct interpretation of law should be based on a textual and if necessary teleological interpretation of the requirements.

176. Second, the PSI argued that "[e]ven if the […] interpretation were clear (which it is not), it would still violate the principle of legality if it extends the scope of the infringement beyond the natural meaning of the provision. The prohibition on extensive interpretation in *malam partem* is a substantive limitation on ESMA's interpretative discretion. It prohibits ESMA from expanding the scope of infringements beyond their natural meaning, even if ESMA's expanded interpretation is applied clearly and consistently"[227].

177. In this respect, the Board reiterates, in line with the case law cited above, that an assessment of legality and legal certainty go hand in hand. A provision that clearly sets out obligations, which can be foreseen by those subject to it, cannot be considered as too broadly interpreted – if that broad interpretation was clear and foreseeable, it is the correct interpretation.

178. Third, regarding the PSI's claim that minor failures were incorrectly captured, it is important to note that a factor or threshold of "seriousness" does not feature in EMIR and SFTR. Where a provision refers to "adequate" or "appropriate" systems, these are the correct qualifiers.

179. Further, when judging what the PSI could foresee, the most important point to consider are the provisions themselves. In this respect, as the Board already found in a past

[224] Response to the Board's initial Statement of Findings, pp. 23-25. See also Exhibit 23, Response to the Initial SoF, paragraphs 132 to 136.
[225] See also Response to the Board's initial Statement of Findings, p. 23.
[226] Response to the Board's initial Statement of Findings, p. 27.
[227] Response to the Board's initial Statement of Findings, p. 27.

decision[228], it should be noted that the fact that a provision requires interpretation does not automatically mean there is a breach of the principle of legal certainty. For example, the CJEU ruled that "with regard to the alleged infringement of the principle of legal certainty, according to the case-law that principle is a fundamental principle of Community law which requires, in particular, that rules should be clear and precise, so that individuals may be able to ascertain unequivocally what their rights and obligations are and may take steps accordingly. However, where a degree of uncertainty regarding the meaning and scope of a rule of law is inherent in the rule, it is necessary to examine whether the rule of law at issue displays such ambiguity as to prevent individuals from resolving with sufficient certainty any doubts as to the scope or meaning of that rule" [229].

180. The Board also refers to the decisions of the Board of Appeal of the European Supervisory Authorities in the case related to the Nordic banks[230]. In the Board of Appeal's view, "The fact that a given provision of financial regulation is open to different interpretations does not necessarily invoke the principle of legal certainty in respect of sanctions"[231].

181. Therefore, the fact that the interpretation of a requirement is the subject of divergent views does not imply as such that there would be a breach of the principle of legal certainty. More precisely, the fact that the PSI interpreted EMIR and SFTR in a way different from the interpretation adopted by ESMA does not imply that there is a breach of the principle of legal certainty in the present case.

182. Therefore, the Board finds that the provisions of EMIR and SFTR were and are sufficiently clear and are applied in a clear manner.

The principle of speciality

183. The PSI also evoked the principle of speciality[232] arguing that "the point is not that [the] same conduct might fall under more than one infringement type, but rather that it corresponds more precisely to a specific offence, and only that offence may form the basis for a sanction"[233].

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[228] See Section 4.2.1 of the Decision of 7 April 2025 of the Board of Supervisors to adopt a supervisory measure and impose a fine in respect of an infringement committed by Modefinance S.r.l.; available here: ESMA43-857238790-1431 Decision to adopt a supervisory measure and impose a fine in respect of an infringement committed by Modefinance.

[229] General Court, Case T-216/05, Mebrom NV v Commission of the European Communities, para. 108. See also CJEU, Case C-177/96, Belgian State and Banque Indosuez and Others, 16 October 1997.

[230] Board of Appeal of the European Supervisory Authorities, Decisions BoA-D-2019-01,BoA-D-2019-02,BoA-D-2019-03,BoA-D-2019-04, https://www.esma.europa.eu/sites/default/files/library/board_of_appeal_-_27_february_2019_-_decisions_2019_01_02_03_04_-_final.pdf.

[231] See Board of Appeal of the Europeans Supervisory Authorities, Decisions BoA-D-2019-01,BoA-D-2019-02,BoA-D-2019-03,BoA-D-2019-04, https://www.esma.europa.eu/sites/default/files/library/board_of_appeal_-_27_february_2019_-_decisions_2019_01_02_03_04_-_final.pdf, para. 227.

[232] Exhibit 23, Response to the Initial SoF, paragraphs 141 to 148.

[233] Exhibit 23, Response to the Initial SoF, paragraph 145.

184. In this respect, the PSI claimed that the fact that in this case Article 65(4) of EMIR was applied "confirms that the principle of speciality is relevant and applicable, as so is the principle of legality, the only question is whether […it was applied] correctly"[234].

185. It also stated that its arguments concern "the proper application of *lex specialis* when the same conduct can be characterised under multiple infringement types. The principle of speciality requires that where conduct falls under both a general provision and a specific provision, only the specific provision applies. The […] reliance on Article 65(4) EMIR as a residual rule to reduce overlapping fines does not cure the violation of speciality, it merely mitigates the financial consequences whilst maintaining multiple infringement findings that should never have been established in the first place. Article 65(4) is designed to address situations where a single act constitutes multiple distinct infringements, not to permit [ESMA] to multiply infringement findings by characterising the same structural deficiency under overlapping provisions and then reduce the fine as a consolation prize." [235]

186. The Board finds these arguments not to be convincing and dismisses the claims.

187. Indeed, the Board must assess the evidence in light of the legal requirements. Where facts are relevant to several infringements, in line with EMIR and SFTR it must consider them all. The Board notes that "structural deficiencies" still comprise of acts or omissions. For these the legislation explicitly allows for the possibility of factual overlaps between infringements, i.e. the same act or omission constituting several infringements, and permits only the imposition of one fine in such cases as set out in the second paragraph of Article 65(4) of EMIR. Only when infringements have been established, Article 65(4) of EMIR is to be considered. EMIR and SFTR are clear in this respect. Following the PSI's claim to override the specific rules in the context by applying the general principle would rob it of any meaning.

188. Further, the Board recalls in this context, that past decisions have found more than one infringement established in circumstances where the same acts or omissions are relied upon, and reduced the fine accordingly[236]. Thus, the proposed approach is in line with well-established past practice.

4.1.4 Submissions of the PSI relevant to sanctions

189. Finally, the PSI also set out several arguments relevant to the sanctions to be imposed if infringements are established[237]. These concern the principle of proportionality, the

[234] Response to the Board's initial Statement of Findings, p. 28.
[235] Response to the Board's initial Statement of Findings, p. 29.
[236] See by way of example Section 4.6.2 of the Decision of 20 March 2024 of the Board of Supervisors to adopt supervisory measures and impose fines in respect of infringements committed by Scope Ratings GmbH; available here: https://www.esma.europa.eu/sites/default/files/2024-03/ESMA43-1868696574-770_Decision_Scope_Ratings_fine.pdf
[237] Exhibit 23, Response to the Initial SoF, paragraphs 457 to 500.

proper application of Article 65(4) of EMIR, the relevant maximum and basic amounts of fines and the application of aggravating factors.

190. It claimed that in the case at hand there are several violations of the principle of proportionality and argued that there had been a:

"[…] Misapplication of Article 65(4) EMIR: the single sanction rule does not distinguish between "regimes" and proportionality requires applying it to EMIR/SFTR duplication.

[…] Breach of the 20% turnover limit: SFTR fines […] represent 67% of SFTR revenues (EUR [1-5] million), vastly exceeding the 20% limit. Moreover, […] systematically set[ting] the basic amount for SFTR infringements at the upper end of the range based on RTR's total turnover (EUR [25-30] million), when Article 65(2) EMIR requires that, for turnover between EUR 1m–5m the basic amount must be set at the middle of the range, not the upper end. This improper calibration artificially inflates the SFTR fines before any aggravating factors are even applied.

[…] Improper aggravating factors: applying the same duration coefficient (1.5) for vastly different durations, [and] double counting "systemic weaknesses" (used both to establish infringements and as aggravating factors) […]" [238].

191. Based on these claims the PSI requested the consolidation of the infringements down to 4-5 infringements and a reduction of the fine to EUR 120,000 – EUR 150,000[239].

192. These claims must be fully rejected, as they are all based on a misunderstanding of the applicable rules, and the Board will take them one by one.

Principle of proportionality

193. First, the PSI raised arguments regarding the principle of proportionality[240], noting that "[p]roportionality requires calibrating the sanction according to the seriousness of the facts and individual circumstances" [241] and that "all the circumstances of the case must be taken into account when determining the appropriate penalty and the amount of any fine, ensuring that it reflects the true severity of the allegedly infringing conduct"[242].

194. The Board agrees with the general principle, and notes Recital 84 of EMIR, which provides "This Regulation should establish coefficients linked to aggravating and mitigating circumstances in order to give the necessary tools to ESMA to decide on a fine which is

[238] Response to the Board's initial Statement of Findings, pp. 29-30. See also Exhibit 23, Response to the Initial SoF, paragraphs 149-185.
[239] Response to the Board's initial Statement of Findings, pp. 37-38.
[240] Exhibit 23, Response to the Initial SoF, paragraphs 149 to 185.
[241] Response to the Board's initial Statement of Findings, p. 29. See also Exhibit 23, Response to the Initial SoF, paragraph 151.
[242] Exhibit 23, Response to the Initial SoF, paragraph 153.

proportionate to the seriousness of the infringement committed by a trade repository, taking into account the circumstances under which that infringement has been committed." These coefficients are set out in Annex II to EMIR and the decisions follows this process. It is these provisions, along with the establishment of basic amounts that reflect the size of the PSI, that help to ensure the proportionality of sanctions.

195. The PSI further argued that ESMA should undertake an assessment going beyond the factors precisely set out in the regulations. "The principle of proportionality must be observed, "not only as regards the determination of factor constituting an infringement, but also the determination of the rules concerning the severity of fines and the assessment of the factors which may be taken into account in the fixing of those fines"[243]. Therefore, the fact that proportionality considerations are embedded within a legislative or regulatory framework does not eliminate the requirement that a proportionality assessment must be conducted independently, even where legislation provides a structured framework for sanctions" [244].

196. It specifically requested a reduction of the fine because it had "continuously and successfully [operated] as a TR since 2013: no data breach has led to misuse of information and no operational failure has led to interruption of service, and there has been no impact on data quality or regulatory compliance […], full cooperation with ESMA supervision and extensive voluntary remedial measures. [… thus] fines for documentation deficiencies that have not resulted in any actual harm or risk to the financial system [are] disproportionate" [245].

197. The Board finds that this position has no merit. ESMA as a European supervisor is bound by the rules in place and has no discretion in this respect. Given that EMIR (in conjunction with SFTR) is extremely precise and keeping in mind the principle of legal certainty, ESMA is bound by these explicit rules. ESMA cannot divert from the outlined approach. The legislator foresaw the need for proportionate sanctions, and the legal texts are drafted accordingly.

198. The Board finds that where it follows the rules in place, proportionality is assured. There is no second step after following EMIR. Such a further review would render meaningless all rules on sanctioning set out in EMIR.

199. Further the mechanical application of the law is the approach ESMA has taken since the beginning of supervision (including in the previous decisions against the PSI) and across different mandates. EMIR's sanctioning regime resembling closely that of CRAs,

[243] Referring to case law of limited relevance, as they concern preliminary rulings regarding national tax authorities (Case C-544/19 Ecotex Bulgaria, EU:C:2021:803, para. 91) and national courts (Case C-190/17, Zheng, EU:C:2018:357, para. 40).
[244] Response to the Board's initial Statement of Findings, p. 31.
[245] Response to the Board's initial Statement of Findings, p. 37.

the finding of the Joint Board of Appeal ("BoA") of the European Supervisory Authorities in the *Scope* decision provides useful guidance and supported ESMA's approach to proportionality:

> "… as regards the appellant's argument that the fine was disproportionate, the Board does not find this argument to be made out. ESMA does not have discretion under the CRA Regulation[246] to alter or calibrate fines depending on its subjective view of the seriousness or otherwise of an infringement or based on factors beyond those identified in the Regulation. The list of infringements […] governs the infringements which must be subject to enforcement action by ESMA once a breach is identified. Further, the CRA Regulation contains a number of design features precisely adopted in order to support appropriate finessing of sanctions in light of individual circumstances. These include the set of aggravating and mitigating co-efficients set out in Annex IV to the [CRA] Regulation and applied by ESMA in this case. In this regard, the Board of Appeal notes that recital 19 of Regulation (EU) No 513/2011 (which empowers ESMA to act as supervisor of rating agencies and take enforcement action) provides that co-efficients linked to aggravating and mitigating circumstances are established in order to give the necessary tools to ESMA to decide on a fine which is proportionate to the seriousness of an infringement committed by a credit rating agency, taking into account the circumstances under which the infringement was committed. Proportionality is accordingly embedded within the design of the fines regime. Finally, the Board of Appeal notes that, as an EU agency, and so an entity which must operate under the legislative framework established by the co-legislators, ESMA must apply its enforcement powers within the terms of the CRA Regulation. The Regulation does not contain an over-arching discretion for ESMA to calibrate fines in the manner argued for by the appellant"[247].

200. In relation to the points raised by the PSI, forming the basis of its request for a reduction of the fine, these are all assessed by ESMA within the legal framework as part of the analysis of the evidence of the infringement or in relation to mitigating/aggravating factors. These cannot be assessed outside the legal framework, for the reasons set out above.

Application of Article 65(4) of EMIR

201. The second paragraph of Article 65(4) of EMIR states that "Where an act or omission of a trade repository constitutes more than one infringement listed in Annex I, only the higher fine calculated in accordance with paragraphs 2 and 3 and relating to one of those infringements shall apply." One of the ways in which proportionality is embedded in the legislation is through this provision.

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[246] Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, OJ L 302, 17.11.2009, p. 1–31.
[247] Para. 184 of the Board of Appeal decision in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03) available at: https://www.esma.europa.eu/sites/default/files/library/boa_d_2020_03_decision_on_scope_ratings_v_esma.pdf.

202. In this respect, the PSI argued that the provision must be applied across EMIR and SFTR (rather than within each legal regime). For the reasons set out below, the Board considers that this claim must be dismissed.

203. As noted above, the PSI was registered under both EMIR and SFTR from May 2020. Article 9(1) of SFTR provides that "The powers conferred on ESMA in accordance with Articles 61 to 68, 73 and 74 of [EMIR], in conjunction with Annexes I and II thereto, shall also be exercised with respect to [SFTR]"; this therefore encompasses the second paragraph of Article 65(4) of EMIR and provides that where two infringements under SFTR are based on overlapping facts, only the higher fine can be imposed.

204. Having reviewed the text of the legislation, the Board finds that the second paragraph of Article 65(4) of EMIR (in conjunction with Article 9(1) of SFTR) only captures cases where more than one infringement under the same regime (i.e. either EMIR or SFTR) is based on the same act or omission. This follows on from the analysis set out above regarding the interaction between EMIR and SFTR, namely they have different scopes and objectives and address different risks. They are two separate legal regimes, with separate legal obligations (which can lead to separate infringements and sanctions).

205. The PSI opposed this finding and submitted that Article 65(4) of EMIR should apply "because the infringements in question are identical, pursue the same objective, relate to the same facts (alleged omissions or deficiencies in […] policies and procedures, operational risk […]) and are attributable to the same alleged offender (single infringement)" [248]. "In this regard, the provision applies where "an act or omission... constitutes more than one infringement listed in Annex I". It does not state "more than one infringement under the same regime". Even accepting, ad argumentandum, that these are different infringements, the text of Article 65(4) requires that where the same act or omission constitutes multiple infringements listed in Annex I (to which SFTR refers), only the highest fine applies" [249].

206. It further claimed that the second paragraph of Article 65(4) of EMIR did not refer to overlap "under the same regulation", "the provision contains no such limitation. The text refers simply to "more than one infringement listed in Annex I", it does not distinguish between infringements within EMIR and infringements between EMIR and SFTR. Since Article 9(1) SFTR incorporates Annex I for SFTR purposes, any infringement under SFTR is by definition an infringement listed in Annex I within the meaning of Article 65(4)" [250].

207. The PSI again argued that the two regimes were the same and based on "Article 9(1) SFTR […argued that] This incorporates the anti-duplication rule as part of the same

[248] Exhibit 23, Response to the Initial SoF, paragraph 107, see also paragraph 108.
[249] Response to the Board's initial Statement of Findings, p. 22.
[250] Response to the Board's initial Statement of Findings, p. 22.

enforcement framework and it must operate to prevent dual classification for the same facts, whether under EMIR or SFTR" [251]. It claimed that "two regimes theory serves to evade the anti-duplication guarantee without convincing textual basis. […] There is no principled basis for this distinction" [252].

208. Most of the other arguments raised by the PSI turn on the understanding of how EMIR and SFTR interact. In this respect the Board reiterates the existence of two separate regimes (as set out above). The second paragraph of Article 65(4) of EMIR does not apply as between two infringements under SFTR and EMIR which rely on the same acts or omissions.

209. The PSI's reference to Annex I to argue the legal regime is the same must be dismissed. This becomes evident when reading Article 9(1) of SFTR fully, in the final sentence it refers to "Annex I […] shall be construed as references to Article 12(1) and (2) of this Regulation respectively." It is evident that Annex I to EMIR and Annex I to EMIR in conjunction with SFTR are not the same thing, EMIR deals with infringements related to shortcomings of TRs handling reports of derivatives, and SFTR deals with TRs handling reports of SFTs.

210. On this basis the Board finds that the purpose of the second paragraph of Article 65(4) of EMIR is to prevent the imposition of a fine in circumstances where the same acts or omissions establish two infringements under a single regime (i.e. either EMIR or SFTR) and this is the correct application as followed in the decision below.

211. In this respect, where the evidence relied upon in establishing the two infringements related to the obligations under Articles 80(1) and 80(6) of EMIR, the proper application of the second paragraph of Article 65(4) of EMIR means that fines cannot be imposed under both infringements. Fines must be calculated for both infringements in any event, as it will have to be established which penalty is lower. Further, the infringement concerning operational risks under EMIR relies upon the same evidence as the infringements related to the obligations under Articles 80(1) and 80(6) of EMIR. The Board underlines that the same is not true of the operational risks infringement under SFTR, which is established on the basis of a different set of facts.

212. Finally, the Board notes that the PSI also argued that all of the infringements were identical and considers that this is a question of fact to be assessed as part of the analysis of each of the infringements set out below.

Relevant maximum and basic amounts of fines

[251] Response to the Board's initial Statement of Findings, p. 22.
[252] Response to the Board's initial Statement of Findings, p. 23.

213. The PSI argued that ESMA breached the maximum and basic amounts of the fines. This is based on an incorrect understanding of the relevant turnover and must be dismissed.

214. As an introductory remark regarding the basic amount, the Board notes that the basic amount for the calculation of fines under EMIR changed in 2019. In terms of Recital 25 of Regulation (EU) 2019/834, the amounts of fines initially provided for in Regulation (EU) No 648/2012 had "proven insufficiently dissuasive in view of the current turnover of the trade repositories, which could potentially limit the effectiveness of ESMA's supervisory powers under that Regulation in relation to trade repositories." Hence the upper limit of the basic amounts of fines was increased[253].

215. It is of note that this change is not relevant to the infringements under SFTR analysed below, as the PSI's registration under SFTR post-dated the amendment of the maximum amounts. In short, given that the PSI was registered as a TR under SFTR in 2020, the relevant amounts for the basic amount of a fine under SFTR are the higher sums (i.e. following the change outlined above, which was made in 2019).

216. Regarding the EMIR breaches, some of the evidence relied upon for their establishment predates this change, meaning that the breaches started before the entry into force of the increased amounts.

217. In line with the principles of legal certainty[254] and non-retroactivity of laws[255], in cases where an infringement under EMIR was committed, or began to be committed, prior to 17 June 2019, then the applicable amounts prior to the entry into force of Regulation 2019/834 is used as the basis of the fine.

218. Regarding the maximum turnover, the PSI argued that the calculation of the appropriate basic amounts of the fines was incorrect because the turnover from SFTR-related activity must be distinguished from EMIR-related activity both in the calculation of the basic amounts and the determination as to whether the 20% cap has been breached[256].

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[253] Regulation (EU) 2019/834 of 20 May 2019 was published in the Official Journal on 28 May 2019.
[254] As already set out above, see for example Case C-201/08, Plantanol GmbH & Co. KG v Hauptzollamt Darmstadt [2009] ECLI:EU:C:2009:539, para. 46: the principle of legal certainty, the corollary of which is the principle of the protection of legitimate expectations, requires, on the one hand, that rules of law must be clear and precise and, on the other, that their application must be foreseeable by those subject to them.
[255] The principle of non-retroactivity ensures that laws do not apply to events that occurred before their entry into force. The general rule is that new laws, particularly those imposing penalties, should not apply retroactively to conducts that occurred under a previous legal regime. This principle is rooted in Article 49 of the Charter of Fundamental Rights of the European Union, which states that "no one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed," and, more relevant to our context, "nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed."
[256] Exhibit 23, Response to the Initial SoF, paragraphs 493 and 497 to 499.

219. In this respect, the PSI claimed that the cap of 20% of a TR's turnover exists "for the purpose of avoiding the punitive and severity nature of criminal sanctions"[257]. "Moreover, the limit of the 20% of turnover […] ensures that fines do not become punitive to the point of threatening the entity's viability. When SFTR fines alone represent 67% of SFTR revenues, this purpose is defeated. The fine ceases to be an administrative penalty calibrated to the gravity of the breach and becomes a punitive measure that threatens the viability of [the PSI's] SFTR business. This is precisely the outcome that the 20% limit is designed to prevent, and it demonstrates that the […] mechanical application of the fine calculation methodology without independent proportionality assessment produces disproportionate results" [258].

220. According to the PSI, "the principle of proportionality requires that fines be calculated by reference to the turnover generated by the specific business activity to which the alleged infringement relates. In other words, if an infringement concerns EMIR activities, the fine should be calculated based on EMIR-related turnover; if an infringement concerns SFTR activities, the fine should be calculated based on SFTR-related turnover. This ensures that the severity of the penalty is commensurate with the scope and economic significance of the allegedly offensive conduct" [259]. In making this submission, the PSI relied in part on the distinction drawn between SFTR and EMIR when ESMA calculates supervisory fees[260].

221. The PSI further argued that separating the turnover, "produces absurd and disproportionate results when the same conduct is sanctioned separately under EMIR and SFTR. If EMIR and SFTR are truly separate regimes with separate legal obligations (as the IIO argues for purposes of non bis in idem), then consistency requires that fines be calibrated separately for each regime. It is not acceptable […] that EMIR and SFTR are distinct legal regimes for one purpose and the same for another. Different legal regimes lead to different relevant parameters to calculate the fines; if there were only one sanctioning regime, the reference turnover should be one. Otherwise, the result is that TRs with smaller SFTR operations are disproportionately sanctioned compared to their SFTR revenues" [261].

222. The Board does not accept the PSI's submission on this point and notes that the relevant provisions of EMIR do not distinguish in any way between a TR's income from EMIR-related activities or SFTR-related activities: Article 65(2) of EMIR provides "In order to decide whether the basic amount of the fines should be at the lower, the middle or the higher end of the limits set out in the first subparagraph, ESMA shall have regard to the **annual turnover of the preceding business year of the trade repository concerned**

[257] Exhibit 23, Response to the Initial SoF, paragraph 489. See also Exhibit 23, Response to the Initial SoF, paragraphs 490 and 491.
[258] Response to the Board's initial Statement of Findings, p. 32.
[259] Response to the Board's initial Statement of Findings, p. 32.
[260] Exhibit 23, Response to the Initial SoF, paragraph 494.
[261] Response to the Board's initial Statement of Findings, p. 32.

…" and Article 65(4) of EMIR provides that "… the amount of the fine shall not exceed 20 % of the **annual turnover of the trade repository concerned** in the preceding business year" (emphases added). Thus, the basis both for determining the basic amount and the cap is the turnover of the PSI as a whole, which is as it should be to ensure that any sanctions are proportionate to the size of the entity as a whole.

223. There is no basis on which to hive off the revenue from SFTR-related activities to reduce the fine. The only basis for calculating the starting point and the upper ceiling for fines is the revenue of the PSI as a whole.

224. Further, the PSI's argument is not bolstered by the observation about supervisory fees; these fees must be calculated on the basis of a TR's activities under different regimes, to reflect the extent of its activities, but the fees are, in the end, all paid by a single TR (which, in this case, is the PSI).

225. Finally, the Board notes that this is the approach adopted in every ESMA enforcement decision. While TRs, like credit rating agencies, may derive income from a number of sources, the proper basis for the basic amount of fines and the cap is the income of the entity as a whole, as made clear in the legislation, in previous enforcement decisions[262], and in ESMA's publicly available guidance[263].

226. In short, the PSI is a single entity that is (as discussed elsewhere) being sanctioned under two regimes; in these circumstances the relevant turnover is and can only be that for the whole legal entity.

227. On this basis, the Board follows its well-established approach and the fines (basic and maximum amounts) in this decision are calculated based on the turnover of the whole entity.

Submissions on aggravating factors

228. Finally, the PSI made general submissions in relation to the aggravating factors regarding the duration of the infringement and the revelation of systemic weaknesses.

229. As to the duration of the infringement, the PSI argued that the application of the relevant aggravating factor in circumstances where ESMA finds that an infringement has been committed for more than six months "… is clearly incompatible with the principle of

[262] See for example case 2017/2 (2018) concerning Danske Bank. The sanctioned wrongdoing concerned issuing credit ratings without being authorised by ESMA and the fine was calculated based on the bank's overall annual turnover in the preceding year not on the credit rating business. Similarly in case CRA-2022.01.04 (2023) concerning S&P Global Ratings Europe Limited, the sanctioned wrongdoing concerned only credit rating activities but the basic amount was calculated based on the CRA's entire turnover, which had been generated from credit ratings activities and ancillary services.
[263] See "Information regarding methodology to set fines"; available here: https://www.esma.europa.eu/sites/default/files/esma_-_information_regarding_methodology_to_set_fines.pdf

proportionality, as the alleged infringements varied significantly in duration"[264]. The PSI noted the contrasting time periods during which the infringements took place and claimed that the same coefficient cannot therefore be applied to all infringements that lasted more than six months, particularly when the 'same' infringement is established under EMIR and SFTR with a markedly different duration under each[265]. The PSI also claimed that the "… aggravating circumstance is not automatically applied simply because conduct lasted more than six months, but rather, where this threshold is exceeded, an increase of up to 1.5 may be applied"[266].

230. In response, the Board underlines that the text at Annex II to EMIR provides (emphasis added): "The following coefficients **shall** be applicable, cumulatively, to the basic amounts referred to in Article 65(2) … if the infringement has been committed for more than six months, a coefficient of 1,5 **shall** apply …" The relevant provision does not therefore allow for discretion. Contrary to the PSI's submissions, EMIR does not allow for a distinction to be drawn between infringements that last seven months and infringements that last seven years; once the duration exceeds six months, the coefficient applies. Further, the use of the term "shall" means that the coefficient must be applied if the duration of the infringement exceeds half a year. The application of the relevant factor is therefore consistent with the relevant provision. Regarding systemic weaknesses, the PSI argued[267] that certain infringement types in Annex I to EMIR are by their very nature systemic and "the nature of the infringement is already reflected in the choice of infringement type"[268]. For example "policies and procedures are by their nature systemic: they apply across the organisation and govern how the TR ensures compliance with EMIR and SFTR".[269] "If (…) the deficiencies in [the PSI's] policies and procedures extended to several policies, were numerous and of a fundamental nature (quod non), then those characteristics would form part of the elements constituting the infringement itself"[270]. Therefore, applying this aggravating factor "constitutes impermissible double-counting"[271] as "the "systemic" nature is inherent in the infringement. Applying an additional "systemic weaknesses" aggravation multiplies the sanction for the same characteristic"[272].

231. The Board acknowledges that by their nature some of the infringements imply weaknesses in the PSI's set-up and that the aggravating factor should be reserved to cases where the shortcomings extend beyond the infringement itself. However, there is no

[264] Exhibit 23, Response to the Initial SoF, paragraph 470. See also Response to the Board's initial Statement of Findings, p. 35.
[265] Exhibit 23, Response to the Initial SoF, paragraphs 470, 471 and 473 to 477.
[266] Exhibit 23, Response to the Initial SoF, paragraph 472.
[267] Exhibit 23, Response to the Initial SoF, paragraphs 478 to 482.
[268] Response to the Board's initial Statement of Findings, p. 34.
[269] Response to the Board's initial Statement of Findings, p. 63.
[270] Exhibit 23, Response to the Initial SoF, paragraph 479.
[271] Response to the Board's initial Statement of Findings, p. 34 and p. 63.
[272] Response to the Board's initial Statement of Findings, p. 34.

exclusion (such as for example in Annex IV Point II.1 of the CRA Regulation[273]) foreseen regarding certain infringements and thus the aggravating factor can apply to any of the established infringements. Whether it applies is a question of fact. Where applicable, the Board has set out in detail below the ways in which the PSI's wrongdoing extended beyond the infringements themselves.

4.2 Analysis of the infringements concerning policies and procedures (under EMIR and SFTR)

232. This section of the decision analyses whether the PSI breached the following requirement:

> "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 78(3) of EMIR)**

233. If this requirement is not met as regards the EMIR activities of the PSI, this would constitute the infringement set out at Point (c) of Section I of Annex I to EMIR.

234. Moreover, this section of the decision analyses whether the PSI breached the requirement regarding policies and procedures according to Article 78(3) of EMIR in conjunction with the following requirements under SFTR:

> "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(2) of SFTR)**

> "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 5(4) of SFTR)**

235. If the requirement of adequate policies and procedures is not met as regards the SFTR activities of the PSI, this would constitute the infringement of Point (c) of Section I of Annex I to EMIR in conjunction with Article 9(1) of SFTR.

[273] Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, OJ L 302, 17.11.2009, p. 1–31.

4.2.1 Analysis

236. The Board examined in detail the wording and the context of the relevant legislative provisions. Its conclusions are set out below.

4.2.1.1 Legal interpretation

237. The obligations set out above are clear on a simple reading, as there is no doubt as to what constitutes adequate policies and procedures sufficient to ensure TR's compliance, including of its managers and employees, with all the provisions of EMIR (and SFTR where relevant). A TR must have policies in place which are sufficiently clear and detailed to enable it to comply with the rules in place. There is no need for any non-compliance to have occurred, rather the policies and procedures themselves are under scrutiny.

238. The PSI challenged this reading, each argument is addressed in turn below.

239. First the PSI argued that the "obligations imposed on Trade Repositories under Art.78(3) of EMIR relate specifically to policies and procedures aimed at ensuring regulatory compliance. These obligations do not extend to other operational obligations that may arise in connection with other policies and procedures unrelated to the objective of ensuring Trade Repositories' proper compliance with applicable regulations"[274]. In response, the Board agrees that the policies and procedures that may be relevant to this infringement are those which aim to ensure regulatory compliance, and the policies upon which the assessment relies aim to achieve such compliance.

240. However, the PSI proposed an overly restrictive interpretation of its obligations which is not prompted by a fair reading of the provision itself, in particular when read alongside Delegated Regulation 150/2013, which refers in Article 8 to "internal policies and procedures designed to ensure that the applicant, including its managers and employees, comply with **all the provisions** of [EMIR]" (emphasis added).

241. To take only the example of the System Development Life Cycle[275], it is evident that this policy is relevant to compliance, as noted by the Executive Director in her letter of 18 May 2021: "[the PSI] experienced many … SDLC incidents, which have already affected the integrity, availability and, in certain cases, the confidentiality of SFTR data … it is evident from the SFTR implementation and Internal Audit's high risk finding on the absence of a sound SDLC framework that Regis-TR failed to carry out the work (anticipated to ESMA back in 2018) to address ESMA's serious concerns related to the system development capability"[276].

[275] See criticism in Exhibit 23, Response to the Initial SoF, paragraph 249(i).
[276] Supervisory Report, Exhibit 10, 'ESMA74-426-8 Letter from Verena Ross to [CEO] of REGIS'.

242. Second, the PSI submitted, that "[t]he natural reading of "adequate policies and procedures" focuses on whether the policies and procedures achieve their purpose: ensuring compliance. If [the PSI]'s policies and procedures ensured compliance (as evidenced by the absence of compliance failures resulting from inadequate policies), they were adequate, even if documentation could be improved"[277]. To support its reading it pointed to Article 8 of Delegated Regulation 150/2013, arguing that "[t]he requirement is that policies and procedures be "designed to ensure" compliance, not that they be perfectly drafted, terminologically consistent across all documents, or free from any cross-referencing ambiguities. [The PSI]'s policies and procedures were designed to ensure compliance and did in fact ensure compliance, as evidenced by the absence of compliance failures"[278]. This is only partly correct: indeed policies and procedures must be drafted with the objective of compliance in mind and "designed to ensure" compliance; however the nature of this infringement is not such as to require evidence of crystallised risk. The assessment concerns whether the PSI's policies and procedures are adequate and designed to ensure compliance. The analysis focusses on the policies and procedures themselves, the structure, cross-references and words used (i.e. their design). There is no need to show that the identified shortcomings have resulted in investor detriment (for example). In any event, as discussed in relation to the facts analysed below, the shortcomings of the policies had indeed an impact on the PSI's ability to comply with its obligations under EMIR and SFTR.

243. Third, the PSI also argued that when analysing the PSI's policies and procedures, they should not be "read together" to establish whether there was an infringement. "If individual alleged deficiencies do not demonstrate that policies and procedures are inadequate to ensure compliance, aggregating them does not transform their nature [… to find an infringement it must be shown that the PSI's] policies and procedures failed to ensure compliance, not that documentation could be improved"[279]. This argument is meritless and sets the bar too high. The Board takes into account all the shortcomings when considering whether the PSI's policies and procedures are adequate to ensure compliance with all the provisions of EMIR and (by extension in the present case) SFTR. This is the correct standard to apply based on the wording of the legislation. The PSI itself recognised this. It proposed some questions to ask to assess compliance: "Do the policies and procedures provide clear guidance on compliance obligations? Do they ensure that managers and employees understand and comply with EMIR? Are they effective in preventing non-compliance?" [280] Only by looking at the policies and procedures together and looking at the shortcomings together these questions can be answered. This is also in line with previous

[277] Response to the Board's initial Statement of Findings, p. 53.
[278] Response to the Board's initial Statement of Findings, p. 59.
[279] Response to the Board's initial Statement of Findings, p. 59. In this respect the PSI also seemed to imply that the infringement could only be established if there was an absence "or deficiency equivalent to an absence" of policies and procedures intended to ensure compliance. See Exhibit 23, Response to the Initial SoF, paragraphs 250, 262 and 266.
[280] Response to the Board's initial Statement of Findings, p. 52.

ESMA enforcement decisions, which do not take the approach suggested by the PSI, but rather take a pragmatic view of the failings in policies and procedures in the round, and assess whether those are sufficient to establish the infringement[281].

4.2.1.2 Factual analysis

244. The PSI had specific policies and procedures in a number of areas as described in Section 2.2 (above). However, these policies and procedures were not adequate to ensure compliance with EMIR or SFTR. Below, those inadequacies are set out in detail.

245. First, several policies and procedures applicable to the System Development Life Cycle of the PSI **cover the same topics, complement, or supplement each other, but without clarifying their respective scopes and relationships to one another**. For instance:

- The scopes of some procedures appear to be identical, but the procedures lack any clarification as regards their relationship to each other[282].

- Several procedures contain descriptions of the same procedural steps or responsibilities, for example on Business cases [283], Requirement traceability matrix [284], Business Requirement Analysis [285] and testing (Business Acceptance Testing [286], Functional testing[287], Test plan[288]), without any reference to other procedures or clarification as to how these procedural steps interrelate.

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[281] See by way of example Section 4.1 of the Decision of 22 March 2024 of the Board of Supervisors to adopt supervisory measures and impose fines in respect of infringements committed by Scope Ratings GmbH; available here: https://www.esma.europa.eu/sites/default/files/2024-03/ESMA43-1868696574-770_Decision_Scope_Ratings_fine.pdf

[282] Supervisory Report, Exhibit 61, '9.A.4 RTR SA Product Management Procedure – v1.0', pp. 5-6 covers all product management activities, both related to business and regulatory requirements, which appears to combine the scope of Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 4, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0' p. 5, and Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 4, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 5.

[283] In Supervisory Report, Exhibit 61, '9.A.4 RTR SA Product Management Procedure – v1.0', pp. 9-10 and Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 9-15, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0' pp. 9-15.

[284] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', pp. 13-17, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', pp. 13-18, Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 15-21, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0' pp. 15-21, Supervisory Report, Exhibit 60, 'A-1-2 – Project Management Procedure - v2 – 15 June 2018', p. 18, Supervisory Report, Exhibit 61, '9.A.4 RTR SA Product Management Procedure – v1.0', pp.11-12.

[285] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', pp. 8-12, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', pp. 9-13, Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 22-27, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0' pp. 21-26, Supervisory Report, Exhibit 60, 'A-1-2 – Project Management Procedure - v2 – 15 June 2018', pp. 18-19.

[286] Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 31-38 and Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', pp. 20-25.

[287] Supervisory Report, Exhibit 61, '9.A.4 RTR SA Product Management Procedure – v1.0', pp. 15-16, Supervisory Report, Exhibit 63, 'A-1-6 Testing Team Procedure – v1 – 25 Sept 2020'.

[288] Supervisory Report, Exhibit 62 '9.A.6 Functional Design Department Procedure – v1.0', p. 10.

- Some procedures refer to a supplementing procedure; however, the supplementing procedure does not contain any information about the procedures it supposedly supplements[289].

- Even where some of these procedures name other related documents or procedures[290] or procedures which were used as sources to define the described principles[291], the exact interplay of the different documents is left unclear.

246. The PSI rejected that these issues amounted to a deficiency, arguing that "it reflects the iterative and cross-functional nature of the SDLC"[292] and that "cross-references are not required by Article 78(3) EMIR" [293]. This misses the real issue. While the fact that the relevant information and internal procedures on the PSI's System Development Life Cycle (SDLC) are disseminated in numerous documents and are lacking proper cross-references, may contribute to the lack of clarity of these internal arrangements and make it more difficult to find the relevant information[294], the clear deficiency stems from the fact that the policies and procedures do not clarify their respective scopes and relationships to

[289] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 20, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 21 and Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 30, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', pp. 29-30 refer to the supplementing procedure Supervisory Report, Exhibit 62 '9.A.6 Functional Design Department Procedure – v1.0', which does not refer back to these procedures.

[290] See, by way of example, Supervisory Report, Exhibit 61, '9.A.4 RTR SA Product Management Procedure – v1.0', p. 6 states that "this procedure is related to" the PSI's Version Release and Change Management Procedure, Project Management Procedure, External communications Procedure and Public Data Procedure, without any further clarification of the exact interplay / overlap; Supervisory Report, Exhibit 62, '9.A.6 Functional Design Department Procedure – v1.0', p. 4 states the PSI's Version Release Procedure and Change Management, Communication to Members and Authorities Procedure and the Communications to ESMA Procedure as "related documents", without clarifying to what extend they interplay; Supervisory Report, Exhibit 63, 'A-1-6 Testing Team Procedure – v1 – 25 Sept 2020', p. 6 indicates the "adherence" of this procedure to the PSI's Client Services Procedure, Functional Design Department Procedure, Bug Resolution Procedure (Draft), Version Release Procedure and Change Management, SFTR Testing strategy (Draft), Project Management Procedure, without any further clarification; and Supervisory Report, Exhibit 64, 'A-1-4 – Version release Procedure & Change management – v2 – 28 April 2017', p. 8 states as related documents the ESMA Requirements Procedure and Communications to Members Procedure, without any further explanation of the exact relationship to these documents. This is still the case in the later version of the Version Release Procedure & Change Management Procedure, see Exhibit 15, RTR-359-49 - Version Release Procedure and Change Management Procedure, pp. 12-13.

[291] See, by way of example, in Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 27 and in Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 29 it is stated that PSI's Signature Authority Policy, Version Release Procedure & Change Management and Functional Design Department Procedure were used "as a source to define the principles described in this procedure", without however clarifying the concrete overlap with these procedures.

[292] Response to the Board's initial Statement of Findings, p. 54.

[293] Response to the Board's initial Statement of Findings, p. 55.

[294] It is of note in this context that in Exhibit 2, PSI's response to the IIO's RFI, p. 7, the PSI mentioned that the latter observation is "a subjective appreciation and disproportionate for several reasons… Firstly, … these are organized coherently, allowing staff to easily access the necessary information depending on the area or specific situation… To date, staff have applied the policies and procedures, and no issues of understanding or implementation have been identified, which demonstrates that this distribution has not negatively impacted daily operations. … the existence of multiple documents governing different aspects is common practice in many regulated companies. This specialized approach ensures better control and accuracy in key areas. Finally, the argumentation in the Supervisory Report does not include any kind of evidence showing how the distribution of the information could have negatively affected the company's operations or regulatory compliance". However, as outlined above, the mere reference to other related documents in some of the procedures, without any clarification of the exact relationship with each other does not ensure the coherence of these arrangements, and this is especially relevant where a trade repository has many documents in which such information is found (as opposed to a smaller number).

one another. A new staff member would struggle to comply with the policies and procedure (and the regulations) further to reading and analysing the documents.

247. The PSI went so far as to claim that the "absence of compliance failures resulting from alleged lack of coherence demonstrates that [its] SDLC framework was adequate to ensure compliance, even if documentation could be enhanced with additional cross-references"[295], despite its own internal audit finding on a "lack of sound system development framework" and action required in the [Internal project 1: redacted due to confidentiality] in this respect[296]. It is noteworthy that from this work, the PSI itself recognised that further procedures were necessary to clarify the process.

248. Second, **some procedures are inconsistent with others covering the same topics**, as regards the roles and responsibilities of certain bodies. See, by way of example, the Project Management Procedure, which implies that the BoD has the deciding role on Business Cases[297], which seems to be inconsistent with the Business Product Management Procedure, which provides that the BoD is only informed of them[298]. Further both versions of the Regulatory Product Management Procedure state that when features relate to both customers and regulators' access two separate Business Requirement Analyses (BRA) must be carried out, one by Business Product Management and the other by Regulatory Product Management[299], while both versions of the Business Product Management Procedure foresee a joint BRA procedure in such cases[300]. In a further example, both versions of the Business Product Management Procedure stating in the responsibilities section that it is the responsibility of Regulatory Product Management to assist to the bugs review meetings[301], while the procedural section states that it is for Business Product Management to take part in these meetings[302], as well as the Business Product Management Procedure and Regulatory Product Management Procedure stating contradictory responsibilities as regards who shall determine the stakeholders for the

[295] Response to the Board's initial Statement of Findings, p. 54.
[296] See Supervisory Report, Exhibit 13, 'A-9-1 - [Internal project 1: redacted due to confidentiality] 2020 – 2023', p. 26.
[297] Supervisory Report, Exhibit 60, 'A-1-2 – Project Management Procedure - v2 – 15 June 2018', pp. 11, 14, Supervisory Report, Exhibit 65, 'A-1-1 – Project Management Procedure v1 – 16 Nov 2015', pp. 6, 7.
[298] Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 7, 13, 15, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', pp. 7, 11, 15.
[299] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 8, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 9.
[300] Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 22, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 22.
[301] Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 7, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 8.
[302] Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0': on the responsibility for the bugs review meetings, p. 38, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 37.

Business Requirement Analysis (BRA) [303] and the Requirements traceability matrix (RTM)[304] and whether the GEM-review is a one step or two step procedure[305].

249. Moreover, both versions of the Business Product Management Procedure are unclear as to whether the BoD is always[306] to be informed of a Business Case or only "when appropriate" / "as required"[307]. For Requests for Approval (RA), the responsibilities section in the Business and Regulatory Product Management Procedures state that Regulatory Product Management shall be a decision maker on the RA if it is raised by them[308], which appears not to be consistent with the procedural section, pursuant to which the Change Control Board (CCB) is the decision maker on all RAs[309]. Both versions of the Regulatory Product Management procedure also state in the procedural section that Regulatory Product Management is responsible for the review of the Functional Specification Documents or change requests drafted by Functional Design,[310] which is not reflected in the responsibilities section[311].

250. Some procedures are unclear, for example lacking clear references between different sections: See for instance in the Business Product Management Procedure, the

[303] Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 14 and 25 and Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', pp. 14 and 24 state that this is a responsibility of Project Management together with Business Product Management, while Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 11 and Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 11 state that this is a responsibility of Project Management together with Regulatory Product Management and Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 6, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 7 state that this is a joint responsibility of all three of them.

[304] According to Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 6, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 7, and Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 8, this is a responsibility of Project Management together with Business Product Management. According to Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 14, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 14 this is a responsibility of Project Management together with Business Product Management. According to Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 5, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 6, Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 6, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 7, this is a joint responsibility of all three of them.

[305] Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 8 and 14-15.

[306] Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 15 "is presented to the Board of Directors for information only" and Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 15 "is presented to the Board of Directors".

[307] Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 7, 11 and Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', pp. 7, 11.

[308] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 6, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 7, Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 7, and Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 8.

[309] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 19, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 21, Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 30, and Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 29.

[310] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 20 and Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 21.

[311] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', pp. 5-6 and Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', pp. 6-7, which merely state the responsibility of Regulatory Product Management "Review of documents from other departments if required".

responsibilities for Business Cases of Business Development, Client Relationship Management and Head of Business Product Management [312]. In particular, the responsibility of the Head of Business Product Management in the context of Business Cases is stated in the procedural section[313], while the responsibilities section only states the general responsibilities of Business Product Management to "Develop the Business Case Document within the scope of a formal Project framework …" and "Manage the Business Case review and sign-off process"[314].

251. The responsibility of the GEM to agree to exceptions in the context of the Business Requirement Analysis (BRA) outside of formal project framework stated in the procedural section [315] is not reflected in the responsibilities section [316]. The same issue is found regarding the responsibility of Project Management [317] and the GEM [318] for Business Acceptance testing (BAT), as well as the responsibilities of IT Management[319] and the Chief Information Security Officer (CISO)[320] in the context of the Requirements traceability matrix (RTM). In the Regulatory Product Management Procedure, the responsibilities table refers to the responsibilities for Business Cases [321], even though the procedure for Business Cases is not addressed at all in this document[322]. The Crisis Management Plan

[312] Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 14.
[313] Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 14, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 14.
[314] Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 6-7 and Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', pp. 7-9.
[315] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 8, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 9.
[316] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 7, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 8.
[317] Responsibility of "Project Managers" in BAT process stated in Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 32-33 and Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 31 is not reflected in the responsibilities-section in Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 6, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 7.
[318] Responsibilities of the "GEM" for final go/no-go decision in context of the BAT-process stated in Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 25, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 27, Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 38 and Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 36 is not reflected in the corresponding responsibilities-sections in Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 7, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 8, Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 8 and Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 9.
[319] Responsibility of "IT Management" in the RTM-process stated in Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 15,Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 15 is not reflected in responsibilities sections in Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 7-8, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 8.
[320] Responsibility of the CISO in the RTM-process stated in Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', p. 16, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', p. 17, Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 20 and Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', p. 20: responsibility of CISO not reflected in the corresponding responsibilities sections in Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', pp. 5-7, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', pp. 6-8, Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 6-8 and Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', pp. 7-9.
[321] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', pp. 5-7 for the Project Management, Business Product Management and GEM.
[322] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0'.

shows similar flaws: while the procedural section of the Crisis Management Plan states that it is the responsibility of the GEM to contact the next person in the list of the call tree in case of a crisis, i.e. the Control Functions and Board of Directors[323], this responsibility is not reflected in the table of responsibilities[324]. Similarly, the responsibilities of the "Crisis Management Committee (CMC)" stated in the procedural section are not properly reflected in the responsibilities table in the other section. The latter merely states that the Managing directors / GEM members, "whose areas are impacted by a critical incident, will assume the role of Crisis Manager"[325]. However, it neither explicitly uses the term "Crisis Management Committee (CMC)", nor does it list any of the other central roles of the CMC outlined in the procedural section, such as the responsibility of the CEO as "Ultimate Crisis Decision authority" or the roles of the CISO, CRO, Business Continuity Manager, Incident Manager and Heads of Client Services, IT Management and the Institutional Relationship Management function as corporate members of the committee[326]. Moreover, while the responsibilities section provides that, "[I]f all areas are impacted by a critical incident, the COO should assume [the role of Crisis Manager]"[327], this information is missing in the procedural section. Additionally, the responsibility of the incident manager, incident owner or crisis manager to notify the CMC is stated in the procedural section[328] but not reflected in the responsibilities section[329]. These flaws are all the more significant given that the CMC plays a crucial role in crisis management; according to the Plan, "[t]his committee is accountable for the company's stability, continuity, and reputation"[330].

252. Further, the policies and procedures fail to make clear who is responsible for which tasks at the principal steps of the different processes. As regards the definition of roles and responsibilities, certain procedures are clustered into two different sections. One section of the documents provides an overview of the main responsibilities, associates them to the different stakeholders / teams / project groups, and briefly states the different tasks ('responsibilities section'), but without clearly and explicitly referring to the different steps and processes[331]. The detailed description and different steps of the procedures are explained in another section ('procedural section'), including the responsibilities for these

[323] Supervisory Report, Exhibit 73, 'B-23-2 Crisis Management Plan – v1', p. 25.
[324] Supervisory Report, Exhibit 73, 'B-23-2 Crisis Management Plan – v1', pp. 13-15, which merely lists the separate roles of the Managing Directors, which are GEM members and can be the Crisis Managers, if the contingency situation is impacting their respective areas.
[325] Supervisory Report, Exhibit 73, 'B-23-2 Crisis Management Plan – v1', p. 15.
[326] Supervisory Report, Exhibit 73, 'B-23-2 Crisis Management Plan – v1', p. 16.
[327] Supervisory Report, Exhibit 73, 'B-23-2 Crisis Management Plan – v1', p. 15.
[328] Supervisory Report, Exhibit 73, 'B-23-2 Crisis Management Plan – v1', p. 17.
[329] Supervisory Report, Exhibit 73, 'B-23-2 Crisis Management Plan – v1', p. 14.
[330] Supervisory Report, Exhibit 73, 'B-23-2 Crisis Management Plan – v1', p. 15.
[331] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', pp. 5-7, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', pp. 6-8, Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 6-8, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', pp. 7-9, Supervisory Report, Exhibit 73, 'B-23-2 Crisis Management Plan – v1', Section 3, p. 13-15.

different steps of the processes in a more detailed manner[332]. Hence, the two sections show overlaps and to get a clear and full picture of the responsibilities in the different steps of the processes, it is necessary to compare the two sections and read both in parallel. However, due to the different structure and different level of detail in the two sections as well as the lack of clear and precise references between the two sections, this structure does not make it clear who is responsible for which task at the different steps of the process. The procedures therefore do not clearly and consistently define the roles and responsibilities for the three areas covered by the procedures. This is a shortcoming.

253. In this respect, the PSI responded that these were "either misreadings of the procedures or reflect legitimate flexibility in governance processes"[333], and went on to set out the correct understanding of the policies and procedures, stating that there were no "instances where these alleged inconsistencies resulted in compliance failures, decision-making breakdowns, or confusion among staff. The absence of such failures demonstrates that the procedures were adequate to ensure compliance"[334]. The PSI also argued that the policies and procedures in this respect were "structured with two complementary sections: (i) a Roles and Responsibilities section providing a high-level overview of key roles; and (ii) a Procedural Steps section describing the workflow in detail. This structure is common in governance documentation and serves a practical purpose: the Roles and Responsibilities section provides a quick reference for senior management and oversight bodies, whilst the Procedural Steps section provides detailed guidance for operational staff" [335]. These claims should be rejected: while it is helpful to receive the explanations of the PSI on what it considers to be the "correct" interpretation of its policies and procedures, this does not change the conclusion that one would be misled on the basis of a reading of the policies and procedures. These inconsistencies had a clear impact on knowing who would have been in charge of the process, leading to risks of misunderstanding and incorrect application.

254. Third, some **policies and procedures provide for processes and arrangements that are not complete or not sufficiently detailed and clear** to ensure effective compliance with the PSI's obligations under EMIR and SFTR, for example by referring to another procedural step or document without defining it[336], or by only providing high level descriptions of crucial procedural steps or responsibilities. For instance, the procedures on project management do not contain a detailed description of the steps to be performed by

[332] Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0', pp. 8-26, Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', pp. 8-27, Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', pp. 8-40, Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', pp. 9-38, Supervisory Report, Exhibit 73, 'B-23-2 Crisis Management Plan – v1', pp. 15-30.
[333] Response to the Board's initial Statement of Findings, p. 55. For example, "GEM approves Business Cases as a general rule, with BoD approval required only when specific materiality thresholds are exceeded."
[334] Response to the Board's initial Statement of Findings, p. 56.
[335] Response to the Board's initial Statement of Findings, p. 41.
[336] Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', p. 38: refers to an undefined Project Board.

the project manager when planning a project for the estimations of budget, time and resources[337] or any follow-up process as regards the support provided by the IT service provider[338].

255. In this respect, the PSI argued that it "provides a clear framework for project planning […] The procedure provides the governance framework; detailed operational guidance is provided through training, templates, and operational manuals"[339]. However, this does not address the issue at hand. A procedure should at least define the most important steps regarding the estimations of budget, time and resources[340] or any follow-up process as regards the support provided by the IT service provider[341].

256. Fourth, **the dates of application of some policies and procedures are ambiguous**. This is inter alia the case when a new policy or procedure possibly combines two other procedures[342] or where a policy or procedure is replaced by another one, occasionally entailing a change to the name of the policy (Business continuity management policy replacing the Business Continuity & Disaster Recovery Policy)[343] without clarifying that the later policy is a replacement. Another procedure contains inconsistent information as to the date of its application[344].The PSI stated that the Business Continuity & Disaster Recovery Policy was not replaced but only renamed, that this was communicated internally and to ESMA and is evidenced in the history log of the older procedure[345]. However, after thorough examination of the two policies, it is clear that the Business Continuity Management Policy does not contain any information about which policy is being replaced (the history log states only that there is an older version without stating the name of this

[337] Supervisory Report, Exhibit 65, 'A-1-1 – Project Management Procedure v1 – 16 Nov 2015', p. 8; Supervisory Report, Exhibit 60, 'A-1-2 – Project Management Procedure - v2 – 15 June 2018', p. 18.
[338] Supervisory Report, Exhibit 60, 'A-1-2 – Project Management Procedure - v2 – 15 June 2018', pp. 22, 23 and 25: contains no provision stating any follow-up support by the IT provider.
[339] Response to the Board's initial Statement of Findings, p. 56.
[340] Supervisory Report, Exhibit 65, 'A-1-1 – Project Management Procedure v1 – 16 Nov 2015', p. 8; Supervisory Report, Exhibit 60, 'A-1-2 – Project Management Procedure - v2 – 15 June 2018', p. 18.
[341] Supervisory Report, Exhibit 60, 'A-1-2 – Project Management Procedure - v2 – 15 June 2018', pp. 22, 23 and 25: contains no provision stating any follow-up support by the IT provider.
[342] Supervisory Report, Exhibit 61, '9.A.4 RTR SA Product Management Procedure – v1.0', pp. 5, 6 covers all product management activities, in relation to regulatory and business related requirements and, therefore, possibly regroups Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0' and Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0'.
[343] According to the PSI's response to the RFI of Supervisors, Supervisory Report, Exhibit 29, 'Second Reply to RF'I, Question 29(A)', p. 42, the Supervisory Report, Exhibit 66, '29.A.1 Business Continuity & Disaster Recovery – v1.0' was renamed and replaced by Supervisory Report, Exhibit 67, 'B-23-1 - Business continuity management policy – v2', however this replacement is not specified in the later version.
[344] See Supervisory Report, Exhibit 61, '9.A.4 RTR SA Product Management Procedure – v1.0', which mentions an approval date by the GEM on 20 January 2022 on p. 1 and an approval date of 20 January 2021 in the table history on p. 3.
[345] Exhibit 2, PSI's Response to the IIO's RFI, p. 4.

policy)[346], and contains significant changes compared to the older version[347] (so is not a simple renaming).

257. Moreover, the PSI's claim that "[t]he fact that approval dates or document names changed during this transition does not mean that the policies and procedures were inadequate to ensure compliance" is misleading. As set out above, where it is unclear which polices and procedures are in place at a given point in time, this may lead to confusion which procedure to follow.

258. Finally, the PSI reiterated arguments in relation to legitimate expectations[348], legality[349], proportionality[350] and the interplay between EMIR and SFTR[351]. The Board carefully assessed these arguments and finds them unfounded in line with its analysis outlined above.

259. Given the foregoing, the Board finds that there were substantial shortcomings in the PSI's policies and procedures from at least November 2015: the policies and procedures were not sufficiently clear and detailed to ensure the compliance with the PSI's obligations under EMIR and SFTR.

260. Given what is noted above about the interplay between SFTR and EMIR, there is a basis for finding the infringement proved as a breach of the PSI's obligations under both texts. This approach is justified because the obligation is identical (i.e. that under Article 78(3) of EMIR) and the relevant evidence set out above includes policies that were in force beyond the date of registration under SFTR, and which also covered the PSI's activities under SFTR[352]. Therefore, there is a breach of Article 78(3) of EMIR for both EMIR and SFTR activities. The infringement is therefore made out under both texts. The infringement under SFTR only started from 7 May 2020 (i.e. the date on which the SFTR authorisation took effect).

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[346] Supervisory Report, Exhibit 67, 'B-23-1 - Business continuity management policy – v2, p. 2. The newest version of the Business Continuity Management Policy from 01.10.2023, Exhibit 14, CRO Regulation S1 Business Continuity Management EN ('Business continuity management policy – v2.2'), p. 1 does also not clarify this replacement.

[347] Especially the Business continuity management methodology is described in much more detail in Supervisory Report, Exhibit 67, 'B-23-1 - Business continuity management policy – v2', pp. 16-22 than in Supervisory Report, Exhibit 66, '29.A.1 Business Continuity & Disaster Recovery – v1.0', pp. 12-13.

[348] Exhibit 23, Response to the Initial SoF, paragraphs 253 to 259. See also Response to the Board's initial Statement of Findings, pp. 60-61.

[349] Exhibit 23, Response to the Initial SoF, paragraphs 253 to 259. See also Response to the Board's initial Statement of Findings, pp. 52-53.

[350] Exhibit 23, Response to the Initial SoF, paragraphs 282 to 283. See also Response to the Board's initial Statement of Findings, pp. 52 and 64.

[351] Exhibit 23, Response to the Initial SoF, paragraphs 253 to 259. See also Response to the Board's initial Statement of Findings, p. 65.

[352] By way of example, Supervisory Report, Exhibit 56, '9.A.3 REGIS-TR procedures – Regulatory Product Management v 1.0'; Supervisory Report, Exhibit 57, '9.A.5 Regulatory Product Management Procedure (RTR SA) – v2.0', Supervisory Report, Exhibit 58, '9.A.1 Business Product Management Procedure – v1.0', Supervisory Report, Exhibit 59, '9.A.2 Business Product Management Procedure – v2.0', Supervisory Report, Exhibit 60, 'A-1-2 – Project Management Procedure - v2 – 15 June 2018', and Supervisory Report, Exhibit 61, '9.A.4 RTR SA Product Management Procedure – v1.0', Supervisory Report, Exhibit 69, '29.A.9.2 Business Continuity Plan – v2.0', Supervisory Report, Exhibit 73, 'B-23-2 Crisis Management Plan – v1'.

261. This constitutes the infringements set out at Point (c) of Section I of Annex I to EMIR, read where appropriate in conjunction with and Article 9(1) of SFTR.

4.2.2 Intent or negligence

262. Article 65(1) of EMIR provides:

263. “Where, in accordance with Article 64(5), ESMA finds that a trade repository has, intentionally or negligently, committed one of the infringements listed in Annex I, it shall adopt a decision imposing a fine in accordance with paragraph 2 of this Article.

264. An infringement by a trade repository shall be considered to have been committed intentionally if ESMA finds objective factors which demonstrate that the trade repository or its senior management acted deliberately to commit the infringement.”

265. In accordance with Article 65(1) of EMIR, a finding that an infringement has been committed by a TR with intention or negligence will lead to the imposition of a fine by the Board of Supervisors.

266. Consequently, the findings need to include also findings on the question whether ESMA considers that the relevant infringement has been committed by the PSI intentionally or negligently.

267. In accordance with Article 65(1) of EMIR, a finding that an infringement has been committed intentionally requires a finding of “objective factors which demonstrate that the trade repository or its senior management acted deliberately to commit the infringement”.

268. Taking into account the above, the Board considers that, overall, the factual background as set out in this decision does not establish that there are objective factors which demonstrate that the PSI, its employees or senior managers acted deliberately to commit the infringements.

269. It should therefore be assessed whether the PSI acted with negligence.

4.2.2.1 Preliminary remarks regarding negligence

270. EMIR provides no explicit guidance as regards the concept of “negligence”. However, it follows from the provisions of Articles 73 and 65 of EMIR that the term “negligence” as referred to in EMIR requires more than a determination that there has been the commission of an infringement.

271. Further, it is clear from the second subparagraph of Article 65(1) of EMIR that a negligent infringement is not one which was committed deliberately or intentionally. This

position is further supported by the case-law of the CJEU which ruled that negligence may be understood as entailing an unintentional act or omission[353].

272. In addition, "negligence" in the context of EMIR (in conjunction with SFTR where relevant) is an EU law concept – albeit one which is familiar to and an inherent part of the 27 Member States' legal systems – which must be given an autonomous, uniform interpretation.

273. Taking into account the CJEU jurisprudence[354], the concept of a negligent infringement of EMIR (in conjunction with SFTR where relevant) is to be understood to denote a lack of care on the part of a TR when it fails to comply with this Regulation.

274. Based on this, ESMA will consider negligence to be established in circumstances where the TR, as a professional firm in the financial services sector subject to stringent regulatory requirements, is required to take special care in assessing the risks that its acts or omissions entail, and has failed to take that care; and as a result of that failure, the TR has not foreseen the consequences of its acts or omissions, including particularly its infringement of EMIR, in circumstances where a person in such a position who is normally informed and sufficiently attentive could not have failed to foresee those consequences.

275. The following points should be taken into consideration regarding the standard of care to be expected of a TR.

276. First, one should take into consideration the position taken by the General Court in the Telefonica case, where the General Court spoke of persons "carrying on a professional activity, who are used to having to proceed with a high degree of caution when pursuing their occupation. They can on that account be expected to take special care in assessing the risks that such an activity entails"[355]. Similarly, it is considered that, operating within the framework of a regulated industry, a TR which holds itself out as a professional entity and carries out regulated activities should be expected to exercise special care in assessing the risks that its acts and omissions may entail.

277. Second, regard should be given to the nature and significance of the objectives and provisions of EMIR and SFTR. Of particular note, Recitals 4, 5 and 75 of EMIR emphasise the important role and impact of TRs in global securities and banking markets, the consequentially essential need for the data processing of TRs to be conducted in accordance with principles of integrity, transparency, responsibility and good governance,

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[353] See for instance Case C-308/06, *International Association of Independent Tanker Owners (Intertanko) and Others v Secretary of State for Transport* [2008] ECR I- 4057, where the CJEU noted at para. 75 of its judgment that all of the Member States' legal systems "*have recourse to the concept of negligence which refers to an unintentional act or omission by which the person responsible breaches his duty of care*."

[354] See for instance Case C-48/98, *Firma Söhl & Söhlke v Hauptzollamt Bremen* [1999] ECR I-7877, para. 58; Case C-64/89, *Deutscher Fernsprecher* [1990] ECR 1-2535, para. 19.

[355] Case T-336/07, Telefónica, SA and Telefónica de España, SA v Commission [2012] ECLI:EU:T:2012:172, para. 323.

and the resulting intention of the legislator to provide stringent requirements in relation to the conduct of TRs. Further, the weight given to these considerations by the legislator is reflected by the nature and extent of the requirements imposed on TRs under Title VII of EMIR and by the corresponding infringement provisions under Annex I to EMIR. Moreover, of more particular note, EMIR envisages that an important function of a TR is to ensure that it identifies instances in which its present practices carry the risk of non-compliance with EMIR. The importance of this function is reflected, for instance, by the requirement for a TR to have sound procedures and internal control mechanisms. Moreover, as regards SFTR, Recitals 1, 2, 6 and 7 of SFTR emphasise the importance of reporting requirements for SFTs and the need for enhanced transparency of securities financing markets and thus of the financial system.

278. Therefore, on this basis, the standard of care to be expected of a TR is high.

279. This high standard of care has been confirmed by the BoA, which has stated that "ESMA rightly emphasises that financial services providers … play an important role in the economy of the EU, as well as in the financial stability and integrity of the financial markets" and that "[a] high standard of care is to be expected of such persons"[356].

280. The determination of whether an infringement is committed negligently is a question of fact[357].

4.2.2.2 Assessment of negligence in the present case

281. Regarding the assessment of negligence in the present case, the Board notes the following.

282. The PSI claimed that it had not been negligent in the commission of the infringement[358] and that it "exercised special care in establishing and maintaining its policies and procedures"[359], however the Board cannot accept these arguments on the following grounds.

283. First, the requirements related to policies and procedures in EMIR (in conjunction with SFTR where relevant) are a fundamental aspect of a TR's structure, which go to the heart

[356] See para 285 of the decisions of the Board of Appeal in the Appeals of Svenka Handelsbanken AB, Skandinaviska Enskilda Banken AB, Swedbank AB and Nordea Bank Abp against ESMA's decision in the Nordic Banks case (ref. BoA D 2019 01, BoA D 2019 02, BoA D 2019 03 and BoA D 2019 01), available at https://www.esma.europa.eu/sites/default/files/library/board_of_appeal_-_27_february_2019_-_decisions_2019_01_02_03_04_-_final.pdf, see para 158 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03) available at: https://www.esma.europa.eu/sites/default/files/library/boa_d_2020_03_decision_on_scope_ratings_v_esma.pdf.
[357] See para. 159 of the Board of Appeal Decision in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03) available at: https://www.esma.europa.eu/sites/default/files/library/boa_d_2020_03_decision_on_scope_ratings_v_esma.pdf.
[358] See Response to the Board's initial Statement of Findings, pp. 61-63.
[359] Response to the Board's initial Statement of Findings, p. 62.

of its ability to comply with its obligations under EMIR and SFTR. They are clear and easy to understand for a professional firm in the financial services sector.

284. Second, the failings in the PSI's policies and procedures as identified above do not amount only to "clerical errors", as averred by the PSI[360]. Rather, the failings were serious and go to the heart of the PSI's compliance obligations, given the centrality of clear policies and procedures to a proper compliance framework. They are sufficient to undermine the PSI's ability to comply with its obligations: to take one example from the foregoing, the procedures on project management do not contain a detailed description of the steps to be performed by the project manager when planning a project for the estimations of budget, time and resources[361] or any follow-up process as regards the support provided by the IT service provider. These failures also included inconsistent use of terms; policies that contain references to supplementary documents that do not do as described; inconsistencies between procedures (including as regards the role of important bodies such as the BoD and CEO); unclear or even contradictory information in policies during many years, and insufficient detail in policies and procedures that contain ambiguous dates of application. It should thus have been clear to the PSI as a professional firm in the financial services sector subject to stringent regulatory requirements, that it ran the risk of infringing the rules in place, by not having adequate policies and procedures.

285. As set out above, the care expected from the PSI as a professional firm in the financial services sector subject to stringent regulatory requirements is high and, on the basis of the elements described above, the Board considers that the PSI failed to take the special care expected of a TR in assessing the risks that its acts or omissions entail. As the result of that failure, it has not foreseen the consequences of its acts or omissions, including particularly its infringement of EMIR (in conjunction with SFTR where relevant), in circumstances where a TR in such a position that is normally informed and sufficiently attentive could not have failed to foresee those consequences.

286. Therefore, it is considered that the PSI was negligent when committing the infringements set out at Point (c) of Section I of Annex I to EMIR and Point (c) of Section I of Annex I to EMIR in conjunction with Article 9(1) of SFTR.

287. Two fines should thus be imposed (under both EMIR and SFTR); each is calculated in turn, applying the relevant aggravating and mitigating factors.

[360] Exhibit 23, Response to the Initial SoF, paragraph 251.
[361] Supervisory Report, Exhibit 65, 'A-1-1 – Project Management Procedure v1 – 16 Nov 2015', p. 8; Supervisory Report, Exhibit 60, 'A-1-2 – Project Management Procedure - v2 – 15 June 2018', p. 18.

4.2.3 Fine under EMIR

4.2.3.1 Basic amount of the fine

288. Because the issues with the PSI's policies and procedures began before the change in basic amount (linked to Regulation (EU) 2019/834), the relevant version of Article 65 of EMIR is the one that was in force when the infringement began, i.e. prior to June 2019; it provides in paragraph 2 as follows:

> "The basic amounts of the fines referred to in paragraph 1 shall be included within the following limits:
>
> (a) for the infringements referred to in point (c) of Section I of Annex I and in points (c) to (g) of Section II of Annex I, and in points (a) and (b) of Section III of Annex I the amounts of the fines shall be at least EUR 10,000 and shall not exceed EUR 20,000; …
>
> In order to decide whether the basic amount of the fines should be at the lower, the middle or the higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover of the preceding business year of the trade repository concerned. The basic amount shall be at the lower end of the limit for trade repositories whose annual turnover is below EUR 1 million, the middle of the limit for the trade repository whose turnover is between EUR 1 and 5 million and the higher end of the limit for the trade repository whose annual turnover is higher than EUR 5 million."

289. It has been established that the PSI committed the infringement set out at Point (c) of Section I of Annex I to EMIR, by not establishing adequate policies and procedures sufficient to ensure compliance, including that of its managers and employees, with all the provisions of EMIR.

290. To determine the basic amount of the fine, the Board has regard to the PSI's latest annual turnover[362].

291. In 2024, the PSI had an annual turnover of EUR [25-30] million[363].

292. Thus, given that the infringement began before 2019, the basic amount of the fine for the infringement listed in Point (c) of Section I of Annex I to EMIR is set at the higher end of the limit of the fine set out in Article 65(2)(a) of EMIR and shall not exceed EUR 20,000.

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[362] See in this regard para. 177 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03).
[363] Regis-TR S.A. Annual Financial Statements as at 31 December 2024, p. 3.

4.2.3.2 Applicable aggravating factors

293. The applicable aggravating factors listed in Annex II to EMIR are set out below.

Annex II, Point I(b) If the infringement has been committed for more than six months, a coefficient of 1,5 shall apply

294. As explained in Section 4.1.4 above, ESMA has no discretion in applying this aggravating factor. If an infringement has been committed for more than six months, ESMA must apply the aggravating factor. Here the infringement lasted more than six months, as the deficiencies in the relevant policies and procedures as described above were evident over a number of years.

295. This aggravating factor is therefore applicable.

Annex II, Point I(c) If the infringement has revealed systemic weaknesses in the organisation of the trade repository in particular in its procedures, management systems or internal controls, a coefficient of 2,2 shall apply.

296. The Board notes that EMIR does not provide guidance on what constitutes "systemic weaknesses in the organisation of the trade repository". However, as set out in Section 4.1.4 above and based on the wording of the terms used, not all weaknesses in the procedures, management systems or the internal controls will necessarily constitute "systemic weaknesses in the organisation of a TR".

297. In its analysis of the aggravating factor, the Board considered the type and the level of seriousness of the PSI's failure that led to the infringement and finds that the failings in this infringement revealed systemic weaknesses in the PSI.

298. The Board notes that by its very nature the infringement at Point (c) of Section I of Annex I to EMIR implies weaknesses in the PSI's policies and procedures. Therefore, the aggravating factor set by Point (c) of Section I of Annex II to EMIR should be reserved to cases where the shortcomings identified for the established infringement at Point (c) of Section I of Annex I to EMIR constitute shortcomings that extend beyond the infringement itself[364].

[364] This approach is consistent with past cases. See for instance ESMA Decision CRA 2015/2 (Fitch I), in which it was decided that the internal control Infringement by definition implies weaknesses in the organisation of a CRA. Consequently, the application of an aggravating factor in these circumstances should be reserved to cases where the flaws that have led the relevant CRA not to meet the internal control requirement, and thus to commit the internal control infringement, point to shortcomings that extend beyond the infringement itself.

299. In this respect, the PSI argued that there was not sufficient evidence demonstrating the actual impact of the infringement and that the evidence did not reveal any shortcomings going beyond those of the infringement itself [365].

300. The Board does not agree with the PSI and finds that there is evidence to show systemic weaknesses in the organisation of the PSI. Indeed, the failings in the PSI's policies and procedures go beyond a failure to establish adequate policies and procedures, as they imply failures in the PSI's governance system (policies in this area are faulty, for example as regards the roles of important bodies such as the BoD and CEO). In addition, several significant flaws in the PSI's policies and procedures have remained unresolved and these shortcomings reveal systemic weaknesses in the organisation of the PSI to address identified issues.

301. Given the foregoing, this aggravating factor is applicable[366].

4.2.3.3 Mitigating factors

302. Annex II to EMIR lists the mitigating factors to be taken into consideration for the adjustment of the fine. Their application to the present case is assessed below.

Annex II, Point II(a). If the infringement has been committed for less than ten working days, a coefficient of 0,9 shall apply.

303. The infringement under Point (c) of Section I of Annex I to EMIR has been committed for more than ten working days.

304. This mitigating factor is therefore not applicable.

Annex II, Point II(b). If the trade repository's senior management can demonstrate that they have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall apply.

305. As a preliminary remark, the application of this mitigating factor should be limited to those situations where the PSI can prove that the infringement was the result of events which were beyond the control of its senior management; for instance, when an employee intentionally circumvents the measures put in place by the senior management. It also means that to benefit from the application of this mitigating factor, the measures taken by the TR must be measures taken ex ante (i.e., before the commission of the infringement) and not ex post (i.e., once the infringement had already been committed). If taken ex post the measures might be relevant to the mitigating factor for voluntarily taking

[365] Response to the Board's initial Statement of Findings, p. 3 and 35.
[366] See also Exhibit 11, ESMA Supervisors' Second Response to IIO, Response to Q9, p. 5.

measures to ensure that a similar infringement cannot be committed in the future, but not for the application of this mitigating factor.

306. The PSI was asked to provide any documentation showing specifically the measures taken by its senior management to prevent the infringement. In this regard, the PSI "consider[ed] that it has not engaged in any conduct that could be considered as a violation of the applicable regulations. In any case, [the PSI] has shared relevant documents [...] and that evidences the involvement of senior management in the compliance with the regulations"[367].

307. The Board finds that the matters set out do not constitute sufficient evidence that all necessary measures were taken by senior management to prevent the infringement at Point (c) of Section I of Annex I to EMIR.

308. This mitigating factor is therefore not applicable.

Annex II, Point II(c) If the trade repository has brought quickly, effectively, and completely the infringement to ESMA's attention, a coefficient of 0,4 shall apply.

309. To benefit from the application of this mitigating factor, the PSI must acknowledge that it has committed (or believe that it could have committed) an infringement and to do so quickly, effectively, and completely.[368]

310. The Board considers the three requirements (speed, effectiveness, and completeness) set out at Point (c) of Section II of Annex II to EMIR to be cumulative. Therefore, if one of them is not met, the mitigating factor should not be applied.

311. The Board notes that the PSI stated that it "ha[d] always maintained a fluid, direct and transparent communication with ESMA on any aspect that may be relevant to its supervision. Keeping ESMA duly updated on new policies and procedures approved, improvements actions plans …, incident notification, reports received … and reporting of all BoD material which is also shared with ESMA"[369].

312. However, this does not constitute evidence of bringing this infringement to ESMA's attention.

313. Therefore, this mitigating factor is not applicable.

[367] Exhibit 2, PSI's Response to the IIO's RFI, p. 32.
[368] See paras. 183 and 202 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03).
[369] Exhibit 2, PSI's Response to the IIO's RFI, p. 32.

Annex II, Point II(d) If the trade repository has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply.

314. In the instant case, the PSI provided a description of a number of actions taken to remedy issues identified in the areas covered by the case. In particular, the PSI implemented remedial measures to address the deficiencies in policies and procedures, such as the [Internal project 1: redacted due to confidentiality] 2020-2023 (approved in July 2021), which "included specific workstreams to enhance SDLC documentation, improve coherence across procedures, standardise terminology, and strengthen governance frameworks"[370], the enhanced SDLC governance framework, "including clearer definition of roles and responsibilities across SDLC phase, enhanced cross-referencing between related procedure, standardised terminology and glossary of key terms, improved version control and document management, and enhanced training for staff on SDLC procedures" [371], the formal policy and procedure approval framework (with Board of Directors approval for policies, GEM approval for policies and procedures and a register of dates and versions), and integration into SIX Group in 2022, which provided access to the group's policy and procedure frameworks, templates and best practices, and ongoing policy and procedures reviews[372].

315. Therefore, the Board considers that some measures were taken. However, these were not sufficient to remediate the shortcomings set out above, as many of the policies as analysed in Section 4.2 remain in place. Thus, due to the serious and ongoing nature of the infringement, the Board cannot conclude that these measures amount to voluntary remediation to ensure that similar infringements cannot be committed in the future.

316. In the circumstances, the Board considers that the PSI has not taken the measures to ensure that similar infringement cannot be committed in the future and the mitigating factor is therefore not applicable.

4.2.3.4 Determination of the adjusted fine

317. In accordance with Article 65(3) of EMIR, taking into account the applicable aggravating and mitigating factors, the basic amount of EUR 20,000 must be adjusted as follows.

318. The difference between the basic amount and the amount resulting from the application of each individual coefficient set out in Annex II of EMIR is added to the basic amount in the case of the aggravating factors and subtracted from the basic amount in the case of the mitigating factors:

[370] Response to the Board's initial Statement of Findings, p. 63.
[371] Response to the Board's initial Statement of Findings, p. 63.
[372] Response to the Board's initial Statement of Findings, p. 64.

Aggravating factor set out in Annex II, Point I(b):

EUR 20,000 x 1.5 = EUR 30,000

EUR 30,000 – EUR 20,000 = EUR 10,000

Aggravating factor set out in Annex II, Point I(c):

EUR 20,000 x 2.2 = EUR 44,000

EUR 44,000 – EUR 20,000 = EUR 24,000

Adjusted fine taking into account the applicable aggravating and mitigating factors:

EUR 20,000 + EUR 10,000+ EUR 24,000 = **EUR 54,000**.

319. Consequently, following adjustment by taking into account the applicable aggravating factors, the amount of the fine to be imposed on the PSI for the infringement concerning policies and procedures amounts to **EUR 54,000**.

4.2.3.5 Maximum cap of the fine and disgorgement of profits

320. Article 65(4) of EMIR provides that "Notwithstanding paragraphs 2 and 3, the amount of the fine shall not exceed 20 % of the annual turnover of the trade repository concerned in the preceding business year but, where the trade repository has directly or indirectly benefited financially from the infringement, the amount of the fine shall be at least equal to that benefit".

321. It should therefore be assessed whether the PSI has directly or indirectly benefited financially from the infringement and, if this is not the case, whether the maximum cap has been exceeded.

Financial benefit from the infringement

322. The Board does not consider that, in this case, the PSI has directly or indirectly benefited from this infringement.

Maximum cap of the fine

323. In the financial year ending 31 December 2024, the PSI generated a total annual turnover of EUR [25-30] million[373].

[373] Regis-TR S.A. Annual Financial Statements as at 31 December 2024, p. 3.

324. EUR [25-30] million x 0.2 = EUR [5-6] million.

325. Therefore, the adjusted fine applicable shall not exceed EUR [5-6] million**.**

4.2.4 Fine under SFTR

4.2.4.1 Basic amount of the fine

326. The PSI was granted an extension of authorisation by ESMA on 29 April 2020 (which entered into force on 7 May 2020) to enable it to perform TR services pertaining to SFTR, for all types of securities financing transactions (SFTs).

327. The relevant version of Article 65 of EMIR provides in paragraph 2 as follows:

> "The basic amounts of the fines referred to in paragraph 1 shall be included within the following limits:
>
> (a) for the infringements referred to in point (c) of Section I of Annex I and in points (c) to (g) of Section II of Annex I, and in points (a) and (b) of Section III of Annex I the amounts of the fines shall be at least EUR 10,000 and shall not exceed EUR 200,000; …
>
> In order to decide whether the basic amount of the fines should be at the lower, the middle or the higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover of the preceding business year of the trade repository concerned. The basic amount shall be at the lower end of the limit for trade repositories whose annual turnover is below EUR 1 million, the middle of the limit for the trade repository whose turnover is between EUR 1 and 5 million and the higher end of the limit for the trade repository whose annual turnover is higher than EUR 5 million".

328. It has been established that the PSI committed the infringement set out at Point (c) of Section I of Annex I to EMIR (in conjunction with SFTR), by not establishing adequate policies and procedures sufficient to ensure compliance, including that of its managers and employees, with all the provisions of SFTR.

329. To determine the basic amount of the fine, the Board has regard to the PSI's latest annual turnover[374].

[374] See in this regard para. 177 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03).

330. In 2024, the PSI had an annual turnover of EUR [25-30] million[375].

331. In this regard, the basic amount of the fine for the infringement listed in Point (c) of Section I of Annex I to EMIR is set at the higher end of the limit of the fine set out in Article 65(2)(a) of EMIR and shall not exceed EUR 200,000.

4.2.4.2 Applicable aggravating factors

332. The applicable aggravating factors listed in Annex II to EMIR are set out below.

Annex II, Point I(b) If the infringement has been committed for more than six months, a coefficient of 1,5 shall apply.

333. As explained in Section 4.1.4 above, ESMA has no discretion in applying this aggravating factor. If an infringement has been committed for more than six months, ESMA must apply the aggravating factor. Here the infringement lasted more than six months, as the deficiencies in the relevant policies and procedures as described above were evident over a number of years.

334. This aggravating factor is therefore applicable.

Annex II, Point I(c) If the infringement has revealed systemic weaknesses in the organisation of the trade repository in particular in its procedures, management systems or internal controls, a coefficient of 2,2 shall apply.

335. In line with the reasoning set out in Sections 4.1.4 and 4.2.3.2 above, the Board finds that the failings in this infringement are sufficient to indicate systemic weaknesses in the PSI, on the same rationale as set out for this infringement under EMIR.

336. Given the foregoing, this aggravating factor is applicable.

4.2.4.3 Mitigating factors

337. Annex II to EMIR lists the mitigating factors to be taken into consideration for the adjustment of the fine. Their application to the present case is assessed below.

Annex II, Point II(a) If the infringement has been committed for less than ten working days, a coefficient of 0,9 shall apply.

338. The infringement at Point (c) of Section I of Annex I to EMIR has been committed for more than ten working days.

[375] Regis-TR S.A. Annual Financial Statements as at 31 December 2024, p. 3.

339. This mitigating factor is therefore not applicable.

Annex II, Point II(b) If the trade repository's senior management can demonstrate that they have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall apply.

340. The Board notes the general remarks on the application of this factor and the PSI's comments as set out in Section 4.2.3.3 above and does not repeat them here.

341. On this basis, the Board finds that not all necessary measures were taken by senior management to prevent the infringement at Point (c) Section I of Annex I to EMIR, read in conjunction with Article 9(1) SFTR.

342. This mitigating factor is therefore not applicable.

Annex II, Point II(c) If the trade repository has brought quickly, effectively, and completely the infringement to ESMA's attention, a coefficient of 0,4 shall apply.

343. In line with the reasoning set out in Section 4.2.3.3 above, the Board notes that there is no evidence that the PSI brought this infringement to the attention of ESMA.

344. Therefore, this mitigating factor is not applicable.

Annex II, Point II(d) If the trade repository has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply.

345. As explained above in Section 4.2.3.3, the Board considers that some remedial actions have been taken. However, as stated above, the Board cannot conclude that these measures amount to voluntary remediation to ensure that similar infringements cannot be committed in the future.

346. The mitigating factor is therefore not applicable.

4.2.4.4 Determination of the adjusted fine

347. In accordance with Article 65(3) of EMIR, taking into account the applicable aggravating and mitigating factors, the basic amount of EUR 200,000 must be adjusted as follows.

348. The difference between the basic amount and the amount resulting from the application of each individual coefficient set out in Annex II is added to the basic amount in the case of the aggravating factors and subtracted from the basic amount in the case of the mitigating factors:

Aggravating factor set out in Annex II, Point I(b):

EUR 200,000 x 1.5 = EUR 300,000

EUR 300,000 – EUR 200,000 = EUR 100,000

Aggravating factor set out in Annex II, Point I(c):

EUR 200,000 x 2.2 = EUR 440,000

EUR 440,000 – EUR 200,000 = EUR 240,000

Adjusted fine taking into account the applicable aggravating and mitigating factors:

EUR 200,000 + EUR 100,000 + EUR 240,000 = **EUR 540,000**

349. Consequently, following adjustment by taking into account the applicable aggravating factors, the amount of the fine to be imposed on the PSI for the infringement concerning policies and procedures under SFTR amounts to **EUR 540,000**.

4.2.4.5 Maximum cap of the fine and disgorgement of profits

350. The Board's conclusions are as set out in Section 4.2.3.5 above: the PSI did not benefit from the infringement and the maximum cap of the fine is EUR [5-6] million.

4.2.5 Conclusion

351. The total amount of the fine to be imposed on the PSI for these infringements related to policies and procedures under EMIR and SFTR amounts to **EUR 594,000**.

4.2.6 Supervisory measures

352. Regard must be had to Article 73, paragraphs 1 and 2, of EMIR.

353. Given the factual findings in the present case and in particular the fact that the infringements under EMIR and SFTR are continuing without full remediation, the supervisory measures set out in Articles 73(1)(a) and 73(1)(c) of EMIR may be considered appropriate with regard to the nature and the seriousness of the infringements.

354. The Board thus imposes two supervisory measures: a public notice and a requirement that the infringements under EMIR and SFTR be brought to an end.

4.3 Analysis of the infringement concerning organisational structure for business continuity (under SFTR)

355. This section of the decision analyses whether the PSI breached the organisational structure requirement pursuant to Article 78(4) of EMIR in conjunction with the following requirements under SFTR:

> "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 78(4) of EMIR**)
>
> "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(2) of SFTR**)
>
> "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 5(4) of SFTR**)

356. If the requirement of adequate organisational structure for business continuity is not met as regards the SFTR activities of the PSI, this would constitute the infringement of Point (d) of Section I of Annex I to EMIR in conjunction with Article 9(1) of SFTR.

4.3.1 Analysis

357. The Board examined in detail the wording and the context of the relevant legislative provisions. Its conclusions are set out below.

4.3.1.1 Legal interpretation

358. Pursuant to Article 78(4) of EMIR, a TR must have a well-defined and effective organisational framework, the structure of which should be adequate to support its operations and responsibilities. The organisational structure must be designed to guarantee that the TR can continue its operations without interruptions and must also ensure that the TR functions smoothly and efficiently while carrying out its activities. Article 78(4) of EMIR also obliges the TR to use systems, resources and procedures that are

suitable taking into account the nature and the complexity of its activities, meaning that the systems, resources and procedures must be proportionate to the needs of the entity.

359. In this respect, the PSI argued that to establish a breach of Article 78(4) of EMIR, ESMA would need to show "proof of structural failure: that the TR lacks the organisational capacity to ensure continuity and orderly functioning. […] An adequate organisational structure does not prevent all incidents, it ensures that the TR can identify incidents, manage them, remediate them, and continue operating"[376]. The PSI claimed that to be in breach of the obligation a TR would have "ceased to provide services or interrupted its operations"[377]. This is not the correct standard; the Board clarifies that it is not necessary to observe an interruption of services in order to establish the infringement. The analysis undertaken by the Board focusses on the adequacy of the organisational structure (which has as its objective the continuity and orderly functioning), a breakdown is not a pre-condition. On the other hand, mere incidents are not enough to establish the infringement[378], which is structural in nature. In this respect, as set out in the below, the facts in relation to this infringement show shortcomings in the PSI's organisational structure that led to those incidents (as observed by the PSI itself in its internal records) affecting the confidentiality, integrity and availability of the data maintained by the TR, which are fundamental to its operations and orderly functioning.

4.3.1.2 Factual analysis

360. The relevant facts under this infringement relate to the implementation of the SFTR project as referenced in Section 2.4 (above). SFTR came into force on 12 January 2016, with a reporting start date on 13 July 2020. The PSI received an extension of authorisation from ESMA for SFTR related activities on 29 April 2020, effective as of 7 May 2020. The evidence in this case shows that the PSI did not employ appropriate and proportionate systems, resources and procedures and thus did not have an adequate organisational structure to ensure continuity and orderly functioning of its activities under SFTR.

361. Between 13 July 2020 and 20 September 2022, the PSI reported **158** SFTR-related **incidents** to ESMA, classified by the period and the impact on data confidentiality, integrity and availability[379]. These **158 incidents** can be divided as follows:

[376] Response to the Board's initial Statement of Findings, pp. 71-72.
[377] Response to the Board's initial Statement of Findings, p. 72. See also Exhibit 23, Response to the Initial SoF, paragraph 328.
[378] Exhibit 23, Response to the Initial SoF, paragraph 330. See also Response to the Board's initial Statement of Findings, pp. 71-72.
[379] Exhibit 1, Supervisory Report, p. 47, para. 250. See also Supervisory Report, Exhibit 131, 'D-35-1 ESMA83-357-34514 Regis-Log_Rfi_18.01.23', spreadsheet named "log_ESMA" pp. 1-14.

362. There were **88 incidents** notified from 13 July 2020 to 31 December 2020. Of these incidents, one impacted confidentiality of data, 36 impacted the integrity of data, 18 impacted the availability of data and 33 impacted the availability and integrity of data[380].

363. There were **44 incidents** notified from 1 January 2021 to 31 December 2021. Of these incidents, one impacted confidentiality of data, six impacted the integrity of data, 23 impacted the availability of data, two impacted the availability and confidentiality of data, and 12 impacted the availability and integrity of data[381].

364. There were **26 incidents** notified from 1 January 2022 to 20 September 2022. Of these incidents, eight impacted the availability of data, four impacted the availability and integrity of data, 12 impacted the integrity of data, and two impacted the integrity and availability of the data[382].

365. Between 13 July 2020 and 21 October 2022, the PSI was responsible for approximately 49% of all SFTR incidents notified by all TRs to ESMA[383]. For context, the PSI's market share of reporting under SFTR is 15%[384].

366. The evidence indicates several causes of the incidents described above. These can be grouped in the following categories: (i) oversights during the preparation phase, including late preparation; (ii) SDLC (System Development lifecycle) problems, management constraints, testing methodology and quality of the deliveries; and (iii) issues with the allocation of resources[385].

367. Regarding **oversights during the preparation phase**, including late preparation, the Board emphasises that the evidence that predates the PSI's registration under SFTR (effective 7 May 2020) is provided as important background and does not underpin the assessment of the infringement itself, which only began once the PSI registered under SFTR. For the avoidance of any doubt, the Board only considered the evidence dating after the PSI's registration when considering the establishment of the infringement[386].

368. As to these oversights during the preparation phase, the Board notes that the PSI's COO held daily meetings with the Quality Assessment ("QA") team starting from April 2020, only less than three months before the SFTR reporting start date, to monitor the project's

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[380] Exhibit 1, Supervisory Report, p. 47, para 251. See also Supervisory Report, Exhibit 131, 'D-35-1 ESMA83-357-34514 Regis-Log_Rfi_18.01.23', spreadsheet named "log_ESMA" pp. 1-14.
[381] Exhibit 1, Supervisory Report, p. 47, para 252. See also See also Supervisory Report, Exhibit 131, 'D-35-1 ESMA83-357-34514 Regis-Log_Rfi_18.01.23', spreadsheet named "log_ESMA " pp. 1-14.
[382] Exhibit 1, Supervisory Report, p. 47, para 253. See also Supervisory Report, Exhibit 131, 'D-35-1 ESMA83-357-34514 Regis-Log_Rfi_18.01.23', spreadsheet named "log_ESMA" pp. 1-14.
[383] Exhibit 9, ESMA Supervisors' Response to the IIO, p. 4.
[384] Exhibit 1, Supervisory Report, p. 7.
[385] Exhibit 1, Supervisory Report, p. 40. See also, Supervisory Report, Exhibit 111, 'REGIS-TR 2022_Annual Compliance Report', Section 3.2.3.1. SFTR implementation project, p. 17.
[386] The Board clarifies this point in response to the arguments raised by the PSI in Response to the Board's initial Statement of Findings, p. 74 and Exhibit 23, Response to the Initial SoF, paragraph 313.

final implementation phase[387]. Preparations for the reporting start date included system tests from early June 2020 to 13 July 2020, using test templates in place at that time[388]. He coordinated problem identification process during the test phase and reported progress through eight test reports to GEM between 3 June 2020 and 5 July 2020[389]. Importantly, as of 3 July 2020 (which was after the PSI's registration under SFTR), 136 out of 948 critical tests cases failed, and 40 out of 7455 high-risk test cases failed[390]. The COO mentioned in his report that 13 "blocker bugs" were identified and priority was given to the resolution of these bugs[391]. The PSI performed an individual impact analysis on all bugs not fixed by the reporting start date, to determine whether there were potential incidents[392]. 49 incidents resulting from this internal assessment were reported to ESMA[393]. The COO acknowledged that not all tests could be completed due to time constraints[394]. During the BoD of 2 October 2020, it was mentioned that SFTR reporting took place with "pending implementations from the project and a number of found bugs and issues detected before and since the reporting start date"[395]. The BoD of 16 December 2021 acknowledged that there was a lack of testing vis-à-vis bugs. The COO committed that by mid-April 2022 there should be zero incident in the system[396]. However, during the BoD of 10 March 2022, the COO acknowledged the high ratio of bugs detected post-implementation versus in testing (25%), noting that the quality of the SFTR release "was not optimal due to the limited testing time and should be improved with the June release"[397]. Against this background, the Board notes that there were still incidents reported under SFTR after April 2022[398].

369. It is clear that there were concerns about the PSI's organisational structure, and its ability to ensure continuity and orderly functioning of the PSI in the performance of its services and activities under SFTR, which remained unresolved post-registration.

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[387] Exhibit 1, Supervisory Report, p. 48. See also Supervisory Report, Exhibit 155, '23.C.2.4. Conference – Seguimiento desarrollo SFTR'.
[388] Exhibit 1, Supervisory Report, p. 48. See also Supervisory Report, Exhibit 156, 'A-15-1- SFTR Test Report 3 June 2020.pdf', Supervisory Report, Exhibit 157, 'A-15-2 - SFTR Test Report 9 June 2020.pdf', Supervisory Report, Exhibit 158, 'A-15-3 - SFTR Test Report 11 June 2020.pdf', Supervisory Report, Exhibit 159, 'A-15-4 - SFTR Test Report 15 June 2020.pdf', Supervisory Report, Exhibit 160, 'A-15-5 - SFTR Test Report 18 June 2020.pdf', Supervisory Report, Exhibit 161, 'A-15-6 - SFTR Test Report 24 June 2020.pdf', Supervisory Report, Exhibit 162, 'A-15-7 - SFTR Test Report 30 June 2020.pdf', and Supervisory Report, Exhibit 163, 'A-15-8 - SFTR Test Report 5 July 2020.pdf'.
[389] Exhibit 1, Supervisory Report, p. 48. See also Supervisory Report, Exhibit 156, 'A-15-1- SFTR Test Report 3 June 2020.pdf', Supervisory Report, Exhibit 157, 'A-15-2 - SFTR Test Report 9 June 2020.pdf', Supervisory Report, Exhibit 158, 'A-15-3 - SFTR Test Report 11 June 2020.pdf', Supervisory Report, Exhibit 159, 'A-15-4 - SFTR Test Report 15 June 2020.pdf', Supervisory Report, Exhibit 160, 'A-15-5 - SFTR Test Report 18 June 2020.pdf', Supervisory Report, Exhibit 161, 'A-15-6 - SFTR Test Report 24 June 2020.pdf', Supervisory Report, Exhibit 162, 'A-15-7 - SFTR Test Report 30 June 2020.pdf', and Supervisory Report, Exhibit 163, 'A-15-8 - SFTR Test Report 5 July 2020.pdf'.
[390] Exhibit 1, Supervisory Report, p. 48. See also Supervisory Report, Exhibit 163, 'A-15-8 - SFTR Test Report 5 July 2020.pdf'.
[391] Exhibit 1, Supervisory Report, p. 48. See also Supervisory Report, Exhibit 163, 'A-15-8 - SFTR Test Report 5 July 2020.pdf'.
[392] Exhibit 1, Supervisory Report, p. 48. See also Supervisory Report, Exhibit 8, 'First Reply to RFI', Question A(15) e), p. 30.
[393] Exhibit 1, Supervisory Report, p. 48. See also Supervisory Report, Exhibit 8, 'First Reply to RFI', Question A(15) e), p. 30.
[394] Exhibit 1, Supervisory Report, p. 50. See also Exhibit 156, 'A-15-1- SFTR Test Report 3 June 2020.pdf'.
[395] Supervisory Report, Exhibit 101, 'REGIS-TR Board pack_01.12.2020', p. 8.
[396] Supervisory Report, Exhibit 130, 'TOPIC 2 - REGIS-TR S.A. BoD - 2021.12.16 Minutes', Topic 6, p. 6.
[397] Supervisory Report, Exhibit 132, 'TOPIC 2a - REGIS-TR S.A. BoD - 2022.03.10 - minutes (2)', pp. 5-6.
[398] Exhibit 1, Supervisory Report, p. 50.

370. Regarding the **SDLC problems, management constraints, testing methodology and quality of the deliveries**, the Board notes that in the 2020 Annual Compliance Report, the Compliance function stated that the project management of SFTR implementation was undermined. It also said that "the lack of effective control framework and the errors in the definition, development and testing of SFTR solution are the reason for the high number of incidents and bugs that are reported by [the PSI] during 2020, and their delayed resolution"[399]. The ex-post report analysing the root cause of all incidents under SFTR reported to ESMA indicated that the root cause of the majority of the incidents reported following the deployment of SFTR project (78%) related to the SDLC failure / problems[400]. After the SFTR reporting start date, the PSI improved its test libraries and templates and created a new test template in March 2021[401]. As part of the PSI's [Internal project 1: redacted due to confidentiality], an ex-post report was completed in October 2021[402]. According to this document, incidents under SFTR from 13 July 2020 to 30 October 2021 were caused by SDLC failures[403]. The 2022 Annual Compliance report mentioned that the deployment of activity under SFTR provoked a number of incidents and bugs in the system that needed long periods to be fixed[404]. The main root causes identified were capacity management constraints, inefficiencies in the SDLC framework, testing methodology and quality of the deliveries[405].

371. The PSI referred to the incident reports as detailed above and concluded that "… ESMA never demonstrated to [the PSI] that these incidents (which are the focus of the current allegations against it) were due to deficiencies in its organisational structure or in the allocation of resources for business continuity. This is because these incidents merely reflected the normal challenges associated with the start-up phase of its business with respect to transactions in financial instruments, those under SFTR, which are significantly different from those under EMIR"[406]. The PSI further argued that "[t]his complexity meant that even a well-resourced and well-organised TR would face implementation challenges when extending its operations to cover a new asset class" [407]. The Board takes the view that the high number of incidents notified to ESMA were symptoms of the problems as described above, namely oversights during the preparation phase, including late preparation; SDLC problems, management constraints, testing methodology and quality of the deliveries; and issues with the allocation of resources. The link between the underlying issues, and particularly issues with SDLC, is highlighted in the PSI's own 2020 Annual

[399] Supervisory Report, Exhibit 95, 'TOPIC 6 Compliance Status Update_Annual Compliance Report', Section 5.1.5.3 COMPLIANCE ASSESSMENT CONCLUSIONS 2020, p. 57.
[400] Supervisory Report, Exhibit 166, 'A-15-19 - IP11 - SFTR incident root-cause analysis report.pdf', p. 5.
[401] Exhibit 1, Supervisory Report, p. 48. See also Supervisory Report, Exhibit 8, 'First Reply to RFI', Question A(15) c), p. 29 and Supervisory Report, Exhibit 165, '23.C.3.4. REGULATION -TP-BRD-NAME'.
[402] Supervisory Report, Exhibit 166, 'A-15-19 - IP11 - SFTR incident root-cause analysis report'.
[403] Supervisory Report, Exhibit 166, 'A-15-19 - IP11 - SFTR incident root-cause analysis report', Sections 1,3, 4 and 5.
[404] Supervisory Report, Exhibit 111, 'REGIS-TR 2022_Annual Compliance Report', Section 3.2.3.1. p. 17.
[405] Supervisory Report, Exhibit 111, 'REGIS-TR 2022_Annual Compliance Report', Section 3.2.3.1. p. 17.
[406] Exhibit 23, Response to the Initial SoF, paragraph 297
[407] Response to the Board's initial Statement of Findings, p. 67.

Compliance Report, which stated that the project management of SFTR implementation was undermined and said that "the lack of effective control framework and the errors in the definition, development and testing of SFTR solution are the reason for the high number of incidents and bugs that are reported by [the PSI] during 2020, and their delayed resolution"[408]. Also, as noted above, the ex-post report analysing the causes of all incidents under SFTR reported to ESMA indicated that the root cause of most (78%) related to SDLC failure problems[409]. Therefore, on the basis of the PSI's own analysis, the incidents were symptomatic of the deeper problems as outlined above, which show an inadequate organisational structure to allow orderly functioning of the TR in the performance of its activities.

372. The PSI also noted that the number of incidents "progressively declined until they ceased altogether … not because [the PSI] corrected deficiencies (which did not exist) in its organisational structure or resource allocation (which ESMA itself considered sufficient and adequate), but as a result of the experience it acquired in registering financial instrument transactions under SFT[R] and as the natural evolution of the stabilization period of any market infrastructure platform"[410]. Given that, as noted above, the Board based its conclusions not only on the number of incidents but on an analysis of their underlying causes, the purported reduction in notifications does not affect the assessment of whether the infringement is established. Further, a decline does not affect the fact that there were a disproportionate number of incidents reported by the PSI[411], which indicated the presence of underlying issues.

373. As above, it is clear that the PSI did not employ appropriate and proportionate systems, resources and procedures to ensure compliance with its obligations under SFTR.

374. Regarding **resource allocation**, the Board notes that the lack of appropriate resources was an issue raised in BoD meetings (23 May 2019[412], 17 September 2019[413], and 10 March 2022[414]) and constantly during GEM meetings (24 January 2018[415], 11 April 2018[416], 23 May 2018[417] and 29 March 2019[418]). It was also mentioned in the 2020 Annual Compliance Report, focusing on the lack, for certain areas, of expertise and knowledge

[408] Supervisory Report, Exhibit 95, 'TOPIC 6 Compliance Status Update_Annual Compliance Report', Section 5.1.5.3 COMPLIANCE ASSESSMENT CONCLUSIONS 2020, p. 57.
[409] Exhibit 23, Supervisory Report, Exhibit 166, 'A-15-19 - IP11 - SFTR incident root-cause analysis report.pdf', p. 5.
[410] Exhibit 23, Response to the Initial SoF, paragraph 298. See also Response to the Board's initial Statement of Findings, pp. 69-70.
[411] As noted above, the PSI represents 49% of reported SFTR incidents between July 2020 and October 2022, when the PSI's market share was far smaller (15%).
[412] Supervisory Report, Exhibit 127, 'BoD Documentation Pack 17 September 2019 updated 16.09.2019', p. 12.
[413] Supervisory Report, Exhibit 121, 'RTR BoD 10.12.2019 Documentation Pack F', p. 12.
[414] Supervisory Report, Exhibit 132, 'TOPIC 2a - REGIS-TR S.A. BoD - 2022.03.10 – minutes'.
[415] Supervisory Report, Exhibit 144, '20180124 GEM Meeting Minutes'.
[416] Supervisory Report, Exhibit 146, '20180411 GEM Meeting Minutes'.
[417] Supervisory Report, Exhibit 148, '20180523 GEM Meeting Minutes'.
[418] Supervisory Report, Exhibit 149, '20190329 GEM Meeting Minutes'.

required for a highly regulated service such as the one offered by a TR[419]; the report also referred to the serious shortcomings shown by staff during the implementation of the SFTR project which demonstrated the need to improve resources with the right knowledge and expertise[420]. The report on tests results from the COO to the GEM, dated 9 June 2020[421], mentioned that, due to time and resources constraints, not all tests could be performed before the start of reporting. The Annual Risk Reports for 2019[422] and 2020[423] also raised issues with regard to the adequacy of resources which, according to the PSI had been mitigated by January 2021[424], notably by creating a QA function team and increasing staffing of the QA team to enhance test executions[425]. However, there has been no significant increase in terms of full time equivalent headcount from December 2019 to December 2022 in this team (seven in 2019, eight in 2020, 11 in 2021 and 11 in 2022) and most of the employees were outsourced[426], which raises a concern on knowledge and expertise of staff in-house.

375. In this respect, the PSI noted that it was "prudent business practice to outsource activities in areas where an organisation lacks experience, until such expertise is developed internally […and that] the increase from seven FTEs in 2019 to 11 FTEs in 2022 represents a 57% increase in headcount, which is material in the context of a specialised QA function"[427]. The increase in staff numbers is welcome, but the points made by the Board above regarding resource allocation remain. In such a small team any increase in numbers has a big impact in terms of percentage but does not automatically translate to adequate staffing.

376. The PSI also requested that ESMA should engage in a comparative analysis with other TRs[428] and notes improvements in its organisational structure[429]. On the first point, the current case concerns the PSI and not other entities. It is perhaps of note in this context that compared to its competitors, the PSI was responsible for a disproportionate number of reported incidents, as noted above. As to improvements, where relevant, the Board takes them into account in assessing the application of aggravating and mitigating factors.

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[419] Supervisory Report, Exhibit 95, 'TOPIC 6 Compliance Status Update_Annual Compliance Report', Section 5.1.5.3 COMPLIANCE ASSESSMENT CONCLUSIONS 2020.
[420] Supervisory Report, Exhibit 95, 'TOPIC 6 Compliance Status Update_Annual Compliance Report', Section 5.1.5.3 COMPLIANCE ASSESSMENT CONCLUSIONS 2020, p. 57.
[421] Supervisory Report, Exhibit 157, 'A-15-2 - SFTR Test Report 9 June 2020.pdf'.
[422] Supervisory Report, Exhibit 122, 'A-15-17 RTR Annual Risk Report 2019', p. 195.
[423] Supervisory Report, Exhibit 124, 'A-15-18 - REGIS-TR Annual Risk Report 2020.pdf'.
[424] Supervisory Report, Exhibit 8, 'First Reply to RFI', Question C(29), p. 52 and Exhibit A-10-2 – REORG_Communication_20210217.
[425] Supervisory Report, Exhibit 44, '1.6.3 2020 REGIS-TR Roles and Responsibilities matrix.xlsx', Supervisory Report, Exhibit 45, '1.6.4 2021 REGIS-TR Roles & Responsibilities matrix.xlsx' and Supervisory Report, Exhibit 46, '1.6.5 2022 REGIS-TR Roles & Responsibilities matrix.xlsx'.
[426] Supervisory Report, Exhibit 8, 'First Reply to RFI', Question A(6), p. 13.
[427] Response to the Board's initial Statement of Findings, p. 69. See also Exhibit 23, Response to the Initial SoF, paragraph 301.
[428] Exhibit 23, Response to the Initial SoF, paragraphs 322 to 323.
[429] Exhibit 23, Response to the Initial SoF, paragraphs 325 to 327.

377. Finally, the PSI further took issue with the assessment based on arguments in relation to legitimate expectations [430] and legality [431]. The Board carefully assessed these arguments and finds them unfounded in line with its analysis outlined above.

378. In light of the analysis of the wording of Article 78(4) of EMIR, as mentioned above, it is clear from the foregoing that the PSI did not employ appropriate and proportionate systems, procedures and resources and did not maintain and operate an adequate organisational structure to ensure continuity and orderly functioning of its SFTR activities; this resulted in a high number of reported incidents under SFTR following the reporting start date.

379. On this basis, the Board finds that the facts described above show shortcomings in the PSI's organisational structure, including insufficient systems, procedures and resources, which were acknowledged by the PSI in various reporting documents and resulted in numerous incidents following the reporting start date.

380. In its activities under SFTR, therefore, the PSI did not meet the requirements of Article 78(4) of EMIR in conjunction with Article 5(2) of SFTR. This constitutes a breach of Point (d) of Section I of Annex I to EMIR in conjunction with Article 9(1) of SFTR.

381. Given that this infringement relates only to the PSI's acts and omissions in its capacity as a TR registered under SFTR, the infringement is established only under SFTR (by reference to the requirement in EMIR). As underlined at several points above, while some reference has been made above to facts that preceded the PSI's registration under SFTR, this is done only to provide context.

4.3.2 Intent or negligence

382. The Board takes note of Article 65(1) of EMIR as cited and explained in Section 4.2.2 above.

383. The Board considers that, overall, the factual background as set out in this decision does not establish that there are objective factors which demonstrate that the PSI, its employees or senior managers acted deliberately to commit the infringement.

384. It should therefore be assessed whether the PSI acted with negligence.

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[430] Exhibit 23, Response to the Initial SoF, paragraphs 291 to 305. See also Response to the Board's initial Statement of Findings, p. 73.
[431] Exhibit 23, Response to the Initial SoF, paragraphs 306 to 331. See also Response to the Board's initial Statement of Findings, pp. 71-72.

4.3.2.1 Assessment of negligence in the present case

385. Regarding the assessment of negligence in the present case, the Board notes the following.

386. The PSI claimed that it had not been negligent in the commission of the infringement and that, on the contrary, "[it] exercised special care in preparing for SFTR implementation"[432] and that "[i]mplementation challenges are normal and expected when a TR extends its operations to cover a new and complex asset class"[433]. However, the Board cannot accept these arguments on the following grounds.

387. Contrary to the PSI's claims[434], as an experienced player in the market, the PSI should have been aware of the need to make adequate changes in preparation for the impending registration as a TR under SFTR and be in compliance from the reporting start date. The evidence shows that its preparations were inadequate and the results were stark: in a period of little more than two years, it reported 158 incidents in relation to its activities under SFTR, which represent almost half of all the SFTR incidents reported by all the registered TRs. As noted above, the PSI's market share was 15%[435]. These reports were due to several factors, but it is clear from the foregoing that at many levels, including the BoD, there were issues raised, in particular as regards adequate resourcing and expertise, both before and after the SFTR reporting start date.

388. These shortcomings amount to strong evidence of negligence, as the failings exposed go to the heart of the PSI's obligations under SFTR to have an adequate organisational structure for the performance of its services.

389. Overall, on the basis of the elements described above, the Board considers that the PSI failed to take the special care expected of a TR. As a professional firm in the financial services sector subject to stringent regulatory requirements, the PSI is required to take special care in assessing the risks that its acts or omissions entail, and has failed to take that care; and as the result of that failure, it has not foreseen the consequences of its acts or omissions, including particularly its infringement of EMIR in conjunction with SFTR, in circumstances where a TR in such a position that is normally informed and sufficiently attentive could not have failed to foresee those consequences.

390. Therefore, it is considered that the PSI was negligent when committing the infringement set out at Point (d) of Section I of Annex I to EMIR in conjunction with Article 9(1) of SFTR.

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[432] See Response to the Board's initial Statement of Findings, pp. 74-75.
[433] See Response to the Board's initial Statement of Findings, p. 75.
[434] Response to the Board's initial Statement of Findings, pp. 74-75.
[435] Exhibit 1, Supervisory Report, p. 7.

4.3.3 Fine

4.3.3.1 Basic amount of the fine

391. The PSI was granted an extension of authorisation by ESMA on 29 April 2020 (which entered into force on 7 May 2020) to enable it to perform TR services pertaining to SFTR, for all types of securities financing transactions (SFTs).

392. The relevant version of Article 65 of EMIR provides in paragraph 2 as follows:

> "(b) for the infringements referred to in points (a), (b) and (d) to (k) of Section I of Annex I, and in points (a), (b) and (h) of Section II of Annex I, the amounts of the fines shall be at least EUR 5,000 and shall not exceed EUR 100,000; …
>
> In order to decide whether the basic amount of the fines should be at the lower, the middle or the higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover of the preceding business year of the trade repository concerned. The basic amount shall be at the lower end of the limit for trade repositories whose annual turnover is below EUR 1 million, the middle of the limit for the trade repository whose turnover is between EUR 1 and 5 million and the higher end of the limit for the trade repository whose annual turnover is higher than EUR 5 million"

393. It has been established that the PSI committed the infringement set out in Point (d) of Section I of Annex I to EMIR, in conjunction with Article 9(1) of SFTR, by not maintaining or operating an adequate organisational structure to ensure continuity and orderly functioning of the TR in the performance of its services and activities.

394. To determine the basic amount of the fine, the Board has regard to the PSI's latest annual turnover[436].

395. In 2024, the PSI had an annual turnover of EUR [25-30] million[437].

396. In this regard, the basic amount of the fine for the infringement listed in Point (d) of Section I of Annex I to EMIR is set at the higher end of the limit of the fine set out in Article 65(2)(b) of EMIR and shall not exceed EUR 100,000.

[436] See in this regard paragraph 177 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03).
[437] Regis-TR S.A. Annual Financial Statements as at 31 December 2024, p. 3.

4.3.3.2 Applicable aggravating factors

397. The applicable aggravating factors listed in Annex II to EMIR are set out below.

Annex II, Point I(b) If the infringement has been committed for more than six months, a coefficient of 1,5 shall apply.

398. As explained in Section 4.1.4 above, ESMA has no discretion in applying this aggravating factor. If an infringement has been committed for more than six months, ESMA must apply the aggravating factor. The deficiencies in the organisational structure as described above were evident over a number of years.

399. This aggravating factor is thus applicable.

Annex II, Point I(c) If the infringement has revealed systemic weaknesses in the organisation of the trade repository in particular in its procedures, management systems or internal controls, a coefficient of 2,2 shall apply.

400. In line with the reasoning set out in Sections 4.1.4 and 4.2.3.2 above, the Board finds that the failings in this infringement are sufficient to indicate systemic weaknesses in the PSI.

401. Contrary to the PSI's claim[438], there is specific evidence in the file supporting the conclusion that the PSI failures constitute shortcomings that extend beyond the infringement itself. Most notably the fact that the PSI should have been aware of the need to make adequate changes in preparation for the impending registration as a TR under SFTR and have in place an adequate organisational structure from the SFTR reporting start date. However, its preparations were inadequate and for example issues with SDLC and allocation of resources undermined its organisational structure. These deep-rooted shortcomings in resourcing and expertise remained unresolved for an extended period, both before and after the reporting start date and are evidence of systemic weaknesses in the PSI[439].

402. Given the foregoing, this aggravating factor is applicable.

Annex II, Point I(d) If the infringement has had a negative impact on the quality of the data the TR maintains, a coefficient of 1,5 shall apply.

403. In the file, there is evidence to demonstrate that there was an impact on the quality of the data maintained by the PSI. According to the evidence, the impact areas of the various

[438] Response to the Board's initial Statement of Findings, p. 75.
[439] See also Exhibit 11, ESMA Supervisors' Second Response to IIO, Response to Q9, p. 5.

incidents include the integrity and availability of data[440]; these are very obviously relevant to data quality.

404. While acknowledging, that "data quality might have been affected to some extent due to errors in the SDLC [… the PSI claimed that] The issue, however, is one of materiality. [… The PSI further argued that ESMA needed to] establish that data quality was materially compromised, that incorrect data was disseminated to users, or that the integrity or availability of data was substantially affected"[441]. There is nothing in the relevant legislation to support such a claim, any negative impact on the quality of the data the TR maintains is sufficient to establish the aggravating factor. The Board finds that the evidence[442] in the file clearly shows such negative impact on the quality of the data.

405. The aggravating factor is therefore applicable.

4.3.3.3 Mitigating factors

406. Annex II to EMIR lists the mitigating factors to be taken into consideration for the adjustment of the fine. Their application to the present case is assessed below.

Annex II, Point II(a) If the infringement has been committed for less than ten working days, a coefficient of 0,9 shall apply.

407. The infringement at Point (d) of Section I of Annex I to EMIR, in conjunction with Article 9(1) of SFTR, has been committed for more than ten working days.

408. This mitigating factor is therefore not applicable.

Annex II, Point II(b) If the trade repository's senior management can demonstrate that they have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall apply.

409. The Board notes the general remarks on the application of this factor and the PSI's comments as set out in Section 4.2.3.3 above and does not repeat them here.

410. Further, the PSI stated that "Risks related to [the PSI's] SFTR implementation were identified, assessed and managed according to the criteria described in the … Risk Management Policy and Risk Management Procedure. Risks that could affect the PSI's SFTR implementation were identified not only during the project's development phase, but

[440] Supervisory Report, Exhibit 131, 'D-35-1 ESMA83-357-34514 Regis-Log_Rfi_18.01.23', spreadsheet named "log_ESMA", pp. 1-14.
[441] Response to the Board's initial Statement of Findings, p. 76.
[442] See in particular Supervisory Report, Exhibit 131, 'D-35-1 ESMA83-357-34514 Regis-Log_Rfi_18.01.23', spreadsheet named "log_ESMA" pp. 1-14.

also following the go-live of SFTR, as the Risk management activity is performed by the Risk function of [the PSI] on an ongoing basis. The results were presented to the BoD, and they contain not only a description of every risk, but they also detail their potential sources/drivers as well as a list of control measures in place at the time and any corresponding mitigating actions taken. In addition to that, a periodic update on the evolution of the identified risks with a specific focus on the – not limited to SFTR – most critical ones and the corresponding defined mitigation actions is presented by the Risk function at every ordinary Board meeting since then"[443].

411. This does not constitute sufficient evidence that all necessary measures were taken by senior management to prevent the infringement at Point (d) Section I of Annex I to EMIR, in conjunction with Article 9(1) of SFTR, especially given that the above risks materialised.

412. This mitigating factor is therefore not applicable.

Annex II, Point II(c) If the trade repository has brought quickly, effectively, and completely the infringement to ESMA's attention, a coefficient of 0,4 shall apply.

413. In line with the reasoning and PSI's arguments already set out in Section 4.2.3.3, the Board notes there is no evidence that the PSI brought this infringement to the attention of ESMA.

414. Therefore, this mitigating factor is not applicable.

Annex II, Point II(d). If the trade repository has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply.

415. In the instant case, the PSI provided a description of a number of actions taken to remedy issues identified in the areas covered by the case. The PSI claimed that it "demonstrated a continuous and significant commitment to improving Incident Management through a series of strategic initiatives, such as segregating Incident Management responsibilities from Quality Management and providing additional resources, counting with a regular oversight of the Compliance function as part of the execution of its Annual Monitoring Program"[444], that it has carried out "adaptation to ESMA's evolving guidance and the retrospective analysis of SFTR incidents, which provided valuable insights for ongoing enhancements"[445] as well as "[I]mprovements on employing appropriate and proportional systems resources and procedures to ensure

[443] Exhibit 2, PSI's Response to the IIO's RFI, p. 29.
[444] Exhibit 2, PSI's Response to the IIO's RFI, pp. 29-30.
[445] See Exhibit 2, PSI's Response to the IIO's RFI, pp. 30-32 with a detailed description of the specific actions taken, which included a segregation of responsibilities, increased resource capacity, inclusions in [Internal project 1: redacted due to confidentiality], implementation of Jira for incident reporting and improved tools capabilities and improved workflow, retrospective analysis of SFTR-incidents, weekly incidents committee, enhanced reporting to the BoD on Incident Management as well as improvements encompassed with clearer guidance received from ESMA.

continuity and orderly functioning in the performance of their activities and services"[446]. The PSI stated that "starting with the development of SFTR, but not limited to that project, [the PSI] took the decision to initiate and later on to widen the direct contractual collaboration – beside BME PTS - with other IT development service providers with the aim to seek for further and/or complementary expertise and ad-hoc support resources in the areas of IT/system development as well as system/quality assurance testing activities. Moreover, and to strengthen the monitoring and control of [the PSI] on future project governance, SDLC and quality of software deliveries, [the PSI] put together its 2021-2022 [Internal project 1: redacted due to confidentiality] […], which was shared with the [PSI] Board of Directors on 29 July 2021 and ESMA on 31 July 2021 and which constitutes a further initiative to implement via 21 different deliverables tangible improvements in some of our key areas of, both, from a process as well as from a control perspective"[447].

416. Therefore, the Board considers that some measures were taken. However, these were not sufficient to remediate the shortcomings set out above given that no changes to the organisational structure were undertaken and incidents persisted. Thus, due to the serious and ongoing nature of the infringement, the Board cannot conclude that these measures amount to voluntary remediation to ensure that similar infringements cannot be committed in the future.

417. The mitigating factor is therefore not applicable.

4.3.3.4 Determination of the adjusted fine

418. In accordance with Article 65(3) of EMIR, taking into account the applicable aggravating and mitigating factors, the basic amount of EUR 100,000 must be adjusted as follows.

419. The difference between the basic amount and the amount resulting from the application of each individual coefficient set out in Annex II is added to the basic amount in the case of the aggravating factors and subtracted from the basic amount in the case of the mitigating factors:

Aggravating factor set out in Annex II, Point I(b):

EUR 100,000 x 1.5 = EUR 150,000

EUR 150,000 – EUR 100,000 = EUR 50,000

Aggravating factor set out in Annex II, Point I(c):

EUR 100,000 x 2.2 = EUR 220,000

[446] Exhibit 2, PSI's Response to the IIO's RFI, p. 26.
[447] Exhibit 2, PSI's Response to the IIO's RFI, p. 26.

EUR 220,000 – EUR 100,000 = EUR 120,000

Aggravating factor set out in Annex II, Point I(d):

EUR 100,000 x 1.5 = EUR 150,000

EUR 150,000 – EUR 100,000 = EUR 50,000

Adjustment of the fine taking into account applicable aggravating and mitigating factors:

EUR 100,000 + EUR 50,000 + EUR 120,000 + EUR 50,000 = **EUR 320,000**

420. Consequently, following adjustment by taking into account the applicable aggravating factors, the amount of the fine to be imposed on the PSI for the infringement concerning the organisational structure amounts to **EUR 320,000.**

4.3.3.5 Maximum cap of the fine and disgorgement of profits

421. The Board's conclusions are as set out in Section 4.2.3.5 above: the PSI did not benefit from the infringement, and the maximum cap of the fine is [5-6] million.

4.3.4 Conclusion

422. The total amount of the fine to be imposed on the PSI for the infringement related to the PSI's organisational structure for business continuity (under SFTR) amounts to **EUR 320,000.**

4.3.5 Supervisory measures

423. Regard must be had to Article 73, paragraphs 1 and 2, of EMIR.

424. Given the factual findings in the present case and in particular the fact that the infringement is continuing without full remediation, the supervisory measures set out in Articles 73(1)(a) and 73(1)(c) of EMIR may be considered appropriate with regard to the nature and the seriousness of the infringement.

425. The Board thus imposes two supervisory measures: a public notice and a requirement that the infringement under SFTR be brought to an end.

4.4 Analysis of the infringements concerning operational risks (under EMIR and SFTR)

426. This section of the decision analyses whether the PSI breached the following requirement:

> "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 79(1) of EMIR**)[448]

427. If this requirement is not met, this would constitute the infringement set out at Point (a) of Section II of Annex I to EMIR.

428. Moreover, this section of the decision analyses whether the PSI breached the operational risk requirement pursuant to Article 79(1) of EMIR in conjunction with the following requirements under SFTR:

> "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(2) of SFTR**)

> "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 5(4) of SFTR**)

429. If the requirement regarding operational risks is not met as regards the SFTR activities of the PSI, this would constitute the infringement of Point (a) of Section II of Annex I to EMIR in conjunction with Article 9(1) of SFTR.

4.4.1 Analysis

430. The Board examined in detail the wording and the context of the relevant legislative provisions. Its conclusions are set out below.

4.4.1.1 Legal interpretation

431. In any business, operational risk is the risk of losses caused by flawed or failed processes, policies, systems or events that disrupt business operations. A TR's obligation in relation to operational risk pursuant to Article 79(1) of EMIR is twofold: it shall first identify

[448] This provision was amended on 17 January 2025. The new version reads ""A trade repository shall identify sources of operational risk and minimise them also through the development of appropriate systems, controls and procedures, including ICT systems managed in accordance with [DORA]": The corresponding infringement at Point (a) of Section II of Annex I to EMIR was amended in the same terms. This change does not affect the assessment as the facts in relation to the infringements as assessed below took place before the amendment was made.

the risks to which it is exposed and their sources. Second, once the risks are identified, the TR shall develop systems, controls and procedures to minimise those risks. The previous version of Article 79(1) of EMIR specifies that such solutions must be reliable and secure and have an adequate capacity to handle the information received. Despite the amendment of the provision noted above, the requirements of reliability, security and adequate capacity are ongoing, as they are ordinary features of appropriate systems, controls and procedures. Further, it is of note that the infringements as assessed below started and ended before the amendment was made.

432. In this respect, the PSI argued that the threshold for finding a breach should be high and that the requirement should be interpreted to "not require perfection, zero incidents, or systems that prevent all operational risks from crystallising. It requires appropriate systems to minimise risks, meaning reduce them to an acceptable level. Thus, isolated incidents cannot be automatically converted into breaches of Article 79(1) EMIR [... and that it should not require] systems that prevent all risks from crystallising"[449]. The Board takes note of these arguments; however they are peripheral to the facts in the case, that show evidence of structural failings as set out below.

4.4.1.2 Factual analysis

433. As to the facts in the present case, the Board examined an aspect of the Brexit project under the EMIR framework, related to the risk of confidentiality breach due to the ongoing access of TRs (which were no longer registered in the EU) to the EU inter-TR SFTP folder. The Board also examined two particular aspects under the SFTR framework: the LEI update and the portability arrangement for port-out process. Each is analysed in turn below.

434. First, as to the **failure to mitigate risks related to Brexit**, which is the failing which underpins the breach of EMIR, and specifically the risk of confidentiality breach due to access of TRs, which were no longer registered in the EU, to the EU inter-TR SFTP folder, after the Brexit go-live date[450], the Board notes that the PSI stated that a checklist was produced to ensure a successful transition for the EMIR UK regulation Go Live planned for 4 January 2021. The cut-off of service to the TRs who were no longer authorised under EMIR was included, but due to human error, this task was not added for [TR 1: redacted due to confidentiality] or [TR 2: redacted due to confidentiality] and therefore not performed. This task was included with respect to the other relevant TRs and therefore was performed[451]. This constituted a failure to mitigate this risk with appropriate systems, controls and procedures and is thus not compliant with Article 79(1) of EMIR.

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[449] Response to the Board's initial Statement of Findings, p. 78.
[450] Exhibit 1, Supervisory Report, p. 35.
[451] Supervisory Report, Exhibit 8, 'First Reply to RFI', Question B(26)b), page 47. See also Supervisory Report, Exhibit 105, 'B-26-1 - INC-485 Incident Report'.

435. The PSI in this respect argued that the "access was detected by [the PSI] itself, and that [the PSI] took the necessary mitigating measures as quickly as possible" and "the extent of the access to the information by both, since [TR 2: redacted due to confidentiality] confirmed that it had not accessed any information, and [TR 1: redacted due to confidentiality] signed a comfort letter and assured that it had deleted all downloaded non-UK files"[452]. The PSI thus identified the risk of accessing the EU inter-TR SFTP folder. However, while it developed some controls and procedures to mitigate those risks, they were not adequate to minimise the risk, which crystallised because of a "human error" according to the PSI. The Board also notes that the PSI only detected the error in the access restrictions six months after the access should have been disabled.

436. The PSI further submitted that "The fact that on a single occasion a British Trade Repository accessed data held by [the PSI] shortly after Brexit became effective can in no way be equated with a systemic failure of [the PSI]'s operational risk prevention mechanisms. This incident, if considered an error at all, must be recognised for what it is (an isolated breach). It is not acceptable to extrapolate from this isolated incident a broader structural deficiency, as the Report attempts to do"[453] and also that "Human error is an inherent operational risk that cannot be eliminated entirely, even with appropriate systems" [454]. The PSI further stated that "The Brexit project, including risk management, execution, and operational separation of technical and human resources, was adequately handled"[455] and that "Despite this isolated incident, the overall management of the Brexit project was thorough and effective"[456].

437. However, as noted above, the evidence shows that while the PSI developed some controls and procedures to mitigate risks, they were not adequate to minimise it, and the infringement is therefore made out, especially as the restriction of access to the folder was a basic requirement, and that the risks were not adequately mitigated by the PSI. This cannot be regarded as compliant with Article 79(1) of EMIR.

438. Second, as to the **risk related to the LEI update**, there is considerable evidence of non-identification and non-minimisation of the risk related to the procedure to ensure a change in the LEI when a counterparty undergoes a corporate action, commonly known as an "LEI update". As noted in Section 2.4 (above), these issues were raised several times at BoD meetings and in the Annual Compliance Report.

439. The LEI update risk was presented in the PSI's 2022 Annual compliance report[457] which indicated that the "The LEI Update processing suffered numerous delays from its

[452] Exhibit 2, PSI's response to the IIO's RFI, p. 7.See also Response to the Board's initial Statement of Findings, p. 79.
[453] Exhibit 23, Response to the Initial SoF, paragraph 347(i).
[454] Response to the Board's initial Statement of Findings, p. 79.
[455] Exhibit 2, PSI's response to the IIO's RFI, p. 7.
[456] Exhibit 2, PSI's response to the IIO's RFI, p. 7.
[457] Supervisory Report, Exhibit 111, 'REGIS-TR 2022_Annual Compliance Report', p. 17.

original deadline, due to re-prioritization among other SFTR functionalities and the high number of bugs identified during the testing phase. After the solution was deployed in Production environment in December 2022, a blocking issue was detected, postponing the execution of the first cases to 2023."

440. The same issue was highlighted in the PSI's Internal Audit Report dated 7 June 2022. Internal Audit noted that, at the time of the audit, there was no full process in place for performing LEI updates under SFTR but only an interim solution to continue reporting with the old LEI. The required IT functionality for performing these updates was planned for delivery in May 2022; this was the target date announced to the BoD on 16 December 2021. The initial deadline had been July 2021 as announced to the BoD on 18 May 2021[458]. This evidence shows that the PSI identified the delays in processing the LEI updates and considered them to be an operational risk. This in itself does not constitute an infringement; as noted above, the present infringement is made out if the PSI failed to develop systems, controls and procedures to mitigate that risk.

441. In this regard, the Board notes that issues related to the processing of LEI updates arose at the PSI starting from 2019: they were mentioned in the 2019 Annual Report[459]. In its 2020 Annual Risk Report, the CRO mentioned that the "LEI update" project was late due to a lack of resources[460]. The Board also notes that during the BoD meeting of 22 September 2021, the LEI update was mentioned as a cause for the delay of one release in the SFTR project[461]. In October 2022, the implementation of the LEI update was still in progress[462]. Only in 2023 the final solution was implemented and the PSI put in place automatic LEI updates[463].

442. Therefore, the risk related to the LEI update was not mitigated by the PSI by appropriate systems, controls and procedures. For the period after the PSI's registration under SFTR, this cannot be regarded as compliant with Article 79(1) of EMIR, read in conjunction with Article 5 of SFTR.

443. The PSI argued that "the delayed implementation of an internal mechanism which allows the update of LEI identifiers of all related transactional data after an entity goes through corporate event cannot lead to the conclusion that [the PSI] does not have adequate operational risk prevention mechanisms"[464]. Further it stated that its "interim solution minimised the risk of outdated LEIs through manual processes and workarounds [… and] there was no evidence of actual impact on data quality. If the interim solution had

[458] Supervisory Report, Exhibit 119, 'RTR-2021-AR01 - LEI Updates', Section 2.1, p. 5.
[459] Supervisory Report, Exhibit 122, 'A-15-17 RTR Annual Risk Report 2019', p. 74.
[460] Supervisory Report, Exhibit 124, 'A-15-18 - REGIS-TR Annual Risk Report 2020.pdf', p. 151.
[461] Exhibit 1, Supervisory Report, p. 44. See also Supervisory Report, Exhibit 129, 'BoD 16th December 2021 Documentation Pack', Topic 6, p. 7 (p.47 in file).
[462] Supervisory Report, Exhibit 113, '[Internal project 1: redacted due to confidentiality] Status – 2022.10'.
[463] Exhibit 23, Response to the Initial SoF, paragraph 380.
[464] Exhibit 23, Response to the Initial SoF, paragraph 347(ii).

been inadequate to minimise the risk, data quality would have been compromised. It was not"[465].

444. The Board notes in response that the evidence related to LEI updates is relevant to the question of operational risk, and observes that the PSI's own risk report from 2019 refers to "Misreporting of a client with an old LEI" as a risk, with the "Risk Class: Operational"[466]. The question of whether the risk crystalised is beside the point. The PSI argued that the fact that it had "classified outdated LEIs as an operational risk demonstrates that RTR's risk identification processes functioned appropriately. The fact that RTR planned to enhance the interim solution with automation demonstrates prudent risk management and forward planning, not inadequate systems"[467]. However, from the evidence above it is clear that there were severe delays in the implementation of the solution that could fully resolve the issue and thus the risk was not appropriately mitigated.

445. Finally, the PSI argued that "the existence of an automatic system for updating LEIs is not a requirement that stems directly from binding regulations … It was only with the adoption of Regulation 2019/834, which entered into force on 29 April 2024, that the implementation of such a system became mandatory"[468]. This argument does not impact the Board's conclusion. It is correct to observe that the 2019 Regulation (which came into force on 17 June 2019) refers to LEI indicators, but it does so only to mandate the drafting by ESMA of "implementing technical standards specifying the data standards and formats for the information to be reported, which shall include … global legal entity identifiers (LEIs) …"[469]. From this, it is clear that before the implementing regulation came into force in April 2024, there was not one binding standard on how LEIs should be updated; however the PSI's internal review found that the manner in which LEI updates were handled by the PSI created operational risk and until the automatic LEI update was implemented, this risk was not minimised.

446. Third, regarding the **risk related to the absence of the portability arrangement** for the port-out process, the Board notes that the PSI has a procedure, dated as of August 2019, on portability for its activities under SFTR, which contains a process for the portability of data (i.e. the transfer of records of transaction between TRs) including port-in and port-out[470]. However, in its 2021 Annual Compliance Report[471], the compliance function highlighted, in relation to SFTR activities performed by the PSI, that the portability of data was one of the regulatory requirements that was not ready on the reporting start date and was still under development. Although the PSI put in place the port-in part of the portability

[465] Response to the Board's initial Statement of Findings, p. 80.
[466] Supervisory Report, Exhibit 122, 'A-15-17 RTR Annual Risk Report 2019', p. 75.
[467] Response to the Board's initial Statement of Findings, pp. 80-81.
[468] Exhibit 23, Response to the Initial SoF, paragraph 347(ii). See also Response to the Board's initial Statement of Findings, p. 81.
[469] Regulation (EU) 2019/834 of 20 May 2019, Article 9(6).
[470] Supervisory Report, Exhibit 115, 'RTR-359-75 Inter-TR Portability SFTR procedure', Section 5, p. 15.
[471] Supervisory Report, Exhibit 110, '2021_REGIS-TR Annual Compliance Report'.

solution (transfer of records of transaction from another TR to the PSI), the port-out (transfer of records of transaction from the PSI to another TR) was not in place by end of 2021, meaning that the PSI was potentially unable to arrange the transfer to another TR, should a client wish to leave[472]. The main cause for that was a delay in the development of port-out function due to assignment of resources to other projects [473]. This delay continued until at least March 2023.

447. The PSI noted that "[the PSI] was authorised without having this procedure in place [which] shows that its full implementation is not a prerequisite for regulatory compliance"[474]. The PSI went on to submit that the publication of the relevant guideline[475] by ESMA after the reporting start date implied that "the reporting protocols for this new product were under a process of stabilization also on ESMA side"[476] and that the need for portability only became evident in the context of the winding down of another TR[477]. The Board does not agree with any of these submissions: portability has always been important for a TR, as evidenced by the fact that in 2017, ESMA published Guidelines which stated "One of the priorities for ESMA is to ensure that high quality data is available to the authorities to allow them to fulfil their responsibilities and mandates. ESMA is aware that portability, if not properly conducted, can affect negatively the quality of the data available to authorities"[478]; these Guidelines were amended on 25 March 2022 following consultation. It is also of note that Regulation (EU) 2019/834 of 20 May 2019 (which applied from 18 June 2021) amended Article 78(9)(c) of EMIR to explicitly require that TRs establish "policies for the orderly transfer of data to other trade repositories …". Further, the evidence of internal discussions set out above shows that, at the very least, the PSI was aware of the importance of portability, without satisfactorily meeting its regulatory obligations in that area. In the circumstances, the assertion of a legitimate expectation by the PSI that portability was either unimportant or that there were no issues with its portability arrangements is not sustainable.

448. The PSI further argued that it "identified the emerging risk and allocated resources to mitigate it. The fact that development took time does not demonstrate inadequate systems, it demonstrates the inherent complexity of implementing portability functionality. [… EMIR] does not require TRs to anticipate and build functionality for risks that have not yet

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[472] Supervisory Report, Exhibit 110, '2021_REGIS-TR Annual Compliance Report', Section 4.4.3.1, p. 19.
[473] Supervisory Report, Exhibit 111, 'REGIS-TR 2022_Annual Compliance Report', p. 17.
[474] Exhibit 23, Response to the Initial SoF, paragraph 347(iii). See also Response to the Board's initial Statement of Findings, pp. 81-82.
[475] The PSI refers to the ESMA Guidelines on transfer of data between Trade Repositories under EMIR and SFTR, dated 25 March 2022, available here: https://www.esma.europa.eu/sites/default/files/library/esma74-362-2351_final_report_-_guidelines_on_data_transfer_between_trade_repositories_emir_sftr.pdf. It is important to note that these Guidelines were an update of the August 2017 Guidelines as referenced below.
[476] Exhibit 23, Response to the Initial SoF, paragraph 347(iii).
[477] Exhibit 23, Response to the Initial SoF, paragraph 347(iii). See also Response to the Board's initial Statement of Findings, p. 82.
[478] Final Report: Guidelines on transfer of data between Trade Repositories, 24 August 2017, paragraph 19; available here: https://www.esma.europa.eu/sites/default/files/library/esma70-151-552_guidelines_on_transfer_of_data_between_trade_repositories.pdf

crystallised [and] there was no immediate operational risk requiring portability functionality"[479]. The Board considers these arguments unconvincing. The risk posed by the PSI's inability "to potentially arrange the transfer to another TR should a client wished to leave" [480] could crystalise at any point in time and should have been appropriately mitigated. This is the expectation of a prudent operator in a highly regulated market.

449. Therefore, the Board concludes that the PSI did not mitigate the risk related to port-out under the SFTR framework. For the period after the PSI's registration under SFTR, this cannot be regarded as compliant with Article 79(1) of EMIR, in conjunction with Article 5 of SFTR.

450. Finally, in addition to the specific matters raised by the PSI, the PSI further took issue with the assessment based on arguments in relation to legitimate expectations [481], speciality[482], legality[483], proportionality[484], and interplay of EMIR and SFTR[485]. The Board carefully assessed these arguments and finds them unfounded in line with its analysis outlined above.

451. On this basis, the Board considers that the PSI failed to properly minimise risks in relation to each of the situations outlined above, contrary to the PSI's claims[486]: access to the inter-TR SFTP folder post-Brexit, the LEI update, and portability.

452. Based on the above, the Board finds that the failures established the infringements set out at Point (a) of Section II of Annex I to EMIR and Point (a) of Section II of Annex I to EMIR read in conjunction with Article 9(1) of SFTR.

4.4.2 Intent or negligence

453. The Board takes note of Article 65(1) of EMIR as cited and explained in Section 4.2.2 above.

454. The Board considers that, overall, the factual background as set out in this decision does not establish that there are objective factors which demonstrate that the PSI, its employees or senior managers acted deliberately to commit the infringements.

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[479] Response to the Board's initial Statement of Findings, p. 82.
[480] Supervisory Report, Exhibit 110, '2021_REGIS-TR Annual Compliance Report', Section 4.4.3.1, p. 19.
[481] Exhibit 23, Response to the Initial SoF, paragraphs 338 to 350. See also Response to the Board's initial Statement of Findings, p. 82.
[482] Exhibit 23, Response to the Initial SoF, paragraphs 362 to 371. See also Response to the Board's initial Statement of Findings, p. 80.
[483] Exhibit 23, Response to the Initial SoF, paragraphs 351 to 361. See also Response to the Board's initial Statement of Findings, pp. 78-79.
[484] Exhibit 23, Response to the Initial SoF paragraphs 378-381. See also Response to the Board's initial Statement of Findings, pp. 78 and 84.
[485] Exhibit 23, Response to the Initial SoF, paragraphs 372 to 377. See also Response to the Board's initial Statement of Findings, p. 85.
[486] Response to the Board's initial Statement of Findings, pp. 82-83.

455. It should therefore be assessed whether the PSI acted with negligence.

4.4.2.1 Assessment of negligence in the present case

456. Regarding the assessment of negligence in the present case, the Board notes the following.

457. It is essential that TRs recognise and manage risks so as to better protect investors and preserve market stability. These obligations are fundamental to the functioning of TRs. The PSI claimed that it had not been negligent in the commission of the infringements and that, on the contrary, "[it] exercised special care in managing operational risks"[487]. However, the Board cannot accept these arguments on the following grounds.

458. Contrary to the PSI's claims[488], the failings in the PSI's management of operational risks were long-running and serious. As noted above, they extended into many areas and lasted over a period of many years. The failure to address the issue of LEI updates in the SFTR project was only one example: from 2019, when it was first raised by the PSI, to 2023, when the risk was finally minimised. The same is true of the PSI's failures to manage portability and access to the folder post-Brexit.

459. Overall, on the basis of the elements described above, the Board considers that the PSI failed to take the special care expected of a TR. As a professional firm in the financial services sector subject to stringent regulatory requirements, the PSI is required to take special care in assessing the risks that its acts or omissions entail, and has failed to take that care; and as the result of that failure, it has not foreseen the consequences of its acts or omissions, including particularly its infringement of EMIR and SFTR, in circumstances where a TR in such a position that is normally informed and sufficiently attentive could not have failed to foresee those consequences.

460. Therefore, it is considered that the PSI was negligent when committing the infringements set out at Point (a) of Section II of Annex I to EMIR and Point (a) of Section II of Annex I to EMIR in conjunction with Article 9(1) of SFTR.

461. Given what is noted above, two fines should be imposed; each is calculated in turn.

[487] See Response to the Board's initial Statement of Findings, p. 83.
[488] Response to the Board's initial Statement of Findings, pp. 83-84.

4.4.3 Fine under EMIR

4.4.3.1 Basic amount of the fine

462. The relevant version[489] of Article 65 of EMIR provides in paragraph 2 as follows:

> "The basic amounts of the fines referred to in paragraph 1 shall be included within the following limits: …
>
> (b) for the infringements referred to in points (a), (b) and (d) to (k) of Section I of Annex I, and in points (a), (b) and (h) of Section II of Annex I, the amounts of the fines shall be at least EUR 5,000 and shall not exceed EUR 100,000; …
>
> In order to decide whether the basic amount of the fines should be at the lower, the middle or the higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover of the preceding business year of the trade repository concerned. The basic amount shall be at the lower end of the limit for trade repositories whose annual turnover is below EUR 1 million, the middle of the limit for the trade repository whose turnover is between EUR 1 and 5 million and the higher end of the limit for the trade repository whose annual turnover is higher than EUR 5 million."

463. It has been established that the PSI committed the infringement set out at Point (a) of Section II of Annex I to EMIR, by not identifying sources of operational risk or by not minimising those risks through the development of appropriate systems, controls and procedures.

464. To determine the basic amount of the fine, the Board has regard to the PSI's latest annual turnover[490].

465. In 2024, the PSI had an annual turnover of EUR [25-30] million[491].

466. The basic amount of the fine for the infringement listed in Point (a) of Section II of Annex I to EMIR is set at the higher end of the limit of the fine set out in Article 65(2)(b) of EMIR and shall not exceed EUR 100,000.

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[489] The Board notes that the basic amount for the calculation of fines under EMIR changed in 2019. The facts establishing this infringement occurred after the change in basic amount.
[490] See in this regard paragraph 177 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03).
[491] Regis-TR S.A. Annual Financial Statements as at 31 December 2024, p. 3.

4.4.3.2 Applicable aggravating factors

467. The applicable aggravating factors listed in Annex II to EMIR are set out below.

Annex II, Point I(b) If the infringement has been committed for more than six months, a coefficient of 1,5 shall apply.

468. As explained in Section 4.1.4 above, ESMA has no discretion in applying this aggravating factor. If an infringement has been committed for more than six months, ESMA must apply the aggravating factor. The risk related to access to the EU inter-TR SFTP folder after Brexit as described in Section 2.3 above, lasted more than six months from at least 1 January 2021 (and arguably well before that date, as the failure to mitigate the risk began earlier, as detailed in the legal assessment) to 7 July 2021.

469. This aggravating factor is thus applicable.

4.4.3.3 Mitigating factors

470. Annex II to EMIR lists the mitigating factors to be taken into consideration for the adjustment of the fine. Their application to the present case is assessed below.

Annex II, Point II(a) If the infringement has been committed for less than ten working days, a coefficient of 0,9 shall apply.

471. The infringement at Point (a) of Section II of Annex I to EMIR has been committed for more than ten working days.

472. This mitigating factor is therefore not applicable.

Annex II, Point II(b) If the trade repository's senior management can demonstrate that they have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall apply.

473. The Board notes the general remarks on the application of this factor and the PSI's comments as set out in Section 4.2.3.3 above and does not repeat them here.

474. This does not constitute sufficient evidence that all necessary measures were taken by senior management to prevent the infringement at Point (a) of Section II of Annex I to EMIR.

475. This mitigating factor is therefore not applicable.

Annex II, Point II(c) If the trade repository has brought quickly, effectively, and completely the infringement to ESMA's attention, a coefficient of 0,4 shall apply.

476. In line with the reasoning and PSI's arguments already set out in Section 4.2.3.3, the Board notes there is no evidence that the PSI brought this infringement to the attention of ESMA.

477. The Board notes that the PSI did notify ESMA of the confidentiality breach through an initial notification on 27 July 2021 (i.e. almost three weeks after becoming aware of the issue itself on 7 July) and followed this with a full notification on 30 August 2021. This does not constitute a quick and complete notification[492].

478. Therefore, this mitigating factor is not applicable.

Annex II, Point II(d) If the trade repository has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply.

479. The PSI was asked to provide a detailed description of the remedial actions taken.

480. As noted above, the Brexit confidentiality incident was remediated.

481. The PSI further stated that "In February 2021, [the PSI] management decided to move the QA function out of the Client Services Unit into an independent unit that reported directly into [the PSI] Chief Operating Officer. With this change, the QA function took ownership for the test execution of every component of [the PSI] system, including non-functional tests. In addition, the [PSI] QA function has added either permanent or contractor employees with technical expertise in code programming, test automation and SQL. The headcount of the QA function reached 11 FTEs in 2022. This has increased the test coverage rate and the rate of defect detection. Finally, the QA function has centralized its documentation of the test strategy for each release"[493].

482. On that basis, remedial actions have been taken by the PSI and the Board considers that this should ensure that a similar infringement cannot be committed in the future.

483. The Board thus assesses whether the measure was taken voluntarily, which would imply that the mitigating factor provided by Point (d) of Section II of Annex II to EMIR would be applicable.

484. The Board notes that there is no definition of what "voluntarily" ("de son plein gré" in the French version of EMIR) precisely means within the context of this mitigating factor. Nevertheless, there are clear-cut examples. It is clear that a TR has voluntarily taken measures when it has taken them spontaneously without any solicitation from its supervisor. It is also obvious that when there is a specific obligation to take these

[492] See Exhibit 11, ESMA Supervisors' Second Response to IIO, Response to Q6, p. 5 and attached documents.
[493] Exhibit 2, PSI's Response to the IIO's RFI, p. 28.

measures, it can no longer be considered that the measures are taken voluntarily. The situation is to a certain extent less clear-cut when the TR takes measures only after a number of requests and interactions with its supervisor aiming at ensuring that the said measures are implemented by the TR, for example, through an action plan defined and monitored by the supervisor.

485. The PSI was not under any compulsion (such as, for example, following an ESMA decision) to take the measures outlined above to ensure that similar infringements cannot be committed in the future, and the PSI appears to have done so voluntarily.

486. The mitigating factor is therefore applicable.

4.4.3.4 Determination of the adjusted fine

487. In accordance with Article 65(3) of EMIR, taking into account the applicable aggravating and mitigating factors, the basic amount of EUR 100,000 must be adjusted as follows.

488. The difference between the basic amount and the amount resulting from the application of each individual coefficient set out in Annex II is added to the basic amount in the case of the aggravating factors and subtracted from the basic amount in the case of the mitigating factors:

Aggravating factor set out in Annex II, Point I(b):

EUR 100,000 x 1.5 = EUR 150,000

EUR 150,000 – EUR 100,000 = EUR 50,000

Mitigating factor set out in Annex II, Point II(d):

EUR 100,000 x 0.6 = EUR 60,000

EUR 100,000 – EUR 60,000 = EUR 40,000

Adjusted fine taking into account applicable aggravating and mitigating factors:

EUR 100,000 + EUR 50,000 – EUR 40,000 = **EUR 110,000**

489. Consequently, following adjustment by taking into account the applicable aggravating factor, the amount of the fine to be imposed on the PSI for the infringement concerning operational risk under EMIR amounts to **EUR 110,000**.

490. Nevertheless, as outlined in Section 4.1.4 above, the second paragraph of Article 65(4) of EMIR states that “Where an act or omission of a trade repository constitutes more than

one infringement listed in Annex I, only the higher fine calculated in accordance with paragraphs 2 and 3 and relating to one of those infringements shall apply."

491. Given that the facts in relation to the Brexit confidentiality incident set out in Section 2.3.4 also form the basis of the infringements analysed below, only the highest fine should be imposed. Thus, the Board concludes that the fine of EUR 110,000 will not be imposed.

4.4.3.5 Maximum cap of the fine and disgorgement of profits

492. The Board's conclusions are as set out in Section 4.2.3.5 above: the PSI did not benefit from the infringement, and the maximum cap of the fine is EUR [5-6] million.

4.4.4 Fine under SFTR

4.4.4.1 Basic amount of the fine

493. The PSI was granted an extension of authorisation by ESMA on 29 April 2020 (which entered into force on 7 May 2020) to enable it to perform TR services pertaining to SFTR, for all types of securities financing transactions (SFTs). The relevant version of Article 65 of EMIR provides in paragraph 2 as follows:

> "The basic amounts of the fines referred to in paragraph 1 shall be included within the following limits: …
>
> (b) for the infringements referred to in points (a), (b) and (d) to (k) of Section I of Annex I, and in points (a), (b) and (h) of Section II of Annex I, the amounts of the fines shall be at least EUR 5,000 and shall not exceed EUR 100,000; …
>
> In order to decide whether the basic amount of the fines should be at the lower, the middle or the higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover of the preceding business year of the trade repository concerned. The basic amount shall be at the lower end of the limit for trade repositories whose annual turnover is below EUR 1 million, the middle of the limit for the trade repository whose turnover is between EUR 1 and 5 million and the higher end of the limit for the trade repository whose annual turnover is higher than EUR 5 million."

494. It has been established that the PSI committed the infringement set out at Point (a) of Section II of Annex I to EMIR in conjunction with Article 9(1) of SFTR, by not identifying sources of operational risk or by not minimising those risks through the development of appropriate systems, controls and procedures.

495. To determine the basic amount of the fine, the Board has regard to the PSI's latest annual turnover[494].

496. In 2024, the PSI had an annual turnover of EUR [25-30] million[495].

497. In this regard, the basic amount of the fine for the infringement listed in Point (a) of Section II of Annex I to EMIR is set at the higher end of the limit of the fine set out in Article 65(2)(b) of EMIR and shall not exceed EUR 100,000.

4.4.4.2 Applicable aggravating factors

498. The applicable aggravating factors listed in Annex II to EMIR are set out below.

Annex II, Point I(a) if the infringement has been committed repeatedly, for every time it has been repeated, an additional coefficient of 1,1 shall apply.

499. There is evidence to suggest that the infringement was committed in two separate instances (i.e. in relation to (i) the LEI update and (ii) port-out).

500. The PSI argued that these "are distinct issues affecting different systems and processes, and they are not repetitions of the same conduct: […] the LEI issue concerned data update processes; and […] the port-out issue concerned client portability functionality. Thus, […] to apply a repetition aggravating factor to […] distinct operational risk issues is inappropriate and violates the principle of proportionality"[496]. The Board disagrees with the PSI. The operational risk issues related to the LEI update and port-out are two instances of the same breach under SFTR, i.e., not identifying sources of operational risk or not minimising those risks through the development of appropriate systems, controls and procedures.

501. This aggravating factor is thus applicable; the infringement was repeated once.

Annex II, Point I(b) If the infringement has been committed for more than six months, a coefficient of 1,5 shall apply.

502. As explained in Section 4.1.4 above, ESMA has no discretion in applying this aggravating factor. If an infringement has been committed for more than six months, ESMA must apply the aggravating factor. The infringement started after the PSI's registration under SFTR and was committed for more than six months, as the risks related to the

[494] See in this regard paragraph 177 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03).
[495] _Regis-TR S.A. Annual Financial Statements as at 31 December 2024, p. 3.
[496] Response to the Board's initial Statement of Findings, p. 84.

absence of the portability arrangement for port-out process and LEI updates, as described above, lasted more than six months.

503. This aggravating factor is thus applicable.

Annex II, Point I(c) If the infringement has revealed systemic weaknesses in the organisation of the trade repository in particular in its procedures, management systems or internal controls, a coefficient of 2,2 shall apply.

504. In line with the reasoning set out in Sections 4.1.4 and 4.2.3.2 above, the Board finds that the failings in this infringement are sufficient to indicate systemic weaknesses in the PSI.

505. There is specific evidence in the file supporting the conclusion that the infringement reveals systemic weaknesses in the PSI's systems, controls and procedures; in particular, as noted above, the issue of LEI updates and port-out remained unresolved for a long time despite the PSI having identified and discussed the risks. This shows that there were more serious underlying issues in its procedures, management systems or internal controls.

506. More specifically, regarding the LEI update, the issues were raised several times at BoD meetings, and in the 2022 Annual compliance report[497] which indicated that the LEI update processing suffered numerous delays, due to re-prioritisation among other SFTR functionalities and the high number of bugs identified during the testing phase. Moreover, after the solution was deployed, a blocking issue was detected, postponing the execution of the first cases to 2023. There was no full process in place for performing LEI updates under SFTR but only an interim solution[498] and the "LEI update" project was delayed due to a lack of resources[499]. Only in 2023 the final solution was implemented and the PSI put in place automatic LEI updates[500].

507. Similarly, regarding the risk related to the absence of the portability arrangement for the port-out process which was delayed until at least March 2023, the cause was a delay in the development of the port-out function due to the assignment of resources to other projects.

508. In the Board's view, the PSI failed to manage different operational risks (in two repeated instances) through the development of appropriate systems, controls and procedures (such as a proper port-out process and a procedure to ensure a change in the LEI) and did so due to lack of resources and prioritisation.

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[497] Supervisory Report, Exhibit 111, 'REGIS-TR 2022_Annual Compliance Report', p. 17.
[498] Supervisory Report, Exhibit 119, 'RTR-2021-AR01 - LEI Updates', Section 2.1, p. 5.
[499] Supervisory Report, Exhibit 124, 'A-15-18 - REGIS-TR Annual Risk Report 2020.pdf', p. 151.
[500] Exhibit 23, Response to the Initial SoF, paragraph 380.

509. In the Board's view, these instances of non-identification and non-minimisation of operational risk revealed broader problems affecting the organisation of the PSI. In particular, this infringement stemmed from the fact that the PSI did not have appropriate systems, controls and procedures, and not from an individual error. The non-identification and non-minimisation of operational risk has also revealed weaknesses in the PSI's ability to detect and remediate incidents in a timely manner.

510. Given the foregoing, this aggravating factor is applicable[501].

4.4.4.3 Mitigating factors

511. Annex II to EMIR lists the mitigating factors to be taken into consideration for the adjustment of the fine. Their application to the present case is assessed below.

Annex II, Point II(a) If the infringement has been committed for less than ten working days, a coefficient of 0,9 shall apply.

512. The infringement at Point (a) of Section II of Annex I to EMIR, in conjunction with Article 9(1) of SFTR, has been committed for more than ten working days.

513. This mitigating factor is therefore not applicable.

Annex II, Point II(b) If the trade repository's senior management can demonstrate that they have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall apply.

514. The Board notes the general remarks on the application of this factor and the PSI's comments as set out in Sections 4.2.3.3 and 4.3.3.3 above and does not repeat them here.

515. This does not constitute sufficient evidence that all necessary measures were taken by senior management to prevent the infringement at Point (a) of Section II of Annex I to EMIR, in conjunction with Article 9(1) of SFTR.

516. This mitigating factor is therefore not applicable.

Annex II, Point II(c) If the trade repository has brought quickly, effectively, and completely the infringement to ESMA's attention, a coefficient of 0,4 shall apply.

517. In line with the reasoning and PSI's arguments already set out in Section 4.2.3.3, the Board notes there is no evidence that the PSI brought this infringement to the attention of ESMA.

[501] See Exhibit 11, ESMA Supervisors' Second Response to IIO, Response to Q9, p. 5.

518. In relation to the LEI update and portability, the Board notes that there was some reference made by the PSI to those issues in the context of its exchanges with ESMA in the [Internal project 1: redacted due to confidentiality]. However, this does not constitute evidence of bringing this infringement to ESMA's attention quickly, effectively, and completely.

519. Therefore, this mitigating factor is not applicable.

Annex II, Point II(d) If the trade repository has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply.

520. As explained above, the Board considers that the portability issues have been resolved and automatic LEI updates were put in place.

521. On that basis, remedial actions have been taken by the PSI, and the Board considers that this should ensure that a similar infringement cannot be committed in the future.

522. In line with the reasoning outlined in Section 4.4.3.3 above, the Board notes that the PSI appears to have done so voluntarily.

523. The mitigating factor is therefore applicable.

4.4.4.4 Determination of the adjusted fine

524. In accordance with Article 65(3) of EMIR, taking into account the applicable aggravating and mitigating factors, the basic amount of EUR 100,000 must be adjusted as follows.

525. The difference between the basic amount and the amount resulting from the application of each individual coefficient set out in Annex II is added to the basic amount in the case of the aggravating factors and subtracted from the basic amount in the case of the mitigating factors:

Aggravating factor set out in Annex II, Point I(a):

EUR 100,000 x 1.1 = EUR 110,000

EUR 110,000 – EUR 100,000 = EUR 10,000

EUR 10,000 x 1 = EUR 10,000

Aggravating factor set out in Annex II, Point I(b)

EUR 100,000 x 1.5 = EUR 150,000

EUR 150,000 – EUR 100,000 = EUR 50,000

Aggravating factor set out in Annex II, Point I(c):

EUR 100,000 x 2.2 = EUR 220,000

EUR 220,000 – EUR 100,000 = EUR 120,000

Mitigating factor set out in Annex II, Point II(d):

EUR 100,000 x 0.6 = EUR 60,000

EUR 100,000 – EUR 60,000 = EUR 40,000

Adjusted fine taking into account applicable aggravating and mitigating factors:

EUR 100,000 + EUR 10,000 + EUR 50,000 + EUR 120,000 - EUR 40,000 = **EUR 240,000**

526. Consequently, following adjustment by taking into account the applicable aggravating and mitigating factors, the amount of the fine to be imposed on the PSI for the infringement concerning operational risk under SFTR amounts to **EUR 240,000**.

4.4.4.5 Maximum cap of the fine and disgorgement of profits

527. The Board's conclusions are as set out in Section 4.2.3.5 above: the PSI did not benefit from the infringement, and the maximum cap of the fine is EUR [5-6] million.

4.4.5 Conclusion

528. The total amount of the fine to be imposed on the PSI for these infringements amounts to **EUR 350,000**.

529. However, given what is said above about factual overlap, the Board takes the view that the EMIR fine (of EUR 110 000) will not be imposed.

4.4.6 Supervisory measure

530. Regard must be had to Article 73, paragraphs 1 and 2, of EMIR.

531. Given the factual findings in the present case, and the fact that the infringements were remediated, the supervisory measure set out in Article 73(1)(c) of EMIR may be considered appropriate with regard to the nature and the seriousness of the infringements.

532. The Board thus imposes a public notice as the appropriate supervisory measure.

4.5 Analysis of the infringement concerning confidentiality, integrity and protection of information (under EMIR)

533. This section of the decision analyses whether the PSI breached the following requirement:

> "a trade repository shall ensure the confidentiality, integrity and protection of the information received under Article 9" (**Article 80(1) of EMIR**)[502].

534. If this requirement is not met, this would constitute the infringement set out at Point (c) of Section II of Annex I to EMIR.

4.5.1 Analysis

535. The Board examined in detail the wording and the context of the relevant legislative provisions. Its conclusions are set out below.

4.5.1.1 Legal interpretation

536. The wording of Article 80(1) of EMIR is unambiguous: TRs have an obligation to ensure the confidentiality of the information that they receive under Article 9 of EMIR[503].

537. Pursuant to Article 80(1) of EMIR read in conjunction with Article 9(1) of EMIR, the PSI cannot disclose the details of any derivative contract that has been reported to it, unless such disclosure is authorised by EMIR. These exceptions are set out in Article 78(7), 80(5), 80(5a) and 81(2) of EMIR where EMIR requires TRs to provide access to information to various entities.

538. The Board also notes that TRs have important obligations in reconciliation of data between TRs. This fact is underlined by Delegated Regulation 2022/1858[504], which states that notwithstanding other obligations regarding the details of derivatives collected and recorded when performing the reconciliation process, TRs should ensure the confidentiality of the data exchanged between them and made available to the reporting counterparties,

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[502] As noted by the PSI at paragraph 387 of the Exhibit 23, Response to the Initial SoF, this provision was repealed by DORA. As also noted by the PSI in the same paragraph, this legislative change does not affect the present case, because it occurred after the infringement came to an end.

[503] See also para. 185 of the Decision of Board of Supervisors, (ref. Decision 2021/6) to adopt supervisory measures and impose fines in respect of infringements committed by DDTC Derivatives Repository plc available at: https://www.esma.europa.eu/sites/default/files/library/esma41-356-187_decision_-_dtcc_derivatives_repository.pdf.

[504] Commission Delegated Regulation (EU) 2022/1858 of 10 June 2022 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards specifying the procedures for the reconciliation of data between trade repositories and the procedures to be applied by the trade repository to verify the compliance by the reporting counterparty or submitting entity with the reporting requirements and to verify the completeness and correctness of the data reported, OJ L 262, 7.10.2022, pp. 46–64.

the entities responsible for reporting and the submitting entities. This is further emphasised in Article 3 of Delegated Regulation 2022/1858 which provides that TRs shall have arrangements in place to ensure the confidentiality of data when exchanging information with other TRs and when providing information to other entities. The Board notes that Delegated Regulation 2022/1858 was not in force at the time of the infringement being assessed, but takes the view that it provides helpful context.

539. In this respect, the PSI claimed that "Art.80 (1) of EMIR does not refer to the absence of any deficiencies, rather, it requires that the confidentiality, protection and integrity of the information be ensured [… and submitted that] the relevant question in assessing compliance with Art.80(1) of EMIR is whether that incident was recurrently repeated"[505]. It further added that Article 80(1) of EMIR "requires that the TR "ensures" these objectives meaning implement appropriate measures to achieve them"[506]. The Board dismisses these arguments, as even one failure to protect (or "ensure") confidentiality clearly breaches the obligation and does not require any structural failures. In any event, as explained below, the breach in question was far reaching and led to incorrect access being given over several months.

540. In sum, the legislative framework makes it plain that TRs have important obligations to control access to the information that they hold; linked to this are obligations to protect the confidentiality of that information, including during the reconciliation process, and a failure to ensure confidentiality would constitute the infringement at Point (c) of Section II of Annex I to EMIR.

4.5.1.2 Factual analysis

541. Turning to the facts of the present case, as described in detail in Section 2.3 above, 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. This included the withdrawal of registration of [TR 1: redacted due to confidentiality] and [TR 2: redacted due to confidentiality] on 1 January 2021, as TRs registered under EMIR[507]. Post-Brexit, UK registered TRs were thus no longer entitled to access neither trade data reported to the PSI pursuant to Article 9 of EMIR nor the data maintained for the purposes of the reconciliation process in the PSI's inter-TR SFTP folder.

542. However, notwithstanding this withdrawal of registration, the PSI failed to disable the access to its inter-TR SFTP folder of [TR 1: redacted due to confidentiality] and [TR 2: redacted due to confidentiality]. The issue was only discovered on 7 July 2021, when the

[505] Exhibit 23, Response to the Initial SoF, paragraph 391.
[506] Response to the Board's initial Statement of Findings, p. 86.
[507] See the press release "Brexit: ESMA withdraws the registrations of six UK-based credit rating agencies and four trade repositories", 04 January 2021 at https://www.esma.europa.eu/press-news/esma-news/brexit-esma-withdraws-registrations-six-uk-based-credit-rating-agencies-and.

PSI ran checks "concerning logs and downloads from the impacted server as part of a project whose aim is the deactivation of this server so that the inter-TR service is to be updated"[508].

543. After the detection of this incident, the PSI disabled the account of [TR 1: redacted due to confidentiality] and [TR 2: redacted due to confidentiality]. The PSI carried out checks and confirmed that [TR 2: redacted due to confidentiality] did not connect to the PSI's EMIR inter-TR SFTP folder after 1 January 2021[509]. However, the PSI found that a user from [TR 1: redacted due to confidentiality] was able to connect to the folder in question and downloaded data every day between 4 January 2021 and 7 July 2021[510].

544. Given the foregoing, the Board considers that, by not disabling the access to the inter-TR SFTP folder of [TR 1: redacted due to confidentiality] and [TR 2: redacted due to confidentiality], both TRs no longer registered in the EU, as of the date of Brexit, the PSI failed to ensure the confidentiality of data reported to it under Article 9 of EMIR, in contravention of Article 80(1) of EMIR.

545. The PSI took issue with the above reading, arguing that there "was not a six-month failure to ensure confidentiality; it was a human error (failure to disable two specific accounts) that went undetected for six months until RTR's manual review processes identified it"[511]. It also claimed that the severity of the infringement was mitigated by the fact that the entity that accessed the data was previously authorised and only became a "third-country entity" due to Brexit[512] and the fact that the PSI verified that "no harm occurred"[513]. The Board, in line with its previous decisions, disagrees with the PSI's characterisation of the evidence as a one-off incident due to human error[514]. The incorrect access lasted for more than six months before coming to light in July 2021; there is no requirement for "harm", the fact that access was given in itself breaches confidentiality and to employ the language of Article 80(1) of EMIR, it was a failure to "ensure the confidentiality, integrity and protection of the information received" by the PSI. Article 80(1) of EMIR connotes a proactive and continuous duty to manage access rights effectively, particularly in response to significant regulatory changes like Brexit. Further, on the PSI's last point, the previous registration of the entity is irrelevant to the PSI's core obligation: following Brexit, UK TRs were no longer authorised under EMIR to access information. The

[508] Supervisory Report, Exhibit 105, 'B-26-1 - INC-485 Incident Report'.
[509] Supervisory Report, Exhibit 104, 'B-26-4 - Email to ESMA Re INC-485'.
[510] Supervisory Report, Exhibit 105, 'B-26-1 - INC-485 Incident Report'.
[511] Response to the Board's initial Statement of Findings, p. 87.
[512] Exhibit 23, Response to the Initial SoF, paragraph 391.
[513] Response to the Board's initial Statement of Findings, p. 88.
[514] In a previous enforcement decision, a TR was sanctioned for a breach of Article 80(1) of EMIR that resulted from a similar failure to restrict access to information (in that case asset managers that were not entitled to view certain types of data); see Decision of the Board of Supervisors to adopt supervisory measures and impose fines in respect of infringements committed by DTCC Derivatives Repository Plc, 8 July 2021, paragraphs 196 to 205. Available here: https://www.esma.europa.eu/sites/default/files/library/esma41-356-187_decision_-_dtcc_derivatives_repository.pdf

PSI, as the holder of this data, had a clear and ongoing responsibility to ensure that access was restricted only to currently authorised entities; the prior authorisation is immaterial.

546. In addition to the specific matters raised by the PSI, the PSI further took issue with the assessment based on arguments in relation to speciality[515] and legality[516]. The Board carefully assessed these arguments and finds them unfounded in line with its analysis outlined above.

547. The Board finds that the PSI's acts and omissions as detailed above constitute the infringement set out at Point (c) of Section II of Annex I to EMIR.

548. The Board notes that, by contrast with several of the other infringements assessed in this decision, this infringement relates only to the PSI's activities under EMIR; no breach under SFTR is established.

4.5.2 Intent or negligence

549. The Board takes note of Article 65(1) of EMIR as cited and explained in Section 4.2.2 above.

550. The Board considers that, overall, the factual background as set out in this decision does not establish that there are objective factors which demonstrate that the PSI, its employees or senior managers acted deliberately to commit the infringement.

551. It should therefore be assessed whether the PSI acted with negligence.

4.5.2.1 Assessment of negligence in the present case

552. Regarding the assessment of negligence in the present case for the confidentiality breach, the Board notes the following.

553. The PSI claimed that it had not been negligent in the commission of the infringement[517] and that it "exercised special care in managing the Brexit transition"[518]; however the Board cannot accept these arguments on the following grounds.

554. First, the requirement is clear, and the breach is an obvious one. Contrary to its claims[519], the PSI as a professional firm in the financial services sector subject to stringent

[515] Exhibit 23, Response to the Initial SoF, paragraphs 395 to 400. See also Response to the Board's initial Statement of Findings, pp. 90-91.
[516] Exhibit 23, Response to the Initial SoF, paragraphs 389 to 394. See also Response to the Board's initial Statement of Findings, pp. 86-87.
[517] See Response to the Board's initial Statement of Findings, p. 90.
[518] Response to the Board's initial Statement of Findings, p. 90.
[519] Response to the Board's initial Statement of Findings, p. 90.

regulatory requirements and required to take special care, should have foreseen that giving access to TRs no longer authorised to receive access to data would amount to a breach of its obligations.

555. The PSI claimed that the incident was the result of "human error"[520]. However, the Board finds that the infringement arose not only from "human error" but was the result of broader issues within the PSI evidenced by the fact that the PSI allowed unauthorised access to confidential information, and the error remained unnoticed for more than six months.

556. In addition, it is clear from the provisions of EMIR set out above that TRs have crucially important obligations to control access to information that they hold; linked to this are obligations to protect the confidentiality of that information. In the present case, the PSI failed to meet those obligations for a lengthy period.

557. Overall, on the basis of the elements described above, the Board considers that the PSI failed to take the special care expected of a TR. As a professional firm in the financial services sector subject to stringent regulatory requirements, the PSI is required to take special care in assessing the risks that its acts or omissions entail, and has failed to take that care; and as the result of that failure, it has not foreseen the consequences of its acts or omissions, including particularly its infringement of EMIR, in circumstances where a TR in such a position that is normally informed and sufficiently attentive could not have failed to foresee those consequences.

558. Therefore, it is considered that the PSI has been negligent when committing the infringement of Point (c) of Section II of Annex I to EMIR.

4.5.3 Fine

4.5.3.1 Basic amount of the fine

559. The relevant version[521] of Article 65 of EMIR provides in paragraph 2 as follows:

> "The basic amounts of the fines referred to in paragraph 1 shall be included within the following limits:
>
> (a) for the infringements referred to in point (c) of Section I of Annex I and in points (c) to (g) of Section II of Annex I, and in points (a) and (b) of Section III of Annex I

[520] Exhibit 2, PSI's Response to the IIO's RFI, p. 7.
[521] The Board notes that the basic amount for the calculation of fines under EMIR changed in 2019. The facts establishing this infringement occurred after the change in basic amount.

the amounts of the fines shall be at least EUR 10,000 and shall not exceed EUR 200,000; …

In order to decide whether the basic amount of the fines should be at the lower, the middle or the higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover of the preceding business year of the trade repository concerned. The basic amount shall be at the lower end of the limit for trade repositories whose annual turnover is below EUR 1 million, the middle of the limit for the trade repository whose turnover is between EUR 1 and 5 million and the higher end of the limit for the trade repository whose annual turnover is higher than EUR 5 million."

560. It has been established that the PSI committed the infringement set out at Point (c) of Section II of Annex I to EMIR, by not ensuring the confidentiality, integrity or protection of the information received under Article 9.

561. To determine the basic amount of the fine, the Board has regard to the PSI's latest annual turnover[522].

562. In 2024, the PSI had an annual turnover of EUR [25-30] million[523].

563. The basic amount of the fine for the infringement listed in Point (c) of Section II of Annex I to EMIR is set at the higher end of the limit of the fine set out in Article 65(2)(a) of EMIR and shall not exceed EUR 200,000.

4.5.3.2 Applicable aggravating factors

564. The applicable aggravating factor listed in Annex II to EMIR is set out below.

Annex II, Point I(b) If the infringement has been committed for more than six months, a coefficient of 1,5 shall apply.

565. As explained in Section 4.1.4 above, ESMA has no discretion in applying this aggravating factor. If an infringement has been committed for more than six months, ESMA must apply the aggravating factor. The infringement was committed for more than six months: [TR 1: redacted due to confidentiality]'s and [TR 2: redacted due to confidentiality]'s access to the PSI's EMIR inter-TR SFTP folder should have been disabled on 1 January 2021 and the incident was discovered on 7 July 2021.

[522] See in this regard para. 177 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03).
[523] Regis-TR S.A. Annual Financial Statements as at 31 December 2024, p. 3.

566. Further, the PSI argued that "the infringement took only few minutes (the time it took to disconnect the UK TRs from the RTR's database after the human error was detected)"[524]. The Board disagrees with the PSI. The nature of the breach is that the confidentiality of information was not ensured. This lasted for more than six months.

567. This aggravating factor is therefore applicable.

4.5.3.3 Mitigating factors

568. Annex II to EMIR lists the mitigating factors to be taken into consideration for the adjustment of the fine. Their application to the present case is assessed below.

Annex II, Point II(a) If the infringement has been committed for less than ten working days, a coefficient of 0,9 shall apply.

569. The infringement at Point (c) of Section II of Annex I to EMIR has been committed for more than ten working days.

570. This mitigating factor is therefore not applicable.

Annex II, Point II(b) If the trade repository's senior management can demonstrate that they have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall apply.

571. The Board notes the general remarks on the application of this factor and the PSI's comments as set out in Section 4.2.3.3 above and does not repeat them here.

572. As with the infringement above, the matters set out do not constitute sufficient evidence that all necessary measures were taken by senior management to prevent the infringement at Point (c) of Section II of Annex I to EMIR.

573. This mitigating factor is therefore not applicable.

Annex II, Point II(c) If the trade repository has brought quickly, effectively, and completely the infringement to ESMA's attention, a coefficient of 0,4 shall apply.

574. In line with the reasoning and PSI's arguments already set out in Section 4.2.3.3, the Board notes there is no evidence that the PSI brought this infringement to the attention of ESMA.

[524] Response to the Board's initial Statement of Findings, p. 90.

575. The Board notes that the PSI did notify ESMA of the confidentiality breach through an initial notification on 27 July 2021 (i.e. almost three weeks after becoming aware of the issue itself on 7 July) and followed this with a full notification on 30 August 2021. This does not constitute a quick and complete notification[525].

576. Therefore, this mitigating factor is not applicable.

Annex II, Point II(d) If the trade repository has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply.

577. In line with the PSI' submissions and the reasoning outlined in Section 4.4.3.3 above, the Board notes that the PSI has voluntary remediated the infringement and considers that this should ensure that a similar infringement cannot be committed in the future.

578. The mitigating factor is therefore applicable to the infringement at Point (c) of Section II of Annex I of EMIR.

4.5.3.4 Determination of the adjusted fine

579. In accordance with Article 65(3) of EMIR, taking into account the applicable aggravating and mitigating factors, the basic amount of EUR 200,000 must be adjusted as follows.

580. The difference between the basic amount and the amount resulting from the application of each individual coefficient set out in Annex II is added to the basic amount in the case of the aggravating factors and subtracted from the basic amount in the case of the mitigating factors:

Aggravating factor set out in Annex II, Point I(b):

EUR 200,000 x 1.5 = EUR 300,000

EUR 300,000 – EUR 200,000 = EUR 100,000

Mitigating factor set out in Annex II, Point II(d):

EUR 200,000 x 0.6 = EUR 120,000

EUR 200,000 – EUR 120,000 = EUR 80,000

Adjusted fine taking into account applicable aggravating and mitigating factors:

EUR 200,000 + EUR 100,000 – EUR 80,000 = **EUR 220,000**

[525] See Exhibit 11, ESMA Supervisors' Second Response to IIO, Response to Q6, p. 5 and attached documents.

581. Consequently, following adjustment by taking into account the applicable aggravating and mitigating factors, the amount of the fine to be imposed on the PSI for the infringement of confidentiality amounts to **EUR 220,000**.

4.5.3.5 Maximum cap of the fine and disgorgement of profits

582. The Board's conclusions are as set out in Section 4.2.3.5 above: the PSI did not benefit from the infringement, and the maximum cap of the fine is EUR [5-6] million.

4.5.3.6 Conclusion

583. The total amount of the fine to be imposed on the PSI for this infringement amounts to **EUR 220,000.**

4.5.4 Supervisory measure

584. Regard must be had to Article 73, paragraphs 1 and 2, of EMIR.

585. Given the factual findings in the present case, and the fact that the infringement was remediated, the supervisory measure set out in Article 73(1)(c) of EMIR may be considered appropriate with regard to the nature and the seriousness of the infringement.

586. The Board thus imposes a public notice as the appropriate supervisory measure.

4.6 Analysis of the infringement concerning misuse of information (under EMIR)

587. This section of the decision analyses whether the PSI breached the following requirement:

> "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." (**Article 80(6) of EMIR**)

588. If this requirement is not met this would constitute the infringement set out at Point (h) of Section II of Annex I to EMIR.

4.6.1 Analysis

589. The Board examined in detail the wording and the context of the relevant legislative provisions. Its conclusions are set out below.

4.6.1.1 Legal interpretation

590. The issue is whether the PSI took “reasonable steps to prevent any misuse of the information contained in its systems”. These concepts of “reasonable steps” and “misuse” merit some analysis.

591. The Board notes that while EMIR does not provide a definition of “reasonable steps”, the CJEU jurisprudence provides some assistance in understanding the concept of “reasonable steps” to prevent the misuse of data: the court explored similar requirements in line with the principles of data protection and privacy under EU law, including the GDPR[526] in the Case C-340/21, VB v. Natsionalna agentsia za prihodite (National Revenue Agency, Bulgaria). In that judgment, the Court examined the implementation of “appropriate and effective measures"; while this is slightly different to reasonable steps, the Board takes the view that the case-law may be helpful:

592. “In order to maintain security and to prevent processing in infringement of this Regulation, the controller or processor should evaluate the risks inherent in the processing and implement measures to mitigate those risks, such as encryption. Those measures should ensure an appropriate level of security, including confidentiality, taking into account the state of the art and the costs of implementation in relation to the risks and the nature of the personal data to be protected”[527].

593. The Board notes that pursuant to Article 80(6) of EMIR, a TR must show that it has taken all “reasonable” steps to prevent misuse of the information in its systems. Given the case-law above, and its apparent emphasis on appropriateness, the Board further considers that these “reasonable steps” must entail the implementation of all appropriate measures to address foreseeable risks to the information maintained in its systems, taking into account the state of the art and the costs of implementation in relation to the risks.

594. As to “misuse”, the Board takes the view that this word should be given its ordinary meaning, and therefore be taken to refer to any improper use of the information in its systems. This is bolstered by the relevant Regulatory Technical Standards laying down conditions for registration as a trade repository**,** which provide in Article 14(1) that “An

[526] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation).
[527] See Case C-340/21, VB v Natsionalna agentsia za prihodite [2023], ECLI:EU:C:2023:986, para. 3 citing GDPR and para. 35.

application for registration as a trade repository shall contain the internal policies, procedures and mechanisms preventing **any use** of information maintained in the applicant trade repository: (a) for illegitimate purposes; (b) for disclosure of confidential information; (c) not permitted for commercial use ..."[528] (emphasis added).

595. This infringement is different from the one assessed in Section 4.5 above, which obliges TRs to "ensure the confidentiality, integrity and protection of … information". The concept of misuse is a broad one and covers a variety of scenarios that may not involve breaches of confidentiality and / or integrity.

596. The PSI took issue with the analysis of the relevant provision for several reasons[529]. The Board responds to each in turn.

597. The PSI considers that "Extending it to external third parties (UK TRs) distorts the provision beyond its natural meaning" [530]. First, the PSI advises a "literal interpretation" of Article 80(6) of EMIR, pursuant to which the ""information" subject to protection by the Trade Repository is that which it receives in the course of its activity and is "maintained in its systems", i.e., that which is communicated in accordance with Art. 9 of EMIR and maintained in its systems"[531]. Second, the PSI submits that a "teleological interpretation of the provision reveals that its purpose is to prevent misuse of the information by persons who have access to it by reason of their professional relationship with RTR. It does not extend to access by unrelated third parties. This is the reason why Art. 80(6) refers to information "maintained in its systems" in its first paragraph, and to persons linked to the Trade Repository (whether natural persons or legal entities), in its second paragraph"[532]. Third, under what the PSI terms a "systematic interpretation", the "heading of Art. 80 of EMIR ("safeguarding and preservation of information") and the obligations set out in the provision refer to specific aspects of the storage and maintenance of data by the Trade Repository in the course of its activities, as well as to the use of such data by the Trade Repository itself and by individuals or entities connected to it"[533]. The PSI concludes that "the logic of the provision is that the "misuse" of information "maintained in its systems" can only be committed by the Trade Repository itself or persons connected to it, where such information is used for purposes other than those established in the regulations (such as commercial purposes, among others). The obligations set out in Art. 80 of EMIR can hardly be interpreted as extending to the actions of third parties unrelated to the activity

[528] 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.
[529] Exhibit 23, Response to the Initial SoF, paragraphs 405 to 412.
[530] Response to the Board's initial Statement of Findings, p. 92.
[531] Exhibit 23, Response to the Initial SoF, paragraph 404.
[532] Exhibit 23, Response to the Initial SoF, paragraph 405.
[533] Exhibit 23, Response to the Initial SoF, paragraph 406.

carried out by the Trade Repository"[534]. The PSI considers that "if Article 80(6) also covers unauthorised access by external third parties, then it adds nothing to Article 80(1)" [535].

598. The Board does not agree with the PSI's interpretation of the legislative provisions. Article 80(6) of EMIR extends to third parties and is not a duplicate of Article 80(1) of EMIR. First, while there is no reference in Article 80(6) of EMIR to Article 9 thereof, even if one were to read in such a reference, the relevant facts in the present case concern information for reconciliation purposes, i.e. information that derived from that which was reported under Article 9 of EMIR. Second, notwithstanding the second paragraph of the provision, which refers to the use of information for commercial purposes, a straightforward, literal reading of the Article does not lead one to a restrictive interpretation of the obligation in the first paragraph; the purpose of the article is to ensure that TRs prevent the misuse of information, including (but not restricted to) the use of confidential information by individuals. In this context, it might be helpful to bear in mind the wording of the corresponding infringement at Point (h) of Section II of Annex I to EMIR – "a trade repository infringes Article 80(6) by not taking all reasonable steps to prevent any misuse of the information maintained in its systems" – which does not refer to the use of information for commercial purposes. Third, the Board notes there is nothing in the provision to suggest that the TR must only keep information confidential from those connected to it; the duty is a general one and it has been breached in this instance by the PSI. The Board takes the view that the second paragraph of the provision does not limit its ambit to "third parties unrelated to the activity carried out by the Trade Repository", given that the clear duty as set out in the first paragraph is to "prevent **any** misuse"; the second paragraph gives only one example of such misuse.

599. For a TR that has as its basic function the safeguarding of large volumes of sensitive information, the term "reasonable steps" connotes a high standard of diligence. In the circumstances, the failure to revoke the access of the UK TRs demonstrates that "all reasonable steps" were not taken to prevent unauthorised access to the information. There also seems no doubt that the information in the inter-TR SFTP folder was "maintained in [the PSI's] systems", as required by Article 80(6) of EMIR. The Board also underlines that this was not an isolated incident but a failure that lasted several months.

4.6.1.2 Factual analysis

600. As to the facts in the present case, the Board notes that for the Brexit migration project, the PSI established and followed several procedures, including, notably, [Procedure 1: redacted due to confidentiality][536], which described the steps to be followed for the Brexit migration but did not designate the function in charge of each step or specify deadlines for

[534] Exhibit 23, Response to the Initial SoF, paragraph 407.
[535] Response to the Board's initial Statement of Findings, p. 93.
[536] Supervisory Report, Exhibit 82, [Procedure 1: redacted due to confidentiality].

each task. This [Procedure 1: redacted due to confidentiality] acknowledged that "the exclusion of the UK trades from the reconciliation process, process through which TRs confirm that the two sides of a derivative or an SFT have been reported with the same information by each entity responsible for reporting, as provided by Article 78(9) of EMIR, is part of the post-Brexit tasks"[537]. Notably, [Procedure 1: redacted due to confidentiality] mentions disabling access for the FCA and BoE"[538] but does not refer to the access disabling of TRs no longer registered in the EU.

601. For the Brexit migration process, the PSI produced a checklist comprising two documents: [Document 1: redacted due to confidentiality], and [Document 2: redacted due to confidentiality] ("the Checklist"). [Document 1: redacted due to confidentiality] detailed the tasks to be operated for the purpose of the Brexit migration between 30 December 2020 and 4 January 2021, their allocation to functions and individuals and their deadline. Some of the listed tasks related to disconnecting UK NCAs from EU channels[539] but, as with [Procedure 1: redacted due to confidentiality], the Checklist did not refer to the disabling of the access to inter-TR SFTP folder for reconciliation for each TR no longer registered in the EU[540].

602. The Board notes that over and above the documentation specifically developed for the purpose of the Brexit migration project, the PSI's general information security documentation was applicable to Brexit migration activities. It includes [Guidelines: redacted due to confidentiality] [541] and [Policy: redacted due to confidentiality][542].

603. [Guidelines: redacted due to confidentiality] provide, in a section on access control management, that formal procedures shall control the allocation of access rights and cover all stages in the life cycle of user access, from the initial user registration to the de-registration of users who no longer need access. The Guidelines also specify that "the deletion of User IDs shall be based on formal procedures", that "access rights shall be reviewed at least once a year; access rights for information classified as "critical" shall be reviewed at least twice a year" and that "inadequate or unnecessary access rights shall be withdrawn as soon possible"[543]. [Policy: redacted due to confidentiality] describes the controls to be applied to manage access to systems and data. It notably provides that "all the effective access privileges shall be reviewed, at least twice a year, to detect accounts with excessive or inadequate privileges"[544]. The Board notes the PSI's clarification provided on this biannual review, i.e. "that the object of this access review is verifying … the internal users …, therefore … does not include the monitoring and identification of the

[537] Supervisory Report, Exhibit 82, [Procedure 1: redacted due to confidentiality], p. 7.
[538] Supervisory Report, Exhibit 82, [Procedure 1: redacted due to confidentiality], p. 5.
[539] Supervisory Report, Exhibit 84, '[Document 1: redacted due to confidentiality]'
[540] Supervisory Report, Exhibit 85, '[Document 2: redacted due to confidentiality]
[541]Supervisory Report, Exhibit 86, [Guidelines: redacted due to confidentiality].
[542] Supervisory Report, Exhibit 87, [Policy: redacted due to confidentiality].
[543] Supervisory Report, Exhibit 86, [Guidelines: redacted due to confidentiality], p. 39.
[544] Supervisory Report, Exhibit 87, [Policy: redacted due to confidentiality], p. 14.

TRs that exchange information with [the PSI] in the context of the Inter-TR reconciliation"[545].

604. The above demonstrates a lack of "reasonable steps" taken by the PSI to prevent any misuse of the information contained in its systems in the post-Brexit regulatory environment. The PSI's policies lacked clear protocols for promptly revoking access for entities no longer within the EU's jurisdiction. The regulatory implications of Brexit were clearly foreseeable by the PSI. In the present case, the PSI was required to re-evaluate its policies and procedures in line with the implications of Brexit and clearly provide for the removal of access rights for UK-registered TRs. The TR's inaction contravenes the requirement of Article 80(6) of EMIR for a TR to take reasonable steps to prevent misuse, as sensitive information was left vulnerable to potential misuse.

605. The Board also takes note of the PSI's comment that the second line of defence was involved "at various phases of the project and post implementation" [546] and the accompanying evidence for this involvement [547], which does not however affect the abovementioned analysis.

606. The fact that the information in question does not appear to have been misused does not exonerate the TR. Article 80(6) of EMIR is a preventative obligation, obliging TRs to take reasonable steps to prevent misuse and the establishment of the relevant infringement is therefore not contingent on the actual misuse of information.

607. Finally, in addition to the specific arguments related to the infringement, the PSI raised arguments in relation to the principles of legality[548] and speciality[549]. The Board carefully assessed these arguments and finds them unfounded in line with its analysis outlined above.

608. Thus, the Board finds that the PSI's acts constitute the infringement set out at Point (h) of Section II of Annex I to EMIR. The Board notes that, by contrast with several of the other infringements assessed in this decision, this infringement relates only to the PSI's activities under EMIR; no breach under SFTR is established.

4.6.2 Intent or negligence

609. The Board takes note of Article 65(1) of EMIR as cited and explained in Section 4.2.2 above.

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[545] Exhibit 2, PSI's response to the IIO's RFI, p. 15.
[546] Exhibit 6, PSI's Comments on the Supervisory Report, p. 2.
[547] Exhibit 2, PSI's response to the IIO's RFI, p. 16.
[548] Exhibit 23, Response to the Initial SoF, paragraphs 413 to 422. See also Response to the Board's initial Statement of Findings, p. 92.
[549] Exhibit 23, Response to the Initial SoF, paragraphs 423 to 427. See also Response to the Board's initial Statement of Findings, p. 95.

610. The Board considers that, overall, the factual background as set out in this decision does not establish that there are objective factors which demonstrate that the PSI, its employees or senior managers acted deliberately to commit the infringement.

611. It should therefore be assessed whether the PSI acted with negligence when committing the infringement set out at Point (h) of Section II of Annex I to EMIR.

4.6.2.1 Assessment of negligence in the present case

612. Regarding the assessment of negligence in the present case, the Board notes the following.

613. The PSI claimed that it had not been negligent in the commission of the infringement[550] and that it "exercised special care in managing Brexit transition"[551], however the Board cannot accept these arguments on the following grounds.

614. As with the preceding infringement, the Board notes that TRs have important obligations to control access to information that they hold and to prevent the misuse of that information. These obligations go to the heart of a TR's role, which is to act as a repository for crucial market information. In the present case, the PSI failed to take reasonable steps to meet those obligations for a lengthy period.

615. Overall, on the basis of the elements described above, the Board considers that the PSI failed to take the special care expected of a TR. As a professional firm in the financial services sector subject to stringent regulatory requirements, the PSI is required to take special care in assessing the risks that its acts or omissions entail, and has failed to take that care; and as the result of that failure, it has not foreseen the consequences of its acts or omissions, including particularly its infringement of EMIR, in circumstances where a TR in such a position that is normally informed and sufficiently attentive could not have failed to foresee those consequences.

616. Therefore, it is considered that the PSI has been negligent when committing the infringement of Point (h) of Section II of Annex I to EMIR.

[550] See Response to the Board's initial Statement of Findings, p. 96.
[551] Response to the Board's initial Statement of Findings, p. 96.

4.6.3 Fine

4.6.3.1 Basic amount of the fine

617. The relevant version[552] of Article 65 of EMIR provides in paragraph 2 as follows:

> "The basic amounts of the fines referred to in paragraph 1 shall be included within the following limits: …
>
> (b) for the infringements referred to in points (a), (b) and (d) to (k) of Section I of Annex I, and in points (a), (b) and (h) of Section II of Annex I, the amounts of the fines shall be at least EUR 5,000 and shall not exceed EUR 100,000; …
>
> In order to decide whether the basic amount of the fines should be at the lower, the middle or the higher end of the limits set out in the first subparagraph, ESMA shall have regard to the annual turnover of the preceding business year of the trade repository concerned. The basic amount shall be at the lower end of the limit for trade repositories whose annual turnover is below EUR 1 million, the middle of the limit for the trade repository whose turnover is between EUR 1 and 5 million and the higher end of the limit for the trade repository whose annual turnover is higher than EUR 5 million."

618. It has been established that the PSI committed the infringement set out at Point (h) of Section II of Annex I to EMIR, by not taking all reasonable steps to prevent any misuse of the information maintained in its systems.

619. To determine the basic amount of the fine, the Board has regard to the PSI's latest annual turnover[553].

620. In 2024, the PSI had an annual turnover of EUR [25-30] million[554].

621. The basic amount of the fine for the infringement listed in Point (h) of Section II of Annex I to EMIR is set at the higher end of the limit of the fine set out in Article 65(2)(b) of EMIR and shall not exceed EUR 100,000.

4.6.3.2 Applicable aggravating factors

622. The applicable aggravating factor listed in Annex II to EMIR is set out below.

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[552] The Board notes that the basic amount for the calculation of fines under EMIR changed in 2019. The facts establishing this infringement occurred after the change in basic amount.
[553] See in this regard para. 177 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03).
[554] Regis-TR S.A. Annual Financial Statements as at 31 December 2024, p. 3.

Annex II, Point I(b) If the infringement has been committed for more than six months, a coefficient of 1,5 shall apply.

623. As explained in Section 4.1.4 above, ESMA has no discretion in applying this aggravating factor. If an infringement has been committed for more than six months, ESMA must apply the aggravating factor: [TR 1: redacted due to confidentiality] and [TR 2: redacted due to confidentiality] were no longer authorised in the EU under EMIR and their access to the PSI's EMIR inter-TR SFTP folder should have been disabled on 1 January 2021. The incident was discovered on 7 July 2021. The infringement was therefore committed for more than six months.

624. The aggravating factor is thus applicable.

4.6.3.3 Mitigating factors

625. Annex II to EMIR lists the mitigating factors to be taken into consideration for the adjustment of the fine. Their application to the present case is assessed below.

Annex II, Point II(a) If the infringement has been committed for less than ten working days, a coefficient of 0,9 shall apply.

626. The infringement under Point (h) of Section II of Annex I to EMIR has been committed for more than ten working days.

627. This mitigating factor is therefore not applicable.

Annex II, Point II(b) If the trade repository's senior management can demonstrate that they have taken all the necessary measures to prevent the infringement, a coefficient of 0,7 shall apply.

628. The Board notes the general remarks on the application of this factor and the PSI's comments as set out in Section 4.2.3.3 above and does not repeat them here.

629. As with the infringement above, the matters set out do not constitute sufficient evidence that all necessary measures were taken by senior management to prevent the infringement at Point (h) of Section II of Annex I to EMIR.

630. This mitigating factor is therefore not applicable.

Annex II, Point II(c) If the trade repository has brought quickly, effectively, and completely the infringement to ESMA's attention, a coefficient of 0,4 shall apply.

631. In this respect, the Board notes the following.

632. In line with the reasoning and PSI's arguments already set out in Section 4.2.3.3, the Board notes there is no evidence that the PSI brought this infringement to the attention of ESMA.

633. The Board notes that the PSI did notify ESMA of the confidentiality breach through an initial notification on 27 July 2021 (i.e. almost three weeks after becoming aware of the issue itself on 7 July) and followed this with a full notification on 30 August 2021[555]. In the Board's view, this does not constitute a quick and complete notification.

634. Therefore, this mitigating factor is not applicable.

Annex II, Point II(d) If the trade repository has voluntarily taken measures to ensure that similar infringement cannot be committed in the future, a coefficient of 0,6 shall apply.

635. In line with the PSI' submissions and the reasoning outlined in Section 4.4.3.3 above, the Board notes that the PSI has voluntary remediated the infringement and considers that this should ensure that a similar infringement cannot be committed in the future.

636. The mitigating factor is thus applicable to the infringement at Point (h) of Section II of Annex I to EMIR.

4.6.3.4 Determination of the adjusted fine

637. In accordance with Article 65(3) of EMIR, taking into account the applicable aggravating and mitigating factors, the basic amount of EUR 100,000 must be adjusted as follows.

638. The difference between the basic amount and the amount resulting from the application of each individual coefficient set out in Annex II is added to the basic amount in the case of the aggravating factors and subtracted from the basic amount in the case of the mitigating factors:

Aggravating factor set out in Annex II, Point I(b):

EUR 100,000 x 1.5 = EUR 150,000

EUR 150,000 – EUR 100,000 = EUR 50,000

Mitigating factor set out in Annex II, Point II(d):

EUR 100,000 x 0.6 = EUR 60,000

EUR 100,000 – EUR 60,000 = EUR 40,000

[555] See also Exhibit 11, ESMA Supervisors' Second Response to IIO, Response to Q6, p. 4, and attached documents.

Adjusted fine taking into account applicable aggravating and mitigating factors:

EUR 100,000 + EUR 50,000 – EUR 40,000 = **EUR 110,000**

639. Consequently, following the adjustment by taking into account the applicable aggravating and mitigating factors, the amount of the fine to be imposed on the PSI for the infringement concerning misuse of information amounts to **EUR 110,000**.

640. Nevertheless, as outlined in Section 4.1.4 above, the second paragraph of Article 65(4) of EMIR states that "Where an act or omission of a trade repository constitutes more than one infringement listed in Annex I, only the higher fine calculated in accordance with paragraphs 2 and 3 and relating to one of those infringements shall apply."

641. Given that the facts in relation to the Brexit confidentiality incident set out in Section 2.3.4 also form the basis of the infringements analysed above, only the highest fine should be imposed. Thus, the Board concludes that the fine of EUR 110,000 will not be imposed.

4.6.3.5 Maximum cap of the fine and disgorgement of profits

642. The Board's conclusions are as set out in Section 4.2.3.5 above: the PSI did not benefit from the infringement, and the maximum cap of the fine is EUR [5-6] million.

4.6.3.6 Conclusion

643. The total amount of the fine to be imposed on the PSI for this infringement amounts to **EUR 110,000**.

644. However, given what is said above about factual overlap, the Board takes the view that the fine will not be imposed.

4.6.4 Supervisory measure

645. Regard must be had to Article 73, paragraphs 1 and 2, of EMIR.

646. Given the factual findings in the present case, and the fact that the infringement was remediated, the supervisory measure set out in Article 73(1)(c) of EMIR may be considered appropriate with regard to the nature and the seriousness of the infringement.

647. The Board thus imposes a public notice as the appropriate supervisory measure.

On the basis of the above Statement of Findings, the Board hereby

DECIDES

that

REGIS-TR S.A. committed with negligence the following infringements:

a. infringement set out at Point (c) of Section I of Annex I to 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;

b. infringement set out at Point (c) of Section I of Annex I to EMIR, in conjunction with Article 9(1) of SFTR by not establishing adequate policies and procedures sufficient to ensure its compliance, including of its managers and employees with all the provisions of EMIR, in conjunction with SFTR;

c. infringement set out at Point (d) of Section I of Annex I to EMIR, in conjunction with Article 9(1) of SFTR 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;

d. infringement set out at Point (a) of Section II of Annex I to EMIR by not identifying sources of operational risk and minimising them through the development of appropriate systems, controls and procedures;

e. infringement set out at Point (a) of Section II of Annex I to EMIR, in conjunction with Article 9(1) to SFTR by not identifying sources of operational risk and minimising them through the development of appropriate systems, controls and procedures;

f. infringement set out at Point (c) of Section II of Annex I to EMIR by not ensuring the confidentiality, integrity and protection of the information received under Article 9 of EMIR;

g. infringement set out at Point (h) of Section II of Annex I to EMIR by not taking all reasonable steps to prevent any misuse of the information maintained in the TR's system.

therefore

IMPOSES

the following **fines**:

a. EUR 54,000 for the infringement set out at Point (c) of Section I of Annex I to EMIR;

b. EUR 540,000 for the infringement set out at Point (c) of Section I of Annex I to EMIR, in conjunction with Article 9(1) of SFTR;

c. EUR 320,000 for the infringement set out at Point (d) of Section I of Annex I to EMIR, in conjunction with Article 9(1) of SFTR;

d. EUR 110,000 for the infringement set out at Point (a) of Section II of Annex I to EMIR;

e. EUR 240,000 for the infringement set out at Point (a) of Section II of Annex I to EMIR, in conjunction with Article 9(1) of SFTR;

f. EUR 220,000 for the infringement set out at Point (c) of Section II of Annex I to EMIR;

g. EUR 110,000 for the infringement set out at Point (h) of Section II of Annex I to EMIR.

The Board found that the infringements set out at Point (a) of Section II of Annex I to EMIR, Point (c) of Section II of Annex I to EMIR and Point (h) of Section II of Annex I to EMIR in relation respectively to operational risk, confidentiality of information and misuse of information stem from the same act or omission. The Board thus applied the second paragraph of Article 65(4) of EMIR in respect of the fines imposed for these infringements. Therefore, only the fine of EUR 220,000 is applied for the three infringements.

This leads to a total amount of **EUR 1,374,000**

and

ADOPTS

a supervisory measure in the form of a **public notice** to be issued in respect of all the infringements; and

a supervisory measure in the form of a **requirement to bring to an end three infringements,** concerning infringements at Point (c) of Section I of Annex I to EMIR, Point (c) of Section I of Annex I to EMIR, in conjunction with Article 9(1) of SFTR and Point (d) of Section I of Annex I to EMIR, in conjunction with Article 9(1) of SFTR.

REGIS TR, S.A. may avail itself of the remedies of Chapter V of Regulation (EU) No 1095/2010 against this decision.

This decision is addressed to REGIS TR, S.A. – 15, rue Léon Laval, L-3372 Leudelange, Luxembourg, and shall take effect upon notification.

Done at Paris, on 17 February 2026.

[Signed]

For the Board of Supervisors

The Chair

Verena Ross