

Public Notice

DTCC Derivatives Repository Plc ('DDRL') is a trade repository ('TR') headquartered in the UK, which up until the UK withdrawal from the European Union had the largest market share (measured in number of reports per TR) in the European Union.

After 31 December 2020, DDRL ceased to be registered with ESMA¹. Nevertheless, based on the Withdrawal Agreement, ESMA is competent to impose fines on DDRL as the appointment of an Independent Investigating Officer ('IIO') by ESMA took place before the end of the transition period.

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ('EMIR') lays down obligations for a TR in the conduct of its activities. In conjunction with its role of supervisor of TRs under EMIR, the European Securities and Markets Authority ('ESMA') has functions and powers to take enforcement actions in relation to infringements of EMIR by TRs.

EMIR provides for the protection of the integrity and confidentiality of data received by TRs and that, in order to ensure transparency and availability of information, TRs shall ensure that specified authorities and regulators have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

In 2019, following preliminary investigations, ESMA's Supervision Department concluded with respect to DDRL 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.

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

Having considered the evidence, and having heard DDRL, the Board has found that DDRL negligently committed the seven following infringements of EMIR, leading to the imposition of a fine of EUR 408 000 (Decision 2021/6) and the issuance of this public notice in accordance with Article 73 of EMIR.

¹ DTCC Data Repository (Ireland) Plc is the only TR of the PSI's group operating in the EU.

First Infringement

By granting asset managers access to data that they were not entitled to receive, DDRL negligently committed the infringement set out at Point (c) of Section II of Annex I of EMIR.

A) Legal background

According to EMIR, a TR shall ensure the confidentiality, integrity and protection of the information received under Article 9 of EMIR.

B) Factual findings and analysis of the Board

In February 2014, DDRL implemented a functionality allowing asset managers to access all the data of the funds which were exclusively managed by them.

Between the start of the reporting obligation under EMIR and the disabling of the functionality on 1 October 2018, DDRL identified 35 instances in which a total of 32 asset managers were incorrectly granted exclusive access rights over investment funds. This meant that 32 asset managers could see all positions within a fund, even though they only managed a portion of that fund.

The reasons for granting incorrect access were usually due to DDRL incorrectly setting up asset managers as exclusive.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised in the written submissions, the Board found that DDRL failed to comply with Article 80(1) of EMIR, because it did not ensure the confidentiality of the data reported to it by (or on behalf of) investment funds. Therefore, it committed the infringement set out at Point (c) of Section II of Annex I of EMIR. The infringement has been committed each time that DDRL provided one of its asset manager clients with access to data that it was not entitled to receive, i.e. 35 times.

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

The basic amount of the fine was calculated pursuant to Article 65 of EMIR. In addition, the Board applied the relevant aggravating factors prescribed by Annex II of EMIR (the infringement has been committed repeatedly and has revealed systemic weaknesses in the organisation of DDRL) and therefore fined DDRL EUR 112 000.

D) Supervisory measure and fine

Public notice



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

Fine

The fine imposed on DDRL is EUR 112 000.

Second Infringement

By implementing mapping rules which altered the substance of the information reported to it, DDRL negligently committed the infringement set out at Point (c) of Section II of Annex I of EMIR.

A) Legal background

According to EMIR, a TR shall ensure the confidentiality, integrity and protection of the information received under Article 9 of EMIR.

B) Factual findings and analysis of the Board

After the entry into force of the reporting obligation under EMIR, DDRL maintained its original reporting system, which used non-EMIR data fields. To prepare the participant and regulator reports, DDRL thus implemented a set of mapping rules which identified the input data that needed to be reported under each EMIR reporting data field and populated those fields in the reports.

Between 12 February and 21 August 2014 (for FX derivatives trades) and between 12 February 2014 and 27 April 2017 (for equity derivatives trades), DDRL implemented a mapping rule to populate the EMIR “counterparty side” field that, when the buyer value did not match the “Buyer LEI value” (e.g. because it had been left blank), populated the “counterparty side” field as a sell (“S”), instead of leaving it blank.

C) Finding of the infringement

The Board deems that the mapping rules related to the “counterparty side” field led to two different outcomes: (i) the alteration of the substance of the data and (ii) the provision of incorrect reports to the regulators.

With regards to the first outcome, on the basis of the assessment of the complete file submitted by the IIO and of the arguments raised in the written submissions, the Board found that DDRL failed to comply with Article 80(1) of EMIR because it altered the substance of the data reported by counterparties and CCPs. Therefore, DDRL committed the infringement set out at Point (c) of Section II of Annex I of EMIR. The infringement was committed each time that the implementation of a “counterparty side” mapping rule for a derivative asset class resulted in the alteration of the substance of the data reported, i.e. 2 times.

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

The basic amount of the fine was calculated pursuant to Article 65 of EMIR. In addition, the Board applied the relevant aggravating factors prescribed by Annex II of EMIR (the infringement has been committed repeatedly, has lasted more than six months, has revealed

systemic weaknesses in the organisation of DDRL and has had a negative impact on the quality of the data that it maintains) and therefore fined DDRL EUR 66 000.

The second outcome was assessed by the Board in the context of the third infringement.

D) Supervisory measure and fine

Public notice

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

Fine

The fine imposed on DDRL is EUR 66 000.

Third Infringement

By generating reports for regulators that contained data that was not consistent with the data reported to it, DDRL negligently committed the infringement set out at Point (b) of Section III of Annex I of EMIR.

A) Legal background

According to EMIR, a TR shall ensure that the entities referred to in Article 81(3) of EMIR have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

B) Factual findings and analysis of the Board

After the entry into force of the reporting obligation under EMIR, DDRL maintained its original reporting system, which used non-EMIR data fields. To prepare the participant and regulator reports, DDRL thus implemented a set of mapping rules which identified the input data that needed to be reported under each EMIR reporting data field and populated those fields in the reports.

Between 12 February and 21 August 2014 (for FX derivatives trades) and between 12 February 2014 and 27 April 2017 (for equity derivatives trades), DDRL implemented a mapping rule to populate the EMIR “counterparty side” field that, when the buyer value did not match the “Buyer LEI value” (e.g. because it had been left blank), populated the “counterparty side” field as a sell (“S”), instead of leaving it blank. As a result, the reports that were generated by DDRL’s system included information that was not consistent with the data reported by counterparties and CCPs.

C) Finding of the infringement

The Board deems that the mapping rules related to the “counterparty side” field led to two different outcomes: (i) the alteration of the substance of the data and (ii) the provision of incorrect reports to the regulators.

The first outcome was assessed by the Board in the context of the second infringement (above).

With regards to the second outcome, on the basis of the assessment of the complete file submitted by the IIO and of the arguments raised in the written submissions, the Board found that DDRL failed to comply with Article 81(2) of EMIR because it generated reports for regulators which included information that was not consistent with the data reported to it. Therefore, DDRL committed the infringement set out at Point (b) of Section III of Annex I of EMIR. The infringement was committed each time that the implementation of a “counterparty side” mapping rule for a derivative asset class resulted in the generation of inconsistent reports, i.e. 2 times.

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

The basic amount of the fine was calculated pursuant to Article 65 of EMIR. In addition, the Board applied the relevant aggravating factors prescribed by Annex II of EMIR (the infringement has been committed repeatedly, has lasted more than six months, has revealed systemic weaknesses in the organisation of DDRL and has had a negative impact on the quality of the data that it maintains) and therefore fined DDRL EUR 66 000.

Nevertheless, the Board considered that this infringement and the second infringement set out above, despite being autonomous, stem from the same (incorrect) mapping rules related to the “counterparty side” field.

In accordance with Article 65(4) of EMIR, only the highest fine should be imposed, and since in this case, the two fines are of the same amount, only one fine of EUR 66 000 is to be imposed for the two mentioned infringements.

D) Supervisory measure and fine

Public notice

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

Fine

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

Fourth Infringement

By failing to provide CCP supervisors and overseers with the transaction data they were entitled to receive, DDRL negligently committed infringement the set out at Point (b) of Section III of Annex I of EMIR.

A) Legal background

According to EMIR, a TR shall ensure that the entities referred to in Article 81(3) of EMIR have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

B) Factual findings and analysis of the Board

Between 12 February 2014 and 16 March 2018, DDRL did not provide CCP supervisors and overseers with access to data regarding transactions where a CCP located in their jurisdiction was reported in the “CCP” field, unless the CCP was also a counterparty of the trade.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised in the written submissions, the Board found that DDRL failed to comply with Article 81(2) of EMIR because it did not provide CCP supervisors and overseers with direct and immediate access to all the data they needed to fulfil their mandates and responsibilities, which include not only the data regarding those transactions in which a CCP under their jurisdiction acted as a counterparty to the trade, but also any back-to-back transaction of a clearing arrangement. Therefore, DDRL committed the infringement set out at Point (b) of Section III of Annex I of EMIR.

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

The basic amount of the fine was calculated pursuant to Article 65 of EMIR. In addition, the Board applied the relevant aggravating (the infringement has lasted more than six months, has revealed systemic weaknesses in the organisation of DDRL and has had a negative impact on the quality of the data that it maintains) and mitigating (DDRL has voluntarily taken measures to ensure that a similar infringement cannot be committed in the future) factors prescribed by Annex II of EMIR and therefore fined DDRL EUR 56 000.

D) Supervisory measure and fine

Public notice

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

Fine

The fine imposed on DDRL is EUR 56 000.

Fifth Infringement

By failing to provide the AFM and the CSSF with the transaction data regarding equity derivatives contracts where the underlying of those contracts were located in their respective jurisdictions, DDRL negligently committed the infringement set out at Point (b) of Section III of Annex I of EMIR.

A) Legal background

According to EMIR, a TR shall ensure that the entities referred to in Article 81(3) of EMIR have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

B) Factual findings and analysis of the Board

DDRL did not provide the AFM (between 11 February 2014 and 6 July 2017) and the CSSF (between 22 May 2014 and 6 July 2017) with data regarding reported transactions where, according to the Reuters Instrument Code (RIC), the underlying of the equity derivative trade was respectively located in the Netherlands or in Luxembourg, because the “RIC Location Mapping” (i.e. the equity underlying location mapping used by DDRL to report market regulators with data regarding equity derivatives contracts whose underlyings are located in their jurisdiction) was not among the parameters setup for the AFM’s and CSSF’s access in SDO.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised in the written submissions, the Board found that DDRL failed to comply with Article 81(2) of EMIR because it did not provide two market regulators with direct and immediate access to all the data that they need to fulfil their mandates and responsibilities, which includes the details of equity derivatives contracts whose underlyings are in their jurisdictions. Therefore, DDRL committed the infringement set out at Point (b) of Section III of Annex I of EMIR.

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

The basic amount of the fine was calculated pursuant to Article 65 of EMIR. In addition, the Board applied the relevant aggravating factors prescribed by Annex II of EMIR (the infringement has been committed repeatedly, has lasted more than six months, has revealed systemic weaknesses in the organisation of DDRL and has had a negative impact on the quality of the data that it maintains) and therefore fined DDRL EUR 66 000.

D) Supervisory measure and fine

Public notice

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



Fine

The fine imposed on DDRL is EUR 66 000.

Sixth Infringement

By failing to provide the ECB with the transaction data regarding derivatives contracts where the counterparties or the underlying of those contracts were located in Lithuania, DDRL negligently committed the infringement set out at Point (b) of Section III of Annex I of EMIR.

A) Legal background

According to EMIR, a TR shall ensure that the entities referred to in Article 81(3) of EMIR have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

B) Factual findings and analysis of the Board

On 1 January 2015, Lithuania adopted the euro as its currency. However, between 1 January 2015 and 6 July 2017, DDRL failed to provide the ECB with transaction data regarding derivatives contracts where the counterparties or the underlyings of those contracts were in Lithuania.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised in the written submissions, the Board found that DDRL failed to comply with Article 81(2) of EMIR because it did not provide the ECB with direct and immediate access to all the trade data that it needed to fulfil its mandate and responsibilities, which since 1 January 2015 also includes data regarding any derivatives contracts where the counterparties or the underlyings are in Lithuania. Therefore, DDRL committed the infringement set out at Point (b) of Section III of Annex I of EMIR.

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

The basic amount of the fine was calculated pursuant to Article 65 of EMIR. In addition, the Board applied the relevant aggravating factors prescribed by Annex II of EMIR (the infringement has lasted more than six months, has revealed systemic weaknesses in the organisation of DDRL and has had a negative impact on the quality of the data that it maintains) and therefore fined DDRL EUR 64 000.

D) Supervisory measure and fine

Public notice

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

Fine

The fine imposed on DDRL is EUR 64 000.

Seventh Infringement

By failing to provide the regulators with all data regarding the OTC derivatives contracts that were opened and exited, cancelled or matured on the same day, DDRL negligently committed the infringement set out at Point (b) of Section III of Annex I of EMIR.

A) Legal background

According to EMIR, a TR shall ensure that the entities referred to in Article 81(3) of EMIR have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

B) Factual findings and analysis of the Board

From 12 February 2014 to 15 April 2016, DDRL did not provide the regulators with the details of the OTC derivative trades that were opened and exited, terminated or matured on the same day, except for the information contained in the “Exit” and “Cancel” messages.

C) Finding of the infringement

On the basis of the assessment of the complete file submitted by the IIO and of the arguments raised in the written submissions, the Board found that DDRL failed to comply with Article 81(2) of EMIR because, during that period, it did not provide the regulators with all the data that they needed to fulfil their mandates and responsibilities. Therefore, DDRL committed the infringement set out at Point (b) of Section III of Annex I of EMIR.

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

The basic amount of the fine was calculated pursuant to Article 65 of EMIR. In addition, the Board applied the relevant aggravating (the infringement has lasted more than six months, has revealed systemic weaknesses in the organisation of DDRL and has had a negative impact on the quality of the data that it maintains) and mitigating (DDRL has brought quickly, effectively and completely the infringement to ESMA’s attention and has voluntarily taken measures to ensure that a similar infringement cannot be committed in the future) factors prescribed by Annex II of EMIR and therefore fined DDRL EUR 44 000.

D) Supervisory measure and fine

Public notice

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

Fine

The fine imposed on DDRL is EUR 44 000.



Overall fine

The overall fine to be imposed on DDRL for the above seven infringements committed with negligence amount to EUR 408 000.