European Securities and Markets Authority

ESMA PUBLIC USE

22 March 2022
ESMA41-356-271

Decision 2022/1

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 by Regulation (EU) 2019/2175 of 18 December 2019[2] ('ESMA Regulation'), and in particular Articles 41(1) and 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 [3] (the 'Regulation'), and in particular Articles 64 and 65 thereof,

Having regard to 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[4], and in particular Article 3 thereof,

Whereas:

[1] OJ L 331, 15.12.2010, p. 84.
[2] OJ L 334, 27.12.2019, p. 1–145.
[3] OJ L 201, 27.7.2012, p. 1.
[4] OJ L 179, 19.6.2014, p. 31.

i. The MDR Department within ESMA concluded, following preliminary investigations, that, with respect to REGIS-TR, S.A. ('REGIS-TR' or the 'PSI') there were serious indications of the possible existence of facts liable to constitute one or more of the infringements listed in Annex I 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.

ii. Thus, an independent investigating officer ('IIO') was appointed on 20 November 2020 pursuant to Article 64(1) of Regulation (EU) No 648/2012.

iii. On 6 July 2021, the IIO sent to REGIS-TR her initial Statement of Findings, which found that it had committed one or more of the infringements listed in Annex I to Regulation (EU) No 648/2012.

iv. In response to the IIO's initial Statement of Findings, written submissions dated 21 August 2021 were made by REGIS-TR.

v. Following the receipt of written submissions referred to in point iv. above, the IIO amended her initial Statement of Findings and incorporated those amendments into the Statement of Findings dated 28 September 2021 (the 'IIO's Statement of Findings').

vi. On 29 September 2021, the IIO submitted to the Board her file relating to REGIS-TR which included the initial Statement of Findings dated 6 July 2021, the written submissions made by REGIS-TR on 21 August 2021 and the Statement of Findings dated 28 September 2021.

vii. On 29 October 2021, the Panel established by the Board to assess the completeness of the file submitted by the IIO adopted a ruling of completeness in respect of that file[5].

viii. The Board thoroughly discussed the case at its meeting on 17 November 2021.

ix. On 13 December 2021, on behalf of the Board, ESMA sent the Board's initial Statement of Findings to REGIS-TR.

x. On 31 January 2022, REGIS-TR made written submissions in respect of the Board's initial Statement of Findings.

xi. The Board discussed the case further at its meeting on 22 March 2022.

xii. Pursuant to Article 65 of the Regulation (EU) No 648/2012, 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.

xiii. Pursuant to Article 73 of the Regulation (EU) No 648/2012, where ESMA finds that a trade repository has committed one of the infringements listed in Annex I, it shall take one or more supervisory measures, taking into account the nature and seriousness of the infringement.

[5] Ruling of the Enforcement Panel (ESMA41-356-256)

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 was established in Luxembourg in 2010 as a joint venture between Clearstream Banking S.A. ('CBL')[6] and Sociedad de Gestion de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A. ('Iberclear')[7], each holding 50% of the shares of REGIS-TR[8].
2. The PSI is registered as a Trade Repository ('TR') with ESMA since 14 November 2013[9]. On 6 May 2020, the registration was extended to include all types of securities financing transactions ('SFTs') reported under the Securities Financing Transactions Regulation ('SFTR')[10].
3. As regards the provision of trade repository services in the EU, in 2021 REGIS-TR ranked second among the EU-based trade repositories in terms of the number of clients and revenues. The total turnover of the PSI in 2020 was EUR 18 457 697[11]. In 2021, the PSI had the second largest client base, with 1,772.00 clients and since the EMIR reporting go-live in 2014 it has been reported over 40% of the trades, ranking first among the EU-registered trade repositories.

[6] Exhibit 1, 'ESMA83-357-34188 - Supervisory Report CaseAU21' ('Supervisory Report'), p. 6, para. 15: "CBL is a public limited liability company, owned by Clearstream International S.A., a member of the Deutsche Börse Group. CBL is an International Central Securities Depository and subject to the supervision of the Commission de Surveillance du Secteur Financier (CSSF); CBL is also authorised to operate a securities settlement system. Its registered office is at 42, avenue JF Kennedy, L-1855 Luxembourg, Grand Duchy of Luxembourg".
[7] Exhibit 1, 'ESMA83-357-34188 - Supervisory Report CaseAU21' ('Supervisory Report'), p. 6, para. 16: "Iberclear is a public limited liability company, owned by Bolsas y Mercados Españoles, Sociedad Hólding de Mercados y Sistemas Financieros, S.A. (BME), a member of the Bolsas y Mercados Españoles Group (BME Group). Iberclear is the Spanish central securities depository, subject to the supervision of the Comisión Nacional del Mercado de Valores (CNMV); Iberclear is also a securities settlement system. Its registered office is at Plaza de la Lealtad 1, Madrid, 28014, Spain."
[8] Exhibit 5, 'PSI's Comments on the Supervisory Report', p. 1; See also Exhibit 1, 'ESMA83-357-34188 - Supervisory Report CaseAU21' ('Supervisory Report'), p. 6, para. 14 and Exhibit 35, "Company overview".
[9] Exhibit 10, '2013-1629_esma_registers_trade_repositories_2'.
[10] Exhibit 11, 'esma71-99-1321_esma_registers_sftr_trs'.
[11] Financial statements for the year end 31 December 2020

2 Facts

2.1 Incident affecting the data informed in the fields 1.17 'Value of Contract' (the 'Collateral incident)

4. The PSI put in place three partial messages to report derivatives contracts with action type 'V' (Valuation Update) [12]:

- Valuation Updates ('VU') messages, to update any of the following fields: 1.17 'Value of Contract'; 1.18 'Currency of the value'; 1.19 'Valuation timestamp'; and 1.20 'Valuation type';

- Modification ('MX(V)') messages, to modify any of the following fields: 1.21 'Collateralisation'; 1.22 'Collateral portfolio'; and 1.23 'Collateral portfolio code'; and

- Collateral Updates ('CU') messages, to update any of the following fields: 1.24 'Initial margin posted', 1.25 'Currency of the initial margin posted'; 1.26 'Variation margin posted; 1.27 'Currency of the variation margins posted'; 1.28 'Initial margin received'; 1.29 'Currency of the initial margin received'; 1.30 'Variation margin received'; 1.31 'Currency of the variation margins received'; 1.32 'Excess collateral received'; 1.33 'Currency of the excess collateral posted'; 1.34 'Excess of collateral received'; and 1.35 'Currency of the excess collateral received'.

5. On 8 November 2019, the European Central Bank ('ECB') contacted the PSI wondering why some action type 'V' (Valuation Update) messages had both fields 1.17 'Value of contract' and 1.21 'Collateralisation' empty in the Trade Activity Reports ('TAR') that it had received[13].

6. The PSI carried out an internal investigation and on 13 November 2019 concluded that in the reports that the PSI sent to the entities referred to in Article 81(3) of the Regulation (the 'Regulators') there had been an incorrect implementation of the validation rules[14] affecting the data included in the fields 1.17 'Value of Contract' and 1.21 'Collateralisation' (the 'Collateral Update Incident').

[12] Exhibit 1, 'ESMA83-357-34188 - Supervisory Report CaseAU21' ('Supervisory Report'), p. 16, para. 71.; Exhibit 12, 'IIO - RTR02 - Connectivity Handbook Reporting Participant v2021.03', pp. 26-50.
[13] In the Collateral Update Incident Report, the PSI indicated that the ECB had contacted it in December 2019 (see Document '5.1 TR_Incident_reporting_template (RTR20191113A)' (attached to Supervisory Report, Exhibit 5), p. 4). However, the Board notes that, on 3 July 2020, the PSI clarified that it was on 8 November 2019, i.e., prior to the notification by the PSI of the incident to ESMA Supervisors, that the ECB contacted the PSI enquiring about the Collateral Update Incident (see Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0'. p. 19 and Exhibit 7, 'PSI's Response to the IIO's RFI', p. 6).
[14] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 6.

7. On 15 November 2019[15], the PSI notified the Collateral incident (PSI's ref. number RTR20191113A) to ESMA Supervisors and on 17 January 2020, it submitted the standardized incident report template (the 'Collateral Update Incident Report')[16].

8. According to the information provided in the Collateral Update Incident Report, "Since the RTS implementation, some action type 'V' messages included in the Trade Activity Reports had no value informed neither for the field 1.17 'Value of contract' nor for the field 1.21 'Collateralisation' […] After the investigation, it was discovered that the way REGIS-TR has split the action type 'V' messages (…) VU (Valuation updates): to update fields from 1.17 to 1.20 (…) MX 'with action type 'V': to modify fields from 1.21 to 1.23 (…) CU (Collateral updates): to update fields from 1.24 to1.35 at portfolio or trade Id level. (…) is not correct because collateral update messages sent on transaction/positions, for which the field 1.21 Collateralisation has not been previously informed, are shown in the TAR reports without information in the fields 1.17 'Value of contract' and 1.21 'Collateralisation'. It is important to mention that CU messages sent on contracts for which the collateralization type has been previously informed are not affected as the field's value is mapped from the contract information when inserting the CU in the TAR. […]"[17].

9. On 6 March 2020, the PSI indicated in an internal document that "in the Regulator's Reports generation a process [redacted] took place, where the needed information that is not reported in a message is extracted from the related contract. In this case, the value 1.21 not reported in a CU message should be extracted by the [redacted] process form the correspondent contract. To be more precise, an example to reproduce the issue is: [1] New contract (XT message, action type 'N') is reported with valuation information only. Field 1.17 informed and field 1.21 empty. The contract is stored with COR_MTM_VAL populated and COR_TYP empty. This message is correct according to the current RTS rules when included in the ME_2 report. [2] The previous contract reported in step 1 receives a Collateral Update (CU message, action type 'V'). CU messages does not allow to report the field 1.21 'Collateralisation' nor the field 1.17 'Value of the contract' since both fields are not included [i]n the CU message. When the CU message (step 2) is reported in the ME_1 TAR: - no 'value of the contract' (field 1.17) info. Field not in the CU message structure. and - no 'collateralisation' (field 1.21) info. Field not in the CU message structure and it was not reported in the initial XT (step 1), the [redated] process cannot resolve the value […]"[18].

10. On 3 July and 30 September 2020, in response to ESMA Supervisors' First RFI and ESMA Supervisors' Second RFI[19], the PSI confirmed the information provided in the

[15] Supervisory Report, Exhibit 5, 'D. RTR20191113A Incident report - Incomplete collateral information in some CUs reported in TAR'.
[16] Document '5.1 TR_Incident_reporting_template (RTR20191113A)' (attached to Supervisory Report, Exhibit 5).
[17] Document '5.1 TR_Incident_reporting_template (RTR20191113A)' (attached to Supervisory Report, Exhibit 5), p. 4.
[18] Exhibit 13, 'Document III - EMIR-CR-2019_59 - part 4', pp. 2-3.
[19] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 19-24; Supervisory Report, Exhibit 14, 'REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR_Report, pp. 6-7.

notification and in the Collateral Update Incident Report. In addition, the PSI provided further information regarding the root cause and the chain of events that led to the occurrence of the Collateral incident, as well as about its impact.

11. In particular, on 3 July 2020, the PSI indicated that "the root cause of this incident was an incomplete impact assessment of the system adaptations required for the Revised RTS message processing flow. As a consequence, the related functional specification did not address this change correctly. […] The incident was a consequence of the following decisions taken during the Revised RTS implementation phase, which were only briefly mentioned in the incident report: 1) Adaptations of the three different proprietary messages already available to report Action type= V. […] 2) It was decided that the collateral related fields (1.24 to 1.35) could be updated through CU messages even when the type of the collateralization (field 1.21) had not been previously informed for the contract. […] More specifically, the sequence of reports that would lead to this issue would be as follows: 1) A report with Action type= New is submitted with valuation information only (fields 1.17 to 1.20). The contract is stored with field 1.17 'Value of the contract' populated and field 1.21 'Collateralisation' empty. 2) A Collateral Update (CU) message with Action type = V is subsequently reported. Since neither the field 1.21 'Collateralisation' nor the field 1.17 'Value of the contract' are included in the CU message structure – (neither of these fields can be reported in this message type) if the previous two steps are followed, the CU message, which is an Action type= V (step 2), is displayed in the TAR with both fields empty simultaneously"[20].

12. On 30 September 2020, the PSI further indicated that "the adaptations required to the three proprietary messages used for the reporting of Action Type= V, […], were covered by the Functional Specifications Document […], in concrete in sections 1.2.8 "Collateral Reporting", 1.3 "Review of validations" and 11 "Message structure and Field Descriptions of the new messages" […] From the above-mentioned references, it can be observed there was not any validation defined in order to reject the Collateral Update messages where the field 1.21 "Collateralisation" had not been previously reported. However, it was not detected at that point in time that, collateral update messages under these circumstances, were mapped as reports with Action Type= V with both fields (1.17 and 1.21) empty in the Trade Activity Report (TAR)"[21].

13. Regarding the impact, on 3 July 2020, the PSI noted that TAR and TSR delivered through the Regulators Portal in CSV format as well as the ones delivered through ESMA's Trade Repository Data Reporting tool ('TRACE') in Extensible Markup Language ('XML') format were impacted by the Collateral incident[22].

[20] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 19-20.
[21] Supervisory Report, Exhibit 14, 'REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR_Report', p. 6.
[22] In this regard, on 16 October 2020, the PSI indicated that: "both TAR and TSR were impacted by this incident and in both formats (CSV and XML) although the information shown in every format was different. While in the CSV TAR file, Collateral Update messages were displayed showing all collateral fields even when the latest status of the trade showed the field 1.21

14. In addition, the Collateral incident affected the Rejection and Reconciliation Reports generated by the PSI from 30 August 2019 (the implementation date of the TRACE Phase 3) onwards, as "the Collateral Update messages that were not aligned with the validations should have been rejected, increasing the rejection figures provided in the reports and the overall messages received as participants should have realised of the error and re-submitted the messages" and "the trades incorrectly updated could have not reconciled as the other TR probably had the information according with the validations"[23].

15. The PSI thus estimated[24] that the Collateral incident had the following impact:

Type of reports	Total number of Regulators affected	Total number of reports[25] affected	Total number of records[26] affected
Daily Trade Activity Report ('TAR')[27]	39 Regulators	58 725	206 541 885
Daily Trade State Reports ('TSR')[28]	40 Regulators	57 025	421 192 283
Ad-hoc TAR[29]	13 Regulators	39	1 944 270
Ad-hoc TSR[30]	17 Regulators	99	6 766 610
Rejection Reports[31]	39 Regulators	3 764	59 279 066
Reconciliation Reports[32]	39 Regulators	3 603	N/D[33]

'Collateralization' as empty or 'Uncollateralized', in the XML version of the TAR, this information is not included as the mapping rules to generate an ISO 20022 XML file rely on the content of the field 1.21 to decide whether the tags corresponding to the fields 1.24 to 1.35 must be included in the report. Likewise, while for the CSV version of the TSR, the related trades records were displayed showing all collateral fields, the XML version of the TSR did not contain the fields 1.24 to 1.35 for the above-mentioned reason." (Supervisory Report, Exhibit 49, 'REGIS-TR Follow up answer to RFI (ESMA83-357-34131) and RFI (ESMA83-357-34038)', p. 5).

[23] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 22-23.

[24] The Board notes the following statement from the PSI: "REGIS-TR would like to highlight that the impact on regulators, as presented in paragraphs 35, 44, 52, 65, 88 and 99 of the report, should be considered as theoretical upper limit as due to missing information it was not possible to accurately determine the number of reports affected per Authority" (see Exhibit 5, 'PSI's Comments on Supervisory Report', p. 2).

[25] Reports sent to the Regulators pursuant to Article 81(2) of the Regulation containing the records of any derivative contract and any modification thereof reported to a TR by Reporting Parties under Article 9 of the Regulation.

[26] Record of any derivative contract and any modification thereof reported to a TR by Reporting Parties under Article 9 of the Regulation.

[27] Supervisory Report, Exhibit 30, 'RTR20191113A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 32, 'RTR20191113A_Q4_B1_Recurrent records'.

[28] Supervisory Report, Exhibit 30, 'RTR20191113A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 32, 'RTR20191113A_Q4_B1_Recurrent records'.

[29] Supervisory Report, Exhibit 31, 'RTR20191113A_Q4_A2_Adhoc reports'; Supervisory Report, Exhibit 33, 'RTR20191113A_Q4_B2_Adhoc records'.

[30] Supervisory Report, Exhibit 31, 'RTR20191113A_Q4_A2_Adhoc reports'; Supervisory Report, Exhibit 33, 'RTR20191113A_Q4_B2_Adhoc records'.

[31] Supervisory Report, Exhibit 30, 'RTR20191113A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 32, 'RTR20191113A_Q4_B1_Recurrent records'.

[32] Supervisory Report, Exhibit 30, 'RTR20191113A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 32, 'RTR20191113A_Q4_B1_Recurrent records'.

[33] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 23: "The number of trades affected in Reconciliation Statistics is directly linked with the records affected in the TSR as all of them

16. The Collateral incident started on 1 November 2017 and continued until 27 July 2020, when the PSI implemented a permanent solution[34]. No data affected by the Collateral incident has been retroactively provided to the Regulators[35].

2.2. Incident affecting the validation of modification messages over pre-RTS data and causing the failure of the XML schema validations (the 'XML incident')

17. On 10 October 2019[36], the ECB informed the PSI that the TAR received via TRACE for the previous day failed to pass the XML schema validations. On 16 October 2019, the Central Bank of Ireland raised a similar issue[37].

18. On 17 October 2019, following an internal investigation of the abovementioned issues, the PSI notified an incident (PSI's ref. number RTR20191016A) to ESMA Supervisors affecting the validation of modification messages over data regarding records of derivative contracts sent by Reporting Parties before 1 November 2017 ('Pre-RTS'), which caused that some Regulator reports did not pass the XML schema validations (the 'XML incident')[38] and, on 6 December 2019[39], it submitted the standardized incident report template ('XML Incident Report')[40].

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have jeopardized the reconciliation statistics. How the statistics could have been different is difficult to predict as it is dependent on the outcome of the reconciliation process."

[34] Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 29-30; Exhibit 14, 'IIO - RTR69 - UPLOAD_PROD_20200725_RTR20191113A-EMIR-CR-2019_59': "RTR-3465 - [EMIR] EMIR-CR-2019_59 - CUs sent at portfolio level over a portfolio with MATU/TERM trades with "collateralisation" field empty are rejected".

[35] In response to a question from ESMA Supervisors the PSI indicated that "The messages that were incorrectly accepted from the 1 November 2017 and the 22 June 2020 have been sent to the NCAs on the recurrent reports for the reporting sessions within that period. As the data received from the participant is part of the history of the TR and cannot be changed with any measure that REGIS-TR could perform, it is not possible to provide the Authorities with amended data for these sessions. Consequently, as the data will remain in our databases as it was received, any ad-hoc query retrieving Collateral Update Messages or the latest state of the trades could show the incorrectly accepted data." (Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 24). However, on 22 January 2021, the PSI clarified that it was not impossible but that "only after careful consideration of potential options for correcting and providing amended data to Regulators [the PSI] came to the conclusion to refrain from doing so." (Exhibit 5, 'PSI's Comments on Supervisory Report', p. 2). In her RFI, the IIO requested the PSI to explain the potential options considered and why these options were ultimately discarded by the PSI. In its Response to the IIO's RFI, the PSI explained the options considered and the conclusions reached but indicated that the "conclusions were reached in an internal meeting for which there are no minutes" (Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 22-25).

[36] The Board notes that there are some inconsistencies as regards the date in which the ECB contacted the PSI to raise the issue for the first time. In the notification of the XML Incident, the PSI indicated that it was on 10 October 2019 (see Supervisory Report, Exhibit 4, 'C. Incident report RTR20191016A Wrong validation rule to modification messages over pre-RTS trades'., p. 1); whereas in the in the XML Incident Report, there is a reference to 9 December 2019 (Document '4.1 TR_Incident_reporting_template (RTR20191016A)' (attached to Supervisory Report, Exhibit 4), p. 1). In response to the IIO's RFI, the PSI indicated yet another date, notably 8 November 2019 (See Exhibit 7, 'PSI's Response to the IIO's RFI', p. 5). However, the Board believes that 10 October 2019 is the actual date in which the ECB notified the PSI about this issue, as it is also the date to which the PSI refers in pages 16, 29, 33 and 42 of its response to the IIO's RFI. It is also the date of discovery of the incident indicated in the Collateral Update Incident Report (Document '4.1 TR_Incident_reporting_template (RTR20191016A)' (attached to Supervisory Report, Exhibit 4), p. 5).

[37] Supervisory Report, Exhibit 4, 'C. Incident report RTR20191016A Wrong validation rule to modification messages over pre-RTS trades', p. 1; Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 29 and 42.

[38] Supervisory Report, Exhibit 4, 'C. Incident report RTR20191016A Wrong validation rule to modification messages over pre-RTS trades', p. 2.

[39] Supervisory Report, Exhibit 4, 'C. Incident report RTR20191016A Wrong validation rule to modification messages over pre-RTS trades', p. 1.

[40] Document '4.1 TR_Incident_reporting_template (RTR20191016A)' (attached to Supervisory Report, Exhibit 4).

19. According to the information provided in the notification, "following our investigations, it has been identified a malfunction in the validations rules applied to the participant's inbound messages related to the field "Underlying Id" and "Underlying Id Type", accepting modification messages that should be rejected according to Revised RTS. This scenario occurs when these fields are reported maintaining exactly the same pre-RTS values. This issue only affects modification messages over pre-RTS trades. As the consequence, when the message is reported to Regulators […] using .xml schema, the .xml schema validation fails as these values are not an expected value in Revised RTS. […]. The impacted Regulators will be contacted, and the reports will be regenerated as soon as the issue is solved"[41].

20. In particular, with regards to the specific issue raised by the ECB in October 2019, the PSI indicated in the XML Incident Report that the TAR delivered to the ECB "contained a modification message in which the field 'Underlying ID'[42] was empty while the 'Underlying ID type'[43] was populated with the value 'I'. This message had been incorrectly accepted by REGIS-TR on the 9th due to the wrong application of the RTS rules on modification messages sent on contracts reported during the Pre-RTS period. Consequently, the inclusion of this message in the report delivered to the ECB on the 9th caused that the delivered XML report did not pass the schema validations of the standardized XML schema 20022 v1.4. Two days after, on 11th December 2019, another modification message (sent over a Pre-RTS contract) in which both mentioned fields were reported with the value 'I' caused the same problem"[44].

21. The XML Incident Report further indicated that an IT analysis had confirmed that "RTS validations were not being correctly applied in modification messages received over pre-RTS contracts. More specifically, the fields' format checks and the RTS cross validation rules [were] only applied in the fields that are being updated by the modification message"[45].

22. On 3 July 2020, in response to ESMA Supervisors' First Request for Information[46], the PSI confirmed the information provided in the XML Incident Report. In addition, the PSI provided further information regarding the root cause and the chain of events that led to the occurrence of the XML incident as well as about its impact.

23. Regarding the root cause and the chain of events leading to the XML incident, the PSI indicated that "the system was not configured according to the specifications defined in the functional specifications[47]. Additionally, the lack of negative test cases to validate the specific scenario prevented REGIS-TR from detecting the issue. […]

[41] Supervisory Report, Exhibit 4, 'C. Incident report RTR20191016A Wrong validation rule to modification messages over pre-RTS trades', p. 1.
[42] Field 2.8 of reports.
[43] Field 2.7 of reports
[44] Document '4.1 TR_Incident_reporting_template (RTR20191016A)' (attached to Supervisory Report, Exhibit 4,), p. 1.
[45] Document '4.1 TR_Incident_reporting_template (RTR20191016A)' (attached to Supervisory Report, Exhibit 4), p. 4.
[46] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp.13-19.
[47] Exhibit 15, 'Document I - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS'.

During the RTS testing phase back in 2017, and with the aim to meet the TRQ44 guidance, REGIS-TR decided that, as of the implementation of the RTS deployment: 1) Modification messages with Action type= 'M' or 'R' should be sent with all the fields that were previously informed in the contract (snapshot approach) and that no partial modification would be accepted. 2) Modifications sent on pre-RTS reported contracts should be validated as new contract to guarantee that the contract is updated according to the new validations. The above two measures were defined in the functional specifications. The first measure was correctly implemented and tested whereas the second was not […]"[48]. On 30 September 2020, the PSI provided ESMA Supervisors with a theoretical example to illustrate how the second measure in the functional specifications worked in practice[49].

24. The PSI further explained that, after analysing the XML incident, it detected that the wrong application of the RTS rules on modification messages sent on contracts reported during the Pre-RTS period not only affected the fields 2.7 'Underlying identification type' and 2.8 'Underlying identification' but also the following fields: 1.23 'Collateral portfolio code'; 2.9 'Notional currency 1'; 2.10 'Notional currency 2'; 2.11 'Deliverable currency'; 2.12 'Trade ID'; 2.13 'Report tracking number'; 2.14 'Complex trade component ID'; 2.15 'Venue of execution'; 2.17 'Price / rate'; 2.20 'Notional'; 2.21 'Price multiplier'; 2.22 'Quantity'; 2.31 'Master Agreement version'; 2.51 'Fixed rate day count leg 1'[50]; 2.62 'Delivery currency 2'[51]; 2.64 'Exchange rate basis'; 2.67 'Delivery point or zone'; and 2.68 'Interconnection Point'[52].

25. As a result of the XML incident, the Regulators did not correctly receive their reports in the required format (i.e., in the XML format), which had to be regenerated by the PSI. In addition, the reports regenerated by the PSI to comply with the format requirement were not provided to the Regulators within the prescribed timeframe (i.e., on T+1 for data reported by Reporting Parties no more than one year prior and T+3 otherwise)[53].

26. Regarding the impact, the PSI noted that "from the 1 November 2017 to the 10 February 2020 any Modification or Correction message over a Pre-RTS trade has not requested the client to align the data to the Revised RTSs validations. Therefore, as the validations were not implemented to force them to do that update, we should consider that any Modification or Correction received by REGIS-TR between the mentioned dates is potentially affected by this incident. Nevertheless, the actual

[48] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 13-15.
[49] Supervisory Report, Exhibit 15, 'REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR_Report', p. 5.
[50] The Board notes that 'Fixed rate day count leg 1' is field 2.41 in Delegated Regulation (EU) No 148/2013 and Implementing Regulation (EU) 1247/2012 and not field 2.51. The field 2.51 in Delegated Regulation (EU) No 148/2013 and Implementing Regulation (EU) 1247/2012 is 'Floating rate reset frequency leg 1 – time period'.
[51] The Board notes that 'Delivery currency 2' is field 2.61 in Delegated Regulation (EU) No 148/2013 and Implementing Regulation (EU) 1247/2012 and not 2.62. The field 2.62 in Delegated Regulation (EU) No 148/2013 and Implementing Regulation (EU) 1247/2012 is 'Exchange rate 1'.
[52] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 13-15.
[53] Exhibit 7, 'PSI's Response to the IIO´s RFI', pp. 16-17.

figure may be lower than that as the participant could have proactively reported all the required data at some point in time or since the very beginning"[54].

27. In addition, the XML incident also affected the Rejection and Reconciliation Reports generated by the PSI from 30 August 2019 (the implementation date of the TRACE Phase 3) onwards, as "the Correction and Modification messages that were not aligned with the new validations should have been rejected, increasing the rejection figures provided in the reports and the overall messages received as participants should have realised of the error and re-submitted the message […]" and "the trades incorrectly updated could have not reconciled as the other TR probably had the information according to the new validations"[55].

28. The PSI thus estimated[56] that the XML incident had the following impact:

Type of reports[57]	Total number of Regulators affected	Total number of reports affected	Total number of records affected
Daily TAR[58]	41 Regulators	52 449	786 101 461
Daily TSR[59]	41 Regulators	51 108	5 140 652 188
Ad-hoc TAR[60]	12 Regulators	32	1 942 173
Ad-hoc TSR[61]	15 Regulators	89	4 588 869
Rejection Reports[62]	40 Regulators	2 070	69 013 346
Reconciliation Reports[63]	40 Regulators	2 260	N/D[64]

29.

[54] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 16.
[55] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 17.
[56] The Board notes the following statement from the PSI: "REGIS-TR would like to highlight that the impact on regulators, as presented in paragraphs 35, 44, 52, 65, 88 and 99 of the report, should be considered as theoretical upper limit as due to missing information it was not possible to accurately determine the number of reports affected per Authority" (see Exhibit 5, 'PSI's Comments on Supervisory Report', p. 2).
[57] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 17.
[58] Supervisory Report, Exhibit 26, 'RTR20191016A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 28, 'RTR20191016A_Q4_B1_Recurrent records'.
[59] Supervisory Report, Exhibit 26, 'RTR20191016A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 28, 'RTR20191016A_Q4_B1_Recurrent records'.
[60] Supervisory Report, Exhibit 27, 'RTR20191016A_Q4_A2_Adhoc reports'; Supervisory Report, Exhibit 29, 'RTR20191016A_Q4_B2_Adhoc records'.
[61] Supervisory Report, Exhibit 27, 'RTR20191016A_Q4_A2_Adhoc reports'; Supervisory Report, Exhibit 29, 'RTR20191016A_Q4_B2_Adhoc records'.
[62] Supervisory Report, Exhibit 26, 'RTR20191016A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 28, 'RTR20191016A_Q4_B1_Recurrent records'.
[63] Supervisory Report, Exhibit 26, 'RTR20191016A_Q4_A1_Recurrent reports'.
[64] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 18: "The number of trades affected in Reconciliation Statistics is directly linked with the records affected in the TSR as all of them have jeopardized the reconciliation statistics. How the statistics could have been different is difficult to predict as it is dependent on the outcome of the reconciliation process."

30. On 29 November 2019, the PSI regenerated and provided all the Regulators affected by the XML incident with the reports that did not pass the schema validations of the standardized XML schema 20022 v.1.4[65].

31. The XML incident started on 1 November 2017 and continued until 20 June 2020, when it was permanently resolved[66].

2.3. Incident affecting the fields 2.15 'Venue' and 2.16 'Compression' in reports with Action Type 'M' and 'R' (the 'Compression incident')

32. On 19 December 2019, the PSI discovered that for action type 'M' (modification) and 'R' (correction) messages sent over Pre-RTS trades (i.e. trades originally reported before 1 November 2017, which were still outstanding after that date), the field 2.16 'Compression' was mandatory in the REGIS-TR system[67] whereas according to the reporting requirements for action type 'M' (modification) messages the field was not relevant and therefore had to be left blank by the Reporting Parties and for action type 'R' (correction) messages was optional and thus had to be populated by the Reporting Parties only where applicable. The issue was detected by Business Product Management ('BPM') through tests in the User Acceptance Testing ('UAT') environment[68].

33. On 20 December 2019, the PSI notified the incident (PSI's ref. number RTR20191219A) to ESMA Supervisors (the 'Compression Incident')[69] and on 10 February 2020[70], the PSI submitted the standardized incident report template ('Compression Incident Report')[71].

34. On 3 July 2020, in response to ESMA Supervisors' First RFI[72], the PSI confirmed the information provided in the Compression Incident Report. In addition, the PSI provided further information regarding the root cause and the chain of events that led to the occurrence of the Compression Incident as well as about its impact. Moreover,

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[65] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 15; Exhibit 7, ´PSI's Response to the IIO's RFI', p. 17.
[66] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 15-16. In this regard, the Board notes that to solve the XML Incident two Change requests were needed: one on 10 February 2020 (See Exhibit 16, 'IIO - RTR65 - UPLOAD_PROD_20200208_RTR20191016A- RTR-1815' p. 1: "RTR-1815 - EMIR (Online): Messages sent with action type M or R should be rejected if the field underlying id type is populated while the field underlying ID is empty") and one on 20 June 2020 (See Exhibit 17, 'IIO - RTR66 - RTR20200103A-RTR2363andRTR20191120A-RTR16', p.2: "RTR-2327 - EMIR (RTR-1815 part 2): modifications on Pre-RTS trades: MX/ME messages should not be accepted if at least 1 mandatory fields is not informed and validations on field <corporatesector> should be applied"). See also in this regard Exhibit 18, 'IIO - RTR39 - Q17', p. 3; "Not fully solved in the RTR-1815, another Jira was needed, the RTR-2327".
[67] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 30.
[68] Document '7.1 TR_Incident_reporting_template (RTR20191219A)' (attached to Supervisory Report, Exhibit 7), p. 4.
[69] Supervisory Report, Exhibit 7, 'F. Incident Report RTR20191219A - Incorrect validation implementation on compression field for action type M', pp. 1-2.
[70] Supervisory Report, Exhibit 7, 'F. Incident Report RTR20191219A - Incorrect validation implementation on compression field for action type M', p. 1.
[71] Document '7.1 TR_Incident_reporting_template (RTR20191219A)' (attached to Supervisory Report, Exhibit 7).
[72] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 30-33.

the PSI confirmed that the 2.15 'Venue' field was also impacted by the Compression Incident[73].

35. Regarding the root cause and the chain of events leading to the Compression Incident, the PSI indicated the following: "lack of business requirements on how the TRQ44 should have been implemented as a consequence of the Revised RTS of 1 November 2017. At that time, the wrong interpretation of TRQ44 by REGIS-TR led to the specifications defined in the Change Request […] In Q4 2017, when defining the system adaptation for the Revised RTS deployment, the Change Request describing the logic for corrections and modifications under the Revised RTS was defined and implemented. With this change request, the modification messages processing ('M' or 'R') was changed to validate modification messages as new trades (with the exception of the exposure section) in any case. By mean of this measure, REGIS-TR guaranteed that any modified contract was correctly updated to the new rules. However, REGIS-TR detected in December 2019 that the interpretation of the regulatory requirement defined in the TRQ44 and how it was implemented in the system through the Change Request was not correct. The functional specifications defined should only apply to the first "Modification" or "Correction" report that is received on or after 1 November 2017 for pre-RTS trades. This condition is not mentioned in the Change Request, and the specifications of the Change Request are therefore erroneously applied to all "Modification" or "Correction" reports that are related to pre-RTS trades"[74].

36. Regarding the impact, the PSI noted that "the quantification has been done based on the messages incorrectly rejected, considering that all of them should have been re-reported and accepted afterwards." REGIS-TR understands that the higher rejection volumes were obtained following the implementation of the Revised RTSs, but as the time passed by, participants became aware of the rejections, and they were decreasing until becoming close to zero nowadays. For that reason, the analysis of the impact has been focused on the 8 following months after the implementation (November 2017 to June 2018) and based on these figures and considering a decreasing progression until the current moment, the number of reports and records have been calculated. The number of reports affected is based on the number of sessions where the incident occurred, but it does not take into account re-generations or re-submissions of the reports"[75].

37. On 30 October 2020, in response to ESMA Supervisors' Second RFI, the PSI further noted that "the initial investigation raised that almost 99% of the messages incorrectly rejected due to this incident were received between November 2017 and January

[73] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 31.
[74] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 30-31.
[75] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 32.

2018. As the incident is still open, the impact over the TSR has been analysed considering the same end date used for the analysis of the TAR: 19 June 2020"[76].

38. In addition, the Compression Incident also affected the Rejection Reports generated by the PSI from 30 August 2019 (implementation date of the TRACE Phase 3) onwards[77].

39. The PSI thus estimated[78] that the Compression Incident had the following impact:

Type of reports[79]	Total number of Regulators affected	Total number of reports affected	Total number of records affected
Daily TAR[80]	26 Regulators	620	11 462
Daily TSR[81]	38 Regulators	55 861	2 172 305
Ad-hoc TAR[82]	13 Regulators	39	1 944 270
Ad-hoc TSR[83]	17 Regulators	99	6 766 610
Rejection Reports[84]	26 Regulators	N/D[85]	N/D[86]

40. The Compression Incident started on 1 November 2017[87] and continued until 14 December 2020, when a permanent solution was implemented[88]. No data affected by the Compression Incident has been retroactively provided to the Regulators[89].

[76] Supervisory Report, Exhibit 50, 'REGIS-TR Follow up answers to RFI (ESMA83-357-34131) final', p. 5.
[77] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 32. The Board notes that contrary to other incidents described in this Statement of Findings (such as, e.g., the XML Incident), there is no evidence in the file that the Reconciliation Reports generated by the PSI from 30 August 2019 onwards were also affected by the Compression Incident. However, in the Board's view, taking into account that the LEI Incidents resulted in data that did not comply with the reporting requirements being accepted into the PSI's system and vice versa, it cannot be excluded that they were also affected.
[78] The Board notes the following statement from the PSI: "REGIS-TR would like to highlight that the impact on regulators, as presented in paragraphs 35, 44, 52, 65, 88 and 99 of the report, should be considered as theoretical upper limit as due to missing information it was not possible to accurately determine the number of reports affected per Authority" (see Exhibit 5, 'PSI's Comments on Supervisory Report', p. 2).
[79] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 32-33; Supervisory Report, Exhibit 14, 'REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR_Report', p. 9.
[80] Supervisory Report, Exhibit 40, 'RTR20191219A_Q4_A1_Recurrent reports_v2', p. 1; Supervisory Report, Exhibit 42, 'RTR20191219A_Q4_B1_Recurrent records_v2', p. 1.
[81] Supervisory Report, Exhibit 40, 'RTR20191219A_Q4_A1_Recurrent reports_v2', pp. 3-4; Supervisory Report, Exhibit 42, 'RTR20191219A_Q4_B1_Recurrent records_v2', p. 2.
[82] Supervisory Report, Exhibit 41, 'RTR20191219A_Q4_A2_Adhoc reports_v2'.
[83] Supervisory Report, Exhibit 41, 'RTR20191219A_Q4_A2_Adhoc reports_v2'; Supervisory Report, Exhibit 43, 'RTR20191219A_Q4_B2_Adhoc records'.
[84] Supervisory Report, Exhibit 40, 'RTR20191219A_Q4_A1_Recurrent reports_v2'.
[85] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 33: "The impact on the Authorities is the same that have been included in the TAR analysis, but considering only since the deployment of the TRACE Phase 3."
[86] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 33: "The impact on the Authorities is the same that have been included in the TAR analysis, but considering only since the deployment of the TRACE Phase 3."
[87] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 30.
[88] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 8; Exhibit 19, 'IIO - RTR28 - RTR20191219 Supporting evidence - UPLOAD_PROD_20201212'; Exhibit 20, 'IIO - RTR67 - UPLOAD_PROD_20201212_RTR20191219A-EMIR-CR-2020_18'.
[89] Please see footnote 58 above.

2.4. Incident affecting the currency-related fields of reports (the 'Currencies Incident')

41. As part of the assessment conducted for the [redacted] project [90] launched by the PSI in 2018, the PSI identified validation issues regarding the currency-related fields of reports[91] (the 'Currencies Incident').

42. In particular, in March 2019, the PSI's Functional Team identified that the reference database table used to validate the currency codes reported by Reporting Parties had discrepancies with the ISO4217 (official list of currency codes) and that the currency code CNH (Chinese Yuan Renminbi) was wrongly accepted in all the fields where currency codes shall be reported. The Functional team proposed to solve the issue by updating the reference table with only the active currency codes of the ISO 4217 list. However, the BPM team questioned this solution, which was thus not implemented[92].

43. This issue was raised internally as an incident on 20 November 2019[93], when, as part of the checks carried out within the context of the PSI's Position Calculation Project[94], the PSI detected that the currency code RUR (Russian Ruble) had been reported and wrongly accepted. A review of the currency table was then carried out by the PSI[95].

44. On 27 November 2019[96], the PSI notified the Currencies Incident (PSI's ref. number RTR20191120A) to ESMA Supervisors and, on 13 March 2020[97], the PSI submitted the standardized incident report (the 'Currencies Incident Report')[98].

45. The Currencies Incident Report indicated three root causes for the Currencies Incident: "First, unknown initial source (list of currency codes) used to feed the currencies reference table at the beginning of REGIS-TR in 2014. Secondly, since 2014 until now, the currencies reference table has been manually maintained by REGIS-TR through the intranet tool, from which any currency codes can be inserted but not deleted. Lastly, during the RTS impact assessment, or later on in March 2019 (when the topic was discussed), concrete requirements from BPM side should have been raised to determine in which cases historical currencies can be accepted". The

[90] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 21: "During 2018, an external consultancy company was hired to detect the missing implementations in REGIS-TR IT system compared with the requirements in EMIR Regulation and to procedure the missing documentation for those requirements. [redacted]
[91] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 21 (see also p. 22); Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 6.
[92] Document '6.1 TR_Incident_reporting_template (RTR20191120A)' (attached to Supervisory Report, Exhibit 6), p. 1.
[93] Document '6.1 TR_Incident_reporting_template (RTR20191120A)' (attached to Supervisory Report, Exhibit 6), p. 5.
[94] For further information on the PSI's Position Calculation Project, see Exhibit 7, 'PSI's Response to the IIO's RFI', p. 22 (response to question 31).
[95] Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 6 and 22.
[96] Supervisory Report, Exhibit 6, 'E. Incident report _RTR20191120A_ - Inbound messages with currencies not validated against ISO4217'.
[97] Supervisory Report, Exhibit 6, 'E. Incident report _RTR20191120A_ - Inbound messages with currencies not validated against ISO4217'.
[98] Document '6.1 TR_Incident_reporting_template (RTR20191120A)' (attached to Supervisory Report, Exhibit 6).

Currencies Incident Report also stated that "due to these three reasons, the reference table has never been in line (and still not updated) with the ISO4217 official list and the non-valid or inactive currency codes CNH, DEM, RUR, FIM, SKK, VEF or ITL have been wrongly accepted"[99].

46. On 3 July 2020, in response to ESMA Supervisors' First RFI[100], the PSI confirmed the information provided in the Currencies Incident Report. In addition, the PSI provided further information regarding the root causes and the chain of events that led to the occurrence of the Currencies Incident as well as about its impact.

47. In particular, regarding the root causes and the chain of events leading to the Currencies Incident, the PSI indicated that "the lack of business requirements and analysis to update the currency reference data against the ISO 4217 with the codes with an Active/Historical indication led to the occurrence of the incident. […] Firstly, an unknown initial source (list of currency codes) was used to feed the currencies reference table for EMIR Reporting Start Date (RSD). This reference table was used since the EMIR RSD to validate the codes reported in the currency fields by participants. Given that the initial source was not properly validated against the ISO4217, invalid currency codes might have been present in the reference table […] since the EMIR RSD. Secondly, since 2014 until now, the currencies reference table has been manually maintained by REGIS-TR through the intranet tool, from which any currency codes can be inserted but not deleted and therefore additional invalid or historical currency codes not validated against the ISO 4217 have been added to the reference table"[101].

48. On 30 September 2020, in response to ESMA Supervisors' Second RFI, the PSI confirmed the reception and subsequent reporting to the Regulators of messages containing currency codes that did not figure in the ISO4217 list and provided examples for each of those currency codes[102].

49. Regarding the impact, the PSI noted that "the existence of non-active ISO4217 currencies have allowed REGIS-TR participants to report any of the currency fields with one of the following currency codes: 'CNH', 'DEM', 'RUR', 'FIM', 'SKK', 'VEF', 'ITL'. These messages should have been rejected, but were delivered in the TAR to the Authorities. Consequently, the TSR was updated accordingly with the messages received and also delivered to the Authorities since the EMIR RSD until the resolution date (22 June 2020) […]"[103].

[99] Document '6.1 TR_Incident_reporting_template (RTR20191120A)' (attached to Supervisory Report, Exhibit 6), p. 2.
[100] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 25-29.
[101] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 25-26.
[102] Supervisory Report, Exhibit 14, 'REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR_Report', pp. 7-8.
[103] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 27.

50. In addition, the Currencies Incident affected the Rejection and Reconciliation Reports generated by the PSI from 30 August 2019 (the implementation date of the TRACE Phase 3) onwards, as "the messages that were accepted using any of the currencies listed before should have been rejected, increasing the rejection figures provided in the reports and the overall messages received as participants should have realised of the error and re-submitted the messages. […] The trades incorrectly updated could have not reconciled as the other TR probably had the information according with the validations"[104].

51. The PSI thus estimated[105] that the Currencies Incident had the following impact:

Type of reports	Total number of Regulators affected	Total number of reports affected	Total number of records affected
Daily TAR [106]	41 Regulators	99 679	137 674 760
DailyTSR[107]	41 Regulators	122 416	170 269 139
Ad-hoc TAR[108]	13 Regulators	39	1 944 270
Ad-hoc TSR[109]	17 Regulators	99	6 766 610
Rejection Reports[110]	39 Regulators	3 842	29 395 736
Reconciliation Reports[111]	39 Regulators	3 763	No Data ('N/D')[112]

52. The Currencies Incident started on 1 November 2017 and continued until 22 June 2020, when it was permanently resolved[113] but no data affected by the Currencies Incident has been retroactively provided to the Regulators[114].

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[104] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 27.
[105] The Board notes the following statement from the PSI: "REGIS-TR would like to highlight that the impact on regulators, as presented in paragraphs 35, 44, 52, 65, 88 and 99 of the report, should be considered as theoretical upper limit as due to missing information it was not possible to accurately determine the number of reports affected per Authority" (see Exhibit 5, 'PSI's Comments on Supervisory Report', p. 2).
[106] Supervisory Report, Exhibit 34, 'RTR20191120A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 36, 'RTR20191120A_Q4_B1_Recurrent records_D1'.
[107] Supervisory Report, Exhibit 34, 'RTR20191120A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 37, 'RTR20191120A_Q4_B1_Recurrent records_D2'.
[108] Supervisory Report, Exhibit 35, 'RTR20191120A_Q4_A2_Adhoc reports'; supervisory Report, Exhibit 39, 'RTR20191120A_Q4_B2_Adhoc reports'.
[109] Supervisory Report, Exhibit 35, 'RTR20191120A_Q4_A2_Adhoc reports'; Supervisory Report, Exhibit 39, 'RTR20191120A_Q4_B2_Adhoc reports'.
[110] Supervisory Report, Exhibit 34, 'RTR20191120A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 38, 'RTR20191120A_Q4_B1_Recurrent records_D3'.
[111] Supervisory Report, Exhibit 34, 'RTR20191120A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 36, 'RTR20191120A_Q4_B1_Recurrent records_D1'.
[112] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 28: "The number of trades affected in Reconciliation Statistics is directly linked with the records affected in the TSR as all of them have jeopardized the reconciliation statistics. How the statistics could have been different is difficult to predict as it is dependent on the outcome of the reconciliation process."
[113] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 21; Exhibit 17, 'IIO - RTR66 - RTR20200103A-RTR2363andRTR20191120A-RTR16', p. 2: "RTR-16 - Currency codes update - ISO 4217: Automated update process for [BDMEMIR]. [dbo].[BRMDIVI] with only active currency codes".
[114] Please see footnote 58 above.

2.5. Incidents affecting the Registration Status of the Legal Entity Identifiers ('LEIs') codes reported by the Reporting Parties in the LEI-related fields of reports (the 'LEI Incidents')

53. On 30 July 2019, a client of the PSI contacted the PSI's client services to point out an inconsistency in the online validations applied by the PSI's system: "An R003 which contained a collateral update message sent at portfolio level was accepted, while an R002 file containing the valuation update message on the same contract (same CP1-CP2-UTI) was rejected with the error description: Incorrect Identification [ID-RPTG-CPTY1]"[115].

54. After an initial investigation, REGIS-TR discovered on 9 August 2019[116] that the LEI code informed in the field 1.2 'Reporting Counterparty ID' of the concerned report was in status 'Lapsed' in GLEIF but, due to an inadequate system configuration, it was accepted[117]. Following this discovery, the PSI decided to analyse all the fields where the GLEIF validation was required[118].

55. On 20 August 2019, the PSI notified an incident (PSI's ref. number RTR20190819A) to ESMA Supervisors affecting the LEI-related fields of reports (the 'LEI Status Incident')[119]. On 11 December 2019[120], the PSI submitted the standardized incident report template ('LEI Status Incident Report')[121].

56. According to the information provided in the LEI Status Incident Report, "the adequate checks/validations on the LEI code status in fields 1.2 'Reporting Counterparty ID', 1.4 'ID of the other Counterparty' and 1.9 'Report submitting entity ID' were not coded for collateral update messages sent at portfolio level by our IT service provider"[122]. However, the collateral update messages sent at trade level were not affected by the LEI Status Incident[123].

57. The LEI Status Incident Report also indicated that the "Functional team did not spot this issue during the RTS testing phase due to the lack of certain test case" and that the incident was due to an "inadequate system configuration"[124].

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[115] 'Document '1.1 TR_Incident_reporting_template_RTR20190819A' (attached to Supervisory Report, Exhibit 1), p. 1. The IIO notes that, in response to a request for information from ESMA Supervisors, the PSI indicated that it was on 9 August 2019 when it first discovered the occurrence of the incident.
[116] Document '1.1 TR_Incident_reporting_template_RTR20190819A' (attached to Supervisory Report, Exhibit 1), p. 5; Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 34-35.
[117] Document '1.1 TR_Incident_reporting_template_RTR20190819A' (attached to Supervisory Report, Exhibit 1), p. 4.
[118] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 34-35.
[119] Supervisory Report, Exhibit 1, 'A. RTR20190819A Incident Report - LEI code status not validated in CU messages sent at portfolio level', p.1.
[120] Supervisory Report, Exhibit 1, 'A. RTR20190819A Incident Report - LEI code status not validated in CU messages sent at portfolio level', p.1.
[121] Document '1.1 TR_Incident_reporting_template_RTR20190819A' (attached to Supervisory Report, Exhibit 1).
[122] Document '1.1 TR_Incident_reporting_template_RTR20190819A' (attached to Supervisory Report, Exhibit 1), p. 2.
[123] Document '1.1 TR_Incident_reporting_template_RTR20190819A' (attached to Supervisory Report, Exhibit 1), p. 4.
[124] Document '1.1 TR_Incident_reporting_template_RTR20190819A' (attached to Supervisory Report, Exhibit 1), p. 2.

58. On 3 January 2020, the PSI discovered another incident (PSI's ref. number RTR20200103A) affecting the LEI-related fields of reports (the 'GLEIF Incident')[125] and on 13 January 2020, ESMA Supervisors were notified about the incident[126].

59. According to the information provided in the notification of the GLEIF Incident, "[…] upon the solution of the [LEI Status Incident], additional tests have been executed with the aim of ensuring if the LEI status validations are correctly implemented on the rest of the ID fields. The tests outcome revels that:

    The status of the LEI code informed in fields '1.8 Broker ID', '1.10 Clearing member ID', '1.12 Beneficiary ID', '2.37 CCP' is not validated against the GLEIF source in new contracts (Action type 'N' or 'P') nor in subsequent life cycle events (Action type 'M' or 'R').

    With regards to the field 1.9 Report submitting entity, the status of the LEI code informed is only validated for new contracts (Action type 'N' or 'P'). For this specific field, the validation of the LEI status is not applied for life cycle events (Action type 'M' or 'R')"[127].

60. On 12 February 2020[128], the PSI submitted the standardized incident report template ('GLEIF Incident Report')[129], confirming the information provided in the notification and providing additional information about the GLEIF Incident.

61. In its Response to the IIO's RFI, the PSI indicated that the field 2.84 'Reference entity' was also impacted by the GLEIF Incident but not by the LEI Status Incident[130].

62. On 3 July 2020, in response to ESMA Supervisors' First RFI[131] the PSI confirmed the information provided in the LEI Status Incident Report and the GLEIF Incident Report. In addition, the PSI provided further information regarding the root cause and the chain of events that led to the occurrence of the LEI Incidents as well as about their impact.

63. In particular, regarding the root cause and the chain of events leading to the LEI Incidents, the PSI indicated that the PSI's system was not configured according to the functional specifications. In addition, due to the lack of negative test cases[132] built to validate specific scenarios in the RTS test plan, the issues were not detected during the testing phase[133].

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[125] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 15.
[126] Supervisory Report, Exhibit 8, 'Incident report _RTR20200103A_ – Missing validations on the status of the LEI code'.
[127] Supervisory Report, Exhibit 8, 'Incident report _RTR20200103A_ – Missing validations on the status of the LEI code', p. 2.
[128] Supervisory Report, Exhibit 8, 'Incident report _RTR20200103A_ – Missing validations on the status of the LEI code', p. 1.
[129] Document '8.1 TR_Incident_reporting_template (RTR20200103A)' (attached to Supervisory Report, Exhibit 8).
[130] Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 13-14.
[131] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp.3-7.
[132] In this regard, the PSI explained that: "we refer to negative test cases those that aim at ensuring that values not allowed according to the validation rules are rejected." (Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 4 and 34).
[133] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 4 and 34-35.

64. Regarding the impact of the LEI Incidents, the PSI initially indicated on 3 July 2020 that only the TARs were affected[134]. However, on 30 September 2020, the PSI indicated that the TSRs were also affected[135].

65. In addition, the LEI Incidents also affected the Rejection Reports generated by the PSI from 30 August 2019 (the implementation date of the TRACE Phase 3) onwards, as "these messages should have been rejected, increasing the rejection figures provided in the Rejection reports and the overall messages received as participants should have realised of the error and re-submitted the messages"[136].

66. The PSI thus estimated[137] that the LEI Status Incident had the following impact:

Type of reports	Total number of Regulators affected	Total number of reports affected	Total number of records affected
Daily TAR[138]	41 Regulators	47 893	24 825 258
Daily TSR [139]	41 Regulators	47 594	60 527 842
Ad-hoc TAR[140]	12 Regulators	32	1 942 173
Ad-hoc TSR[141]	14 Regulators	88	4 529 685
Rejection Reports[142]	41 Regulators	1 346[143]	3 913 435[144]

[134] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp.5-6 and 36-37.
[135] Supervisory Report, Exhibit 14, 'REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR_Report', p. 3; Supervisory Report, Exhibit 15, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_updated information', p. 2.
[136] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 5-6 and 37. The Board notes that contrary to other incidents described in this Statement of Findings (such as, e.g., the XML Incident), there is no evidence in the file that the Reconciliation Reports generated by the PSI from 30 August 2019 onwards were also affected by the LEI Incidents. However, in the Board's view, taking into account that the LEI Incidents resulted in data that did not comply with the reporting requirements being accepted into the PSI's system, it cannot be excluded that they were also affected.
[137] The Board notes the following statement from the PSI: "REGIS-TR would like to highlight that the impact on regulators, as presented in paragraphs 35, 44, 52, 65, 88 and 99 of the report, should be considered as theoretical upper limit as due to missing information it was not possible to accurately determine the number of reports affected per Authority" (see Exhibit 5, 'PSI's Comments on Supervisory Report', p. 2).
[138] Supervisory Report, Exhibit 16, 'RTR20190819A_Q4_A1_Recurrent reports_v2'; Supervisory Report, Exhibit 18, 'RTR20190819A_Q4_B1_Recurrent records_v2'.
[139] Supervisory Report, Exhibit 16, 'RTR20190819A_Q4_A1_Recurrent reports_v2'; Supervisory Report, Exhibit 18, 'RTR20190819A_Q4_B1_Recurrent records_v2'.
[140]Supervisory Report, Exhibit 17, 'RTR20190819A_Q4_A2_Adhoc reports_v2'; Supervisory Report, Exhibit 19, 'RTR20190819A_Q4_B2_Adhoc records'.
[141] Supervisory Report, Exhibit 17, 'RTR20190819A_Q4_A2_Adhoc reports_v2'.
[142] Supervisory Report, Exhibit 16, 'RTR20190819A_Q4_A1_Recurrent reports_v2'; Supervisory Report, Exhibit 18, 'RTR20190819A_Q4_B1_Recurrent records_v2'.
[143] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 6: "In this case, it has been considered the implementation date of the TRACE Phase 3 (30 August 2019) as the first report affected. […] The affected reports per Authority and report type can be found in the Document "RTR20190819A_Q4_A1_Recurrent reports."
[144] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 6: "In this case, it has been considered the implementation date of the TRACE Phase 3 (30 August 2019) as the first report affected. […] The number of sessions and records affected in total per Authority in the TAR and Rejection Statistics can be found in the in the Document "RTR20190819A_Q4_B1_Recurrent records".

67. Likewise, the PSI estimated[145] that the GLEIF Incident had the following impact:

Type of reports[146]	Total number of Regulators affected	Total number of reports affected	Total number of records affected
Daily TAR[147]	42 Regulators	61 168	84 385 591
Daily TSR[148]	42 Regulators	59 768	5 448 196 203
Ad-hoc TAR[149]	13 Regulators	39	1 944 270
Ad-hoc TSR[150]	17 Regulators	99	6 766 610
Rejection Reports[151]	41 Regulators	3 946	18 390 504

68. The issues identified in the LEI Status Incident started on 1 November 2017 and continued until 2 December 2019 when they were permanently resolved[152].

69. The issues identified in the GLEIF Incident started on 1 November 2017 and continued until 22 June 2020 when they were permanently resolved[153].

70. Data affected by the LEI Incidents has not been retroactively provided to the Regulators[154].

[145] In this regard, the PSI noted the following: "Firstly, it is important to mention that the figures provided in this response are based on the maximum number of messages that could have been potentially rejected due to this incident if all of them had been rejected, but the actual impacted records would be significantly lower as most of the participants are supposed to use only valid LEIs, as requested in the validation rules" (see Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 37, see also Exhibit 5, 'PSI's Comments on Supervisory Report', p. 2).

[146] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp.36-38; Supervisory Report, Exhibit 15, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_updated information', p.2: "As a result of the new assessment done to respond question 1 of the document "REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR", REGIS-TR has also reassessed the answer provided to question 4.a. of incident RTR20200103A referred in "REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR", where REGIS-TR pointed out a similar reasoning to argue that the TSR was not affected. In such answer REGIS-TR stated "In regards with the TSR, REGIS-TR does not consider it is affected by this incident as any outstanding trade could contain temporally or permanently one or more LEIs in a status that would not allow subsequent updates, but the data has to be delivered to the Authorities despite that fact". Consequently, REGIS-TR would like to confirm the TSR is affected from the perspective that the TSR is showing information coming from messages erroneously accepted."

[147] Supervisory Report, Exhibit 44, 'RTR20200103A_Q4_A1_Recurrent reports_v2'; Supervisory Report, Exhibit 46, 'RTR20200103A_Q4_B1_Recurrent records_v2'.

[148] Supervisory Report, Exhibit 44, 'RTR20200103A_Q4_A1_Recurrent reports_v2'; Supervisory Report, Exhibit 46, 'RTR20200103A_Q4_B1_Recurrent records_v2'.

[149] Supervisory Report, Exhibit 45, 'RTR20200103A_Q4_A2_Adhoc reports_v2'.

[150] Supervisory Report, Exhibit 45, 'RTR20200103A_Q4_A2_Adhoc reports_v2'.

[151] Supervisory Report, Exhibit 44, 'RTR20200103A_Q4_A1_Recurrent reports_v2'; Supervisory Report, Exhibit 46, 'RTR20200103A_Q4_B1_Recurrent records_v2'.

[152] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 4-5; Exhibit 7, 'PSI's Response to the IIO's RFI', p. 27; Exhibit 22, 'IIO - RTR64 - UPLOAD_PROD_20191130_ RTR20190819A-RTR-1437': "RTR-1437: CU messages sent at portfolio LEVEL and ME(V) messages does not validate the LEI status of the CP1".

[153] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 35; Exhibit 7, PSI's Response to the IIO's RFI, pp. 27-28; Exhibit 17, 'IIO - RTR66 - RTR20200103A-RTR2363andRTR20191120A-RTR16', p. 1: "RTR-2363 - Inbound messages: LEI code status is not validated for fields 'Report submitting entity', 'Broker ID', 'Clearing member ID', 'Beneficiary ID' and 'CCP'."

[154] Please see footnote 58 above.

2.6. Incident affecting the reporting level of trades (the 'Reporting Level Incident')

71. The field 2.94 'Level' of the reports indicates whether the report submitted by the Reporting Parties to a TR is done at trade or position level. When the reporting is done at trade level, this field has to be informed with a 'T', whereas if it is done at position level, it has to be informed with a 'P'. Reporting trades at position level is only possible as a supplement to reporting at trade level (i.e., to report certain post-trade events) and it can only be done if certain cumulative conditions had previously been met.

72. On 14 October 2019, the PSI detected that Reporting Parties were able to update the information provided in field 2.94 'Level' of the reports through the submission of a Valuation Update ('VU') message[155]. The issue was "first reported by a client, and then confirmed by internal testing"[156].

73. On 17 October 2019, the PSI notified the incident (PSI's ref. number RTR20191015A) to ESMA Supervisors ('Reporting Level Incident')[157] and on 13 January 2020[158], it submitted the standardized incident report template ('Reporting Level Incident Report')[159].

74. According to the information provided in the notification and in the Reporting Level Incident Report, due to an "insufficient definition of the affected scenario in the functional specifications document and therefore incomplete tests performed when the new RTS were introduced in November 2017 to verify that all the messages did not update the level field in the latest contract status of the trade"[160], the PSI incorrectly allowed Reporting Parties to modify the level of reporting through the submission of an Action type 'V' (valuation update) message, i.e., the PSI incorrectly allowed that a report done at trade level (i.e., a trade originally reported with field 2.94 'Level' informed with a 'T') be subsequently modified and reported at position level through the submission of a message with the field 2.94 'Level' informed with a 'P' (Position)[161], whereas according to the revised RTS/ITS this is not allowed.

75. On 3 July 2020, in response to ESMA Supervisors' First RFI[162], the PSI confirmed the information provided in the Reporting Level Incident Report. In addition, the PSI

[155] Supervisory Report, Exhibit 2, 'B. Incident notification RTR20191015A Level field updated by VU message'.
[156] Document '3.1 TR_Incident_reporting_template' (attached to Supervisory Report, Exhibit 3), p. 1 - see TR incident number 'RTR20191015A'.
[157] Supervisory Report, Exhibit 2, 'B. Incident notification RTR20191015A Level field updated by VU message'.
[158] Supervisory Report, Exhibit 3, 'B1. FW Missing incident templates'.
[159] Document '3.1 TR_Incident_reporting_template' (attached to Supervisory Report, Exhibit 3), see TR incident number 'RTR20191015A'.
[160] Document '3.1 TR_Incident_reporting_template' (attached to Supervisory Report, Exhibit 3), p. 1 - see TR incident number 'RTR20191015A'.
[161] Supervisory Report, Exhibit 2, 'B. Incident notification RTR20191015A Level field updated by VU message'; Document '3.1 TR_Incident_reporting_template' (attached to Supervisory Report, Exhibit 3), see TR incident number 'RTR20191015A'.
[162] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 8-12.

provided further information regarding the root cause and the chain of events that led to the occurrence of the Reporting Level Incident as well as about its impact.

76. Regarding the root cause and the chain of events leading to the Reporting Level Incident, the PSI indicated that "when assessing the impact of the RTS of November 2017, REGIS-TR did not identify the requirement that a subsequent report may only update the initially reported value of field 2.94 'Level' if it is a correction (2.93 Action type = R). Therefore, the absence of such requirement provoked the lack of functional definition and subsequent system development according to the expected behaviour" and that "based on the analysis made [by the PSI] the lack of testing was due to the missing design of the relevant requirement in the functional specifications"[163].

77. On 30 September 2020, in response to another RFI from ESMA Supervisors, the PSI indicated that its understanding was that the incident did not relate to position level reporting, but to the validations implemented over the Valuation Update (VU) messages[164].

78. Regarding the impact, the PSI noted that "Since 1 November 2017, REGIS-TR started to deliver to Authorities wrong data on the TAR and TSR. […] As this incident is still open, the information provided considers the period between 1 November 2017 to 14 June 2020 (moment on which the analysis was performed)"[165].

79. In addition, the Reporting Level Incident also affected the Rejection and Reconciliation Reports generated by the PSI from 30 August 2019 (the implementation date of the TRACE Phase 3) onwards, as "the messages changing the field Level should have been rejected, increasing the rejection figures provided in the reports and the overall messages received as participants should have realised of the error and re-submitted the messages" and "the trades erroneously updated, could have been excluded from the reconciliation process when the change was from T to P as the reconciliation process did not include the trades reported at Position level until the 2 December 2019, moment in which all the trades reported with Level = P were sent to reconciliation"[166].

80. The PSI thus estimated[167] that the Reporting Level Incident had the following impact:

[163] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 8.
[164] Supervisory Report, Exhibit 14, 'REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR_Report', p. 4.
[165] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 9.
[166] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 10.
[167] The Board notes the following statement from the PSI: "REGIS-TR would like to highlight that the impact on regulators, as presented in paragraphs 35, 44, 52, 65, 88 and 99 of the report, should be considered as theoretical upper limit as due to missing information it was not possible to accurately determine the number of reports affected per Authority" (see Exhibit 5, 'PSI's Comments on Supervisory Report', p. 2).

Type of reports	Total number of Regulators affected	Total number of reports affected	Total number of records affected
Daily TAR[168]	40 Regulators	50 402	195 511 690
Daily TSR[169]	40 Regulators	45 940	247 016 173
Ad-hoc TAR[170]	13 Regulators	39	1 944 270
Ad-hoc TSR[171]	17 Regulators	99	6 766 610
Rejection Reports[172]	39 Regulators	3 681	66 757 634
Reconciliation Reports[173]	39 Regulators	3 518	N/D[174]

81. The Reporting Level Incident started on 1 November 2017[175] and continued until 28 November 2020, when a permanent solution was deployed in the production environment[176]. No data affected by the Reporting Level Incident has been retroactively provided to the Regulators[177].

[168] Supervisory Report, Exhibit 20, 'RTR20191015A_Q4_A1_Recurrent reports' and Supervisory Report, Exhibit 22, 'RTR20191015A_Q4_B1_Recurrent records_D1'.
[169] Supervisory Report, Exhibit 20, 'RTR20191015A_Q4_A1_Recurrent reports' and Supervisory Report, Exhibit 23, 'RTR20191015A_Q4_B1_Recurrent records_D2'.
[170] Supervisory Report, Exhibit 21, 'RTR20191015A_Q4_A2_Adhoc reports' and Supervisory Report, Exhibit 25, 'RTR20191015A_Q4_B2_Adhoc records'.
[171] Supervisory Report, Exhibit 21, 'RTR20191015A_Q4_A2_Adhoc reports' and Supervisory Report, Exhibit 25, 'RTR20191015A_Q4_B2_Adhoc records'.
[172] Supervisory Report, Exhibit 20, 'RTR20191015A_Q4_A1_Recurrent reports' and Supervisory Report, Exhibit 24, 'RTR20191015A_Q4_B1_Recurrent records_D3'.
[173] Supervisory Report, Exhibit 20, 'RTR20191015A_Q4_A1_Recurrent reports'.
[174] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 11, indicates that "the number of trades affected in Reconciliation Statistics is directly linked with the records affected in the TSR as all of them have jeopardized the reconciliation statistics".
[175] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 30.
[176] Exhibit 23, 'IIO - RTR68 - UPLOAD_PROD_20201128_ RTR20191015A-EMIR-CR-2020_15', p. 1: "RTR-3464 EMIR-CR-2020_15 - Regis-TR EMIR New rules on "Level" field".
[177] In response to a question from ESMA Supervisors, the PSI indicated that "the messages that were incorrectly accepted since the 1 November 2017 have been sent to the NCAs on the recurrent reports for the reporting sessions within that period. As the data received from the participant is part of the history of the TR and cannot be changed with any measure that REGIS-TR could perform, it is not possible to provide the Authorities with amended data for these sessions. Consequently, as the data will remain in our databases as it was received, any ad-hoc query retrieving Valuation Messages or the latest state of the trades could show the incorrectly accepted data". (Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 9). However, on 22 January 2021, the PSI clarified that it was not impossible but that "only after careful consideration of potential options for correcting and providing amended data to Regulators [the PSI] came to the conclusion to refrain from doing so" (Exhibit 5, 'PSI's Comments on Supervisory Report', p. 2). In her RFI, the IIO requested the PSI to explain the potential options considered and why these options were ultimately discarded by the PSI. In its Response to the IIO's RFI, the PSI explained the options considered and the conclusions reached but indicated that the "conclusions were reached in an internal meeting for which there are no minutes" (Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 22-25).

3 Relevant legal provisions

82. References to the Regulation in this decision refer to the text of the 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 investigation[178].

83. Besides the provisions of the (initial) Regulation, which entered into force on 16 August 2012, account must also be taken of the amendments to the Regulation introduced by Regulation (EU) 2015/2365[179], which entered into force on 12 January 2016 and the amendments to the Regulation introduced by Regulation (EU) 2019/834[180], which entered into force on 17 June 2019[181].

84. Moreover, besides the provisions of the Regulation currently in force, account must be taken of the provisions of the Regulation concerning the basic amounts of the fines corresponding to the amounts fixed at the time the infringements were committed, i.e., prior to the entry into force of the amendments to the Regulation introduced through Regulation (EU) 2019/834[182].

85. In this respect, the Board takes into account the following Union law provisions.

86. Article 9(1) of the Regulation provides that: "Counterparties and CCPs shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a trade repository registered in accordance with Article 55 or recognised in accordance with Article 77. The details shall be reported no later than the working day following the conclusion, modification or termination of the contract."

87. With respect to specific obligations regarding data integrity, Article 80(1) of the Regulation stipulates that: "A trade repository shall ensure the confidentiality, integrity and protection of the information received under Article 9".

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[178] Following the amendments introduced by the Regulation (EU) 2015/2365, which entered into force on 12 January 2016, the numbering of some of the provisions in the Regulation changed. This decision refers to the current numbering. However, some of the documents used as evidence refer to the original numbering of those provisions.

[179] 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, p. 1.

[180] 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, p. 42.

[181] 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."

[182] 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, p. 42.

88. In this regard, Point (c) of Section II of Annex I of the Regulation stipulates:

"II. Infringements relating to operation requirements:

[...]

(c) a trade repository infringes Article 80(1) by not ensuring the confidentiality, integrity or protection of the information received under Article 9."

89. With respect to specific obligations regarding data provision to the regulators, Article 81(2) and Article 81(3) of the Regulation read as follows:

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

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

(a) ESMA;
(b) EBA;
(c) EIOPA;
(d) the ESRB;
(e) the competent authority supervising CCPs accessing the trade repositories;
(f) the competent authority supervising the trading venues of the reported contracts;
(g) the relevant members of the ESCB, including the ECB in carrying out its tasks within a single supervisory mechanism under Council Regulation (EU) No 1024/2013;
(h) the relevant authorities of a third country that has entered into an international agreement with the Union as referred to in Article 75;
(i) supervisory authorities designated under Article 4 of Directive 2004/25/EC of the European Parliament and of the Council;
(j) the relevant Union securities and market authorities whose respective supervisory responsibilities and mandates cover contracts, markets, participants and underlyings which fall within the scope of this Regulation;
(k) the relevant authorities of a third country that have entered into a cooperation arrangement with ESMA, as referred to in Article 76;
(l) the Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009 of the European Parliament and of the Council;
(m) the resolution authorities designated under Article 3 of Directive 2014/59/EU of the European Parliament and the Council;
(n) the Single Resolution Board established by Regulation (EU) No 806/2014;
(o) competent authorities or national competent authorities within the meaning of Regulations (EU) No 1024/2013 and (EU) No 909/2014 and of Directives 2003/41/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU and, 2014/65/EU, and supervisory authorities within the meaning of Directive 2009/138/EC;

(p) the competent authorities designated in accordance with Article 10(5) of this Regulation.

A trade repository shall transmit data to competent authorities in accordance with the requirements under Article 26 of Regulation (EU) No 600/2014."

90. In this regard, Point (b) of Section III of Annex I of the Regulation stipulates:

"III. Infringements relating to transparency and the availability of information:

[...]

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

91. With respect to the obligation of TRs to verify correctness and completeness of the data submitted by the Reporting Parties[183] Articles 55(1) and (4) of the Regulation read as follows:

"1. A trade repository shall register with ESMA for the purposes of Article 9.

[…]

4. 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."

92. In addition, Article 56(1) and (3) of the Regulation stipulates:

"1. A trade repository shall submit an application for registration to ESMA.

[…]

3. In order to ensure consistent application of this Article, ESMA shall develop draft regulatory technical standards specifying the details of the application for registration referred to in paragraph 1. […]"

93. In this respect, Article 19 of the Delegated Regulation 150/2013[184] provides as follows:

[183] As at the time of the material facts of the case; to be noted that as of 18 June 2021 additional provisions (Article 78(9) and the corresponding infringement provision set out at point (j) of Section I of Annex I of the Regulation) were introduced regarding the obligation to verify correctness and completeness of the data, which, however, are not appliable in the present case as the relevant facts occurred before the entry into force of these provisions.

[184] 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,

"An application for registration as a trade repository shall contain the following information:

(a) procedures for the authentication of the identity of the users accessing the trade repository;
(b) procedures for the verification of the completeness and correctness of derivatives reported to the trade repository;
(c) procedures for the verification of the authorisation and IT permission of the entity reporting on behalf of the reporting counterparty;
(d) procedures for verification that the logical sequence of the details of the reported derivatives is maintained at all times;
(e) procedures for the verification of the completeness and correctness of the details of the reported derivatives;
(f) procedures for the reconciliation of data between trade repositories where counterparties report to different trade repositories;
(g) procedures for the provision of feedback to the counterparties to the derivatives or the third parties reporting on their behalf, on the verifications performed under points (a) to (e) and the outcomes of the reconciliation process point (f)."

94. Finally, the following delegated regulations are to be considered:

95. Delegated Regulation (EU) No 148/2013[185], which entered into force on 15 March 2013. It supplements the Regulation and sets out regulatory technical standards on the minimum details of the data to be reported to TRs. It has been amended by the Delegated Regulation (EU) 2017/104[186], which entered into force on 10 February 2017 and applies since 1 November 2017.

96. Delegated Regulation (EU) No 151/2013[187], which entered into force on 15 March 2013. It supplements the Regulation and sets out regulatory technical standards specifying the data to be published and made available by TRs. It was amended by the Delegated Regulation (EU) 2017/1800[188], which entered into force on 27 October

p. 25–32. Article 19 of Delegated Regulation (EU) 150/2013 was amended by Delegated Regulation (EU) 2019/362. Before this amendment, the provision read as follows: "An application for registration as a trade repository shall contain the procedures put in place by he applicant in order to verify: (a) the compliance of the reporting counterparty or submitting entity with the reporting requirements; (b) the correctness of the information reported; (…)".

[185] Commission Delegated Regulation (EU) No 148/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, OJ L 52, 23.2.2013, p. 1.

[186] Commission Delegated Regulation (EU) 2017/104 of 19 October 2016 amending Delegated Regulation (EU) No 148/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards on the minimum details of the data to be reported to trade repositories, OJ L 17, 21.1.2017, p. 1.

[187] Commission Delegated Regulation (EU) No 151/2013 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 data to be published and made available by trade repositories and operational standards for aggregating, comparing and accessing the data, OJ L 52, 23.2.2013, p. 33.

[188] Commission Delegated Regulation (EU) 2017/1800 of 29 June 2017 amending Delegated Regulation (EU) No 151/2013 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council, OJ L 259, 7.10.2017, p. 14.

2017, and by Delegated Regulation (EU) 2019/361[189], which entered into force on 11 April 2019.

4 Collateral update incident [integrity infringement]

97. As described in Section 2.1 above, the PSI allowed making updates to a contract via three partial messages: (i) "Valuation updates", that would include, among others, field 1.17 'Value of contract'; (ii) "Modifications", that would include, among others, field 1.21 'Collateralisation'; and (iii) "Collateral updates", that would include various fields regarding collateral information.

98. Due to the way the partial messages were set up by the PSI, when submitting a "Collateral update", the field 1.17 'Value of contract' was not one of the values required to be filled in. As a result, the Trade Activity Reports sent to the Regulators upon such "Collateral update" had the field 1.17 empty, although it had been previously reported by Reporting Parties ('Collateral update incident').

99. The Board deems that in the case under consideration the Collateral update incident led to two different outcomes: (i) not ensuring integrity of the data previously reported and (ii) the provision of incorrect reports to the Regulators.

100. In the Board's view, while the impact on integrity of the data constitutes a violation of the obligation to safeguard the integrity of the data, as set out in Article 80(1) of the Regulation, the provision of incorrect reports constitutes a violation of the obligation to ensure the Regulators have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates, set out in Article 81(2) of the Regulation, which is the specific provision covering the output of the reported data and which is analysed in Section 5 below.

101. Therefore, on the basis of the assessment of the facts, the Board established two separate (though intertwined) infringements, as analysed below.

102. With regards to the outcome of not ensuring integrity of the data, this section of the decision analyses whether the PSI breached the following requirement regarding the safeguarding and recording of the data received from counterparties and CCPs:

> "a trade repository shall ensure the […] integrity […] of the information received under Article 9" (Article 80(1) of the Regulation).

103. If this requirement is not met, the infringement set out at Point (c) of Section II of Annex I of the Regulation is established.

[189] Commission Delegated Regulation (EU) 2019/361 of 13 December 2018 amending Delegated Regulation (EU) No 151/2013 with regard to access to the data held in trade repositories, OJ L 81, 22.3.2019, p. 69.

4.1 Analysis of the relevant provisions of the Regulation and the facts

104. The issue under consideration in the present case is whether the PSI has breached its obligation under Article 80(1) of the Regulation to ensure the integrity of the information that it received under Article 9 of the Regulation.

105. The Board agrees with the IIO and finds that the PSI committed this infringement, on the basis of the facts described in Section 2.1 above.

106. The Board notes that the PSI admitted having incorrectly applied the validation rules to reconcile the collateral updates which the Reporting Parties would report via three separate, partial messages – a functionality set up by the PSI.

107. The Board also notes that the PSI chose to set up its system in a way that allowed the Reporting Parties to report updates to a contract, depending on the life-cycle event. Each of the partial messages would contain certain information relevant for the trade but not all of if (that would instead be covered by the remaining two partial messages, if updated, or if not – as originally reported). When reporting such updates (modifications) to the Regulators, the PSI had a duty to reconcile all the relevant information that had been reported to it in order to ensure that complete data, relevant for the performance of their tasks and mandates, is provided to the Regulators and that relevant data previously provided by the Reporting Parties does not result in being omitted.

108. The Board notes that the concept of 'data integrity' refers to the maintenance of the accuracy and consistency of the data during all of the processing activities performed on the data by the TRs (considered by the Board as internal to the TRs since, under the Regulation, the outcome of the wrong reports is covered by Article 81(2)) and that, to comply with the obligation of data integrity set by Article 80(1) of the Regulation, the data should remain intact during all stages of the processing by the TR.

109. In this regard, the Board considers that the PSI did not safeguard the integrity of the data reported to it by the Reporting Parties, in contravention of Article 80(1) of the Regulation, because the PSI did not ensure that the data set contained the same information as reported to it by the Reporting Parties (particularly, by omitting previously reported data).

110. First, the wording of Article 80(1) is clear. TRs have an obligation to ensure the integrity of the data received under Article 9 of the Regulation.

111. Therefore, according to Article 80(1) of the Regulation read in conjunction with Article 9(1), the PSI has an obligation to ensure the integrity of all the details of any derivative contracts reported to it by Reporting Parties.

112. Second, according to Article 1(1) of the Delegated Regulation (EU) No 148/2013, the reports sent to a TR under Article 9(1) of the Regulation must include the details set out in Table 1 of the Annex to that Delegated Regulation, which, where

applicable, inter alia include information about the mark to market valuation or mark to model valuation of the contract (field 1.17 'Value of contract').

113. Furthermore, according to Article 9(1) of the Regulation, the Reporting Parties must also report any modifications or terminations of the derivative contracts. In such event the substance of the data that must be reported is determined by Article 9(5) of the Regulation, which in its points (a) and (b) set out the minimum details that must be included jointly with the validation rules[190], which prescribe which fields are mandatory and which optional for a given message type, depending on the event reported (corresponding to the fields set out in Delegated Regulation (EU) No 148/2013).

114. The validation rules clearly prescribed that when reporting action type "N" (i.e., new) and "V" (i.e., valuation updates, collateral updates and modifications) messages, at least one of the fields 1.17 or 1.21 must be populated[191].

115. Third, the Board notes that ensuring the integrity of all the reported details of any derivative contracts that Reporting Parties have concluded and of any modifications, terminations, valuations, and collateral updates is of utmost importance to ensure that Regulators can fulfil their respective mandates properly.

116. For instance, as stated in the Recital 3 of the Implementing Regulation (EU) 2017/105, "in order to determine the real exposure of counterparties, competent authorities require complete and accurate information on the collateral exchanged between those counterparties […]" [emphasis added].

117. Fourth, the Board notes that, within the context of information technology, data integrity is a familiar concept which refers to the maintenance of the accuracy and consistency of the data over its entire lifecycle and that, in order to ensure data integrity, the data should be stored and processed in a way that it is not altered[192].

118. Thus, the Board concludes that to comply with the obligation under Article 80(1) of the Regulation to ensure the integrity of the data reported under Article 9 of the Regulation, the PSI must ensure that the data included in the Regulator's reports is consistent with the data reported by Reporting Parties.

119. Fifth, as described in more detail in Section 2.1 above, when Reporting Parties submitted a CU message, instead of providing the Regulators with the actual data provided by the Reporting Parties for this field in previous reports regarding the related contract, the field 1.17 'Value of contract' was reported blank in the reports that the PSI generated for the Regulators[193].

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[190] Validation table, as already referred to at the time in ESMA's Q&A TR, see Exhibit 32, 20170201 ESMA70_1861941480-52_qa_on_EMIR_implementation, p.82
[191] Exhibit 1, ESMA83-357-34188 - Supervisory Report CaseAU21, p.16.
[192] See e.g., Exhibit 24, 'What is Data Integrity - Database.guide'.
[193] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 20.

120. Sixth, the Board notes that in the Response to the IIO's initial Statement of Findings, the PSI argues that "the matter raised in the incident report, and covered by the "Collateral Update Infringement", referred to issues in the validation of the reporting of the field but not the content"[194] and states that it "did not alter at any point, the data contained in the reports from clients, nor the information provided to the Regulators in relation to field 1.17 'Value of contract', when compared with the data reported by the Reporting Parties in this field"[195].

121. The Board disagrees with this argument and notes that the PSI decided to put in place three types of partial messages to report derivatives contracts with action type 'V' (Valuation Update), depending on which fields the Reporting Parties wished to update or modify. As explained above, the content of the data set in case of modifications is derived from Article 9(5) of the Regulation in conjunction with the Validation table (as also referred to in ESMA Q&A TR 20b "How are TRs expected to verify completeness and accuracy of the reports submitted by the reporting entities?"[196], already updated on 27 April 2015). Therefore, by employing incorrect validation rules, the content of the data set that the Regulators should have been provided access with, is also tampered.

122. The PSI should thus have ensured that all the information provided by the Reporting Parties regarding field 1.17 is consolidated and provided as-is (without any omittance) to the Regulators. This means that, if field 1.17 'Value of contract' was informed by the Reporting Parties in the Action type 'N' (new) message or in a VU message, it should have also appeared as informed in the reports sent to the Regulators following the submission of a CU message by the same Reporting Parties. However, this was not the case due to the Collateral incident.

123. In light of the above, the Board considers that by providing the Regulators with reports that in field 1.17 'Value of contract' contained data that was not consistent with the data reported by the Reporting Parties for that field, the PSI failed to ensure the integrity of the details of derivative contracts reported to it under Article 9, in contravention of Article 80(1) of the Regulation.

124. For the reasons set out above the Board, in agreement with the IIO, finds that the PSI failed to ensure integrity of the data and therefore breached Article 80(1) of the Regulation. This constitutes an infringement set out at Point c) of Section II of Annex I of the Regulation.

4.2 Intent or negligence

125. Article 65(1) of the Regulation provides as follows:

[194] Exhibit 46, 'IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I', p. 5.
[195] Exhibit 46, 'IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I', p. 4.
[196] Exhibit 32, 20170201 ESMA70_1861941480-52_qa_on_EMIR_implementation, p.82

"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.

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."

126. In accordance with Article 65(1) of the Regulation, 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.

127. Consequently, the Board of Supervisors needs to conclude whether the evidence pertaining to the present case lead to the conclusion that the relevant infringement has been committed by the PSI intentionally or negligently.

128. In accordance with Article 65(1) of the Regulation, 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".

129. The Board agrees with the IIO and considers that, overall, the factual background of the present case does not establish that there are objective factors which demonstrate that the PSI, its employees or senior managers acted deliberately to commit the infringement.

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

Preliminary remarks regarding negligence

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

132. In addition, it is clear from the second subparagraph of Article 65(1) of the Regulation 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[197].

[197] 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*."

133. It should be added that “negligence” in the context of the Regulation 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.

134. Having regard to the CJEU jurisprudence[198], the concept of a negligent infringement of the Regulation is to be understood to denote a lack of care on the part of a TR when it fails to comply with this Regulation.

135. Negligence can thus be considered 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 result of that failure, the TR has not foreseen the consequences of its acts or omissions, including particularly its infringement of the Regulation, in circumstances where a person in such a position who is normally informed and sufficiently attentive could not have failed to foresee those consequences.

136. Regarding the standard of care to be expected of a TR, the following considerations should be taken into consideration.

137. 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*”*[199]. 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.

138. Second, regard should be given to the nature and significance of the objects and provisions of the Regulation. Of particular note, Recitals 4, 5[200] and 75 of the Regulation 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, and the resulting intention of the legislator to provide stringent requirements in relation to the conduct of TRs. Further, the weight

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[198] 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.

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

[200] See Recitals 4 and 5 of the Regulation: "(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.
(5) At the 26 September 2009 summit in Pittsburgh, G20 leaders agreed […] that OTC derivative contracts should be reported to trade repositories. In June 2010, G20 leaders in Toronto reaffirmed their commitment and also committed to accelerate the implementation of strong measures to improve transparency and regulatory oversight of OTC derivative contracts in an internationally consistent and non-discriminatory way."

given to these considerations by the legislator is reflected by the nature and extent of the requirements imposed on TRs under Title VII of the Regulation and by the corresponding infringement provisions under Annex I of the Regulation. Moreover, of more particular note, the Regulation 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 the Regulation. The importance of this function is reflected, for instance, by the requirement for a TR to have sound procedures and internal controls mechanisms.

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

140. This high standard of care has been confirmed by the Joint Board of Appeal ("BoA") of the European Supervisory Authorities, 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" [201].

141. The determination of whether an infringement is committed negligently is a question of fact[202].

4.3 Assessment of whether there is negligence in the present case

142. Regarding the facts at hand in the present case, the Board considers that the following should be taken into consideration to assess whether the PSI has been negligent.

143. First, the Board notes that the Regulation as set out above is evident on a simple reading. There is no doubt that the applicable rules were clear; to comply with Article 80(1), an attentive reading of the provisions of the Regulation would have been sufficient.

144. However, in response to ESMA Supervisors' First Request for Information, the PSI indicated on 3 July 2020 that "the root cause of this incident was an incomplete impact assessment of the system adaptations required for the Revised RTS message processing flow. As a consequence, the related functional specification did not address this change correctly […]"[203].

145. The Board notes that in her Request for Information, the IIO requested the PSI to provide a copy of this impact assessment. However, in its response, the PSI

[201] See paragraph 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.eiopa.europa.eu/content/board-appeal-publishes-its-decision-nordic-banks%E2%80%99-appeals-decisions-esma-%E2%80%9Cshadow-ratings%E2%80%9D_en
See also 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.
[202] See also para. 159 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.
[203] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 19.

indicated that "the conclusion of the impact assessment describing how the collateral information should be reported is included in the following documentation: (…) IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11 (…) IIO - RTR44 - REGIS-TR inbound formats- Revised Technical Standards: Document which describes the XML and CSV formats of the fields that REGIS-TR clients shall report. However, REGIS-TR cannot provide any additional documentation evidencing the internal impact assessment performed"[204].

146. Second, the Functional Specifications Document ('FSD') described "the changes that need to be implemented by REGIS-TR in order to comply with the new technical standards set out by ESMA, known as RTS (Revised Technical Standards)"[205] and included "an individual and detailed analysis of all the field validations included in the latest version of the revised Technical Standards"[206]. However, with regards to the reporting of collateral updates, the functional specifications were not properly defined.

147. In this regard, the Board notes the following statement from the PSI in response to ESMA Supervisors' Second Request for Information: "the adaptations required to the three proprietary messages used for the reporting of Action Type= V, that are described in the response to the first request for information, were covered by the Functional Specifications Document […] defined for the implementation of the Revised RTS., in concrete in sections 1.2.8 "Collateral Reporting", 1.3 "Review of validations" and 11 "Message structure and Field Descriptions of the new messages" […] From the above-mentioned references, it can be observed there was not any validation defined in order to reject the Collateral Update messages where the field 1.21 "Collateralisation" had not been previously reported. However, it was not detected at that point in time that, collateral update messages under these circumstances, were mapped as reports with Action Type= V with both fields (1.17 and 1.21) empty in the Trade Activity Report (TAR)"[207].

148. Third, a diligent TR (complying with its high standard of care) would have checked that its reporting system worked properly, i.e., that if it allowed Reporting Parties to send partial message(s), the information passed on to the Regulators was always consistent with the information that the submitting entities had reported to the PSI under all the relevant input data fields. A normally informed TR would have foreseen the consequences of not doing so.

149. However, as already explained above, between 1 November 2017 and 27 July 2020, the PSI did not properly implement the necessary checks to ensure that, when Reporting Parties submitted CU message, all the information reported to the PSI

[204] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 19.
[205] Exhibit 15, 'Document I - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS', p. 6; Exhibit 25, 'IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11', p. 7.
[206] Exhibit 15, 'Document I - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS', p. 27; Exhibit 25, 'IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11', p. 28.
[207] Supervisory Report, Exhibit 14, 'REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR_Report', p. 6.

under all the relevant input data fields (including the ones that were not part of the structure of the CU message) was accordingly passed on to the Regulators and not result in being omitted[208].

150. As a result, it was only when the ECB contacted the PSI on 8 November 2019 that the Collateral Update incident was identified and investigated.

151. 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 the Regulation, in circumstances where a TR in such a position that is normally informed and sufficiently attentive could not have failed to foresee those consequences.

152. Therefore, the Board, consistent with the Decision of 28 December 2020 of the Joint Board of Appeal of the three ESAs, acknowledges that the PSI did not meet the high standard of care applicable to financial service providers, and, on this basis, establishes the negligence in the commission of the infringement set out at Point (c) of Section II of Annex I of the Regulation.

4.4 Fine

Determination of the basic amount

153. Article 65 of the Regulation provides in paragraph 2[209] 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

[208] See e.g., Exhibit 7, 'PSI's Response to the IIO's RFI', p. 6.

[209] In this regard, the Board notes that with the entry into force of Regulation (EU) 2019/834, the amount of the fines to be imposed in case of an infringement of the Regulation has significantly increased. According to Article 1(16)(a) of Regulation (EU) 2019/834 "in Article 65, paragraph 2 is amended as follows: […] in point (a), 'EUR 20 000' is replaced by 'EUR 200 000';" However, this is not applicable to the present infringement because the facts occurred before the adoption and entry into force of Regulation (EU) 2019/834.

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."

154. It has been established that the PSI committed the infringement set out at Point (c) of Section II of Annex I of the Regulation, by failing to ensure the integrity of the data reported by the Reporting Parties.

155. To determine the basic amount of the fine, the Board has regard to the latest available audited financial statement, indicating the PSI's turnover[210].

156. In 2020, the PSI had a turnover of EUR 18 457 697[211].

157. Thus, the basic amount of the fine for the infringement listed in Point (c) of Section II of Annex I of the Regulation is set at the higher end of the limit of the fine set out in Article 65(2)(a) of the Regulation and shall not exceed EUR 20 000.

Applicable aggravating factors

158. The applicable aggravating factors enlisted in Section I of the Annex II of the Regulation 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

159. The infringement lasted more than six months (i.e., from 1 November 2017 to 27 July 2020). Therefore, the Board agrees with the IIO and considers that the aggravating factor is 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

160. The Board notes that the Regulation does not provide guidance on what constitutes "systemic weaknesses in the organisation of the trade repository". However, 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".

161. The Board considers the type and the level of seriousness of the PSI's failure that led to the infringement.

[210] 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); and the Methodology used by ESMA to calculate the fines: https://www.esma.europa.eu/supervision/enforcement/calculation-fines.
[211] Financial statements for the year end 31 December 2020

162. The Board notes that the IIO requested the PSI to provide its views on whether the infringement revealed systemic weaknesses in the PSI's organisation. In response to the IIO's Request for Information, the PSI indicated that, in its view, the incidents did not reveal systemic weaknesses in the organisation of the PSI[212].

163. The Board does not agree with the arguments put forward by the PSI. In fact, the Board considers the systemic weaknesses in the PSI's system to be apparent in view of the facts and the arguments provided by the PSI do not allow to dispel their existence. On the contrary, in the Board's view they corroborate it.

164. For instance, the Board notes the following statements from the PSI: "The origin of all seven incidents was the implementation of the revised RTS in November 2017: in all cases, the unexpected behavior of the message- and/or data-validation exercises was generated with the deployment in production of the corresponding developments to follow these revised RTS", "[the incidents] were caused by errors resulting from either individual incorrect designed coding and processing solutions and/or misleading and insufficient validation set-ups", "It has been identified for the individual incidents, that a partially inaccurate or incomplete interpretation from a specific business/regulatory requirement to a functional specification or a detected erroneous transfer from a functional specifications to the corresponding development code results as the underlying root cause for each of the incidents", "a testing exercise with correspondingly defined test cases did form part as a conditioning step of the overall implementation process but it was a lack in the definition of specific test cases, to identify the individual scenarios, which finally caused the different incidents detected", "the implementation process of the revised RTS was following the approach for version releases and change management"[213].

165. In the Board's view, the Collateral incident revealed broader problems affecting the organisation of the PSI.

166. In particular, with regards to this infringement, the Board notes the following.

167. First, the Board notes that the Collateral incident stemmed from the fact that the PSI's reporting system was incorrectly configured and designed and not from an individual error or malfunction.

Thus, for instance, in the e-mail notifying the incident to ESMA Supervisors, the PSI indicated that "In REGIS-TR, the Collateral Update and Valuation Update are reported in 2 separate messages, CU and VU messages respectively. For this reason, we identified a gap in a specific case of a New (XT) message and a later Collateral Update (CU) message. This CU message will have "Value of the contract" and "Collateralisation" not informed in the TA report. The steps to reproduce the issue are: [1.] New message (XT) is reported with valuation information only. The trade is stored with "Value of the contract" populated and "Collateralisation" empty. This New message is regulatory

[212] To see the complete response from the PSI, please see Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 25-26.
[213] Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 25-26.

compliance. [2.] The previous trade receives a Collateral Update (CU) message with action type "V". CU messages does not have neither the "Collateralisation" field nor the Valuation information, "Value of the contract", included […]"[214].

168. Likewise, in the Collateral Update Incident Report, the PSI indicated that "after the investigation, it was discovered that the way REGIS-TR has split the action type 'V' messages: - VU (Valuation updates): to update fields from 1.17 to 1.20 - MX 'with action type 'V': to modify fields from 1.21 to 1.23 - CU (Collateral updates): to update fields from 1.24 to1.35 at portfolio or trade Id level is not correct because collateral update messages sent on transaction/positions, for which the field 1.21 Collateralisation has not been previously informed, are shown in the TAR reports without information in the fields 1.17 'Value of the contract' and 1.21 'Collateralisation'"[215].

169. The same was indicated in the change request: "according to the RTS validation rules currently in force, for any action type 'V' or 'N' message type, REGIS-TR should validate that at least one of the fields 1.17 Value of contract or 1.21 Collateralisation are informed. However, due to the current reporting schema implemented in REGIS-TR, the action type V is reported using 2 independent messages, the VU message for valuations and the CU message for collateralizations, there is a specific casuistic where the message induced in the TAR report, in the ME_1 report (all collateralizations messages received the previous reporting session) is included with both fields empty at the same time [...]"[216].

170. Second, the Collateral incident has also revealed weaknesses in the testing of the PSI's system.

171. In this regard, the Board notes the following statement from the PSI in response to ESMA Supervisors' Second Request for Information: "the adaptations required to the three proprietary messages used for the reporting of Action Type= V, that are described in the response to the first request for information, were covered by the Functional Specifications Document […] From the above-mentioned references, it can be observed there was not any validation defined in order to reject the Collateral Update messages where the field 1.21 "Collateralisation" had not been previously reported. However, it was not detected at that point in time that, collateral update messages under these circumstances, were mapped as reports with Action Type= V with both fields (1.17 and 1.21) empty in the Trade Activity Report (TAR)"[217].

172. Third, the Collateral incident has also revealed weaknesses in the PSI's ability to detect and remediate incidents in a timely manner.

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[214] Supervisory Report, Exhibit 5, 'D. RTR20191113A Incident report - Incomplete collateral information in some CUs reported in TAR'.
[215] Document '5.1 TR_Incident_reporting_template (RTR20191113A)' (attached to Supervisory Report, Exhibit 5), p. 4.
[216] Exhibit 13, 'Document III - EMIR-CR-2019_59 - part 4'.
[217] Supervisory Report, Exhibit 14, 'REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR_Report', p. 6.

173. In this regard, the Board notes that the Collateral incident was detected almost two years after and only once the ECB had alerted the PSI[218].

174. Moreover, on risk management more generally, gaps were also identified through the [redacted] Project: "risk and control framework is not always appropriate for REGIS-TR activities"[219].

175. Fourth, the Collateral incident has also brought to light shortcomings and deficiencies in the PSI's management system.

176. In particular, the Board notes that BPM was not involved when the relevant functional specifications were designated. This was, for instance, reflected in the Collateral Update Incident Report: "insufficient analysis of EMIR guidance during the system adaptation to the Revised Technical Standards rules. In 2017 the Functional team decided not to reject the reporting of collateral update messages on contracts for which the collateralization was not informed. Should this question would have been raised to Business Product Management before going ahead with this unilaterally decision, the applied logic would not have been the same"[220].

177. The Board further observes that the PSI's [redacted] Project identified several governance gaps regarding the PSI's policies and procedures : "[…] Roles and responsibilities are insufficiently documented and focus on tasks done rather than tasks required (…) Policies and procedures centralization is not exhaustive, not systematic and follow-up is insufficient (some procedures date to 2015 or remain as "draft") (…) New processes are not systematically documented in policies and procedures"[221].

178. Fifth, the Board notes that in the Response to the IIO's Initial Statement of Findings, the PSI acknowledges that "the occurrence of the incident covered by "Compression Infringement" matter investigated was related to issues in the system configuration as well as control checks that at the time revealed not sufficient"[222]. However, the PSI "does not agree with the approach taken by the ESMA IIO to adduce that issues in the system […] reveals directly issues in the organisation, as the organisation covers not only the systems but also the governance and compliance culture, among others, that are an integral part of the organisation"[223]. The PSI argues that "the evaluation of the weaknesses in the organisation, where applied to the evaluation of an infringement, should also take into consideration the steps taken in order to address the infringement once detected"[224].

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[218] The Board notes that, on 3 July 2020, the PSI clarified that it was on 8 November 2019 (and not in December 2019), i.e., prior to the notification of the notification to ESMA Supervisors, when the ECB contacted the PSI enquiring about the Collateralisation Incident (see Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 19).
[219] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 5.
[220] Document '5.1 TR_Incident_reporting_template (RTR20191113A)' (attached to Supervisory Report, Exhibit 5), p. 2.
[221] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 5.
[222] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 11.
[223] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 7.
[224] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 7.

179. The Board disagrees with the PSI's argumentation.

180. The wording of this aggravating factor is clear: if the infringement has revealed any 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. The evidence available in the file shows that the Collateral Update Infringement revealed systemic weaknesses in several parts of the PSI's organisation and the PSI has also recognised it.

181. Whether these systemic weaknesses have now been addressed is a different issue, but it does not prevent the application of the aggravating factor set out at Annex II, Point I(c).

182. Moreover, the steps taken by the PSI in order to address the infringement once detected are to be considered as part of the assessment of whether the aggravating factor set out at Annex II, Point I(f) or the mitigating factor set out at Annex II, Point II(d) should be applied.

183. Based on the above, the Board concurs with the IIO and identifies significant weaknesses regarding the configuration and design of the PSI's system as well as regarding its testing, its detection and remediation processes and its management systems.

184. In the Board's view, these defects constitute "systemic weaknesses in the organisation" of the PSI.

185. Therefore, the aggravating factor is applicable.

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

186. The Board notes that in her Request for Information, the IIO requested the PSI to provide its reasoned view on whether the incidents covered by her investigation would have implied a negative impact on the quality of the data that the PSI maintains.

187. In response to the IIO's Request for Information, the PSI indicated that it considered that the quality of the data is set by the Reporting Parties and, therefore, the Collateral Update Infringement did not have a negative impact on the quality of the data maintained by the PSI[225].

188. The Board disagrees with the PSI's argumentation.

189. In the Board's view, "quality of data" operates within the context of the principal objective of introducing the reporting requirements under the Regulation, which is to ensure that Regulators have timely and complete access to the correct data in order to be able to perform their mandates and ensure financial stability. Also having in mind the explicit requirement under Article 19 of Delegated Regulation (EU)

[225] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 26.

2013/150 to verify the correctness of the data, providing Regulators with access to the incorrect data reduces its value for the Regulators, and as such the quality of the data, and prevents them from fulfilling their mandates.

190. In this particular case, the Board considers that the quality of the data was compromised for all the following reasons.

191. As explained in Recitals 5 and 6 of Delegated Regulation (EU) 2017/104, in order to properly monitor concentration of exposures and systemic risk, it is crucial to ensure that complete and accurate information on exposure and collateral exchanged between two counterparties is submitted to TRs and that this information is duly passed on to the Regulators.

192. However, as already explained in Section 2.1 and 4.1 of this decision, as a result of how the PSI's system was configured, where Reporting Parties submitted a CU message to update the information provided in the field 1.24 of a report, instead of extracting the actual information provided by Reporting Parties regarding the fields 1.17 'Value of contract' from the reports regarding the related contract previously submitted by the Reporting Parties to generate the reports for the Regulators, the PSI left this field blank.

193. As indicated in Section 2.1 of this decision, the issue is estimated to have had an impact on the daily and ad-hoc TARs and TSRs as well as the Rejection and Reconciliation Reports sent to the Regulators and overall to have affected a substantial number of records sent to a total of 40 Regulators.

194. Based on the above, the Board agrees with the IIO and considers that the infringement has had a negative impact on the quality of the data that the PSI maintained and, therefore, the aggravating factor is applicable.

Mitigating factors

195. The application of the mitigating factors enlisted in Section II of the Annex II of the Regulation is analysed below.

Annex II, Point II(a) if the infringement has been committed for less than 10 working days, a coefficient of 0,9 shall apply

196. The infringement lasted more than ten days. Therefore, the Board agrees with the IIO and deems that this mitigating factor is not applicable.

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

197. The Board notes that in her Request for Information, the IIO requested the PSI to provide any documentation showing specifically the measures taken by the PSI's senior management to prevent the infringement.

198. In its response, the PSI indicated that "the measures of its senior management to prevent an infringement […] of the Regulation, can be identified - taken into consideration, that all incidents are related to the implementation of the revised RTS in November 2017, out of three perspectives:

1. Related to all incidents: Governance (controls performed, measures taken and in-/external reporting/ escalation performed) during the pre-implementation phase of the RTS until November 2017

2. Related to all incidents: Governance (controls performed, measures taken and in-/external reporting/ escalation performed) during the post-implementation phase of the RTS after November 2017

3. For each individual incident: ensuring a proper framework for the full incident handling process, overseeing the individual incident lifecycle based on proper internal reporting, communication and escalation as appropriate as well as taking corrective measures (decisions) if required"[226].

199. In this regard, the Board notes the following.

200. First, the key facts identified by the PSI in its response to the IIO's Request for Information regarding the second and third perspective relate to specific remedial actions taken by the PSI as a result of the identification of the incidents covered by ESMA's investigation and, therefore, cannot be considered as measures (amounting to all the necessary measures) taken by the senior management to prevent the infringement, which is the subject of this case.

201. Second, with regards to the first perspective, the PSI's explanations (and documentation)[227] are, in the Board's view, relevant to understand the framework within which the breach took place. However, the Board considers that they do not establish that the PSI's senior management has taken all the necessary measures to prevent the infringement.

202. On that basis, the Board concurs with the IIO and considers that there is no evidence in the file that the PSI's senior management has taken all the necessary measures to prevent the infringement.

203. This mitigating factor is thus not applicable.

<u>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</u>

204. In this respect, the Board notes the following.

[226] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 36.
[227] See Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 36-37.

205. 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[228].

206. In the Board's view, by notifying an incident a TR is indicating an issue of concern[229] and such a notification could thus be considered an acknowledgement of the potential commission of an infringement. Therefore, to determine whether such TR should benefit from the application of this mitigating factor, it should be assessed whether it has done so quickly, effectively, and completely, i.e., when all the relevant information regarding the incident was effectively provided to ESMA[230].

207. The Board considers that the three requirements (quickness, effectiveness, and completeness) set out at Point II(c) of Annex II to the Regulation are cumulative. Therefore, if one of them is not met, the mitigating factor should not be applied.

208. The PSI informed ESMA on its own initiative about the Collateral Update Infringement on 15 November 2019 (i.e., seven days after its discovery) and submitted the Collateral Update Incident Report on 17 January 2020[231].

209. The Board has assessed the type and degree of detail of the information provided by the PSI respectively on 15 November 2019 and 17 January 2020 and, in this case, the Board considers that the requirements to benefit from the application of this mitigating factor were not met, because it took more than two months for the PSI to provide ESMA Supervisors with all the relevant information about the incident.

210. Finally, the Board notes that the PSI considers that "the elements of Point II(c) of Annex II […] should be assessed in connection to the infringement itself and not solely in relation to the notification to ESMA"[232] and states that "the incident was identified on 8 November, was notified to ESMA on 15 November 2019 and was

[228] See paragraph 183 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03): "the Board finds that ESMA was correct in not applying the mitigating coefficient as it finds it clear on the facts that the appellant did not acknowledge that it had committed (or believe it could have committed) an infringement, and done so quickly, effectively, and completely.". See also paragraph 202: "Specifically, the Board of Appeal finds as regards the mitigation coefficient adjustment set out in point II.3 of Annex IV that it is clear that the appellant did not quickly, efficiently, and completely bring the infringement to ESMA's attention. The relevant notification of clarifications to ESMA did not in any way indicate expressly to ESMA that an infringement had been committed. Further, on the facts presented to the Board of Appeal, the notification in question was provided in the course of the appellant's ongoing supervisory relationship with ESMA and as part of its periodic disclosures; it was not presented in the form of an express acknowledgement of an infringement that is clearly required by point II.3 of Annex IV. The Board of Appeal notes and gives weight in this regard that ESMA only came to have notice of the infringements following supervisory and subsequently IIO action (following, in turn, a complaint). On the facts, therefore, ESMA was correct in finding that this coefficient could not be applied."

[229] See, in this respect, by analogy, paragraph 201 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03): "Specifically, the notification of what the appellant termed clarifications to the 2015 CB Methodology to ESMA did not indicate an infringement (or an issue of concern) and so could not be considered as sufficient to ground mitigation."

[230] See, in this respect, the Decision of the Board of Supervisors to adopt supervisory measures and impose fines in respect of infringements committed by DTCC Derivatives Repository Plc (Decision 2021/6), 8 July 2021 (https://www.esma.europa.eu/sites/default/files/library/esma41-356-187_decision_-_dtcc_derivatives_repository.pdf), paras. 717 to 722.

[231] See, in this regard, Supervisory Report, Exhibit 5, 'D. RTR20191113A Incident report'.

[232] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 8.

effectively resolved on 22 June 2020, allowing ESMA to closely monitor the matter before its resolution"[233].

211. However, the amount of time that it took a TR to put an end to an infringement is not relevant for the purpose of this mitigating factor. How long an infringement has lasted is considered as part of the assessment of whether the aggravating factor set out at Annex II, Point I(b) or the mitigating factor set out at Annex II, Point II(a) should be applied.

212. It is also not relevant for this mitigating factor whether the notification allowed ESMA to monitor the matter before its resolution.

Therefore, in the Board agrees with the IIO and deems that this mitigating factor is thus not applicable.

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

213. The PSI has taken a number of actions, primarily resolving the issues in relation to the infringement by implementing a permanent solution to the Collateral incident.

214. In particular, the Board notes the following.

215. "A Change Request was drafted to implement this validation in order to reject collateral updates messages for which the field 1.21 'Collateralisation' had not been already specified either in the new transaction or position message or through a subsequent modification message with Action type = V. Through the adopted measures, no action type 'V' reports were shown in the TAR reports where fields 1.17 'Value of contract' and 1.21 'Collateralisation' were simultaneously empty and all CUs received and accepted were on contracts for which the field 1.21 'Collateralisation' was informed. REGIS-TR created a full set of test cases that were executed during the testing phase to ensure that the solution described in the functional specifications was correctly implemented. The solution of the incident was deployed in production on July 27, 2020 […]"[234].

216. In light of the above the Board considers that a number of remedial actions have been taken by the PSI regarding the Collateral incident. The Board should thus assess whether these measures were taken voluntarily.

217. The Board notes that there is no definition of what "voluntarily" ("de son plein gré" in the French version of the Regulation) 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 measures, it can no longer be considered that the measures

[233] Exhibit 46, IIO-TR-.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 8.
[234] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 30. See also p. 34.

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.

218. In the present case, the Board notes the following.

219. In this case, no investigation or on-site inspection pursuant to Articles 62 and 63 of the Regulation took place until the IIO was appointed on 20 November 2020. Therefore, when the permanent solution of the Collateral incident was implemented, the IIO's investigation was already going on but there was no decision from ESMA ordering the PSI to put an end to its practices and, consequently, whether to take these measures was still within the PSI's remit.

220. However, the Board notes that the permanent solution for the Collateral incident implemented by the PSI could create further reporting issues.

221. The PSI is now making field 1.21 'Collateralisation' a mandatory field for Action types 'N' (new) and 'V' (valuation update) messages, whereas, as shown below, it is clear from the RTS/ITS as clarified by ESMA's guidance that (i) this field is optional for Action type 'N' (new) messages and conditionally mandatory for Action type 'V' (valuation update) messages and (ii) it suffices that either field 1.17 'Value of contract' or field 1.21 'Collateralisation' is informed by the Reporting Parties for a report to be submitted in accordance with the reporting requirements.

			Technical standards		Validations (published 03/04/2017) Updated 03/10/2017. Amendments are marked in red font.															
					Trade level									Position level								
Table	Item	Field	Details to be reported	Format	Is it Mandatory, Conditional, Optional or Not relevant for a given action type?									Is it Mandatory, Conditional, Optional or Not relevant for a given action type?								-Conditions -Format and content
					N	M	E	C	R	Z	V	P		N	M	E	C	R	Z	V	P	
1	21	Collateralisation	Indicate whether a collateral agreement between the counterparties exists.	U = uncollateralised PC = partially collateralised OC = one way collateralised FC = fully collateralised Populated in accordance with Article 3b	O	-	-	-	-	-	C	- O		O	-	-	-	-		C		At least one of the fields 1.17 or 1.21 has to be populated. When populated, this field shall contain only one of the following values: "U", "PC", "OC" or "FC". Up to 2 alphabetical characters.

222. Therefore, in the Board's view, the solution implemented by the PSI could in all likelihood result in reports of derivative contracts by Reporting Parties being incorrectly rejected if the Reporting Parties, in line with the reporting requirements, inform field 1.17 'Value of contract' and not 1.21 'Collateralisation' when reporting their trades to the PSI.

223. Therefore, the Board agrees with the IIO and considers that the measures taken by the PSI cannot be considered as sufficient to prevent that a similar infringement is committed in the future. Therefore, the mitigation factor is not applicable.

Determination of the adjusted fine

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

225. The difference between the basic and the amount resulting from the application of each individual coefficient linked to the aggravating factors set out above, Point I(b), I(c) and I(d) shall be added to the basic amount:

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

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

EUR 20 000 x 1,5 = EUR 30 000

EUR 30 000 – EUR 20 000 = EUR 10 000

Adjusted fine taking into account applicable aggravating and mitigating factors:

EUR 20 000 + EUR 10 000 + EUR 24 000 + EUR 10 000 = EUR 64 000

226. Consequently, following adjustment by taking into account the applicable aggravating factors, the amount of the fine to be imposed on the PSI for the Collateral update incident would amount to EUR 64 000.

4.5 Supervisory measure

227. Regard must be had to Article 73, paragraphs 1 and 2, of the Regulation.

228. Given the factual findings in the present case and in particular the fact that the PSI permanently solved the issue in 2020, in addition to the imposition of the fine, the only other supervisory measure considered appropriate with regard to the nature and the seriousness of the infringements is the adoption of a public notice as set out in Article 73(1)(c) of the Regulation.

229. It must thus be held that a public notice is to be issued.

5 Collateral update incident [direct and immediate access infringement]

230. As stated above (para 99), the Board deems that in the case under consideration the Collateral update incident led to two different outcomes: (i) not ensuring integrity of the data previously reported and (ii) the provision of incorrect reports to the Regulators.

231. With regards to the outcome of the provision of incorrect reports to the Regulators, this section of the decision analyses whether the PSI breached the following requirement:

> "A trade repository shall collect and maintain data and shall ensure that the entities referred to in paragraph 3 have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates" (Article 81(2) of the Regulation).

232. If this requirement is not met, the infringement set out at Point (b) of Section III of Annex I of the Regulation is established.

5.1 Analysis of the relevant provisions of the Regulation and the facts

233. The Board refers to the facts described in Section 2.1 and considers that the Collateral update incident, which created an integrity infringement due to the failure on the part of the PSI to safeguard the integrity of previously reported data, also led to the provision of incorrect reports to Regulators.

234. All in all, the Collateral update incident had the following estimated impact on the number of Regulators and reports:

Type of reports	Total number of Regulators affected	Total number of reports[235] affected	Total number of records[236] affected
Daily Trade Activity Report ('TAR')[237]	39 Regulators	58 725	206 541 885

[235] Reports sent to the Regulators pursuant to Article 81(2) of the Regulation containing the records of any derivative contract and any modification thereof reported to a TR by Reporting Parties under Article 9 of the Regulation.
[236] Record of any derivative contract and any modification thereof reported to a TR by Reporting Parties under Article 9 of the Regulation.
[237] Supervisory Report, Exhibit 30, 'RTR20191113A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 32, 'RTR20191113A_Q4_B1_Recurrent records'.

Type of reports	Total number of Regulators affected	Total number of reports[235] affected	Total number of records[236] affected
Daily Trade State Reports ('TSR')[238]	40 Regulators	57 025	421 192 283
Ad-hoc TAR[239]	13 Regulators	39	1 944 270
Ad-hoc TSR[240]	17 Regulators	99	6 766 610
Rejection Reports[241]	39 Regulators	3 764	59 279 066
Reconciliation Reports[242]	39 Regulators	3 603	N/D[243]

235. The Board notes that the PSI incorrectly applied the validation rules to reconcile the collateral updates which the Reporting Parties would report via three separate, partial messages – a functionality set up by the PSI.

236. The Board also notes that the PSI chose to set up its system in a way that allowed the Reporting Parties to report updates to a contract, depending on the life-cycle event. Each of the partial messages would contain certain information relevant for the trade but not all of if (that would instead be covered by the remaining two partial messages, if updated, or if not – as originally reported). When reporting such updates (modifications) to the Regulators, the PSI had a duty to reconcile all the relevant information that had been reported to it in order to ensure that complete data, relevant for the performance of their tasks and mandates, is provided to the Regulators and that relevant data previously provided by the Reporting Parties does not result in being omitted.

237. According to Article 9(1) of the Regulation, the Reporting Parties must report details of any derivative contract they have concluded and of any modification or termination of the contract to a TR. Commission Delegated Regulation (EU) No 148/2013, in particular, Article 1(1) and Annex, Table I, thereof, further specifies the

[238] Supervisory Report, Exhibit 30, 'RTR20191113A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 32, 'RTR20191113A_Q4_B1_Recurrent records'.
[239] Supervisory Report, Exhibit 31, 'RTR20191113A_Q4_A2_Adhoc reports'; Supervisory Report, Exhibit 33, 'RTR20191113A_Q4_B2_Adhoc records'.
[240] Supervisory Report, Exhibit 31, 'RTR20191113A_Q4_A2_Adhoc reports'; Supervisory Report, Exhibit 33, 'RTR20191113A_Q4_B2_Adhoc records'.
[241] Supervisory Report, Exhibit 30, 'RTR20191113A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 32, 'RTR20191113A_Q4_B1_Recurrent records'.
[242] Supervisory Report, Exhibit 30, 'RTR20191113A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 32, 'RTR20191113A_Q4_B1_Recurrent records'.
[243] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 23: "The number of trades affected in Reconciliation Statistics is directly linked with the records affected in the TSR as all of them have jeopardized the reconciliation statistics. How the statistics could have been different is difficult to predict as it is dependent on the outcome of the reconciliation process."

details that must be reported by the Reporting Parties to TRs (that include, inter alia, fields 1.17 'Value of contract' and 1.21 'Collateralisation').

238. Furthermore, according to Article 9(1) of the Regulation, the Reporting Parties must also report any modifications or terminations of the derivative contracts. In such event the substance of the data that must be reported is determined by Article 9(5) of the Regulation, which in its points (a) and (b) set out the minimum details that must be included, jointly with the validation rules[244], which prescribe which fields are mandatory and which optional for a given message type, depending on the event reported (corresponding to the fields set out in Delegated Regulation (EU) No 148/2013).

239. The validation rules clearly prescribed that when reporting action type "N" (i.e., new) and "V" (i.e., valuation updates, collateral updates and modifications) messages, at least one of the fields 1.17 or 1.21 must be populated[245].

240. It is then the obligation of the TR, pursuant to Article 81(2) of the Regulation, in conjunction with the requirements set out in Commission Delegated Regulation (EU) 151/2013, to provide the Regulators with direct and immediate access to such details relevant for the specific action type (new, modification, termination as the case may be).

241. The Board finds that the provision of incorrect reports – also such that do not contain all the fields required to be reported by the Reporting Parties – to the Regulators constitutes a violation of the obligation to ensure the Regulators with direct and immediate access to the details of derivatives contracts, set out in Article 81(2) of the Regulation.

242. The Board notes that Article 81(2) operates in the context of the principal objective of introducing the reporting requirement under the Regulation, which is to ensure that Regulators have timely and complete access to the correct data in order to be able to perform their mandates and ensure financial stability. Indeed, providing Regulators with access to incorrect or incomplete data prevents them from fulfilling their mandates. In this context, it cannot have been the intention of the co-legislators to have created a reporting obligation that could be at best useless, if not misleading.

243. It is therefore clear to the Board that, based on this provision and its contextual analysis, the details of derivatives contracts, which the Regulators must be provided access to, must also be complete, in order to allow the Regulators to fulfil their responsibilities and mandates.

244. On the basis of the facts acknowledged, the Board finds that the PSI failed to provide the Regulators with direct and immediate access to the details reported to it

[244] Validation table, as already referred to at the time in ESMA's Q&A TR, see Exhibit 32, 20170201 ESMA70_1861941480-52_qa_on_EMIR_implementation, p.82
[245] Exhibit 1, Supervisory Report, p.16

and therefore breached Article 81(2) of the Regulation. This constitutes an infringement set out at Point b) of Section III of Annex I of the Regulation.

5.2 Intent or negligence

245. Article 65(1) of the Regulation provides as follows:

"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.

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."

246. In accordance with Article 65(1) of the Regulation, 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.

247. Consequently, the Board of Supervisors needs to conclude whether the evidence pertaining to the present case lead to the conclusion that the relevant infringement has been committed by the PSI intentionally or negligently.

248. In accordance with Article 65(1) of the Regulation, 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".

249. The Board considers that, overall, the factual background of the present case does not establish that there are objective factors which demonstrate that the PSI, its employees or senior managers acted deliberately to commit the infringement.

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

251. As regards the preliminary remarks regarding negligence reference is made to the considerations of the Board set out in Section 4.2 above.

5.3 Assessment of whether there is negligence in the present case

252. Regarding the facts at hand in the present case, the Board considers that the following should be taken into consideration to assess whether the PSI has been negligent.

253. First, the Board notes that the Regulation as set out above is evident on a simple reading. There is no doubt that the applicable rules were clear; to comply with Article 81(2), an attentive reading of the provisions of the Regulation would have been sufficient.

254. However, in response to ESMA Supervisors' First Request for Information, the PSI indicated on 3 July 2020 that "the root cause of this incident was an incomplete impact assessment of the system adaptations required for the Revised RTS message processing flow. As a consequence, the related functional specification did not address this change correctly […]"[246].

255. The Board notes that in her Request for Information, the IIO requested the PSI to provide a copy of this impact assessment. However, in its response, the PSI indicated that "the conclusion of the impact assessment describing how the collateral information should be reported is included in the following documentation: (…) IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11 (…) IIO - RTR44 - REGIS-TR inbound formats- Revised Technical Standards: Document which describes the XML and CSV formats of the fields that REGIS-TR clients shall report. However, REGIS-TR cannot provide any additional documentation evidencing the internal impact assessment performed"[247].

256. Second, the Functional Specifications Document ('FSD') described "the changes that need to be implemented by REGIS-TR in order to comply with the new technical standards set out by ESMA, known as RTS (Revised Technical Standards)"[248] and included "an individual and detailed analysis of all the field validations included in the latest version of the revised Technical Standards"[249]. However, with regards to the reporting of collateral updates, the functional specifications were not properly defined.

257. In this regard, the Board notes the following statement from the PSI in response to ESMA Supervisors' Second Request for Information: "the adaptations required to the three proprietary messages used for the reporting of Action Type= V, that are described in the response to the first request for information, were covered by the Functional Specifications Document […] defined for the implementation of the Revised RTS, in concrete in sections 1.2.8 "Collateral Reporting", 1.3 "Review of validations" and 11 "Message structure and Field Descriptions of the new messages" […] From the above-mentioned references, it can be observed there was not any validation defined in order to reject the Collateral Update messages where the field 1.21 "Collateralisation" had not been previously reported. However, it was not detected at that point in time that, collateral update messages under these circumstances, were mapped as reports with Action Type= V with both fields (1.17 and 1.21) empty in the Trade Activity Report (TAR)"[250].

258. Third, a diligent TR (complying with its high standard of care) would have checked that its reporting system worked properly, i.e., that if it allowed Reporting

[246] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 19.
[247] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 19.
[248] Exhibit 15, 'Document I - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS', p. 6; Exhibit 25, 'IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11', p. 7.
[249] Exhibit 15, 'Document I - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS', p. 27; Exhibit 25, 'IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11', p. 28.
[250] Supervisory Report, Exhibit 14, 'REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR_Report', p. 6.

Parties to send partial message(s), the information passed on to the Regulators was always consistent with the information that the submitting entities had reported to the PSI under all the relevant input data fields. A normally informed TR would have foreseen the consequences of not doing so.

259. However, as already explained above, between 1 November 2017 and 27 July 2020, the PSI did not properly implement the necessary checks to ensure that, when Reporting Parties submitted CU message, all the information reported to the PSI under all the relevant input data fields (including the ones that were not part of the structure of the CU message) was accordingly passed on to the Regulators and not result in being omitted[251].

260. As a result, it was only when the ECB contacted the PSI on 8 November 2019 that the Collateral Update incident was identified and investigated.

261. 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 the Regulation, in circumstances where a TR in such a position that is normally informed and sufficiently attentive could not have failed to foresee those consequences.

262. In particular, the Board notes that a diligent TR (complying with the expected high standard of care) would have ensured that, in case of accepting partial reporting, it would be able to receive and retrieve the relevant information from the data reported to it beforehand, in order to provide the Regulators with complete reports. However, based on the facts established, the PSI failed to ensure and follow-up on the compliance with its obligations to ensure the reports it produces for the Regulators are correct. Indeed, the Functional Specifications Document (which was supposed to describe the necessary changes in light of the new reporting requirements under the revised technical standards) did not properly define the functional specifications for collateral updates.

263. Considering the above, the Board, consistent with the Decision of 28 December 2020 of the Joint Board of Appeal of the three ESAs, acknowledges that the PSI did not meet the high standard of care applicable to financial service providers, and, on this basis, establishes the negligence in the commission of the infringement set out at Point (b) of Section III on Annex I of the Regulation.

[251] See e.g., Exhibit 7, 'PSI's Response to the IIO's RFI', p. 6.

5.4 Fine

Determination of the basic amount

264. Article 65 of the Regulation provides in paragraph 2[252] 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."

265. It has been established that the PSI committed the infringement set out at Point (b) of Section III of Annex I of the Regulation, by providing the Regulators with reports that contained data that was not consistent with the data reported by the Reporting Parties.

266. To determine the basic amount of the fine, the Board has regard to the latest available audited financial statement, indicating the PSI's turnover[253].

267. In 2020, the PSI had a turnover of EUR 18 457 697[254].

268. Thus, the basic amount of the fine for the infringement listed in Point (b) of Section III of Annex I of the Regulation is set at the higher end of the limit of the fine set out in Article 65(2)(a) of the Regulation and shall not exceed EUR 20 000.

[252] In this regard, the Board notes that with the entry into force of Regulation (EU) 2019/834, the amount of the fines to be imposed in case of an infringement of the Regulation has significantly increased. According to Article 1(16)(a) of Regulation (EU) 2019/834 "in Article 65, paragraph 2 is amended as follows: […] in point (a), 'EUR 20 000' is replaced by 'EUR 200 000';" However, this is not applicable to the present infringement because the facts occurred before the adoption and entry into force of Regulation (EU) 2019/834.

[253] 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); and the Methodology used by ESMA to calculate the fines: https://www.esma.europa.eu/supervision/enforcement/calculation-fines.

[254] Financial statements for the year end 31 December 2020

Applicable aggravating factors

269. The applicable aggravating factors enlisted in Section I of the Annex II of the Regulation 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

270. The infringement lasted more than six months (i.e., from 1 November 2017 to 27 July 2020). Therefore, the Board considers that the aggravating factor is 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

271. The Board notes that the Regulation does not provide guidance on what constitutes "systemic weaknesses in the organisation of the trade repository". However, 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".

272. The Board considers the type and the level of seriousness of the PSI's failure that led to the infringement.

273. The Board notes that the IIO requested the PSI to provide its views on whether the infringement revealed systemic weaknesses in the PSI's organisation. In response to the IIO's Request for Information, the PSI indicated that, in its view, the incidents did not reveal systemic weaknesses in the organisation of the PSI[255].

274. The Board does not agree with the arguments put forward by the PSI. In fact, the Board considers the systemic weaknesses in the PSI's system to be apparent in view of the facts and the arguments provided by the PSI do not allow to dispel their existence. On the contrary, in the Board's view they corroborate it.

275. For instance, the Board notes the following statements from the PSI: "The origin of all seven incidents was the implementation of the revised RTS in November 2017: in all cases, the unexpected behavior of the message- and/or data-validation exercises was generated with the deployment in production of the corresponding developments to follow these revised RTS", "[the incidents] were caused by errors resulting from either individual incorrect designed coding and processing solutions and/or misleading and insufficient validation set-ups", "It has been identified for the individual incidents, that a partially inaccurate or incomplete interpretation from a specific business/regulatory requirement to a functional specification or a detected erroneous transfer from a functional specifications to the corresponding development code results as the underlying root cause for each of the incidents", "a testing

[255] To see the complete response from the PSI, please see Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 25-26.

exercise with correspondingly defined test cases did form part as a conditioning step of the overall implementation process but it was a lack in the definition of specific test cases, to identify the individual scenarios, which finally caused the different incidents detected", "the implementation process of the revised RTS was following the approach for version releases and change management"[256].

276. In the Board's view, the Collateral incident revealed broader problems affecting the organisation of the PSI.

277. In particular, with regards to this infringement, the Board notes the following.

278. First, the Board notes that the Collateral incident stemmed from the fact that the PSI's reporting system was incorrectly configured and designed and not from an individual error or malfunction.

Thus, for instance, in the e-mail notifying the incident to ESMA Supervisors, the PSI indicated that "In REGIS-TR, the Collateral Update and Valuation Update are reported in 2 separate messages, CU and VU messages respectively. For this reason, we identified a gap in a specific case of a New (XT) message and a later Collateral Update (CU) message. This CU message will have "Value of the contract" and "Collateralisation" not informed in the TA report. The steps to reproduce the issue are: [1.] New message (XT) is reported with valuation information only. The trade is stored with "Value of the contract" populated and "Collateralisation" empty. This New message is regulatory compliance. [2.] The previous trade receives a Collateral Update (CU) message with action type "V". CU messages does not have neither the "Collateralisation" field nor the Valuation information, "Value of the contract", included […]"[257].

279. Likewise, in the Collateral Update Incident Report, the PSI indicated that "after the investigation, it was discovered that the way REGIS-TR has split the action type 'V' messages: - VU (Valuation updates): to update fields from 1.17 to 1.20 - MX 'with action type 'V': to modify fields from 1.21 to 1.23 - CU (Collateral updates): to update fields from 1.24 to1.35 at portfolio or trade Id level is not correct because collateral update messages sent on transaction/positions, for which the field 1.21 Collateralisation has not been previously informed, are shown in the TAR reports without information in the fields 1.17 'Value of the contract' and 1.21 'Collateralisation'"[258].

280. The same was indicated in the change request: "according to the RTS validation rules currently in force, for any action type 'V' or 'N' message type, REGIS-TR should validate that at least one of the fields 1.17 Value of contract or 1.21 Collateralisation are informed. However, due to the current reporting schema implemented in REGIS-TR, the action type V is reported using 2 independent messages, the VU message

[256] Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 25-26.
[257] Supervisory Report, Exhibit 5, 'D. RTR20191113A Incident report - Incomplete collateral information in some CUs reported in TAR'.
[258] Document '5.1 TR_Incident_reporting_template (RTR20191113A)' (attached to Supervisory Report, Exhibit 5), p. 4.

for valuations and the CU message for collateralizations, there is a specific casuistic where the message induced in the TAR report, in the ME_1 report (all collateralizations messages received the previous reporting session) is included with both fields empty at the same time [...]"[259].

281. Second, the Collateral incident has also revealed weaknesses in the testing of the PSI's system.

282. In this regard, the Board notes the following statement from the PSI in response to ESMA Supervisors' Second Request for Information: "the adaptations required to the three proprietary messages used for the reporting of Action Type= V, that are described in the response to the first request for information, were covered by the Functional Specifications Document […] From the above-mentioned references, it can be observed there was not any validation defined in order to reject the Collateral Update messages where the field 1.21 "Collateralisation" had not been previously reported. However, it was not detected at that point in time that, collateral update messages under these circumstances, were mapped as reports with Action Type= V with both fields (1.17 and 1.21) empty in the Trade Activity Report (TAR)"[260].

283. Third, the Collateral incident has also revealed weaknesses in the PSI's ability to detect and remediate incidents in a timely manner.

284. In this regard, the Board notes that the Collateral incident was detected almost two years after and only once the ECB had alerted the PSI[261].

285. Moreover, on risk management more generally, gaps were also identified through the [redacted] Project: "risk and control framework is not always appropriate for REGIS-TR activities"[262].

286. Fourth, the Collateral incident has also brought to light shortcomings and deficiencies in the PSI's management system.

287. In particular, the Board notes that BPM was not involved when the relevant functional specifications were designated. This was, for instance, reflected in the Collateral Update Incident Report: "insufficient analysis of EMIR guidance during the system adaptation to the Revised Technical Standards rules. In 2017 the Functional team decided not to reject the reporting of collateral update messages on contracts for which the collateralization was not informed. Should this question would have been raised to Business Product Management before going ahead with this unilaterally decision, the applied logic would not have been the same"[263].

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[259] Exhibit 13, 'Document III - EMIR-CR-2019_59 - part 4'.
[260] Supervisory Report, Exhibit 14, 'REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR_Report', p. 6.
[261] The Board notes that, on 3 July 2020, the PSI clarified that it was on 8 November 2019 (and not in December 2019), i.e., prior to the notification of the notification to ESMA Supervisors, when the ECB contacted the PSI enquiring about the Collateralisation Incident (see Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 19).
[262] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 5.
[263] Document '5.1 TR_Incident_reporting_template (RTR20191113A)' (attached to Supervisory Report, Exhibit 5), p. 2.

288. The Board further observes that the PSI's [redacted] Project identified several governance gaps regarding the PSI's policies and procedures: "[…] Roles and responsibilities are insufficiently documented and focus on tasks done rather than tasks required (…) Policies and procedures centralization is not exhaustive, not systematic and follow-up is insufficient (some procedures date to 2015 or remain as "draft") (…) New processes are not systematically documented in policies and procedures"[264].

289. Fifth, the Board notes that in the Response to the IIO's Initial Statement of Findings, the PSI acknowledges that "the occurrence of the incident covered by "Compression Infringement" matter investigated was related to issues in the system configuration as well as control checks that at the time revealed not sufficient"[265]. However, the PSI "does not agree with the approach taken by the ESMA IIO to adduce that issues in the system […] reveals directly issues in the organisation, as the organisation covers not only the systems but also the governance and compliance culture, among others, that are an integral part of the organisation"[266]. The PSI argues that "the evaluation of the weaknesses in the organisation, where applied to the evaluation of an infringement, should also take into consideration the steps taken in order to address the infringement once detected"[267].

290. The Board disagrees with the PSI's argumentation.

291. As explained in para 180, the wording of this aggravating factor is clear: if the infringement has revealed any 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. The evidence available in the file shows that the Collateral Update Infringement revealed systemic weaknesses in several parts of the PSI's organisation and the PSI has also recognised it.

292. Whether these systemic weaknesses have now been addressed is a different issue, but it does not prevent the application of the aggravating factor set out at Annex II, Point I(c).

293. Moreover, the steps taken by the PSI in order to address the infringement once detected are to be considered as part of the assessment of whether the aggravating factor set out at Annex II, Point I(f) or the mitigating factor set out at Annex II, Point II(d) should be applied.

294. Based on the above, the Board identifies significant weaknesses regarding the configuration and design of the PSI's system as well as regarding its testing, its detection and remediation processes and its management systems.

295. In the Board's view, these defects constitute "systemic weaknesses in the organisation" of the PSI.

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[264] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 5.
[265] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 11.
[266] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 7.
[267] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 7.

296. Therefore, the aggravating factor is applicable.

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

297. The Board notes that in her Request for Information, the IIO requested the PSI to provide its reasoned view on whether the incidents covered by her investigation would have implied a negative impact on the quality of the data that the PSI maintains.

298. In response to the IIO's Request for Information, the PSI indicated that it considered that the quality of the data is set by the Reporting Parties and, therefore, the Collateral Update Infringement did not have a negative impact on the quality of the data maintained by the PSI[268].

299. The Board disagrees with the PSI's argumentation.

300. In the Board's view, "quality of data" operates within the context of the principal objective of introducing the reporting requirements under the Regulation, which is to ensure that Regulators have timely and complete access to the correct data in order to be able to perform their mandates and ensure financial stability. Providing Regulators with access to the incorrect data reduces its value for the Regulators, and as such the quality of the data, and prevents them from fulfilling their mandates.

301. In this particular case, the Board considers that the quality of the data was compromised for all the following reasons.

302. As explained in Recitals 5 and 6 of Delegated Regulation (EU) 2017/104, in order to properly monitor concentration of exposures and systemic risk, it is crucial to ensure that complete and accurate information on exposure and collateral exchanged between two counterparties is submitted to TRs and that this information is duly passed on to the Regulators.

303. However, as already explained in Section 2.1 and 4.1 of this decision, as a result of how the PSI's system was configured, where Reporting Parties submitted a CU message to update the information provided in the fields 1.24 to 1.35 of a report, instead of extracting the actual information provided by Reporting Parties regarding the fields 1.17 'Value of contract' from the reports regarding the related contract previously submitted by the Reporting Parties to generate the reports for the Regulators, the PSI left this field blank.

304. As indicated in Section 2.1 of this decision, the issue is estimated to have had an impact on the daily and ad-hoc TARs and TSRs as well as the Rejection and Reconciliation Reports sent to the Regulators and overall to have affected a substantial number of records sent to a total of 40 Regulators.

[268] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 26.

305. Based on the above, the Board considers that the infringement has had a negative impact on the quality of the data that the PSI maintained and, therefore, the aggravating factor is applicable.

Mitigating factors

306. The application of the mitigating factors enlisted in Section II of the Annex II of the Regulation is analysed below.

Annex II, Point II(a) if the infringement has been committed for less than 10 working days, a coefficient of 0,9 shall apply

307. The infringement lasted more than ten days. Therefore, the Board deems that this mitigating factor is not applicable.

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

308. The Board notes that in her Request for Information, the IIO requested the PSI to provide any documentation showing specifically the measures taken by the PSI's senior management to prevent the infringement.

309. In its response, the PSI indicated that "the measures of its senior management to prevent an infringement […] of the Regulation, can be identified - taken into consideration, that all incidents are related to the implementation of the revised RTS in November 2017, out of three perspectives:

1. Related to all incidents: Governance (controls performed, measures taken and in-/external reporting/ escalation performed) during the pre-implementation phase of the RTS until November 2017

2. Related to all incidents: Governance (controls performed, measures taken and in-/external reporting/ escalation performed) during the post-implementation phase of the RTS after November 2017

3. For each individual incident: ensuring a proper framework for the full incident handling process, overseeing the individual incident lifecycle based on proper internal reporting, communication and escalation as appropriate as well as taking corrective measures (decisions) if required"[269].

310. In this regard, the Board notes the following.

311. First, the key facts identified by the PSI in its response to the IIO's Request for Information regarding the second and third perspective relate to specific remedial

[269] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 36.

actions taken by the PSI as a result of the identification of the incidents covered by ESMA's investigation and, therefore, cannot be considered as measures (amounting to all the necessary measures) taken by the senior management to prevent the infringement, which is the subject of this case.

312. Second, with regards to the first perspective, the PSI's explanations (and documentation)[270] are, in the Board's view, relevant to understand the framework within which the breach took place. However, the Board considers that they do not establish that the PSI's senior management has taken all the necessary measures to prevent the infringement.

313. On that basis, the Board considers that there is no evidence in the file that the PSI's senior management has taken all the necessary measures to prevent the infringement.

314. This mitigating factor is thus 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

315. In this respect, the Board notes the following.

316. 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[271].

317. In the Board's view, by notifying an incident a TR is indicating an issue of concern[272] and such a notification could thus be considered an acknowledgement of the potential commission of an infringement. Therefore, to determine whether such TR should benefit from the application of this mitigating factor, it should be assessed whether it has done so quickly, effectively, and completely, i.e., when all the relevant information regarding the incident was effectively provided to ESMA[273].

[270] See Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 36-37.
[271] See paragraph 183 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03): "the Board finds that ESMA was correct in not applying the mitigating coefficient as it finds it clear on the facts that the appellant did not acknowledge that it had committed (or believe it could have committed) an infringement, and done so quickly, effectively, and completely.". See also paragraph 202: "Specifically, the Board of Appeal finds as regards the mitigation coefficient adjustment set out in point II.3 of Annex IV that it is clear that the appellant did not quickly, efficiently, and completely bring the infringement to ESMA's attention. The relevant notification of clarifications to ESMA did not in any way indicate expressly to ESMA that an infringement had been committed. Further, on the facts presented to the Board of Appeal, the notification in question was provided in the course of the appellant's ongoing supervisory relationship with ESMA and as part of its periodic disclosures; it was not presented in the form of an express acknowledgement of an infringement that is clearly required by point II.3 of Annex IV. The Board of Appeal notes and gives weight in this regard that ESMA only came to have notice of the infringements following supervisory and subsequently IIO action (following, in turn, a complaint). On the facts, therefore, ESMA was correct in finding that this coefficient could not be applied."
[272] See, in this respect, by analogy, paragraph 201 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03): "Specifically, the notification of what the appellant termed clarifications to the 2015 CB Methodology to ESMA did not indicate an infringement (or an issue of concern) and so could not be considered as sufficient to ground mitigation."
[273] See, in this respect, the Decision of the Board of Supervisors to adopt supervisory measures and impose fines in respect of infringements committed by DTCC Derivatives Repository Plc (Decision 2021/6), 8 July 2021

318. The Board considers that the three requirements (quickness, effectiveness, and completeness) set out at Point II(c) of Annex II to the Regulation are cumulative. Therefore, if one of them is not met, the mitigating factor should not be applied.

319. The PSI informed ESMA on its own initiative about the Collateral Update Infringement on 15 November 2019 (i.e., seven days after its discovery) and submitted the Collateral Update Incident Report on 17 January 2020[274].

320. The Board has assessed the type and degree of detail of the information provided by the PSI respectively on 15 November 2019 and 17 January 2020 and, in this case, the Board considers that the requirements to benefit from the application of this mitigating factor were not met, because it took more than two months for the PSI to provide ESMA Supervisors with all the relevant information about the incident.

321. Finally, the Board notes that the PSI considers that "the elements of Point II(c) of Annex II […] should be assessed in connection to the infringement itself and not solely in relation to the notification to ESMA"[275] and states that "the incident was identified on 8 November, was notified to ESMA on 15 November 2019 and was effectively resolved on 22 June 2020, allowing ESMA to closely monitor the matter before its resolution"[276].

322. However, the amount of time that it took a TR to put an end to an infringement is not relevant for the purpose of this mitigating factor. How long an infringement has lasted is considered as part of the assessment of whether the aggravating factor set out at Annex II, Point I(b) or the mitigating factor set out at Annex II, Point II(a) should be applied.

323. It is also not relevant for this mitigating factor whether the notification allowed ESMA to monitor the matter before its resolution.

324. Therefore, in the Board deems that this mitigating factor is thus not applicable.

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

325. The PSI has taken a number of actions, primarily resolving the issues in relation to the infringement by implementing a permanent solution to the Collateral incident.

326. In particular, the Board notes the following.

327. "A Change Request was drafted to implement this validation in order to reject collateral updates messages for which the field 1.21 'Collateralisation' had not been already specified either in the new transaction or position message or through a subsequent modification message with Action type = V. Through the adopted measures, no action type 'V' reports were shown in the TAR reports where fields 1.17

(https://www.esma.europa.eu/sites/default/files/library/esma41-356-187_decision_-_dtcc_derivatives_repository.pdf), paras. 717 to 722.

[274] See, in this regard, Supervisory Report, Exhibit 5, 'D. RTR20191113A Incident report'.

[275] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 8.

[276] Exhibit 46, IIO-TR-.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 8.

'Value of contract' and 1.21 'Collateralisation' were simultaneously empty and all CUs received and accepted were on contracts for which the field 1.21 'Collateralisation' was informed. REGIS-TR created a full set of test cases that were executed during the testing phase to ensure that the solution described in the functional specifications was correctly implemented. The solution of the incident was deployed in production on July 27, 2020 […]"[277].

328. In light of the above the Board considers that a number of remedial actions have been taken by the PSI regarding the Collateral incident. The Board should thus assess whether these measures were taken voluntarily.

329. The Board notes that there is no definition of what "voluntarily" ("de son plein gré" in the French version of the Regulation) 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 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.

330. In the present case, the Board notes the following.

331. In this case, no investigation or on-site inspection pursuant to Articles 62 and 63 of the Regulation took place until the IIO was appointed on 20 November 2020. Therefore, when the permanent solution of the Collateral incident was implemented, the IIO's investigation was already going on but there was no decision from ESMA ordering the PSI to put an end to its practices and, consequently, whether to take these measures was still within the PSI's remit.

332. However, the Board notes that the permanent solution for the Collateral incident implemented by the PSI could create further reporting issues.

333. The PSI is now making field 1.21 'Collateralisation' a mandatory field for Action types 'N' (new) and 'V' (valuation update) messages, whereas, as shown below, it is clear from the RTS/ITS as clarified by ESMA's guidance that (i) this field is optional for Action type 'N' (new) messages and conditionally mandatory for Action type 'V' (valuation update) messages and (ii) it suffices that either field 1.17 'Value of contract' or field 1.21 'Collateralisation' is informed by the Reporting Parties for a report to be submitted in accordance with the reporting requirements.

[277] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 30. See also p. 34.

Technical standards					Validations (published 03/04/2017) Updated 03/10/2017. Amendments are marked in red font.															
					Trade level								Position level							
Table	Item	Field	Details to be reported	Format	Is it Mandatory, Conditional, Optional or Not relevant for a given action type?								Is it Mandatory, Conditional, Optional or Not relevant for a given action type?							-Conditions -Format and content
					N	M	E	C	R	Z	V	P	N	M	E	C	R	Z	V	P	
1	21	Collateralisation	Indicate whether a collateral agreement between the counterparties exists.	U = uncollateralised PC = partially collateralised OC = one way collateralised FC = fully collateralised Populated in accordance with Article 3b	O	-	-	-	-	-	C	- O	O	-	-	-	-		C	At least one of the fields 1.17 or 1.21 has to be populated. When populated, this field shall contain only one of the following values: "U", "PC", "OC" or "FC". Up to 2 alphabetical characters.

334. Therefore, in the Board's view, the solution implemented by the PSI could in all likelihood result in reports of derivative contracts by Reporting Parties being incorrectly rejected if the Reporting Parties, in line with the reporting requirements, inform field 1.17 'Value of contract' and not 1.21 'Collateralisation' when reporting their trades to the PSI.

335. Therefore, the Board considers that the measures taken by the PSI cannot be considered as sufficient to prevent that a similar infringement is committed in the future. Therefore, the mitigation factor is not applicable.

Determination of the adjusted fine

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

337. The difference between the basic and the amount resulting from the application of each individual coefficient linked to the aggravating factors set out above, Point I(b), I(c) and I(d) shall be added to the basic amount:

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

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

EUR 20 000 x 1,5 = EUR 30 000

EUR 30 000 – EUR 20 000 = EUR 10 000

Adjusted fine taking into account applicable aggravating and mitigating factors:

EUR 20 000 + EUR 10 000 + EUR 24 000 + EUR 10 000 = EUR 64 000

338. Consequently, following adjustment by taking into account the applicable aggravating factors, the amount of the fine to be imposed on the PSI for the Collateral update incident would amount to EUR 64 000.

5.5 Application of the fine

339. The Board notes that Article 65(4) of the Regulation, second paragraph, provides 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".

340. The Board considers that the infringement related to the Collateral update incident that failed to ensure the integrity of the data reported (established by the Board above in section **Error! Reference source not found.**) and the present infringement due to the PSI submitting reports to Regulators containing data that was inconsistent with the information received under Article 9 of the Regulation, despite being autonomous, are stemming from the same Collateral update incident on the part of the PSI.

341. Article 65(4) of the Regulation, second paragraph, is applicable regarding the fines calculated for the infringements by the PSI related to Collateral update incident that failed to ensure the integrity of the data reported and the PSI submitting reports to Regulators containing data that was inconsistent with the information received. 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 64 000 should be applied.

5.6 Supervisory measure

342. Regard must be had to Article 73, paragraphs 1 and 2, of the Regulation.

343. Given the factual findings in the present case and in particular the fact that the PSI permanently solved the issue in 2020, in addition to the imposition of the fine, the only other supervisory measure considered appropriate with regard to the nature and the seriousness of the infringements is the adoption of a public notice as set out in Article 73(1)(c) of the Regulation.

344. It must thus be held that a public notice is to be issued.

6 XML incident

6.1 Analysis of the relevant provisions of the Regulation and the facts

345. As described in Section 2.2, due to an incident affecting validation of incoming modification messages, certain data was accepted in the PSI's system, although it should have been rejected. Subsequently, when further passed on to the Regulators, the reports failed to pass the schema validations of the standardized XML schema 20022 v.1.4[278].xml validation, because they contained such data as should not be included in the reports. As a result, the reports were not provided in the required format and within the required deadlines ('XML incident'). Eventually, on 29 November 2019, the PSI regenerated and provided all the Regulators affected by the XML incident with the reports that initially did not pass the .xml validation.

346. The Board notes that the XML incident took place due to validation issues concerning modification messages over the derivative contracts reported prior to the new reporting requirements that came into effect on 1 November 2017. In particular, certain inbound messages that were not compliant with the new reporting requirements, were accepted while they should have been rejected. When further passed on to the Regulators, using .xml schema, the reports failed to pass the .xml schema, as they contained values not expected under the new reporting requirements.

347. As a consequence of the XML incident, the reports that the Regulators should have had access to, were not provided, first, in the required format and second, within the required deadline.

348. The Board thereby analyses whether the PSI breached the following requirement:

"A trade repository shall collect and maintain data and shall ensure that the entities referred to in paragraph 3 have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates" (Article 81(2) of the Regulation).

349. If this requirement is not met, this would constitute the infringement set out at Point (b) of Section III of Annex I of the Regulation.

350. The issue at stake is whether the PSI has breached its obligation under Article 81(2) of the Regulation to give Regulators direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

[278] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 15; Exhibit 7, ´PSI's Response to the IIO's RFI', p. 17.

351. As set out in Section 2.2 above, between 1 November 2017 and 20 June 2020, due to an incorrect system configuration, some of the reports delivered to the Regulators in XML format did not pass the schema validations of the ISO 20022 methodology[279] and, therefore, the data reported to the PSI by the Reporting Parties could not be used immediately by the Regulators to fulfil their responsibilities and mandate.

352. The Board has examined in detail the wording and the context of Article 81(2) of the Regulation.

353. First, the wording of Article 81(2) is clear. The PSI has an obligation to provide Regulators with "direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates". The only limiting factor, as set out in Article 81(2), to a Regulator's access is the Regulator's "responsibilities and mandates".

354. Second, the XML incident had an impact on the access provided by the PSI to the Regulators on the data reported by Reporting Parties.

355. In this respect, the Board notes that Delegated Regulation (EU) No 151/2013 contains regulatory technical standards specifying the data to be published and made available by TRs and operational standards for aggregating, comparing, and accessing the data that were developed by ESMA and adopted by the Commission, in accordance with their mandates under Article 81(5) of the Regulation, to ensure the consistent application of Article 81 of the Regulation.

356. From 1 November 2017, pursuant to Article 4(1) of Delegated Regulation (EU) No 151/2013 (as amended by Delegated Regulation (EU) 2017/1800), TRs shall provide the Regulators with direct and immediate access to the data reported by Reporting Parties and, for that purpose, they shall use an XML format and a template developed in accordance with the ISO 20022 methodology.

357. Likewise, from 1 November 2017, pursuant to Article 5(3) of Delegated Regulation (EU) No 151/2013 (as amended by Delegated Regulation (EU) 2017/1800), TRs shall establish and maintain the necessary technical arrangements to enable the Regulators to connect using a secure machine-to-machine interface in order to submit data request and to receive data. For that purpose, TRs shall use the SSH File Transfer Protocol. They shall also use standardised XML messages developed in accordance with the ISO 20022 methodology to communicate through that interface.

358. Moreover, from 1 November 2017, pursuant to Article 5(7) of Delegated Regulation (EU) No 151/2013 (as amended by Delegated Regulation (EU) 2017/1800), "a trade repository shall establish and maintain the technical capability to provide direct and immediate access to details of derivatives contracts necessary

[279] Document '4.1 TR_Incident_reporting_template (RTR20191016A)' (attached to Supervisory Report, Exhibit 4), p. 1.

for the entities listed in Article 81(3) of Regulation (EU) No 648/2012 to fulfil their mandates and responsibilities. That access shall be provided as follows:

(a) where an entity listed in Article 81(3) of Regulation (EU) No 648/2012 requests access to details of outstanding derivatives contracts or of derivatives contracts which have either matured or for which reports with action types 'E', 'C', 'Z' or 'P' as referred to in field 93 in Table 2 of the Annex to Implementing Regulation (EU) No 1247/2012 were made not more than one year before the date on which the request was submitted, a trade repository shall fulfil that request no later than 12:00 Universal Coordinated Time on the first calendar day following the day on which the request to access is submitted.

(b) where an entity listed in Article 81(3) of Regulation (EU) No 648/2012 requests access to details of derivatives contracts which have either matured or for which reports with action types 'E', 'C', 'Z' or 'P' as referred to in field 93 in Table 2 of the Annex to Implementing Regulation (EU) No 1247/2012 were made more than one year before the date on which the request was submitted, a trade repository shall fulfil that request no later than three working days after the request to access is submitted.

(c) where a request to access data by an entity listed in Article 81(3) of Regulation (EU) No 648/2012 relates to derivative contracts falling under both points (a) and (b), the trade repository shall provide details of those derivatives contracts no later than three working days after that request to access is submitted."

359. However, due to the XML incident, the reports delivered to the Regulators in XML format did not pass the schema validations of the ISO 20022 methodology and the PSI had to regenerate the reports and provide them again to the Regulators. However, this was done significantly later. For instance, the ECB did not receive the regenerated TAR of 9 October 2019 until 29 November 2019, i.e., until almost two months later. Therefore, contrary to the applicable requirements, the PSI did not provide the ECB with access to the TAR no later than 12:00 Universal Coordinated Time ('UTC') on the first calendar day following the day on which the request to access was submitted (i.e., on T+1).

360. In light of the above, the Board considers that, by failing to provide the Regulators with access to the data reported by the Reporting Parties in the required format (i.e., XML messages developed in accordance with the ISO 20022 methodology) and within the required timeframe (i.e., T+1 or T+3, depending on which data the Regulators requested access to), the PSI failed to ensure that the Regulators had direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

361. This constitutes the infringement set out at Point (b) of Section III of Annex I of the Regulation.

6.2. Intent or negligence

362. Article 65(1) of the Regulation provides as follows:

"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.

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."

363. In accordance with Article 65(1) of the Regulation, 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.

364. Consequently, the Board of Supervisors needs to conclude whether the evidence pertaining to the present case leads to the conclusion that the relevant infringement has been committed by the PSI intentionally or negligently.

365. In accordance with Article 65(1) of the Regulation, 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".

366. The Board agrees with the IIO and considers that, overall, the factual background of the present case does not establish that there are objective factors which demonstrate that the PSI, its employees or senior managers acted deliberately to commit the infringement.

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

368. As regards the preliminary remarks regarding negligence reference is made to the considerations of the Board set out in Section 4.2 above.

6.3 Assessment of whether there is negligence in the present case

369. Regarding the facts at hand in the present case, the Board considers that the following should be taken into consideration to assess whether the PSI has been negligent.

370. First, the Board notes that the Regulation, as well as the requirements of Delegated Regulation (EU) No 151/2013 (as amended by Delegated Regulation (EU) 2017/1800) were clear on a simple reading: a TR must provide a Regulator with access to the details of derivatives contracts that it needs to fulfil its responsibilities and mandate (i) in an XML format developed in accordance with the ISO 20022 methodology; and (ii) no later than 12:00 UTC on the first calendar day following the day on which the request to access is submitted by that Regulator (no later than three

working days, if the Regulator's request concerns trades that were submitted by Reporting Parties more than a year ago).

371. To comply with the legal framework, an attentive reading of the relevant provisions would thus have been sufficient.

372. However, the Board notes that in response to the IIO's Request for Information, the PSI indicated that "the reason why the PSI did not implement in the system the necessary checks and validation of data submitted by Reporting Parties was mainly due to some shortcomings in the process which [led] to a disconnection between the functional documentation and the acceptance of the functionalities before the promotion to production environment. Those shortcomings at that time were caused by a not fully standardized documentation"[280].

373. Second, the FSD described "the changes that need to be implemented by REGIS-TR in order to comply with the new technical standards set out by ESMA, known as RTS (Revised Technical Standards)"[281] and included "an individual and detailed analysis of all the field validations included in the latest version of the revised Technical Standards"[282].

374. However, with regards to modifications and correction reports over Pre-RTS reports, the functional specifications were not properly defined and the PSI ended up configuring its system wrong: "Due to an incorrect configuration of the modification messages logic as per the functional specifications, REGIS-TR was accepting modification messages that should be rejected according to the Revised TS. This scenario happened for modifications where the fields were reported maintaining exactly the same Pre-RTS values. As a consequence, when the message was reported to the Regulators in the TAR, the .xml schema validation failed. […]"[283].

375. Third, the PSI was unable to detect the XML Incident due to the lack of a proper testing methodology and the lack of full test cases executing during the implementation phase of the new EMIR reporting and validation rules[284].

376. The PSI only detected the XML Incident on 10 October 2019[285] when the ECB alerted it.

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[280] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 12.
[281] Exhibit 15, 'Document I - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS', p. 6; Exhibit 25, 'IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11', p. 7.
[282] Exhibit 15, 'Document I - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS', p. 27; Exhibit 25, 'IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11', p. 28.
[283] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 16.
[284] Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 5 and 34. See also Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 13-15.
[285] The Board notes that there are some inconsistencies as regards the date in which the ECB contacted the PSI to raise the issue for the first time. In the notification of the XML Incident, the PSI indicated that it was on 10 October 2019 (see Supervisory Report, Exhibit 4, 'C. Incident report RTR20191016A Wrong validation rule to modification messages over pre-RTS trades', p. 1); whereas in the XML Incident Report, there is a reference to 9 December 2019 (see Document '4.1 TR_Incident_reporting_template (RTR20191016A)' (attached to Supervisory Report, Exhibit 4), p.1), which the IIO assumed was a clerical error. In response to the IIO's RFI, the PSI indicated yet another date, notably 8 November 2019 (See Exhibit 7, 'PSI's Response to the IIO's RFI', p. 5). However, the Board believes that 10 October 2019 is the actual date in which the ECB notified the PSI about this issue, as it

377. In this regard, the Board further notes that the [redacted] Project identified as one of the main gaps that "risks and control framework [was] not always appropriate for REGIS-TR activities"[286].

378. Overall, on the basis of the elements described above, the Board concurs with the IIO and 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 the Regulation, in circumstances where a TR in such a position that is normally informed and sufficiently attentive could not have failed to foresee those consequences.

379. Therefore, it is considered that the PSI has been negligent when committing the infringement of Point (b) of Section III of Annex I of the Regulation.

6.4 Fine

Determination of the basic amount

380. Article 65 of the Regulation provides in paragraph 2[287] 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

is also the date to which the PSI refers in pages 16, 29, 33 and 42 of its response to the IIO's RFI. It is also the date of discovery of the incident indicated in the Collateral Update Incident Report (Document '4.1 TR_Incident_reporting_template (RTR20191016A)' (attached to Supervisory Report, Exhibit 4), p. 5).

[286] Exhibit 26, 'IIO - RTR57 - Topic 3 - Business status post new RTS v.1.0', p. 5.

[287] In this regard, the Board notes that with the entry into force of Regulation (EU) 2019/834, the amount of the fines to be imposed in case of an infringement of the Regulation has significantly increased. According to Article 1(16)(a) of Regulation (EU) 2019/834 "in Article 65, paragraph 2 is amended as follows: […] in point (a), 'EUR 20 000' is replaced by 'EUR 200 000';" However, this is not applicable to the present infringement because the facts occurred before the adoption and entry into force of Regulation (EU) 2019/834.

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."

381. It has been established that the PSI committed the infringement set out at Point (b) of Section III of Annex I of the Regulation, by failing to provide the Regulators with direct and immediate access to the data reported by the Reporting Parties.

382. To determine the basic amount of the fine, the Board has regard to the latest available audited financial statement, indicating the PSI's turnover[288].

383. In 2020, the PSI had a turnover of EUR 18 457 697[289].

384. Thus, the basic amount of the fine for the infringement listed in Point (b) of Section III of Annex I of the Regulation is set at the higher end of the limit of the fine set out in Article 65(2)(a) of the Regulation and shall not exceed EUR 20 000.

Applicable aggravating factors

The applicable aggravating factors enlisted in Section I of the Annex II of the Regulation 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

385. The infringement lasted more than six months (i.e., from 1 November 2017 to 20 June 2020). Therefore, the Board agrees with the IIO and considers that the aggravating factor is 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

386. The Board notes that the Regulation does not provide guidance on what constitutes "systemic weaknesses in the organisation of the trade repository". However, 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".

387. In the analysis on whether the aggravating factor applies, the Board considers the type and the level of seriousness of the PSI's failure that led to the infringement.

388. The Board notes that the IIO requested the PSI to provide its views on whether the infringement revealed systemic weaknesses in the PSI's organisation. In

[288] 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); and the Methodology used by ESMA to calculate the fines: https://www.esma.europa.eu/supervision/enforcement/calculation-fines.
[289] Financial statements for the year end 31 December 2020

response to the IIO's Request for Information, indicated that, in its view, the incidents did not reveal systemic weaknesses in the organisation of the PSI[290].

389. However, the Board does not agree with the arguments put forward by the PSI.

390. In the Board's view, the XML incident revealed broader problems affecting the organisation of the PSI.

391. In particular, with regards to this infringement, the Board notes the following.

392. First, the Board notes that the infringement stemmed from how the PSI's reporting system was configured, which in turn also revealed weaknesses in the PSI's testing system.

393. In this regard, the Board notes, for instance, the explanation given by the PSI for the XML incident: "the system was not configured according to the specifications defined in the functional specifications. […] During the RTS testing phase back in 2017, and with the aim to meet the TRQ44 guidance, REGIS-TR decided that, as of the implementation of the RTS deployment: 1) Modification messages with Action type= 'M' or 'R' should be sent with all the fields that were previously informed in the contract (snapshot approach) and that no partial modification would be accepted. 2) Modifications sent on pre-RTS reported contracts should be validated as new contract to guarantee that the contract is updated according to the new validations. The above two measures were defined in the functional specifications. The first measure was correctly implemented and tested whereas the second was not. […]" [291].

394. With regards to the testing, the Board further observes that the [redacted] Project revealed more general shortcomings in this area: "need to enhanced review of test cases and timing to review", "testing team does not have an appropriate XML converter tool (…)"[292].

395. Second, the XML Infringement also revealed weaknesses in the PSI's management system.

396. As indicated by the PSI in response to the IIO's Request for Information, "the reason why the PSI did not implement in the system the necessary checks and validation of data submitted by Reporting Parties was mainly due to some shortcomings in the process which [led] to a disconnection between the functional documentation and the acceptance of the functionalities before the promotion to production environment. Those shortcomings at that time were caused by a not fully standardized documentation"[293].

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[290] To see the complete response from the PSI, please see Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 25-26.
[291] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 13-14.
[292] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 6.
[293] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 12.

397. Moreover, the PSI's [redacted] Project identified several governance gaps regarding the PSI's policies and procedures : "[…] Roles and responsibilities are insufficiently documented and focus on tasks done rather than tasks required (…) Policies and procedures centralization is not exhaustive, not systematic and follow-up is insufficient (some procedures date to 2015 or remain as "draft") (…) New processes are not systematically documented in policies and procedures"[294].

398. Third, the infringement has also revealed shortcomings in the PSI's outsourcing arrangements as well as in the methods employed to monitor the service level of the outsourced functions.

399. In particular, the Board notes that, in the XML Incident Report, it is indicated, as the underlying cause for the incident, that "RTR IT service provider did not configure the modification messages logic as per REGIS-TR specifications. More precise test cases in the developing phase by BME IT would have prevented the delivery of the modifications functionality with such a failure. Furthermore, REGIS-TR should have spotted this bug in the testing phase before the release of this functionality for clients in the production environment"[295].

400. In this respect, the Board further observes that amongst the governance gaps (a total of 208 gaps) identified within the context of the [redacted] Project, there were some related to the outsourcing of activities: "there is a lack of clarity and follow-up on the respective roles between REGIS-TR and activities outsourced to its shareholders (…) Applied frameworks borrowed from the service providers are not adapted to Regis-TR specific business and specificities […]"[296].

401. Fourth, the XML Infringement has also revealed weaknesses in the PSI's ability to detect and remediate incidents in a timely manner. In particular, the Board notes that the XML Incident was detected only after the ECB contacted the PSI raising an inconsistency[297].

402. Moreover, the [redacted] Project also identified governance gaps in the PSI's risk management system: "risk and control framework is not always appropriate for REGIS-TR activities" [298].

403. As a side and final note, the Board notes that the XML Infringement impacted the PSI's implementation of the operational standards for aggregation and comparison of data to be used by TRs for EMIR reporting purposes because it caused that the reports delivered to the Regulators in XML format did not pass the ISO 20022 schema validations and that it was not an isolated incident. In her Request for Information, the IIO asked the PSI to indicate whether there had been other issues regarding the ISO 20022 schema validations. In its response, the PSI indicated that

[294] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 5.
[295] Document '4.1 TR_Incident_reporting_template (RTR20191016A)' (attached to Supervisory Report, Exhibit 4), p. 2.
[296] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 5.
[297] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 14.
[298] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 5.

it had identified three other incidents (not covered by this case) causing issues with such validations[299].

404. Fifth, the Board notes that in the Response to the IIO's Initial Statement of Findings, the PSI acknowledges that "the occurrence of the incident covered by "XML Infringement" matter investigated was related to issues in the system configuration as well as control checks that at the time revealed not sufficient"[300]. However, the PSI "does not agree with the approach taken by the ESMA IIO to adduce that issues in the system, […], reveals directly issues in the organisation, as the organisation covers not only the systems but also the governance and compliance culture, among others, that are an integral part of the organisation" [301]. The PSI argues that "it is also relevant whether the organisation shows any weakness -or lack of therefore- in the manner in which it responds to the issues arising"[302]. The PSI thus considers that "by assessing the whole extent of the issue, not only the manner in which it took place, but it is also relevant how its resolution was handled. And, taking into consideration all the elements, the infringement did not evidence the existence of system weaknesses"[303].

405. The Board disagrees with the PSI's argumentation.

406. As explained in para 180, the wording of this aggravating factor is clear: if the infringement has revealed any systemic weaknesses in the organisation of the trade repository, the aggravating factor applies. The evidence available in the file shows that the XML Infringement revealed systemic weaknesses in several parts of the PSI's organisation and the PSI has also recognised it.

407. Whether these systemic weaknesses have now been addressed is a different issue, but it does not prevent the application of the aggravating factor set out at Annex II, Point I(c).

408. Moreover, the steps taken by the PSI in order to address the infringement once detected are already considered as part of the assessment of whether the aggravating factor set out at Annex II, Point I(f) or the mitigating factor set out at Annex II, Point II(d) should be applied.

409. Based on the above, the Board identifies significant weaknesses regarding the configuration and testing of the PSI's system as well as regarding its management systems, its outsourcing arrangements, and its detection and remediation processes.

410. The Board concurs with the IIO and deems that these defects constitute "systemic weaknesses in the organisation" of the PSI. Therefore, the aggravating factor is applicable.

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[299] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 18; Exhibit 36, 'IIO - RTR40 - RTR20190906A Incident Report'; Exhibit 37, 'IIO - RTR41 - (RTR20201109A) Incident Report'; Exhibit 38, 'IIO - RTR42 - [RTR20191211A] Incident Report'; Exhibit 39, 'IIO - RTR43 - Q19'.
[300] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 9.
[301] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 9.
[302] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 9.
[303] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 9.

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

411. The Board notes that in her Request for Information, the IIO requested the PSI to provide its reasoned view on whether the incidents covered by her investigation would have implied a negative impact on the quality of the data that the PSI maintains.

412. In response to the IIO's Request for Information, the PSI indicated that it considered that the quality of the data is set by the Reporting Parties and, therefore, the XML Infringement did not have a negative impact on the quality of the data maintained by the PSI[304].

413. The Board disagrees with the PSI's argumentation.

414. As already explained (para 189), "quality of data" operates within the context of the principal objective of introducing the reporting requirements under the Regulation, which is to ensure that Regulators have timely and complete access to the correct data in order to be able to perform their mandates and ensure financial stability.

415. In this particular case, the Board considers that the quality of the data was compromised for all the following reasons.

416. Because of the XML incident, the Regulators did not receive in due time all the reports that they needed to fulfil their respective responsibilities and mandates in the required format.

417. Pursuant to Articles 4 and 5(7) of Delegated Regulation (EU) No 151/2013, to enable the Regulators to fulfil their respective responsibilities and mandates, TRs must provide them with access to the data they need no later than 12:00 UCT on the first calendar day following the day on which the request to access is submitted (no later than three working days, if the Regulator's request concerns trades that were submitted by Reporting Parties more than a year prior). Access to this data shall be provided using an XML format and a template developed in accordance with the ISO 20022 methodology.

418. However, while the PSI regenerated the affected reports using an XML format and a template developed in accordance with the ISO 20022 methodology and provided them to the Regulators once the XML incident was detected, it did so after the stipulated time limit.

419. For example, regarding the TAR originally sent to the ECB on 9 October 2019, the report in XML format was regenerated by the PSI and sent to the ECB only on 29 November 2019[305]. One can thus easily see that the ECB received the data in the correct format only almost two months later.

[304] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 26.
[305] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 17.

420. As a result, as indicated in Section 2.2 of this decision, the issue is estimated to have had an impact on the daily and ad-hoc TARs and TSRs as well as on the Rejection and Reconciliation Reports sent to the Regulators and overall to have affected a substantial number of records sent to a total of 41 Regulators.

421. The timing of access to data is one of the characteristics of the quality of the data. Delays in receiving the reports in the right format such as the ones experienced by the ECB and other Regulators reduce the quality of the data which is accessed and the use that can be made of this data. The data as a whole is deficient and incomplete.

422. Based on the above, the Board agrees with the IIO and considers that the infringement has had a negative impact on the quality of the data that the PSI maintained and, therefore, the aggravating factor is applicable.

Mitigating factors

423. The application of the mitigating factors enlisted in Section II of the Annex II of the Regulation is analysed below.

Annex II, Point II(a) if the infringement has been committed for less than 10 working days, a coefficient of 0,9 shall apply

424. The infringement lasted more than ten days. Therefore, the Board agrees with the IIO and considers that this mitigating factor is not applicable.

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

425. The Board notes that in her Request for Information, the IIO requested the PSI to provide any documentation showing specifically the measures taken by the PSI's senior management to prevent the infringement.

426. In its response, the PSI indicated that "the measures of its senior management to prevent an infringement […] of the Regulation, can be identified - taken into consideration, that all incidents are related to the implementation of the revised RTS in November 2017, out of three perspectives:

1. Related to all incidents: Governance (controls performed, measures taken and in-/external reporting/ escalation performed) during the pre-implementation phase of the RTS until November 2017

2. Related to all incidents: Governance (controls performed, measures taken and in-/external reporting/ escalation performed) during the post-implementation phase of the RTS after November 2017

3. For each individual incident: ensuring a proper framework for the full incident handling process, overseeing the individual incident lifecycle based on proper internal reporting, communication and escalation as appropriate as well as taking corrective measures (decisions) if required"[306].

427. In this regard the Board notes the following.

428. First, the key facts identified by the PSI in its response to the IIO's Request for Information regarding the second and third perspective relate to specific remedial actions taken by the PSI as a result of the identification of the incidents covered by ESMA's investigation and, therefore, cannot be considered as measures (amounting to all the necessary measures) taken by the senior management to prevent the infringement, which is the subject of this case.

429. Second, with regards to the first perspective, the PSI's explanations (and documentation)[307] are, in the Board's view, relevant to understand the framework within which the breach took place. However, the Board considers that they do not establish that the PSI's senior management has taken all the necessary measures to prevent the infringement.

430. On that basis, the Board agrees with the IIO and considers that there is no evidence in the file that the PSI's senior management has taken all the necessary measures to prevent the infringement.

431. This mitigating factor is thus 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

432. In this respect, the Board notes the following.

433. 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[308].

[306] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 36.
[307] See Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 36-37.
[308] See paragraph 183 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03): "the Board finds that ESMA was correct in not applying the mitigating coefficient as it finds it clear on the facts that the appellant did not acknowledge that it had committed (or believe it could have committed) an infringement, and done so quickly, effectively, and completely.". See also paragraph 202: "Specifically, the Board of Appeal finds as regards the mitigation coefficient adjustment set out in point II.3 of Annex IV that it is clear that the appellant did not quickly, efficiently, and completely bring the infringement to ESMA's attention. The relevant notification of clarifications to ESMA did not in any way indicate expressly to ESMA that an infringement had been committed. Further, on the facts presented to the Board of Appeal, the notification in question was provided in the course of the appellant's ongoing supervisory relationship with ESMA and as part of its periodic disclosures; it was not presented in the form of an express acknowledgement of an infringement that is clearly required by point II.3 of Annex IV. The Board of Appeal notes and gives weight in this regard that ESMA only came to have notice of the infringements following supervisory and subsequently IIO action (following, in turn, a complaint). On the facts, therefore, ESMA was correct in finding that this coefficient could not be applied."

434. In the Board's view, by notifying an incident a TR is indicating an issue of concern[309] and such a notification could thus be considered an acknowledgement of the potential commission of an infringement. Therefore, to determine whether such TR should benefit from the application of this mitigating factor, it should be assessed whether it has done so quickly, effectively, and completely, i.e., when all the relevant information regarding the incident was effectively provided to ESMA[310].

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

436. The PSI informed ESMA on its own initiative about the XML Incident on 17 October 2019 (i.e., 7 days after its discovery) and submitted the XML Incident Report on 6 December 2019[311].

437. The Board has assessed the type and degree of detail of the information provided by the PSI respectively on 17 October 2019 and 6 December 2019 and, in this case, the Board considers the requirements to benefit from the application of this mitigating factor were not met, because it took almost two months for the PSI to provide ESMA Supervisors with all the relevant information about the incident.

438. Moreover, the Board notes that it was only on 3 July 2020 that the PSI provided information about all the fields that were affected by the XML incident and thus caused that the reports generated and sent by the PSI to the Regulators did not pass the XML schema validations and had to be regenerated and resent.

439. Therefore, in the Board agrees with IIO's view, and deems that the mitigating factor is thus not applicable.

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

440. The PSI has taken a number of actions, primarily resolving the issues in relation to the infringement by implementing a permanent solution to the XML Incident.

441. In particular, the Board notes the following.

[309] See, in this respect, by analogy, paragraph 201 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03): "Specifically, the notification of what the appellant termed clarifications to the 2015 CB Methodology to ESMA did not indicate an infringement (or an issue of concern) and so could not be considered as sufficient to ground mitigation."

[310] See, in this respect, the Decision of the Board of Supervisors to adopt supervisory measures and impose fines in respect of infringements committed by DTCC Derivatives Repository Plc (Decision 2021/6), 8 July 2021 (https://www.esma.europa.eu/sites/default/files/library/esma41-356-187_decision_-_dtcc_derivatives_repository.pdf), paras. 717 to 722.

[311] See, in this regard, Supervisory Report, Exhibit 3, 'B1. FW Missing incident templates'.

442. On 29 November 2019, the PSI regenerated and provided the ECB and the other Regulators affected by the XML incident with the reports that did not pass the schema validations of the standardized XML schema 20022 v1.4 [312].

443. In addition, on 20 June 2020, the XML incident was permanently resolved[313]. The PSI "created a full set of test cases that were executed during the testing phase to ensure that the solution described in the functional specifications was correctly implemented in the new version"[314].

444. On 26 October 2020, the PSI confirmed that "the correction of the bug ensures that all the fields of pre-RTS contracts are duly updated and validated according to the RTS validations rules, for all contracts for which REGIS-TR has received a modification message after the correction of the aforementioned bug […]"[315].

445. In light of the above the Board considers that a number of remedial actions have been taken by the PSI regarding the XML incident.

446. The Board notes that there is no definition of what "voluntarily" ("de son plein gré" in the French version of the Regulation) 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 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.

447. In the present case, the Board notes the following.

448. In this case, no investigation or on-site inspection pursuant to Articles 62 and 63 of the Regulation took place until the IIO was appointed on 20 November 2020. Therefore, when the permanent solution of the XML Incident was implemented, there was no decision from ESMA ordering the PSI to put an end to its practices and, consequently, whether to take these measures was still within the PSI's remit.

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[312] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 15-16.; Exhibit 7, 'PSI's Response to the IIO's RFI', p. 17.

[313] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 15. In this regard, the Board notes that to solve the XML Incident two Change requests were needed: one on 10 February 2020 (See Exhibit 16, 'IIO - RTR65 - UPLOAD_PROD_20200208_RTR20191016A- RTR-1815' p. 1: "RTR-1815 - EMIR (Online): Messages sent with action type M or R should be rejected if the field underlying id type is populated while the field underlying ID is empty") and one on 20 June 2020 (See Exhibit 17, 'IIO - RTR66 - RTR20200103A-RTR2363andRTR20191120A-RTR16', p.2: "RTR-2327 - EMIR (RTR-1815 part 2): modifications on Pre-RTS trades: MX/ME messages should not be accepted if at least 1 mandatory fields is not informed and validations on field <corporatesector> should be applied"). See also in this regard Exhibit 18, 'IIO - RTR39 - Q17', p. 3: "Not fully solved in the RTR-1815, another Jira was needed the RTR-2327".

[314] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 34.

[315] Supervisory Report, Exhibit 49, 'REGIS-TR Follow up answer to RFI (ESMA83-357-34131) and RFI (ESMA83-357-34038)', p. 4. See also in this regard, Exhibit 7, 'PSI's Response to the IIO's RFI', p. 29.

449. Moreover, in the Board's view, the measures taken by the PSI have fixed the underlying root cause of the incident and, therefore, should in principle be sufficient to ensure that the same or a similar infringement is not committed in the future.

450. In light of the above, the Board agrees with the IIO and deems that the PSI has taken measures to ensure that a similar infringement cannot be committed in the future and, therefore, the mitigation factor is applicable.

Determination of the adjusted fine

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

452. The difference between the basic amount and the amount resulting from the application of each individual coefficient linked to the aggravating factors set out above, Point I(b), Point I(c) and I(d) shall be added to the basic amount and the difference between the basic amount and the amount resulting from the application of the coefficient linked to the mitigating factor set out above, Point II(d) shall be subtracted from the basic amount of the fine:

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

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

EUR 20 000 x 1,5 = EUR 30 000

EUR 30 000 – EUR 20 000 = EUR 10 000

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

EUR 20 000 x 0,6 = EUR 12 000

EUR 20 000 – EUR 12 000 = EUR 8 000

Adjusted fine taking into account applicable aggravating and mitigating factors:

EUR 20 000 + EUR 10 000 + EUR 24 000 + EUR 10 000 – EUR 8 000 = EUR 56 000

453. 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 XML incident would amount to EUR 56 000.

6.6 Supervisory measure

454. Regard must be had to Article 73, paragraphs 1 and 2, of the Regulation.

455. Given the factual findings in the present case and in particular the fact that the PSI permanently solved the issue on 20 June 2020, in addition to the imposition of the fine, the only other supervisory measure considered appropriate with regard to the nature and the seriousness of the infringements is the adoption of a public notice as set out in Article 73(1)(c) of the Regulation.

456. It must thus be held that a public notice is to be issued.

7 Compression incident [integrity infringement]

457. As described in Section 2.3, due to inadequate system configuration, the PSI rejected data that was correctly reported by the Reporting Parties.

458. In particular, when the Reporting Parties submitted modifications to trades reported before the new RTS requirements that came into force in 2017, the modifications were incorrectly rejected, as the PSI's system required fields 2.16 'Compression' to be populated, although this field was not mandatory for the message type submitted by the Reporting Parties. This resulted in a correctly reported data being incorrectly rejected by the PSI ('Compression incident'). The incorrect configuration had an impact also on the field 2.15 'Venue of execution'.

459. The Board deems that in the case under consideration the Compression incident led to two different outcomes: i) it impacted the integrity of the data (correctly) reported to the PSI; and ii) it led to the provision of incorrect reports to the Regulators.

460. The Board considers that while the impact on integrity of the data constitutes a violation of the obligation to safeguard the integrity of the data, as set out in Article 80(1) of the Regulation, the provision of incorrect reports constitutes a violation of the obligation to ensure the Regulators have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates, set out in Article 81(2) of the Regulation and which is analysed in Section 8 below.

461. On the basis of the assessment of the facts, the Board considers that in the present case two separate (though intertwined) infringements are established, as analysed below.

462. With regards to the outcome of not ensuring integrity of the data, this section of the decision analyses whether the PSI breached the following requirement regarding the safeguarding and recording of the data received from counterparties and CCPs:

> "a trade repository shall ensure the […] integrity […] of the information received under Article 9" (Article 80(1) of the Regulation).

463. If this requirement is not met, the infringement set out at Point (c) of Section II of Annex I of the Regulation is established.

7.1 Analysis of the relevant provisions of the Regulation and the facts

464. The issue under consideration in the present case is whether the PSI has breached its obligation under Article 80(1) of the Regulation to ensure the integrity of the information that it received under Article 9 of the Regulation.

465. The system configuration, set up and employed by the PSI, incorrectly interpreted and applied the validation rules for the messages over derivates contracts reported before the new reporting requirements came into effect on 1 November 2017 but that were outstanding.

466. In particular, the field 2.16 'Compression' was mandatorily required whereas according to the reporting requirements for action type 'M' (modification) messages the field was not relevant and therefore had to be left blank by the Reporting Parties and for action type 'R' (correction) messages was optional and thus had to be populated by the Reporting Parties only where applicable. This resulted in rejection of the reports with Action type 'M' (modification) and 'R' (correction) where, in line with the reporting requirements, the Reporting Parties had not informed the fields 2.15 'Venue of execution' or 2.16 'Compression'.

467. Article 80(1) of the Regulation requires TRs to safeguard the integrity of the information received under Article 9 of the Regulation. From a contextual analyses of this provision, the Board concludes that TRs have an obligation to accept all data correctly reported under Article 9 of the Regulation.

468. The Board notes that the concept of 'data integrity' refers to the maintenance of the accuracy and consistency of the data during all of the processing activities performed on the data by the TRs. Improper rejection of correct data therefore constitutes a failure to safeguard the integrity of the data that reaches the TRs.

469. Moreover, Commission Delegated Regulation (EU) No 148/2013 and Commission Implementing Regulation (EU) No 1247/2012 clearly specify the reporting obligations on the part of the Reporting Parties in order to comply with Article 9 of the Regulation. ESMA also had provided guidance via Q&As (TR Q&A 44) on how to transition to the new reporting requirements as of 1 November 2017.

470. In light of the above, the Board considers that the PSI did not safeguard the integrity of the data correctly reported to it by the Reporting Parties, in contravention of Article 80(1) of the Regulation, because the PSI rejected the data that was reported in line with the reporting requirements and which therefore should have formed part of the overall data set. That constitutes an infringement set out at Point c) of Section II of Annex I of the Regulation.

7.2 Intent or negligence

471. Article 65(1) of the Regulation provides as follows:

"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.

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."

472. In accordance with Article 65(1) of the Regulation, 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.

473. Consequently, the Board of Supervisors needs to conclude whether the evidence pertaining to the present case lead to the conclusion that the relevant infringement has been committed by the PSI intentionally or negligently.

474. In accordance with Article 65(1) of the Regulation, 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".

475. The Board considers that, overall, the factual background of the present case does not establish that there are objective factors which demonstrate that the PSI, its employees or senior managers acted deliberately to commit the infringement.

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

477. As regards the preliminary remarks regarding negligence reference is made to the considerations of the Board set out in Section 4.2 above.

7.3 Assessment of whether there is negligence in the present case

478. First, the Board notes that, as explained above, the provision of Article 80(1) is clear. A TR normally informed and sufficiently attentive in the PSI's position could not have failed to foresee that Article 80(1) requires to safeguard the data received by the TR.

479. In particular, the Board notes that a diligent TR (complying with the expected high standard of care) would have ensured that it correctly interprets and implements the new reporting requirements and how they should be applied to pre-existing derivatives reports.

480. Instead, the PSI configured its system in a way that prevented it from fulfilling its responsibilities effectively. The PSI's system was configured to validate as new contracts each and every modification message that Reporting Parties submitted after 1 November 2017 ('Post-RTS'), thereby incorrectly considering that some of the fields in the reports were mandatory and had to be informed, whereas in reality, depending on whether the message was a modification or a correction message, they had or could have been left blank. As a result, the PSI wrongly rejected reports that did not have those fields informed.

481. The Board notes that in her Request for Information, the IIO requested the PSI to provide supporting documents (dating from before 1 November 2017) showing that an internal or external assessment was performed by the PSI to determine that it had to set up its system in this manner. In its response, the PSI indicated that "REGIS-TR has not maintained documentation related to the internal assessment performed before November 1, 2017 and can therefore not provide such documentation. Nevertheless, we have retrieved and attached the email exchange with ESMA Supervision discussing this topic and showing that an internal assessment was performed" [316].

482. From these exchanges the Board notes that, while the PSI raised some questions about TR Answer 44 and discussed such questions with ESMA policy officers, at no point the PSI raised any question about how successive modification or correction messages over outstanding Pre-RTS trades should be treated in order to comply with the reporting requirements nor did it express its intention to validate as new contracts each and every modification or correction message (messages with Action type 'M' or 'R') received from 1 November 2017 onwards.

483. On 11 May 2017, the PSI sent an e-mail to ESMA Supervisors indicating that "in the course of the developments of the revised technical standards REGIS-TRs is facing some issues with the below topics: 1. Modifications logic: According to TR question 44, any modifications reported after the implementation of the revised technical standards shall be reported according to the new RTS. After reviewing this question and answer, REGIS-TR understanding would be as follows: […] b. REGIS-TR accepts partial reporting of modifications, therefore only those fields reported in the modification message will be subject to the revised validations rules. Moreover, if customers report modifications over trades reported with the current RTS, REGIS-TR will not request them to fill in all the new mandatory fields for action type "N". Only

[316] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 23.

if the field is reported in the modification message, the relevant cross validations will apply and customer may be required to report additional fields […]"[317]

484. On 15 June 2017, ESMA policy officers responded to the PSI indicating that "this is not in line with the TR Q&A 44 (b): "In the case of the TRs that accept partial messages for the "Modification" and "Correction" reports (i.e. the messages containing only the strictly mandatory fields such as UTI or counterparties' IDs and the fields that are modified/corrected), those TRs will need to ensure that the counterparties provide all the applicable data elements when sending the "Modification" or "Correction report for the first time upon the application date of the revised technical standards""[318].

485. On 17 July 2017, the PSI indicated, in reference to the TR Answer 44(b), that "As mentioned during the call, the wording in TR Q&A 44(b) in relation to the partial modifications could be misleading, therefore, we suggest that a remark is added indicating that the applicable data elements [refer] to the fields applicable for new trades. Therefore, REGIS-TR suggest the following wording: "*In the case of the TRs that accept partial messages for the "Modification" and "Correction" reports (i.e. the messages containing only the strictly mandatory fields such as UTI or counterparties' IDs and the fields that are modified/corrected), those TRs will need to ensure that the counterparties provide all the applicable data elements for action type New when sending the "Modification" or "Correction report for the first time upon the application date of the revised technical standards*" [319] .

486. The PSI thus suggested to ESMA policy officers to clarify that where TR Answer 44(b) referred to "all the applicable data elements when sending the "Modification" or "Correction" report for the first time", it meant "all the applicable data elements for action type New when sending the "Modification" or "Correction" report for the first time", which ESMA policy officers indicated to be "in line with the intended clarification" [320] and thus the drafting suggestion was included in the TR Q&A 44(b)[321].

487. At no point, the PSI indicated in these exchanges to have understood TR Answer 44(b) as meaning that all subsequent modification or correction reports should be validated as new contracts and asked for any clarification in that respect. However, it did raise other questions, which were answered by ESMA policy officers.

488. In the Board's view, taking into account that the validation rules applicable to Action type 'M' (modification) and 'R' (correction) messages are not always the same that are applicable to Action type 'N' (new) messages and, in particular, that not all fields that are mandatory for Action type 'N' (new) messages are also mandatory for Action type 'M' (modification) and 'R' (correction) messages, a diligent TR (complying with its high standard of care) would have checked that its understanding of TR Q&A

[317] Exhibit 33, 'IIO - RTR46 - Email exchange with ESMA implementation of RTS', pp. 18-19.
[318] Exhibit 33, 'IIO - RTR46 - Email exchange with ESMA implementation of RTS', p. 10.
[319] Exhibit 33, 'IIO - RTR46 - Email exchange with ESMA implementation of RTS', p. 8.
[320] Exhibit 33, 'IIO - RTR46 - Email exchange with ESMA implementation of RTS', p. 4.
[321] Exhibit 34, '20180205 ESMA_70-1861941480-52_qa_on_EMIR Implementation', p. 120.

44(b) on such an important issue was correct. A normally informed TR would have foreseen the consequences of not doing so.

489. Second, in the Board's view, the Functional Specification Document ('FSD'), which was the document that described "the changes that need to be implemented by REGIS-TR in order to comply with the new technical standards set out by ESMA, known as RTS (Revised Technical Standards)" [322], contained contradictory information.

490. Reflecting the discussion with ESMA policy officers just mentioned above, the FSD indicated that "according to TR Q&A 44, "In the case of the TRs that accept partial messages for the "Modification" and "Correction" reports (i.e. messages containing only the strictly mandatory fields such as UTI or counterparties' IDs and the fields that are modified/corrected), those TRs will need to ensure that the counterparties provide all the applicable data elements when sending the "Modification" or "Correction" report for the first time upon the application date of the revised technical standards." ESMA has clarified that the applicable data elements refer to those applicable to action type "N""[323].

491. However, the FSD went on by providing that [redacted][324]. This is in clear contradiction with what the PSI had previously discussed with ESMA and with what was indicated in the first paragraph of section 1.4 of the FSD.

492. In this regard, the Board further notes that in 2017, the relevant business requirements were not set, and the PSI's BPM was not involved in the definition of the functional specifications and the change request[325].

493. Third, as indicated in the amended version of TR Answer 20b of the Q&A on EMIR implementation (applicable from 1 November 2017 onwards), TRs should apply validation rules to ensure that reporting is performed according to the EMIR regime, including the specifications of the Technical Standards, and to be compliant with the requirements of Article 19 of the Delegated Regulation (EU) 150/2013, they should reject the reports which are not submitted in line with the reporting requirements specified in the Validations table[326].

494. Therefore, in the Board's view, before going live on 1 November 2017 but also afterwards, a diligent TR (complying with its high standard of care) would have checked that the validation rules that it had put in place worked properly, i.e., that it did not wrongly reject data submitted by the Reporting Parties in compliance with all

[322] Exhibit 15, 'Document I - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS', p. 6; Exhibit 25, 'IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11', p. 7.
[323] Exhibit 25, 'IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11', p. 62.
[324] Exhibit 25, 'IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11', p. 63.
[325] Document '7.1 TR_Incident_reporting_template (RTR20191219A)' (attached to Supervisory Report, Exhibit 7), p. 2; Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 30-31.
[326] Exhibit 34, '20180205 ESMA_70-1861941480-52_qa_on_EMIR Implementation'.

the relevant reporting requirements. A normally informed TR would have foreseen the consequences of not doing so.

495. However, until December 2019, "REGIS-TR did not detect the deficiency due to the lack of full test cases executed during the implementation of the new RTS"[327].

496. As a result, for a very long time, the PSI was unable to detect the Compression incident. In fact, it was only in December 2019 that the PSI detected, by means of internal testing performed under UAT environment, that its interpretation of the regulatory requirement defined in the TR Answer 44(b) and how it had been implemented in the system was not correct[328].

497. Considering the above, the Board, consistent with the Decision of 28 December 2020 of the Joint Board of Appeal of the three ESAs, acknowledges that the PSI did not meet the high standard of care applicable to financial service providers, and, on this basis, establishes the negligence in the commission of the infringement.

7.4 Fine

Determination of the basic amount

498. Article 65 of the Regulation provides in paragraph 2[329] 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."

[327] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 7.
[328] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 7; Document '7.1 TR_Incident_reporting_template (RTR20191219A)' (attached to Supervisory Report, Exhibit 7), p. 4.
[329] In this regard, the Board notes that with the entry into force of Regulation (EU) 2019/834, the amount of the fines to be imposed in case of an infringement of the Regulation has significantly increased. According to Article 1(16)(a) of Regulation (EU) 2019/834 "in Article 65, paragraph 2 is amended as follows: […] in point (a), 'EUR 20 000' is replaced by 'EUR 200 000';" However, this is not applicable to the present infringement because the facts occurred before the adoption and entry into force of Regulation (EU) 2019/834.

499. It has been established that the PSI committed the infringement set out at Point (c) of Section II of Annex I of the Regulation, by failing to ensure the integrity of the data reported by the Reporting Parties.

500. To determine the basic amount of the fine, the Board has regard to the latest available audited financial statement, indicating the PSI's turnover[330].

501. In 2020, the PSI had a turnover of EUR 18 457 697[331].

502. Thus, the basic amount of the fine for the infringement listed in Point (c) of Section II of Annex I of the Regulation is set at the higher end of the limit of the fine set out in Article 65(2)(a) of the Regulation and shall not exceed EUR 20 000.

Applicable aggravating factors

503. The applicable aggravating factors enlisted in Section I of the Annex II of the Regulation 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

504. The infringement set out at Point (b) of Section III of Annex I of the Regulation has been committed each time that the PSI has coded checks/validations on a field that caused the rejection of messages submitted by the Reporting Parties in compliance with the reporting requirements and thus the non-inclusion of such data in the reports that the PSI generated for the Regulators, i.e. two times: once in regards to field 2.15 'Venue of execution' and the other one in regards to field 2.16 'Compression'. Therefore, putting aside the first time that the PSI has committed the infringement, it has been repeated one time.

505. The Board considers that this aggravating factor is applicable.

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

506. The infringement lasted more than six months (i.e., from 1 November 2017 until 14 December 2020). Therefore, the Board considers that the aggravating factor is 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

[330] 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); and the Methodology used by ESMA to calculate the fines: https://www.esma.europa.eu/supervision/enforcement/calculation-fines.
[331] Financial statements for the year end 31 December 2020

507. The Board notes that the Regulation does not provide guidance on what constitutes "systemic weaknesses in the organisation of the trade repository". However, 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".

508. In the analysis on whether the aggravating factor applies, the Board considers the type and the level of seriousness of the PSI's failure that led to the infringement.

509. The IIO requested the PSI to provide its views on whether the infringement revealed systemic weaknesses in the PSI's organisation. In response to the IIO's Request for Information, the PSI indicated that, in its view, the incidents did not reveal systemic weaknesses in its organisation[332].

510. However, the Board does not agree with the arguments put forward by the PSI.

511. In the Board's view, the Compression Infringement revealed broader problems affecting the organisation of the PSI.

512. In particular with regards to this infringement, the Board notes the following.

513. First, the Board notes that the Compression Infringement stemmed from how the PSI's reporting system was configured, which in turn also revealed weaknesses in the PSI's testing system.

514. According to the information provided in the Compression Incident Report, the incident was due to an "inadequate or ineffective system configuration"[333] and it was not detected until December 2019, "due to the lack of full test cases executed during the implementation of the new RTS"[334].

515. With regards to the testing, the Board further observes that the [redacted] Project revealed more general shortcomings in this area: "need to enhanced review of test cases and timing to review", "testing team does not have an appropriate XML converter tool (…)"[335].

516. Second, the Compression Infringement also revealed weaknesses in the PSI's management system.

517. In this regard, the Board notes that BPM was not involved when the relevant functional specifications and change request were put in place by the PSI: "Lack of the Business product requirements in 2017. At that time, the TRQ&A 44 interpretation on REGIS-TR took place from the Functional and IT management perspective after several meetings with ESMA. This interpretation and the resultant specifications written in the EMIR-CR-2017_13 should have been also validated/reviewed by

[332] To see the complete response from the PSI, please see Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 25-26.
[333] Document '7.1 TR_Incident_reporting_template (RTR20191219A)'(attached to Supervisory Report, Exhibit 7), p. 2.
[334] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 7.
[335] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 6.

Business product Management to ensure the correct understanding of the TRQ&A 44"[336].

518. The Board further notes that the [redacted] Project identified important governance gaps, including in the PSI's risk management system as well in its policies and procedures: "[…] Roles and responsibilities are insufficiently documented and focus on tasks done rather than tasks required […] Policies and procedures centralization is not exhaustive, not systematic and follow-up is insufficient (some procedures date to 2015 or remain as "draft") […] New processes are not systematically documented in policies and procedures" [337].

519. Third, the Compression incident has also revealed weaknesses in the PSI's ability to detect and remediate incidents in a timely manner.

520. In this regard, the Board notes that the Compression incident was detected only in December 2019[338]. Moreover, at first, the PSI was not able to correctly detect the actual root cause of the incident: "A ticket was initially logged in JIRA on the 19 December 2019 in the belief that the erroneous behavior is caused by a bug but was closed on 11 February 2020 after discovering that the system was behaving as described in the functional specifications in place"[339]. At first, the PSI did also not detect that the Compression Incident not only affected field 2.16 'Compression' but also field 2.15 'Venue of execution'. It was only on 3 July 2020 when the PSI discovered it and informed ESMA Supervisors about it: "as an additional information, not provided in the original incident report, it was confirmed that field 2.15 'Venue' is also impacted. Therefore, the new requirements drafted in the Request for Approval to address this incident not only cover the field 'Compression' but also the field 'Venue' which is also affected by the incident" [340].

521. Moreover, on risk management more generally, gaps were also identified through the [redacted] Project: "risk and control framework is not always appropriate for REGIS-TR activities"[341].

522. Fourth, the Board notes that in the Response to the IIO's Initial Statement of Findings, the PSI acknowledges that "the occurrence of the incident covered by "Compression Infringement" matter investigated was related to issues in the system configuration as well as control checks that at the time revealed not sufficient" [342] However, the PSI considers that "any potential weakness in the organisation covers not only the systems but also the governance and compliance culture, among others, that are an integral part of the organisation. These have not been evaluated or

[336] Document '7.1 TR_Incident_reporting_template (RTR20191219A)' (attached to Supervisory Report, Exhibit 7), p. 2; See also Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 30-31.
[337] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 5.
[338] Document '7.1 TR_Incident_reporting_template (RTR20191219A)' (attached to Supervisory Report, Exhibit 7), p. 1.
[339] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 31.
[340] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 10.
[341] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 5.
[342] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 11.

considered by the ESMA IIO […]."[343] and argues that "is also relevant whether the organisation shows any weakness -or lack of therefore- in the manner in which it responds to the issues arising"[344]. The PSI thus considers that "by assessing the whole extent of the issue, not only the manner in which it took place, but it is also relevant how its resolution was handled. And, taking into consideration all the elements, the infringement did not evidence the existence of system weaknesses"[345].

523. The Board disagrees with PSI's argumentation.

524. As explained in para 180 the wording of this aggravating factor is clear: if the infringement has revealed any systemic weaknesses in the organisation of the trade repository, the aggravating factor applies. The evidence available in the file shows that the XML Infringement revealed systemic weaknesses in several parts of the PSI's organisation and the PSI has also recognised it.

525. Whether these systemic weaknesses have now been addressed is a different issue, but it does not prevent the application of the aggravating factor set out at Annex II, Point I(c).

526. Moreover, the steps taken by the PSI in order to address the infringement once detected are already considered as part of the assessment of whether the aggravating factor set out at Annex II, Point I(f) or the mitigating factor set out at Annex II, Point II(d) should be applied.

527. Based on the above, the Board identifies significant weaknesses regarding the configuration and testing of the PSI's system as well as regarding its management systems and its detection and remediation processes.

528. In the Board's view, these defects constitute "systemic weaknesses in the organisation" of the PSI. Therefore, the aggravating factor is applicable.

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

529. The Board notes that in her Request for Information, the IIO requested the PSI to provide its reasoned view on whether the incidents covered by her investigation would have implied a negative impact on the quality of the data that the PSI maintains.

530. In response to the IIO's Request for Information, the PSI indicated that it considered that the quality of the data is set by the Reporting Parties and, therefore, the Compression Infringement did not have a negative impact on the quality of the data maintained by the PSI[346].

531. The Board disagrees with the PSI's argumentation.

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[343] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 11.
[344] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 11.
[345] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 11.
[346] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 26.

532. As already explained (para 189), “quality of data” operates within the context of the principal objective of introducing the reporting requirements under the Regulation, which is to ensure that Regulators have timely and complete access to the correct data in order to be able to perform their mandates and ensure financial stability.

533. It is therefore clear that TRs should not reject data that the Reporting Parties submitted in compliance with the reporting requirements set out in the RTS/ITS as clarified by ESMA’s guidance. This data should be provided to the Regulators immediately and directly so that they are able to fulfil their respective responsibilities and mandates.

534. By treating all modification messages (Action type ‘M’ (modification) and ‘R’ (correction)) as new messages (Action Type ‘N’ (new)), data reported by Reporting Parties was incorrectly rejected by the PSI and not included in the reports that the PSI generated and sent to the Regulators.

535. As a result, the issue is estimated to have had an impact on the daily and ad-hoc TARs and TSRs as well as the Rejection Reports sent to the Regulators and overall to have affected a substantial number of records sent to a total of 38 Regulators.

536. Based on the above, the Board considers that the infringement has had a negative impact on the quality of the data that the PSI maintained and, therefore, the aggravating factor is applicable.

Mitigating factors

537. The application of the mitigating factors enlisted in Section II of the Annex II of the Regulation is analysed below.

Annex II, Point II(a) if the infringement has been committed for less than 10 working days, a coefficient of 0,9 shall apply

538. The infringement lasted more than ten days. Therefore, the Board deems that mitigating factor is not applicable.

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

539. The Board notes that in her Request for Information, the IIO requested the PSI to provide any documentation showing specifically the measures taken by the PSI’s senior management to prevent the infringement.

540. In its response, the PSI indicated “the measures of its senior management to prevent an infringement […] of the Regulation, can be identified - taken into

consideration, that all incidents are related to the implementation of the revised RTS in November 2017, out of three perspectives:

1. Related to all incidents: Governance (controls performed, measures taken and in-/external reporting/ escalation performed) during the pre-implementation phase of the RTS until November 2017

2. Related to all incidents: Governance (controls performed, measures taken and in-/external reporting/ escalation performed) during the post-implementation phase of the RTS after November 2017

3. For each individual incident: ensuring a proper framework for the full incident handling process, overseeing the individual incident lifecycle based on proper internal reporting, communication and escalation as appropriate as well as taking corrective measures (decisions) if required"[347].

541. In this regard the Board notes the following.

542. First, the key facts identified by the PSI in its response to the IIO's Request for Information regarding the second and third perspective relate to specific remedial actions taken by the PSI as a result of the identification of the incidents covered by ESMA's investigation and, therefore, cannot be considered as measures (amounting to all the necessary measures) taken by the senior management to prevent the infringement, which is the subject of this case.

543. Second, with regards to the first perspective, the PSI's explanations (and documentation)[348] are, in the Board's view, relevant to understand the framework within which the breach took place. However, the Board considers that they do not establish that the PSI's senior management has taken all the necessary measures to prevent the infringement.

544. On that basis, the Board considers that there is no evidence in the file that the PSI's senior management has taken all the necessary measures to prevent the infringement.

545. This mitigating factor is thus not applicable.

<u>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</u>

546. In this respect, the Board notes the following.

[347] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 36.
[348] See Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 36-37.

547. 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[349].

548. In the Board's view, by notifying an incident a TR is indicating an issue of concern[350] and such a notification could thus be considered an acknowledgement of the potential commission of an infringement. Therefore, to determine whether such TR should benefit from the application of this mitigating factor, it should be assessed whether it has done so quickly, effectively, and completely, i.e., when all the relevant information regarding the incident was effectively provided to ESMA[351].

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

550. The PSI informed ESMA on its own initiative about the Compression Incident on 20 December 2019 (i.e., one day after it had discovered it) and submitted the Compression Incident Report on 10 February 2020.

551. The Board has assessed the type and degree of detail of the information provided by the PSI respectively on 20 December 2019 and 10 February 2020 and, in this case, the Board considers the requirements to benefit from the application of this mitigating factor were not met, because it took almost two months for the PSI to provide ESMA Supervisors with all the relevant information about the incident.

552. Moreover, the PSI did not inform ESMA that the field 2.15 'Venue of Execution' was also affected by the incident until 3 July 2020, when it responded to ESMA Supervisors' First Request for Information[352].

553. Therefore, the Board deems that this mitigating factor is thus not applicable.

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[349] See paragraph 183 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03): "the Board finds that ESMA was correct in not applying the mitigating coefficient as it finds it clear on the facts that the appellant did not acknowledge that it had committed (or believe it could have committed) an infringement, and done so quickly, effectively, and completely.". See also paragraph 202: "Specifically, the Board of Appeal finds as regards the mitigation coefficient adjustment set out in point II.3 of Annex IV that it is clear that the appellant did not quickly, efficiently, and completely bring the infringement to ESMA's attention. The relevant notification of clarifications to ESMA did not in any way indicate expressly to ESMA that an infringement had been committed. Further, on the facts presented to the Board of Appeal, the notification in question was provided in the course of the appellant's ongoing supervisory relationship with ESMA and as part of its periodic disclosures; it was not presented in the form of an express acknowledgement of an infringement that is clearly required by point II.3 of Annex IV. The Board of Appeal notes and gives weight in this regard that ESMA only came to have notice of the infringements following supervisory and subsequently IIO action (following, in turn, a complaint). On the facts, therefore, ESMA was correct in finding that this coefficient could not be applied."

[350] See, in this respect, by analogy, paragraph 201 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03): "Specifically, the notification of what the appellant termed clarifications to the 2015 CB Methodology to ESMA did not indicate an infringement (or an issue of concern) and so could not be considered as sufficient to ground mitigation."

[351] See, in this respect, the Decision of the Board of Supervisors to adopt supervisory measures and impose fines in respect of infringements committed by DTCC Derivatives Repository Plc (Decision 2021/6), 8 July 2021 https://www.esma.europa.eu/sites/default/files/library/esma41-356-187_decision_-_dtcc_derivatives_repository.pdf), paras. 717 to 722.

[352] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 31.

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

554. The PSI has taken a number of actions, primarily resolving the issues in relation to the infringement by implementing a permanent solution to the Compression Incident.

555. In particular, the Board notes that on 14 December 2020, the PSI permanently resolved the Compression Incident[353].

556. Moreover, the Board notes that "as part of internal REGIS-TR tasks, the corresponding mitigating action to properly solve the underlying cause of this incident was defined: re-assessment of the regulatory requirements to comply with TR Question 44 and the EMIR field validation rules". However, this mitigation action "is still ongoing pending to be scheduled"[354].

557. In light of the above, the Board considers that a number of remedial actions have been taken by the PSI regarding the Compression infringement. The Board should thus assess whether these measures were taken voluntarily.

558. The Board notes that there is no definition of what "voluntarily" ("de son plein gré" in the French version of the Regulation) 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 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.

559. In the present case, the Board notes the following.

560. In this case, no investigation or on-site inspection pursuant to Articles 62 and 63 of the Regulation took place until the IIO was appointed on 20 November 2020. Therefore, when the permanent solution of the Compression Incident was implemented, the IIO's investigation was already going on but there was no decision from ESMA ordering the PSI to put an end to its practices and, consequently, whether to take these measures was still within the PSI's remit.

561. However, the Board also notes that, as explained above, the mitigating action consisting of a re-assessment by the PSI of the regulatory requirements to ensure that it complies with TR Question 44 and the EMIR field validation rules was defined by the PSI, but the re-assessment is still pending to be scheduled[355].

[353] Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 8 and 36; Exhibit 19, 'IIO - RTR28 - RTR20191219 Supporting evidence - UPLOAD_PROD_20201212'; Exhibit 20, 'IIO - RTR67 - UPLOAD_PROD_20201212_RTR20191219A-EMIR-CR-2020_18'.
[354] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 36.
[355] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 36.

562. Therefore, the Board considers that until this re-assessment is done, and the necessary follow-up measures are implemented by the PSI, the measures taken by the PSI cannot be considered as sufficient to prevent that a similar infringement is committed in the future. Therefore, the mitigation factor is not applicable.

Determination of the adjusted fine

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

564. The difference between the basic amount and the amount resulting from the application of each individual coefficient linked to the aggravating factors set out above, Point I(a), I(b), Point I(c) and I(d) shall be added to the basic amount:

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

EUR 20 000 x 1,1 = EUR 22 000

EUR 22 000 – EUR 20 000 = EUR 2 000

EUR 2 000 x 1 = EUR 2 000

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

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

EUR 20 000 x 1,5 = EUR 30 000

EUR 30 000 – EUR 20 000 = EUR 10 000

Adjusted fine taking into account applicable aggravating and mitigating factors:

EUR 20 000 + EUR 2 000 + EUR 10 000 + EUR 24 000 + EUR 10 000 = EUR 66 000

565. Consequently, following adjustment by taking into account the applicable aggravating factors, the amount of the fine to be imposed on the PSI for the Compression incident would amount to EUR 66 000.

7.5 Supervisory measure

566. Regard must be had to Article 73, paragraphs 1 and 2, of the Regulation.

567. Given the factual findings in the present case and in particular the fact that the PSI permanently solved the issue on 14 December 2020, in addition to the imposition of the fine, the only other supervisory measure considered appropriate with regard to the nature and the seriousness of the infringements is the adoption of a public notice as set out in Article 73(1)(c) of the Regulation.

568. It must thus be held that a public notice is to be issued.

8 Compression incident [direct and immediate access infringement]

569. As stated above (para 459), the Board deems that in the case under consideration the Compression incident led to two different outcomes: (i) not ensuring integrity of the correctly reported data and (ii) the provision of incorrect reports to the Regulators.

570. With regards to the outcome of the provision of incorrect reports to the Regulators, this section of the decision analyses whether the PSI breached the following requirement:

> "A trade repository shall collect and maintain data and shall ensure that the entities referred to in paragraph 3 have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates" (Article 81(2) of the Regulation).

571. If this requirement is not met, the infringement set out at Point (b) of Section III of Annex I of the Regulation is established.

8.1 Analysis of the relevant provisions of the Regulation and the facts

572. The Board refers to the facts described in Section 2.3 and considers that the Compression incident, which created an integrity infringement due to the failure on the part of the PSI to safeguard the integrity of correctly reported data, also led to the provision of incorrect reports to Regulators.

573. All in all, the Collateral update incident had the following estimated impact on the number of Regulators and reports:

574. The estimated impact on the number of the reports and records affected was the following[356]:

Type of reports[357]	Total number of Regulators affected	Total number of reports affected	Total number of records affected
Daily TAR[358]	26 Regulators	620	11 462
Daily TSR[359]	38 Regulators	55 861	2 172 305
Ad-hoc TAR[360]	13 Regulators	39	1 944 270
Ad-hoc TSR[361]	17 Regulators	99	6 766 610
Rejection Reports[362]	26 Regulators	N/D[363]	N/D[364]

575. The Board notes that the incident took place due to incorrect interpretation and application of the new reporting requirements that took effect as of 1 November 2017, whereby the PSI's validation set-up rejected 'modification' and 'correction' messages where certain fields were not populated, even though they were reported by the Reporting Parties in line with the new reporting requirements.

576. As a consequence, details correctly reported by the Reporting Parties were not accordingly provided to the Regulators, who should have had direct and immediate access to such data.

577. First, as already explained, the wording of Article 81(2) is clear. The PSI has an obligation to provide Regulators with "direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates". The only limiting factor, as set out in Article 81(2), to a Regulator's access is the Regulator's "responsibilities and mandates".

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[356] The Board notes the following statement from the PSI: "REGIS-TR would like to highlight that the impact on regulators, as presented in paragraphs 35, 44, 52, 65, 88 and 99 of the report, should be considered as theoretical upper limit as due to missing information it was not possible to accurately determine the number of reports affected per Authority" (see Exhibit 5, 'PSI's Comments on Supervisory Report', p. 2).

[357] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 32-33; Supervisory Report, Exhibit 14, 'REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR_Report', p. 9.

[358] Supervisory Report, Exhibit 40, 'RTR20191219A_Q4_A1_Recurrent reports_v2', p. 1; Supervisory Report, Exhibit 42, 'RTR20191219A_Q4_B1_Recurrent records_v2', p. 1.

[359] Supervisory Report, Exhibit 40, 'RTR20191219A_Q4_A1_Recurrent reports_v2', pp. 3-4; Supervisory Report, Exhibit 42, 'RTR20191219A_Q4_B1_Recurrent records_v2', p. 2.

[360] Supervisory Report, Exhibit 41, 'RTR20191219A_Q4_A2_Adhoc reports_v2'.

[361] Supervisory Report, Exhibit 41, 'RTR20191219A_Q4_A2_Adhoc reports_v2'; Supervisory Report, Exhibit 43, 'RTR20191219A_Q4_B2_Adhoc records'.

[362] Supervisory Report, Exhibit 40, 'RTR20191219A_Q4_A1_Recurrent reports_v2'.

[363] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 33: "The impact on the Authorities is the same that have been included in the TAR analysis, but considering only since the deployment of the TRACE Phase 3."

[364] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 33: "The impact on the Authorities is the same that have been included in the TAR analysis, but considering only since the deployment of the TRACE Phase 3."

578. It is also clear that the "details" of Article 9(1) and Article 81(2) are the same, which means that TRs should provide Regulators with the same details as Reporting Parties submit to them.

579. Second, pursuant to Article 9 of the Regulation, Reporting Parties shall ensure that the details of any derivative contract they have concluded and of any modification or termination of the contract are reported to a TR.

580. Reporting Parties must also ensure that the details of derivatives contracts that they report comply with the reporting requirements set out by Delegated Regulation (EU) No 148/2013 and Implementing Regulation (EU) 1247/2012 (as applicable at all material times).

581. Third, it is clear from TR Answer 20b of the Q&A on EMIR implementation[365] (which provides that "TRs should apply validation rules to ensure that reporting is performed according to the EMIR regime, including the specifications of the Technical Standards" and that "In order to be compliant with the requirements of Article 19 of the Commission Delegated Regulation (EU) 150/2013, TRs should reject the reports which are not submitted in line with the reporting requirements specified in the Validations table") that it is only where the data reported by the Reporting Parties is not submitted in line with the reporting requirements that TRs are allowed to reject it.

582. Therefore, if the data reported by the Reporting Parties complies with the reporting requirements, the TR that receives that data has an obligation to provide the Regulators (where they are entitled to receive it in line with their mandates and responsibilities) with immediate and direct access to such data.

583. Regarding the facts at hand in the Compression incident, the Board notes the following.

584. As indicated in TR Answer 44(a) of the Q&A on EMIR Implementation[366], in order to comply with Article 9 of the Regulation, the Reporting Parties are required to submit reports over outstanding trades when a reportable event (i.e., a modification or the termination of the trade) takes place. The reports submitted after the date of application of the revised technical standards[367] (i.e., 1 November 2017) must be compliant with those standards, irrespective of when the original trade was concluded.

585. For each Action type (N = New; M = Modify; E = Error; C = Early Termination; R = Correction; Z = Compression; V = Valuation update; and P = Position component), it is clarified in the Validations Table that the different data fields are categorised as:

[365] Exhibit 27, '20210520 esma70-1861941480-52_qa_on_emir_implementation', p. 93.
[366] Exhibit 32, '20170201 ESMA70_1861941480-52_qa_on_EMIR_implementation', p.96.
[367] Delegated Regulation (EU) No 148/2013 as amended by Delegated Regulation (EU) 2017/104 and Implementing Regulation (EU) 1247/2012 as amended by Implementing Regulation (EU) 2017/105.

'M' (mandatory)	the field is strictly required, and validations of format and content are applied.
'C' (conditional mandatory)	the field is required if the specific conditions set out in the validation rules are met. Format and content validations are applied.
'O' (optional)	the field shall be populated if applicable. Only format and content validations are applied when the field is populated.
'-' (not relevant)	the field shall be left blank.

586. Notably, as shown in the below excerpt, the two fields that were affected by the Compression Incident (i.e., fields 2.15 'Venue of execution' and 2.16 'Compression') are both categorised as mandatory for Action type 'N' (new) and 'P' (position component) and optional for Action type 'R' (correction). For all the other Action types, including for Action type 'M' (modification), the two fields are not relevant and thus must be left blank by the Reporting Parties.

Table	Item	Field	Trade level							Position level						
			Is it Mandatory, Conditional, Optional or Not relevant for a given action type?							Is it Mandatory, Conditional, Optional or Not relevant for a given action type?						
			N	M	E	C	R	Z	V	P	N	M	E	C	R	Z	V	P
2	15	Venue of execution	M	-	-	-	O	-	-	M	M	-	-	-	O		-	
2	16	Compression	M	-	-	-	O	-	-	M	M	-	-	-	O		-	

587. However, due to an incorrect system configuration, the PSI treated all modification and correction messages over Pre-RTS reported trades as if they were newly reported trades (i.e., as messages with Action type 'N').

588. Therefore, the PSI erroneously considered that, for all the messages with action type 'M' (modification) and 'R' (correction) submitted by Reporting Parties over outstanding Pre-RTS trades, the two fields were mandatory and therefore had to be

informed by the Reporting Parties. If the fields had not been informed by the Reporting Parties (which was perfectly justified according to the reporting requirements), the PSI rejected the messages and did not include the data in the reports that it generated for the Regulators.

589. As a result, from 1 November 2017 to 14 December 2020, the PSI incorrectly rejected reports where, for Action type 'M' and 'R', the fields 2.15 'Venue of execution' and 2.16 'Compression' had not been informed by the Reporting Parties (in line with their reporting obligations).

590. In light of the above, the Board concurs with the IIO and considers that, by rejecting data submitted by the Reporting Parties in compliance with the revised RTS/ITS and thus not providing such data to the Regulators, the PSI failed to ensure that the latter had direct and immediate access to the details of derivatives contracts they needed to fulfil their respective responsibilities and mandates, in contravention of Article 81(2) of the Regulation.

591. This constitutes the infringement set out at Point (b) of Section III of Annex I of the Regulation.

8.2 Intent or negligence

592. Article 65(1) of the Regulation provides as follows:

"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.

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."

593. In accordance with Article 65(1) of the Regulation, 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.

594. Consequently, the Board of Supervisors needs to conclude whether the evidence pertaining to the present case lead to the conclusion that the relevant infringement has been committed by the PSI intentionally or negligently.

595. In accordance with Article 65(1) of the Regulation, 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".

596. The Board agrees with the IIO and considers that, overall, the factual background of the present case does not establish that there are objective factors

which demonstrate that the PSI, its employees or senior managers acted deliberately to commit the infringement.

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

598. As regards the preliminary remarks regarding negligence reference is made to the considerations of the Board set out in Section 4.2 above.

8.3 Assessment of whether there is negligence in the present case

599. First, the Board notes that as set out above, the Regulation, as well as the requirements of Delegated Regulation (EU) No 148/2013 and Implementing Regulation (EU) No 1247/2012 were clear on a simple reading: to comply with Article 9 of the Regulation, the Reporting Parties are required to submit reports over outstanding trades when a reportable event (i.e. a modification or the termination of the trade) takes place and must ensure that such reports comply with the revised RTS/ITS, as clarified with the applicable ESMA's guidance. For its part, the TR that receive this data shall ensure that the relevant Regulators receive it directly and immediately.

600. To comply with the legal framework, an attentive reading of the relevant provisions would have been sufficient.

601. However, the PSI configured its system in a way that prevented it from fulfilling its responsibilities effectively. The PSI's system was configured to validate as new contracts each and every modification message that Reporting Parties submitted after 1 November 2017 ('Post-RTS'), thereby incorrectly considering that some of the fields in the reports were mandatory and had to be informed, whereas in reality, depending on whether the message was a modification or a correction message, they had or could have been left blank. As a result, the PSI wrongly rejected reports that did not have those fields informed and did not provide this data to the relevant Regulators.

602. The Board notes that in her Request for Information, the IIO requested the PSI to provide supporting documents (dating from before 1 November 2017) showing that an internal or external assessment was performed by the PSI to determine that it had to set up its system in this manner. In its response, the PSI indicated that "REGIS-TR has not maintained documentation related to the internal assessment performed before November 1, 2017 and can therefore not provide such documentation. Nevertheless, we have retrieved and attached the email exchange with ESMA Supervision discussing this topic and showing that an internal assessment was performed" [368].

603. The Board has had regard to this e-mail exchange and notes that, while the PSI raised some questions about TR Answer 44 and discussed such questions with

[368] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 23.

ESMA policy officers, at no point the PSI raised any question about how successive modification or correction messages over outstanding Pre-RTS trades should be treated in order to comply with the reporting requirements nor did it express its intention to validate as new contracts each and every modification or correction message (messages with Action type 'M' or 'R') received from 1 November 2017 onwards.

604. On 11 May 2017, the PSI sent an e-mail to ESMA Supervisors indicating that "in the course of the developments of the revised technical standards REGIS-TRs is facing some issues with the below topics: 1. Modifications logic: According to TR question 44, any modifications reported after the implementation of the revised technical standards shall be reported according to the new RTS. After reviewing this question and answer, REGIS-TR understanding would be as follows: […] b. REGIS-TR accepts partial reporting of modifications, therefore only those fields reported in the modification message will be subject to the revised validations rules. Moreover, if customers report modifications over trades reported with the current RTS, REGIS-TR will not request them to fill in all the new mandatory fields for action type "N". Only if the field is reported in the modification message, the relevant cross validations will apply and customer may be required to report additional fields […]"[369] [emphasis added].

605. On 15 June 2017, ESMA policy officers responded to the PSI indicating that "this is not in line with the TR Q&A 44 (b): "In the case of the TRs that accept partial messages for the "Modification" and "Correction" reports (i.e. the messages containing only the strictly mandatory fields such as UTI or counterparties' IDs and the fields that are modified/corrected), those TRs will need to ensure that the counterparties provide all the applicable data elements when sending the "Modification" or "Correction report for the first time upon the application date of the revised technical standards"" [370] [emphasis added].

606. On 17 July 2017, the PSI indicated, in reference to the TR Answer 44(b), that "As mentioned during the call, the wording in TR Q&A 44(b) in relation to the partial modifications could be misleading, therefore, we suggest that a remark is added indicating that the applicable data elements [refer] to the fields applicable for new trades. Therefore, REGIS-TR suggest the following wording: "*In the case of the TRs that accept partial messages for the "Modification" and "Correction" reports (i.e. the messages containing only the strictly mandatory fields such as UTI or counterparties' IDs and the fields that are modified/corrected), those TRs will need to ensure that the counterparties provide all the applicable data elements for action type New when sending the "Modification" or "Correction report for the first time upon the application date of the revised technical standards*" [371] [italics in original, emphasis added].

[369] Exhibit 33, 'IIO - RTR46 - Email exchange with ESMA implementation of RTS', pp. 18-19.
[370] Exhibit 33, 'IIO - RTR46 - Email exchange with ESMA implementation of RTS', p. 10.
[371] Exhibit 33, 'IIO - RTR46 - Email exchange with ESMA implementation of RTS', p. 8.

607. The PSI thus suggested to ESMA policy officers to clarify that where TR Answer 44(b) referred to "all the applicable data elements when sending the "Modification" or "Correction" report for the first time", it meant "all the applicable data elements for action type New when sending the "Modification" or "Correction" report for the first time" [emphasis added], which ESMA policy officers indicated to be "in line with the intended clarification" [372] and thus the drafting suggestion was included in the TR Q&A 44(b)[373].

608. At no point, the PSI indicated in these exchanges to have understood TR Answer 44(b) as meaning that all subsequent modification or correction reports should be validated as new contracts and asked for any clarification in that respect. However, it did raise other questions, which were answered by ESMA policy officers.

609. In the Board's view, taking into account that the validation rules applicable to Action type 'M' (modification) and 'R' (correction) messages are not always the same that are applicable to Action type 'N' (new) messages and, in particular, that not all fields that are mandatory for Action type 'N' (new) messages are also mandatory for Action type 'M' (modification) and 'R' (correction) messages, a diligent TR (complying with its high standard of care) would have checked that its understanding of TR Q& Answer 44(b) on such an important issue was correct. A normally informed TR would have foreseen the consequences of not doing so.

610. Second, in the Board's view, the FSD, which was the document that described "the changes that need to be implemented by REGIS-TR in order to comply with the new technical standards set out by ESMA, known as RTS (Revised Technical Standards)"[374], contained contradictory information.

611. Reflecting the discussion with ESMA policy officers just mentioned above, the FSD indicated that "according to TR Q&A 44, "In the case of the TRs that accept partial messages for the "Modification" and "Correction" reports (i.e. messages containing only the strictly mandatory fields such as UTI or counterparties' IDs and the fields that are modified/corrected), those TRs will need to ensure that the counterparties provide all the applicable data elements when sending the "Modification" or "Correction" report for the first time upon the application date of the revised technical standards." ESMA has clarified that the applicable data elements refer to those applicable to action type "N""[375].

612. However, the FSD went on by providing that [redacted][376]. This is in clear contradiction with what the PSI had previously discussed with ESMA and with what was indicated in the first paragraph of section 1.4 of the FSD.

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[372] Exhibit 33, 'IIO - RTR46 - Email exchange with ESMA implementation of RTS', p. 4.
[373] Exhibit 34, '20180205 ESMA_70-1861941480-52_qa_on_EMIR Implementation', p. 120.
[374] Exhibit 15, 'Document I - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS', p. 6; Exhibit 25, 'IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11', p. 7.
[375] Exhibit 25, 'IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11', p. 62.
[376] Exhibit 25, 'IIO - RTR38 - EMIR-FSD-2016_001_A-REVISED TECHNICAL STANDARDS-V 1.11', p. 63.

613. In this regard, the Board further notes that in 2017, the relevant business requirements were not set, and the PSI's BPM was not involved in the definition of the functional specifications and the change request[377].

614. Third, as indicated in the amended version of TR Answer 20b of the Q&A on EMIR implementation (applicable from 1 November 2017 onwards), TRs should apply validation rules to ensure that reporting is performed according to the EMIR regime, including the specifications of the Technical Standards, and to be compliant with the requirements of Article 19 of the Delegated Regulation (EU) 150/2013, they should reject the reports which are not submitted in line with the reporting requirements specified in the Validations table[378].

615. Therefore, in the Board's view, before going live on 1 November 2017 but also afterwards, a diligent TR (complying with its high standard of care) would have checked that the validation rules that it had put in place worked properly, i.e., that it did not wrongly rejected data submitted by the Reporting Parties in compliance with all the relevant reporting requirements. A normally informed TR would have foreseen the consequences of not doing so.

616. However, until December 2019, "REGIS-TR did not detect the deficiency due to the lack of full test cases executed during the implementation of the new RTS"[379].

617. As a result, for a very long time, the PSI was unable to detect the Compression Infringement. In fact, it was only in December 2019 that the PSI detected, by means of internal testing performed under UAT environment, that its interpretation of the regulatory requirement defined in the TR Answer 44(b) and how it had been implemented in the system was not correct[380].

618. Overall, on the basis of the elements described above, the Board agrees with the IIO and 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 the Regulation, in circumstances where a TR in such a position that is normally informed and sufficiently attentive could not have failed to foresee those consequences.

619. Therefore, it is considered that the PSI has been negligent when committing the infringement of Point (b) of Section III of Annex I of the Regulation.

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[377] Document '7.1 TR_Incident_reporting_template (RTR20191219A)' (attached to Supervisory Report, Exhibit 7), p. 2; Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 30-31.
[378] Exhibit 34, '20180205 ESMA_70-1861941480-52_qa_on_EMIR Implementation'.
[379] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 7.
[380] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 7; Document '7.1 TR_Incident_reporting_template (RTR20191219A)' (attached to Supervisory Report, Exhibit 7), p. 4.

8.4 Fine

Determination of the basic amount

620. Article 65 of the Regulation provides in paragraph 2[381] 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."

621. It has been established that the PSI committed the infringement set out at Point (b) of Section III of Annex I of the Regulation, by failing to provide the Regulators with direct and immediate access to the data reported by the Reporting Parties.

622. To determine the basic amount of the fine, the Board has regard to the latest available audited financial statement, indicating the PSI's turnover[382].

623. In 2020, the PSI had a turnover of EUR 18 457 697[383].

624. Thus, the basic amount of the fine for the infringement listed in Point (b) of Section III of Annex I of the Regulation is set at the higher end of the limit of the fine set out in Article 65(2)(a) of the Regulation and shall not exceed EUR 20 000.

[381] In this regard, the Board notes that with the entry into force of Regulation (EU) 2019/834, the amount of the fines to be imposed in case of an infringement of the Regulation has significantly increased. According to Article 1(16)(a) of Regulation (EU) 2019/834 "in Article 65, paragraph 2 is amended as follows: […] in point (a), 'EUR 20 000' is replaced by 'EUR 200 000';" However, this is not applicable to the present infringement because the facts occurred before the adoption and entry into force of Regulation (EU) 2019/834.

[382] 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); ; and the Methodology used by ESMA to calculate the fines: https://www.esma.europa.eu/supervision/enforcement/calculation-fines.

[383] Financial statements for the year end 31 December 2020

Applicable aggravating factors

625. The applicable aggravating factors enlisted in Section I of the Annex II of the Regulation 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

626. The infringement set out at Point (b) of Section III of Annex I of the Regulation has been committed each time that the PSI has coded checks/validations on a field that caused the rejection of messages submitted by the Reporting Parties in compliance with the reporting requirements and thus the non-inclusion of such data in the reports that the PSI generated for the Regulators, i.e. two times: once in regards to field 2.15 'Venue of execution' and the other one in regards to field 2.16 'Compression'. Therefore, putting aside the first time that the PSI has committed the infringement, it has been repeated one time.

627. The Board agrees with the IIO and considers that this aggravating factor is applicable.

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

628. The infringement lasted more than six months (i.e., from 1 November 2017 until 14 December 2020). Therefore, the Board agrees with the IIO and considers that the aggravating factor is 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

629. The Board notes that the Regulation does not provide guidance on what constitutes "systemic weaknesses in the organisation of the trade repository". However, 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".

630. In the analysis on whether the aggravating factor applies, the Board considers the type and the level of seriousness of the PSI's failure that led to the infringement.

631. The IIO requested the PSI to provide its views on whether the infringement revealed systemic weaknesses in the PSI's organisation. In response to the IIO's Request for Information, the PSI indicated that, in its view, the incidents did not reveal systemic weaknesses in its organisation[384].

632. However, the Board does not agree with the arguments put forward by the PSI.

[384] To see the complete response from the PSI, please see Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 25-26.

633. In the Board's view, the Compression Infringement revealed broader problems affecting the organisation of the PSI.

634. In particular with regards to this infringement, the Board notes the following.

635. First, the Board notes that the Compression Infringement stemmed from how the PSI's reporting system was configured, which in turn also revealed weaknesses in the PSI's testing system.

636. According to the information provided in the Compression Incident Report, the incident was due to an "inadequate or ineffective system configuration"[385] and it was not detected until December 2019, "due to the lack of full test cases executed during the implementation of the new RTS"[386].

637. With regards to the testing, the Board further observes that the [redacted] Project revealed more general shortcomings in this area: "need to enhanced review of test cases and timing to review", "testing team does not have an appropriate XML converter tool (…)"[387].

638. Second, the Compression Infringement also revealed weaknesses in the PSI's management system.

639. In this regard, the Board notes that BPM was not involved when the relevant functional specifications and change request were put in place by the PSI: "Lack of the Business product requirements in 2017. At that time, the TRQ&A 44 interpretation on REGIS-TR took place from the Functional and IT management perspective after several meetings with ESMA. This interpretation and the resultant specifications written in the EMIR-CR-2017_13 should have been also validated/reviewed by Business product Management to ensure the correct understanding of the TRQ&A 44"[388].

640. The Board further notes that the [redacted] Project identified important governance gaps, including in the PSI's risk management system as well in its policies and procedures: "[…] Roles and responsibilities are insufficiently documented and focus on tasks done rather than tasks required […] Policies and procedures centralization is not exhaustive, not systematic and follow-up is insufficient (some procedures date to 2015 or remain as "draft") […] New processes are not systematically documented in policies and procedures" [389].

641. Third, the Compression incident has also revealed weaknesses in the PSI's ability to detect and remediate incidents in a timely manner.

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[385] Document '7.1 TR_Incident_reporting_template (RTR20191219A)'(attached to Supervisory Report, Exhibit 7), p. 2.
[386] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 7.
[387] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 6.
[388] Document '7.1 TR_Incident_reporting_template (RTR20191219A)' (attached to Supervisory Report, Exhibit 7), p. 2; See also Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp. 30-31.
[389] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 5.

642. In this regard, the Board notes that the Compression incident was detected only in December 2019[390]. Moreover, at first, the PSI was not able to correctly detect the actual root cause of the incident: "A ticket was initially logged in JIRA on the 19 December 2019 in the belief that the erroneous behavior is caused by a bug but was closed on 11 February 2020 after discovering that the system was behaving as described in the functional specifications in place"[391]. At first, the PSI did also not detect that the Compression Incident not only affected field 2.16 'Compression' but also field 2.15 'Venue of execution'. It was only on 3 July 2020 when the PSI discovered it and informed ESMA Supervisors about it: "as an additional information, not provided in the original incident report, it was confirmed that field 2.15 'Venue' is also impacted. Therefore, the new requirements drafted in the Request for Approval to address this incident not only cover the field 'Compression' but also the field 'Venue' which is also affected by the incident" [392].

643. Moreover, on risk management more generally, gaps were also identified through the [redacted] Project: "risk and control framework is not always appropriate for REGIS-TR activities"[393].

644. Fourth, the Board notes that in the Response to the IIO's Initial Statement of Findings, the PSI acknowledges that "the occurrence of the incident covered by "Compression Infringement" matter investigated was related to issues in the system configuration as well as control checks that at the time revealed not sufficient" [394] However, the PSI considers that "any potential weakness in the organisation covers not only the systems but also the governance and compliance culture, among others, that are an integral part of the organisation. These have not been evaluated or considered by the ESMA IIO […]."[395] and argues that "is also relevant whether the organisation shows any weakness -or lack of therefore- in the manner in which it responds to the issues arising"[396]. The PSI thus considers that "by assessing the whole extent of the issue, not only the manner in which it took place, but it is also relevant how its resolution was handled. And, taking into consideration all the elements, the infringement did not evidence the existence of system weaknesses"[397].

645. The Board disagrees with PSI's argumentation.

646. As explained in para 180, the wording of this aggravating factor is clear: if the infringement has revealed <u>any</u> systemic weaknesses in the organisation of the trade repository, the aggravating factor applies. The evidence available in the file shows that the XML Infringement revealed systemic weaknesses in several parts of the PSI's organisation and the PSI has also recognised it.

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[390] Document '7.1 TR_Incident_reporting_template (RTR20191219A)' (attached to Supervisory Report, Exhibit 7), p. 1.
[391] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 31.
[392] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 10.
[393] Exhibit 21, 'IIO - RTR61 - 20190514_EMIR-reval-esma-meetingv3', p. 5.
[394] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 11.
[395] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 11.
[396] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 11.
[397] Exhibit 46, IIO-TR-2020.11.20_Statement of Findings_RTR written submissions_2021.08.21_Annex I, p. 11.

647. Whether these systemic weaknesses have now been addressed is a different issue, but it does not prevent the application of the aggravating factor set out at Annex II, Point I(c).

648. Moreover, the steps taken by the PSI in order to address the infringement once detected are already considered as part of the assessment of whether the aggravating factor set out at Annex II, Point I(f) or the mitigating factor set out at Annex II, Point II(d) should be applied.

649. Based on the above, the Board identifies significant weaknesses regarding the configuration and testing of the PSI's system as well as regarding its management systems and its detection and remediation processes.

650. In the Board's view, in agreement with the IIO, these defects constitute "systemic weaknesses in the organisation" of the PSI. Therefore, the aggravating factor is applicable.

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

651. The Board notes that in her Request for Information, the IIO requested the PSI to provide its reasoned view on whether the incidents covered by her investigation would have implied a negative impact on the quality of the data that the PSI maintains.

652. In response to the IIO's Request for Information, the PSI indicated that it considered that the quality of the data is set by the Reporting Parties and, therefore, the Compression Infringement did not have a negative impact on the quality of the data maintained by the PSI[398].

653. The Board disagrees with the PSI's argumentation.

654. As already explained (para 189), "quality of data" operates within the context of the principal objective of introducing the reporting requirements under the Regulation, which is to ensure that Regulators have timely and complete access to the correct data in order to be able to perform their mandates and ensure financial stability.

655. It is therefore clear that TRs should not reject data that the Reporting Parties submitted in compliance with the reporting requirements set out in the RTS/ITS as clarified by ESMA's guidance. This data should be provided to the Regulators immediately and directly so that they are able to fulfil their respective responsibilities and mandates.

656. By treating all modification messages (Action type 'M' (modification) and 'R' (correction)) as new messages (Action Type 'N' (new)), data reported by Reporting

[398] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 26.

Parties was incorrectly rejected by the PSI and not included in the reports that the PSI generated and sent to the Regulators.

657. As a result, the issue is estimated to have had an impact on the daily and ad-hoc TARs and TSRs as well as the Rejection Reports sent to the Regulators and overall to have affected a substantial number of records sent to a total of 38 Regulators.

658. Based on the above, the Board agrees with the IIO and considers that the infringement has had a negative impact on the quality of the data that the PSI maintained and, therefore, the aggravating factor is applicable.

Mitigating factors

659. The application of the mitigating factors enlisted in Section II of the Annex II of the Regulation is analysed below.

Annex II, Point II(a) if the infringement has been committed for less than 10 working days, a coefficient of 0,9 shall apply

660. The infringement lasted more than ten days. Therefore, the Board in agreement with the IIO deems that mitigating factor is not applicable.

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

661. The Board notes that in her Request for Information, the IIO requested the PSI to provide any documentation showing specifically the measures taken by the PSI's senior management to prevent the infringement.

662. In its response, the PSI indicated "the measures of its senior management to prevent an infringement […] of the Regulation, can be identified - taken into consideration, that all incidents are related to the implementation of the revised RTS in November 2017, out of three perspectives:

1. Related to all incidents: Governance (controls performed, measures taken and in-/external reporting/ escalation performed) during the pre-implementation phase of the RTS until November 2017

2. Related to all incidents: Governance (controls performed, measures taken and in-/external reporting/ escalation performed) during the post-implementation phase of the RTS after November 2017

3. For each individual incident: ensuring a proper framework for the full incident handling process, overseeing the individual incident lifecycle based on proper internal reporting,

communication and escalation as appropriate as well as taking corrective measures (decisions) if required"[399].

663. In this regard the Board notes the following.

664. First, the key facts identified by the PSI in its response to the IIO's Request for Information regarding the second and third perspective relate to specific remedial actions taken by the PSI as a result of the identification of the incidents covered by ESMA's investigation and, therefore, cannot be considered as measures (amounting to all the necessary measures) taken by the senior management to prevent the infringement, which is the subject of this case.

665. Second, with regards to the first perspective, the PSI's explanations (and documentation)[400] are, in the Board's view, relevant to understand the framework within which the breach took place. However, the Board considers that they do not establish that the PSI's senior management has taken all the necessary measures to prevent the infringement.

666. On that basis, the Board concurs with the IIO and considers that there is no evidence in the file that the PSI's senior management has taken all the necessary measures to prevent the infringement.

667. This mitigating factor is thus 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

668. In this respect, the Board notes the following.

669. 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[401].

670. In the Board's view, by notifying an incident a TR is indicating an issue of concern[402] and such a notification could thus be considered an acknowledgement of

[399] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 36.
[400] See Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 36-37.
[401] See paragraph 183 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03): "the Board finds that ESMA was correct in not applying the mitigating coefficient as it finds it clear on the facts that the appellant did not acknowledge that it had committed (or believe it could have committed) an infringement, and done so quickly, effectively, and completely.". See also paragraph 202: "Specifically, the Board of Appeal finds as regards the mitigation coefficient adjustment set out in point II.3 of Annex IV that it is clear that the appellant did not quickly, efficiently, and completely bring the infringement to ESMA's attention. The relevant notification of clarifications to ESMA did not in any way indicate expressly to ESMA that an infringement had been committed. Further, on the facts presented to the Board of Appeal, the notification in question was provided in the course of the appellant's ongoing supervisory relationship with ESMA and as part of its periodic disclosures; it was not presented in the form of an express acknowledgement of an infringement that is clearly required by point II.3 of Annex IV. The Board of Appeal notes and gives weight in this regard that ESMA only came to have notice of the infringements following supervisory and subsequently IIO action (following, in turn, a complaint). On the facts, therefore, ESMA was correct in finding that this coefficient could not be applied."
[402] See, in this respect, by analogy, paragraph 201 of the Board of Appeal in the Appeal of Scope Ratings GmbH against ESMA's decision (ref. BoA 2020 D 03): "Specifically, the notification of what the appellant termed clarifications to the 2015 CB Methodology

the potential commission of an infringement. Therefore, to determine whether such TR should benefit from the application of this mitigating factor, it should be assessed whether it has done so quickly, effectively, and completely, i.e., when all the relevant information regarding the incident was effectively provided to ESMA[403].

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

672. The PSI informed ESMA on its own initiative about the Compression Incident on 20 December 2019 (i.e., one day after it had discovered it) and submitted the Compression Incident Report on 10 February 2020.

673. The Board has assessed the type and degree of detail of the information provided by the PSI respectively on 20 December 2019 and 10 February 2020 and, in this case, the Board considers the requirements to benefit from the application of this mitigating factor were not met, because it took almost two months for the PSI to provide ESMA Supervisors with all the relevant information about the incident.

674. Moreover, the PSI did not inform ESMA that the field 2.15 'Venue of Execution' was also affected by the incident until 3 July 2020, when it responded to ESMA Supervisors' First Request for Information[404].

675. Therefore, the Board in agreement with the IIO deems that this mitigating factor is thus not applicable.

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

676. The PSI has taken a number of actions, primarily resolving the issues in relation to the infringement by implementing a permanent solution to the Compression Incident.

677. In particular, the Board notes that on 14 December 2020, the PSI permanently resolved the Compression Incident[405].

678. Moreover, the Board notes that "as part of internal REGIS-TR tasks, the corresponding mitigating action to properly solve the underlying cause of this incident was defined: re-assessment of the regulatory requirements to comply with TR

to ESMA did not indicate an infringement (or an issue of concern) and so could not be considered as sufficient to ground mitigation."

[403] See, in this respect, the Decision of the Board of Supervisors to adopt supervisory measures and impose fines in respect of infringements committed by DTCC Derivatives Repository Plc (Decision 2021/6), 8 July 2021 https://www.esma.europa.eu/sites/default/files/library/esma41-356-187_decision_-_dtcc_derivatives_repository.pdf), paras. 717 to 722.

[404] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 31.

[405] Exhibit 7, 'PSI's Response to the IIO's RFI', pp. 8 and 36; Exhibit 19, 'IIO - RTR28 - RTR20191219 Supporting evidence - UPLOAD_PROD_20201212'; Exhibit 20, 'IIO - RTR67 - UPLOAD_PROD_20201212_RTR20191219A-EMIR-CR-2020_18'.

Question 44 and the EMIR field validation rules". However, this mitigation action "is still ongoing pending to be scheduled"[406].

679. In light of the above, the Board considers that a number of remedial actions have been taken by the PSI regarding the Compression infringement. The Board should thus assess whether these measures were taken voluntarily.

680. The Board notes that there is no definition of what "voluntarily" ("de son plein gré" in the French version of the Regulation) 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 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.

681. In the present case, the Board notes the following.

682. In this case, no investigation or on-site inspection pursuant to Articles 62 and 63 of the Regulation took place until the IIO was appointed on 20 November 2020. Therefore, when the permanent solution of the Compression Incident was implemented, the IIO's investigation was already going on but there was no decision from ESMA ordering the PSI to put an end to its practices and, consequently, whether to take these measures was still within the PSI's remit.

683. However, the Board also notes that, as explained above, the mitigating action consisting of a re-assessment by the PSI of the regulatory requirements to ensure that it complies with TR Question 44 and the EMIR field validation rules was defined by the PSI, but the re-assessment is still pending to be scheduled[407].

684. Therefore, the Board agrees with the IIO and considers that until this re-assessment is done, and the necessary follow-up measures are implemented by the PSI, the measures taken by the PSI cannot be considered as sufficient to prevent that a similar infringement is committed in the future. Therefore, the mitigation factor is not applicable.

Determination of the adjusted fine

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

[406] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 36.
[407] Exhibit 7, 'PSI's Response to the IIO's RFI', p. 36.

686. The difference between the basic amount and the amount resulting from the application of each individual coefficient linked to the aggravating factors set out above, Point I(a), I(b), Point I(c) and I(d) shall be added to the basic amount:

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

EUR 20 000 x 1,1 = EUR 22 000

EUR 22 000 – EUR 20 000 = EUR 2 000

EUR 2 000 x 1 = EUR 2 000

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

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

EUR 20 000 x 1,5 = EUR 30 000

EUR 30 000 – EUR 20 000 = EUR 10 000

Adjusted fine taking into account applicable aggravating and mitigating factors:

EUR 20 000 + EUR 2 000 + EUR 10 000 + EUR 24 000 + EUR 10 000 = EUR 66 000

687. Consequently, following adjustment by taking into account the applicable aggravating factors, the amount of the fine to be imposed on the PSI for the Compression incident would amount to EUR 66 000.

8.5 Application of the fine

688. The Board notes that Article 65(4) of the Regulation, second paragraph, provides 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”.

689. The Board considers that the infringement related to the Compression incident that resulted in failing to ensure the integrity of the data correctly reported (established by the Board above in Section 7) and the present infringement due to the PSI failing to provide the Regulators with direct and immediate access to data correctly reported under Article 9 of the Regulation, despite being autonomous, are stemming from the same Compression incident on the part of the PSI.

690. Article 65(4) of the Regulation, second paragraph, is applicable regarding the fines calculated for the infringements by the PSI related to Compression incident that resulted in failing to ensure the integrity of the data correctly reported and the PSI failing to provide the Regulators with direct and immediate access to such data. 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 should be applied.

8.6 Supervisory measure

691. Regard must be had to Article 73, paragraphs 1 and 2, of the Regulation.

692. Given the factual findings in the present case and in particular the fact that the PSI permanently solved the issue on 14 December 2020, in addition to the imposition of the fine, the only other supervisory measure considered appropriate with regard to the nature and the seriousness of the infringements is the adoption of a public notice as set out in Article 73(1)(c) of the Regulation.

693. It must thus be held that a public notice is to be issued.

9 Currencies incident

9.1 Analysis of the relevant provisions of the Regulation and the facts

694. As described in Section 2.4 above, the PSI identified and reported validation issues regarding the currency-related fields of reports (the 'Currencies incident'). In particular, in March 2019, the PSI's Functional Team identified that the reference database table used to validate the currency codes reported by Reporting Parties had discrepancies with the ISO4217 (official list of currency codes) and that the currency code CNH (Chinese Yuan Renminbi) was wrongly accepted in all the fields where currency codes shall be reported. The Board therefore acknowledges that the PSI wrongly accepted incorrectly reported information and passed it on to the Regulators.

695. The Board deems that in the case under consideration the currencies incident led to two different outcomes: i) the PSI failed to verify the completeness and correctness of the data reported to it by Reporting Parties and did not reject reports that did not comply with the applicable reporting requirements; ii) the PSI provided incorrect and unreliable reports to the Regulators.

696. With regards to the first outcome, the Board concurs with the IIO and finds that, under the specific circumstances of this case, the infringement of the obligation to ensure the completeness and correctness of the data reported to the PSI by Reported Entities cannot be established. Indeed, the Board notes that the validation obligation, stemming from the joint reading of the provisions of Articles 55 (1) and (4) and 56(1) and (3) of the Regulation and Article 19 of Delegated Regulation (EU) No 150/2013, was not enforceable at the material time of the 'currencies incident', lacking a specific infringement provision corresponding to the obligation.

697. The enforceability of the mentioned obligation is currently ensured by the provision of Article 78(9)(b) of the Regulation and by the corresponding infringement provision (Point (j) of Section I of Annex I of the Regulation), which however cannot be applied to this case because not in force at the material time of the Currencies incident.

698. With regards to the second outcome (i.e., the provision of incorrect and unreliable reports to Regulators) the Board sets below its findings:

<u>Infringement set out at Point b) of Section III of Annex I of the Regulation concerning the obligation to ensure that Regulators have direct and immediate access to the data held in TRs, by providing incorrect and unreliable reports to the Regulators.</u>

699. For the description of the facts, the Board refers to Section 2.4 above and notes that since 1 November 2017 (date of entry into force of new reporting format) until 22 June 2020, due to an inadequate system configuration, the PSI did not apply appropriate validation rules and accepted that Reporting Parties reported derivative contracts using currency codes that did not (or no longer) figure among the currency codes established by the ISO 4217 standard. These messages should have been rejected, but they were accepted and incorrectly delivered to the Regulators.

700. The Board acknowledges that the Currency incident occurred because, due to an inadequate system configuration, the PSI did not apply appropriate validation rules to verify that the data reported by Reporting Parties were in line with the applicable reporting requirements.

701. The Board further refers to the impact of the Currency incident on the Reports to Regulators and notes that Regulators received wrong (especially in the rejection figures) and in general unreliable reports. The PSI itself indicated that the incident impacted: the daily trade activity reports which contained the wrongly accepted currency codes, the daily trade state reports and all the trade activity and state reports requested by Regulators on ad hoc basis.

702. All in all, the Currencies incident had the following estimated impact on the number of Regulators and reports:

Type of reports	Total number of Regulators affected	Total number of reports affected	Total number of records affected
Daily TAR [408]	41 Regulators	99 679	137 674 760
Daily TSR[409]	41 Regulators	122 416	170 269 139
Ad-hoc TAR[410]	13 Regulators	39	1 944 270
Ad-hoc TSR[411]	17 Regulators	99	6 766 610
Rejection Reports[412]	39 Regulators	3 842	29 395 736
Reconciliation Reports[413]	39 Regulators	3 763	No Data ('N/D')[414]

703. On this basis, the Board finds that due to the lack of application of appropriate validation rules, the PSI delivered wrong and unreliable reports to the Regulators.

704. The Board has therefore examined in detail the wording and the context of Article 81(2) of the Regulation.

705. First, the wording of Article 81(2) of the Regulation is clear. The PSI has an obligation to provide Regulators with "direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates". The only limiting factor, as set out in Article 81(2) of the Regulation, to a Regulator's access is the Regulator's "responsibilities and mandates". This means TRs should provide Regulators with the details counterparties and CCPs have submitted to them in line with Article 9 of the Regulation.

706. Second, the drafting of Article 81(2) of the Regulation makes it clear that the details to be transmitted to the Regulators are those that are correctly reported under Article 9 of the Regulation in order to help them fulfil their responsibilities and mandates. The Board notes that the provision operates in the context of the principal objective of introducing the reporting requirement under the Regulation, which is to ensure that Regulators have timely and complete access to the correct data in order

[408] Supervisory Report, Exhibit 34, 'RTR20191120A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 36, 'RTR20191120A_Q4_B1_Recurrent records_D1'.
[409] Supervisory Report, Exhibit 34, 'RTR20191120A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 37, 'RTR20191120A_Q4_B1_Recurrent records_D2'.
[410] Supervisory Report, Exhibit 35, 'RTR20191120A_Q4_A2_Adhoc reports'; supervisory Report, Exhibit 39, 'RTR20191120A_Q4_B2_Adhoc reports'.
[411] Supervisory Report, Exhibit 35, 'RTR20191120A_Q4_A2_Adhoc reports'; Supervisory Report, Exhibit 39, 'RTR20191120A_Q4_B2_Adhoc reports'.
[412] Supervisory Report, Exhibit 34, 'RTR20191120A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 38, 'RTR20191120A_Q4_B1_Recurrent records_D3'.
413 Supervisory Report, Exhibit 34, 'RTR20191120A_Q4_A1_Recurrent reports'; Supervisory Report, Exhibit 36, 'RTR20191120A_Q4_B1_Recurrent records_D1'.
414 Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 28: "The number of trades affected in Reconciliation Statistics is directly linked with the records affected in the TSR as all of them have jeopardized the reconciliation statistics. How the statistics could have been different is difficult to predict as it is dependent on the outcome of the reconciliation process."

to be able to perform their mandates and ensure financial stability. Indeed, providing Regulators with access to incorrect data prevents them from fulfilling their mandates. In this context, it cannot have been the intention of the co-legislators to have created a reporting obligation that could be at best useless, if not misleading

707. As the Board clarified in its recent decisions[415], TRs have the obligation to provide Regulators with direct and immediate access to correct and reliable details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

708. If the requirement is not met, this constitutes the infringement set out at Point (b) of Section III of Annex I of the Regulation.

709. Further to that, the Board considers that the obligation set by Article 81(2) of the Regulation has to be read in combination with the obligation stemming from Articles 55 (1) and (4), 56(1) and (3) of the Regulation and Article 19 of Delegated Regulation (EU) No 150/2013.

710. Pursuant to Articles 55 (1) and (4), 56(1) and (3) of the Regulation, complemented by Article 19 of Delegated Regulation (EU) No 150/2013, the PSI, at the material time of the Currencies incident, had the obligation to have in place procedures to verify the compliance of the Reporting Parties with the reporting requirements and the correctness of the information reported (for the purpose of the present decision, also described as 'appropriate validation procedures'). The obligation, which existed as a condition for registration as a TR, has to be complied with at any time.

711. The Board duly took into account the PSI's defensive arguments and developed the following analysis.

Regarding the existence of the obligation to apply appropriate procedures to verify the correctness of the data at the time of the facts.

712. The PSI stated that no substantive obligation on validation existed before 18 June 2021. The PSI indeed argued that the provisions of Articles 55 (1) and (4), 56(1) and (3) of the Regulation, which are set out in Chapter 1 of Title VI of EMIR relating to "Conditions and procedures for registration of a trade repository" would be exclusively dealing with the registration procedure and concern procedural aspects only but not substantive requirements, which are set by the Regulation. In the PSI's view, the obligation on validation was *ex novo* introduced by Article 78(9)(b) of the Regulation.

713. In the PSI's view, the obligation on validation was introduced by Article 78(9)(b) of EMIR and the PSI argues that the very introduction of this new requirement provides evidence of the lack of an identical pre-existing requirement.

[415] Decision 2021/6 of 8 July 2021 [esma41-356-187_decision_-_dtcc_derivatives_repository.pdf (europa.eu)] and Decision 2021/7 of 21 September 2021 [esma41-356-233_decision_-_unavista_limited.pdf (europa.eu)].

714. In other words, the PSI considered that the obligation to control the data received by the Reporting Parties only started in June 2021, when Article 78(9)(b) of the Regulation entered into force. As a consequence, the PSI argued that at the moment of the facts it was not subject to any obligation of control, even though it needed to have in place, at the moment of the registration, procedures to, inter alia, "verify (a) the compliance of the reporting counterparty or submitting entity with the reporting requirements; (b) the correctness of the information reported", pursuant to Article 19 of Delegated Regulation (EU) No 150/2013. The requirement would, in the PSI's view, only be of a procedural nature and would not imply any obligation.

715. In this respect, first, the Board notes that the distinction between procedural and substantive requirements/obligations that the PSI tries to make does not exist from a legal standpoint. The legal requirements (that can be set at the level of the Regulation as well as at the level of Delegated Regulations) do always correspond to obligations.

716. Second, the need to have in place appropriate validation procedures is part of the registration requirements, which – as prescribed by Article 55(4) of the Regulation, and supplemented by Article 19 of Delegated Regulation (EU) 150/2013 - have to be complied with at all times.

717. On this basis, it is extremely difficult, if not impossible, to argue that the obligation to have in place appropriate validation procedures does not imply the obligation to apply the same procedures throughout the lifetime of the registered entity.

718. The Board thus considers that the requirement to have in place a procedure to validate data at the moment of registration corresponds to an obligation to validate data, applicable throughout the activity of the TRs.

719. Third, the new provision of Article 78(9)(b) of the Regulation did not introduce a brand new obligation, but clarified the same obligation at the level of the Regulation and made it directly enforceable through the corresponding infringement provision.

720. Fourth, ESMA's Q&A TR 20b "How are TRs expected to verify completeness and accuracy of the reports submitted by the Reporting Parties?"[416] explicitly stated already in 2015 that "[i]n order to be compliant with the requirements of Article 19 of the Commission Delegated Regulation (EU) 150/2013, TRs should reject the reports which are not submitted in line with the reporting requirements specified in the Validations table".

721. In conclusion, the procedures and the corresponding requirements the entities are subject to and submitted at the time of registration continue to apply throughout their operations. From the perspective of ESMA as a supervisor, it is considered that a supervised entity cannot be legitimated to claim that formal/procedural

[416] Exhibit 32, 20170201 ESMA70_1861941480-52_qa_on_EMIR_implementation, p.82

requirements (in this case related to the registration) do not correspond to obligations once the registration is completed.

Regarding alleged silence of the Regulation with respect to the responsibility to control the correctness of the data.

722. The PSI states that even though in principle it could be argued that Regulators shall be provided with complete and correct data in order to perform their supervisory tasks, Article 81(2) of the Regulation is silent on the allocation of responsibility for the completeness and correctness of the data.

723. First, the reading of Article 81(2) of the Regulation is consistent with the reading that the Board gave in the recent precedents of DDRL and UnaVista Decisions, where it is clarified that "the drafting of Article 81(2) makes it clear that the details to be transmitted to the Regulators are those that are correctly reported under Article 9 of the Regulation in order to help them fulfil their responsibilities and mandates".

724. Second, Article 81(2) of the Regulation is not explicit regarding the validation responsibility, but at the same time certainly does not exclude the responsibility of TRs regarding the control of the data. On the contrary, it is explicit about the obligation of the TRs to provide direct and immediate access to data needed by the Regulators and thus takes for granted that the data to be reported to the Regulators by the TR has to be correct. It is indeed clear, in the reading of the Board, that incorrect data should not be passed to Regulators, since - on the basis of incorrect Reports – the Regulators could not fulfil their responsibilities and mandates. In this context, the responsibility regarding data validation stems from the obligation to have in place a procedure to verify the completeness and correctness of the data, to be complied with at all times. It is true that TRs are not responsible for the actual substance reported by the Reporting Parties, however, validation is put in place exactly for the reason to sort out instances when the entities report data not in compliance with the reporting requirements and that is a responsibility on the part of TRs.

725. As said above, the formal requirements do necessarily correspond to substantive obligations (to use the PSI's terminology).

Regarding the alleged retroactive application of Article 78(9)(b) of the Regulation

726. As clarified above, the obligation of data validation existing at the time of the facts was not assisted by an infringement provision. Thus, the Board did not establish the related infringement, which on the contrary would need to be established if the same facts occurred after 18 June 2021. Therefore, Article 78(9)(b) of the Regulation is not applied retroactively.

Regarding the alleged circumvention of lack of such provision before 18 June 2021 by recourse to the violation of Article 81(2) of the Regulation

727. The violation of Article 81(2) of the Regulation stems from the incidents, which led to incorrect and unreliable reports, and is far from being used to circumvent the lack of infringement provision regarding the obligation of data validation. The direct and immediate access infringement is established *per se* with respect to the wrong and unreliable reports.

728. In the case at stake, Article 81(2) of the Regulation is infringed *per se*, because it operates in the context of the principal objective of introducing the reporting requirements under the Regulation, which is to ensure that Regulators have timely and complete access to the correct data in order to be able to perform their mandates and ensure financial stability.

729. Further to that, in order to attribute the infringement and therefore establish the related responsibility, the provision is to be read in conjunction with the other obligations set by the Regulation and in particular it operates in combination with the TRs' responsibility to have in place procedures to verify the completeness and correctness of the data reported and to ensure compliance with these procedures on a going concern, which stems from the joint reading of Articles 55 (1) and (4), 56(1) and (3) of the Regulation, complemented by Article 19 of Delegated Regulation (EU) No 150/2013.

730. The Board wishes to recall that all the obligations of the entities subject to supervision are to be intended and interpreted in conjunction one with another, because they – all together – shall govern the activity of the entities.

Regarding the lack of clarity of the validation obligation in the Regulation

731. For the PSI, lacking sufficient legal certainty concerning the obligation of verifying data reported, the fine should not be imposed.

732. The PSI - referring to the obligation of data validation, for which the establishment of an infringement has been excluded by the Board (also in the initial Statement of Findings notified to the PSI) – recalls the principles of legal certainty ('*nulla poena sine lege*') needed for the imposition of sanctions, and of prohibition of retroactivity ('*nulla poena sine lege previa*').

733. The Board considers these objections as irrelevant, since no infringement is established on the basis of Article 78(9)(b) of the Regulation.

734. Further to that, the Board takes into account that the obligation to apply the procedures to verify the correctness and completeness of the data reported to TRs, is clearly inferable from the requirement to have in place, at the moment of the registration - and at any time during the activity – appropriate validation procedures. This implies clear responsibility of TRs with respect to the completeness and correctness of the data to be reported to the Regulators.

Conclusions

735. On the basis of the above, the Board finds that the PSI should have verified the completeness and correctness of the data received by the Reporting Parties before providing direct and immediate access to them to the Regulators.

736. In the specific circumstances of the Currencies Incidents, due to the lack of appropriate controls performed by the PSI, the Regulators were provided with wrong (especially in the rejection figures) and unreliable reports.

737. On this basis, the Board finds that - due to the wrong and unreliable reports delivered to the Regulators - Article 81(2) of the Regulation was infringed. Further to that, the infringement is attributable to the PSI for a direct causal effect stemming from the lack of application of appropriate validation procedures the PSI was responsible for.

738. The infringement started (for a series of currencies fields[417]) on 1 November 2015 and continued until 22 June 2020, when the incident was permanently resolved.

9.2 Intent or negligence

739. The factual background does not lead to objective factors which demonstrate that the PSI, its employees, or senior managers acted deliberately to commit the infringement.

740. Moreover, on the basis of a thorough assessment of the complete file submitted by the IIO and having taken into account the written submissions made by the PSI, the Board did not find negligence on the part of the PSI. In accordance with the relevant provisions of the Regulation, no fine would be imposed for such an infringement.

9.3 Supervisory measure

741. Regard must be had to Article 73, paragraphs 1 and 2 of the Regulation.

742. Given the factual findings in the present case and in particular the fact that the PSI permanently solved the issue on 22 June 2020, the only supervisory measure considered appropriate with regard to the nature and the seriousness of the infringement is the adoption of a public notice as set out in Article 73(1)(c) of the Regulation.

743. It must thus be held that a public notice is to be issued.

[417] Please see (see DR 148/2013). For other currency fields, existing since 1 November 2017 (see DR 148/2013 as amended by DR 2017/104), the infringement started on 1 November 2017.

10 LEI incidents

10.1 Analysis of the relevant provisions of the Regulation and the facts

744. As described in Section 2.5 above, the PSI identified and reported incidents, due to an inadequate system configuration, affecting the Legal Entity Identifiers ('LEIs') codes reported by the Reporting Parties in the LEI-related fields of the reports (the 'LEI incidents'). The Board therefore acknowledges that the PSI wrongly accepted potentially incorrectly reported information and passed it on to the Regulators.

745. The Board deems that in the case under consideration the LEI incidents led to two different outcomes: i) the PSI failed to verify the completeness and correctness of the data reported to it by Reporting Parties and did not reject reports that did not comply with the applicable reporting requirements; ii) the PSI provided incorrect and unreliable reports to the Regulators.

746. With regards to the first outcome, the Board concurs with the IIO and finds that, under the specific circumstances of this case, the infringement of the obligation to ensure the completeness and correctness of the data reported to the PSI by Reported Entities cannot be established, mainly for the lack of enforceability, at the material time of the 'LEI incidents', due to the lack of the infringement provision corresponding to the obligation stemming from the joint reading of the provisions of Articles 55 (1) and (4) and 56(1) and (3) of the Regulation and Article 19 of Delegated Regulation (EU) No 150/2013.

747. The enforceability of the mentioned obligation is currently ensured by the provision of Article 78(9)(b) of the Regulation and by the corresponding infringement provision (Point (j) of Section I of Annex I of the Regulation), which however cannot be applied to this case because not in force at the material time of the 'currencies incident'.

748. With regards to the second outcome (i.e. the provision of incorrect and unreliable reports to Regulators) the Board sets below its findings:

Infringement set out at Point b) of Section III of Annex I of the Regulation concerning the obligation to ensure that Regulators have direct and immediate access to the data held in TRs, by providing incorrect and unreliable reports to the Regulators.

749. For the description of the facts, the Board refers to Section 2.5 above and notes that: i) from 1 November 2017 until 2 December 2019, due to an inadequate system configuration, for collateral updates ('CU') messages sent at portfolio level, the PSI accepted reports without checking/validating the LEI code status – 'LEI Status incident'. ii) From 1 November 2017 until 22 June 2020, due to an inadequate system

configuration, the PSI accepted reports without validating the LEIs against the Global Legal Entity Identifier Foundation ('GLEIF') – 'GLEIF incident'.

750. These messages were not validated and therefore were all accepted even if potentially incorrect and thus delivered to the Regulators.

751. The Board acknowledges that the LEI incidents occurred because, due to an inadequate system configuration, the PSI did not apply appropriate validation rules to verify that the data reported by Reporting Parties were in line with the applicable reporting requirements.

752. The Board further refers to the impact of the LEI incidents on the Reports to Regulators and notes that they received wrong (especially in the rejection figures) and in general unreliable reports. The PSI indicated that the incident impacted: the daily trade activity reports, the daily trade state reports and the trade activity and state reports requested by Regulators on ad hoc basis. In addition, the LEI incidents affected the Rejection Reports generated from 30 August 2019.

753. All in all, the LEI Status incident had the following estimated impact on the number of Regulators and reports:

Type of reports	Total number of Regulators affected	Total number of reports affected	Total number of records affected
Daily TAR[418]	41 Regulators	47 893	24 825 258
Daily TSR [419]	41 Regulators	47 594	60 527 842
Ad-hoc TAR[420]	12 Regulators	32	1 942 173
Ad-hoc TSR[421]	14 Regulators	88	4 529 685
Rejection Reports[422]	41 Regulators	1 346[423]	3 913 435[424]

754. Likewise, the GLEIF incident had the following estimated impact on the number of Regulators and reports:

[418] Supervisory Report, Exhibit 16, 'RTR20190819A_Q4_A1_Recurrent reports_v2'; Supervisory Report, Exhibit 18, 'RTR20190819A_Q4_B1_Recurrent records_v2'.
[419] Supervisory Report, Exhibit 16, 'RTR20190819A_Q4_A1_Recurrent reports_v2'; Supervisory Report, Exhibit 18, 'RTR20190819A_Q4_B1_Recurrent records_v2'.
[420]Supervisory Report, Exhibit 17, 'RTR20190819A_Q4_A2_Adhoc reports_v2'; Supervisory Report, Exhibit 19, 'RTR20190819A_Q4_B2_Adhoc records'.
[421] Supervisory Report, Exhibit 17, 'RTR20190819A_Q4_A2_Adhoc reports_v2'.
[422] Supervisory Report, Exhibit 16, 'RTR20190819A_Q4_A1_Recurrent reports_v2'; Supervisory Report, Exhibit 18, 'RTR20190819A_Q4_B1_Recurrent records_v2'.
[423] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 6: "In this case, it has been considered the implementation date of the TRACE Phase 3 (30 August 2019) as the first report affected. […] The affected reports per Authority and report type can be found in the Document "RTR20190819A_Q4_A1_Recurrent reports."
[424] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 6: "In this case, it has been considered the implementation date of the TRACE Phase 3 (30 August 2019) as the first report affected. […] The number of sessions and records affected in total per Authority in the TAR and Rejection Statistics can be found in the in the Document "RTR20190819A_Q4_B1_Recurrent records".

Type of reports[425]	Total number of Regulators affected	Total number of reports affected	Total number of records affected
Daily TAR[426]	42 Regulators	61 168	84 385 591
Daily TSR[427]	42 Regulators	59 768	5 448 196 203
Ad-hoc TAR[428]	13 Regulators	39	1 944 270
Ad-hoc TSR[429]	17 Regulators	99	6 766 610
Rejection Reports[430]	41 Regulators	3 946	18 390 504

755. On this basis, the Board finds that due to the lack of application of appropriate validation rules, the PSI delivered wrong and unreliable reports to the Regulators.

756. The Board has therefore examined in detail the wording and the context of Article 81(2) of the Regulation.

757. First, the wording of Article 81(2) of the Regulation is clear. The PSI has an obligation to provide Regulators with "direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates". The only limiting factor, as set out in Article 81(2) of the Regulation, to a Regulator's access is the Regulator's "responsibilities and mandates". This means TRs should provide Regulators with the details counterparties and CCPs have submitted to them in line with Article 9 of the Regulation.

758. Second, the drafting of Article 81(2) of the Regulation makes it clear that the details to be transmitted to the Regulators are those that are correctly reported under Article 9 of the Regulation in order to help them fulfil their responsibilities and mandates. The Board notes that the provision operates in the context of the principal objective of introducing the reporting requirement under the Regulation, which is to ensure that Regulators have timely and complete access to the correct data in order

[425] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', pp.36-38; Supervisory Report, Exhibit 15, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_updated information', p.2: "As a result of the new assessment done to respond question 1 of the document "REGIS-TR Answer to Second RFI (ESMA83-357-34131) under Article 61 EMIR", REGIS-TR has also reassessed the answer provided to question 4.a. of incident RTR20200103A referred in "REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR", where REGIS-TR pointed out a similar reasoning to argue that the TSR was not affected. In such answer REGIS-TR stated "In regards with the TSR, REGIS-TR does not consider it is affected by this incident as any outstanding trade could contain temporally or permanently one or more LEIs in a status that would not allow subsequent updates, but the data has to be delivered to the Authorities despite that fact". Consequently, REGIS-TR would like to confirm the TSR is affected from the perspective that the TSR is showing information coming from messages erroneously accepted."

[426] Supervisory Report, Exhibit 44, 'RTR20200103A_Q4_A1_Recurrent reports_v2'; Supervisory Report, Exhibit 46, 'RTR20200103A_Q4_B1_Recurrent records_v2'.

[427] Supervisory Report, Exhibit 44, 'RTR20200103A_Q4_A1_Recurrent reports_v2'; Supervisory Report, Exhibit 46, 'RTR20200103A_Q4_B1_Recurrent records_v2'.

[428] Supervisory Report, Exhibit 45, 'RTR20200103A_Q4_A2_Adhoc reports_v2'.

[429] Supervisory Report, Exhibit 45, 'RTR20200103A_Q4_A2_Adhoc reports_v2'.

[430] Supervisory Report, Exhibit 44, 'RTR20200103A_Q4_A1_Recurrent reports_v2'; Supervisory Report, Exhibit 46, 'RTR20200103A_Q4_B1_Recurrent records_v2'.

to be able to perform their mandates and ensure financial stability. Indeed, providing Regulators with access to incorrect data prevents them from fulfilling their mandates. In this context, it cannot have been the intention of the co-legislators to have created a reporting obligation that could be at best useless, if not misleading

759. As the Board clarified in its recent decisions[431], TRs have the obligation to provide Regulators with direct and immediate access to correct and reliable details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

760. If the requirement is not met, this constitutes the infringement set out at Point (b) of Section III of Annex I of the Regulation.

761. Further to that, the Board considers that the obligation set by Article 81(2) of the Regulation has to be read in combination with the obligation stemming from Articles 55 (1) and (4), 56(1) and (3) of the Regulation and Article 19 of Delegated Regulation (EU) No 150/2013.

762. Pursuant to Articles 55 (1) and (4), 56(1) and (3) of the Regulation, integrated by Article 19 of Delegated Regulation (EU) No 150/2013, the PSI, at the material time of the Currencies incident, had the obligation to have in place procedures to verify the compliance of the Reporting Parties with the reporting requirements and the correctness of the information reported (for the purpose of the present decision, also described as 'appropriate validation procedures'). The obligation, which existed as a condition for registration as a TR, has to be complied with at any time.

763. The Board duly took into account the PSI's defensive arguments and developed its analysis, as described above (paras. 712-734).

764. On this basis, the Board finds that the PSI should have verified the completeness and correctness of the data received by the Reporting Parties before providing direct and immediate access to them to the Regulators.

765. In the specific circumstances of the LEI incidents, due to the lack of appropriate controls performed by the PSI, the Regulators were provided with wrong (especially in the rejection figures) and unreliable reports.

766. On this basis, the Board finds that - due to the wrong and unreliable reports delivered to the Regulators - Article 81(2) of the Regulation was infringed. Further to that, the infringement is attributable to the PSI for a direct causal effect stemming from the lack of application of appropriate validation rules the PSI was responsible for.

767. The infringement regarding the LEI Status incident started on 1 November 2017 and continued until 2 December 2019, while the infringement regarding the GLEIF incident started on 1 November 2017 and continued until 22 June 2020.

[431] Decision 2021/6 of 8 July 2021 [esma41-356-187_decision_-_dtcc_derivatives_repository.pdf (europa.eu)] and Decision 2021/7 of 21 September 2021 [esma41-356-233_decision_-_unavista_limited.pdf (europa.eu)].

10.2 Intent or negligence

768. The factual background does not lead to objective factors which demonstrate that the PSI, its employees, or senior managers acted deliberately to commit the infringement.

769. Moreover, on the basis of a thorough assessment of the complete file submitted by the IIO and having taken into account the written submissions made by the PSI, the Board did not find negligence on the part of the PSI. In accordance with the relevant provisions of the Regulation, no fine would be imposed for such an infringement.

10.3 Supervisory measure

770. Regard must be had to Article 73, paragraphs 1 and 2, of the Regulation.

771. Given the factual findings in the present case and in particular the fact that the PSI permanently solved the issue on 22 June 2020, the only supervisory measure considered appropriate with regard to the nature and the seriousness of the infringement is the adoption of a public notice as set out in Article 73(1)(c) of the Regulation.

772. It must thus be held that a public notice is to be issued.

11 Reporting level incident

11.1 Analysis of the relevant provisions of the Regulation and the facts

773. As described in Section 2.6 above, the PSI identified and reported incidents affecting the reporting level of trades (‘Reporting level incident’).

774. The Board deems that in the case under consideration the Reporting level incident led to two different outcomes: i) the PSI failed to verify the completeness and correctness of the data reported to it by Reporting Parties and did not reject reports that did not comply with the applicable reporting requirements; ii) the PSI provided incorrect and unreliable reports to the Regulators.

775. With regards to the first outcome, the Board concurs with the IIO and finds that, under the specific circumstances of this case, the infringement of the obligation to ensure the completeness and correctness of the data reported to the PSI by Reporting Parties cannot be established, mainly for the lack of enforceability, at the material time of the Reporting level incident, due to the lack of the infringement provision corresponding to the obligation stemming from the joint reading of the provisions of Articles 55 (1) and (4) and 56(1) and (3) of the Regulation and Article 19 of Delegated Regulation (EU) No 150/2013.

776. The enforceability of the mentioned obligation is currently ensured by the provision of Article 78(9)(b) of the Regulation and by the corresponding infringement provision (Point (j) of Section I of Annex I of the Regulation), which however cannot be applied to this case because not in force at the material time of the Reporting level incident.

777. With regards to the second outcome (i.e., the provision of incorrect and unreliable reports to Regulators) the Board sets below its findings:

Infringement set out at Point b) of Section III of Annex I of the Regulation concerning the obligation to ensure that Regulators have direct and immediate access to the data held in TRs, by providing incorrect and unreliable reports to the Regulators.

778. For the description of the facts, the Board refers to Section 2.6 above and notes that from 1 November 2017 until 30 November 2020, due to an incorrect system configuration, the PSI's system incorrectly allowed the Reporting Parties to update the information provided in field 2.94 (which indicates if a report is done at trade [T] or position [P] level) through the submission of an action type 'V' (Valuation Update) message. In other words, the PSI incorrectly allowed a report done at trade level to be subsequently modified and reported at position level.

779. These messages should have been rejected, but, as of 1 November 2017, they were accepted and incorrectly delivered to the Regulators.

780. The Board acknowledges that the incident occurred because, due to an inadequate system configuration, the PSI did not apply appropriate validation rules to verify that the data reported by Reporting Parties were in line with the applicable reporting requirements.

781. The Board further refers to the impact of the Reporting level incident on the reports to Regulators and notes that they received wrong (in the rejection figures) and in general unreliable reports. The PSI indicated that the incident impacted: the trade activity reports, the daily trade state reports as well as the Rejection and Reconciliation Reports generated by the PSI from 30 August 2019

782. All in all, the Reporting level incident had the following estimated impact on the number of Regulators and reports:

Type of reports	Total number of Regulators affected	Total number of reports affected	Total number of records affected
Daily TAR[432]	40 Regulators	50 402	195 511 690
Daily TSR[433]	40 Regulators	45 940	247 016 173
Ad-hoc TAR[434]	13 Regulators	39	1 944 270
Ad-hoc TSR[435]	17 Regulators	99	6 766 610
Rejection Reports[436]	39 Regulators	3 681	66 757 634
Reconciliation Reports[437]	39 Regulators	3 518	N/D[438]

783. On this basis, the Board finds that due to the lack of application of appropriate validation rules, the PSI delivered wrong and unreliable reports to the Regulators.

784. The Board has therefore examined in detail the wording and the context of Article 81(2) of the Regulation.

785. First, the wording of Article 81(2) of the Regulation is clear. The PSI has an obligation to provide Regulators with "direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates". The only limiting factor, as set out in Article 81(2) of the Regulation, to a Regulator's access is the Regulator's "responsibilities and mandates". This means TRs should provide Regulators with the details counterparties and CCPs have submitted to them in line with Article 9 of the Regulation.

786. Second, the drafting of Article 81(2) of the Regulation makes it clear that the details to be transmitted to the Regulators are those that are correctly reported under Article 9 of the Regulation in order to help them fulfil their responsibilities and mandates. The Board notes that the provision operates in the context of the principal objective of introducing the reporting requirement under the Regulation, which is to ensure that Regulators have timely and complete access to the correct data in order to be able to perform their mandates and ensure financial stability. Indeed, providing Regulators with access to incorrect data prevents them from fulfilling their mandates.

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[432] Supervisory Report, Exhibit 20, 'RTR20191015A_Q4_A1_Recurrent reports' and Supervisory Report, Exhibit 22, 'RTR20191015A_Q4_B1_Recurrent records_D1'.
[433] Supervisory Report, Exhibit 20, 'RTR20191015A_Q4_A1_Recurrent reports' and Supervisory Report, Exhibit 23, 'RTR20191015A_Q4_B1_Recurrent records_D2'.
[434] Supervisory Report, Exhibit 21, 'RTR20191015A_Q4_A2_Adhoc reports' and Supervisory Report, Exhibit 25, 'RTR20191015A_Q4_B2_Adhoc records'.
[435] Supervisory Report, Exhibit 21, 'RTR20191015A_Q4_A2_Adhoc reports' and Supervisory Report, Exhibit 25, 'RTR20191015A_Q4_B2_Adhoc records'.
[436] Supervisory Report, Exhibit 20, 'RTR20191015A_Q4_A1_Recurrent reports' and Supervisory Report, Exhibit 24, 'RTR20191015A_Q4_B1_Recurrent records_D3'.
[437] Supervisory Report, Exhibit 20, 'RTR20191015A_Q4_A1_Recurrent reports'.
[438] Supervisory Report, Exhibit 11, 'REGIS-TR Answer to RFI (ESMA83-357-34038) under Article 61 EMIR_Report_v1.0', p. 11, indicates that "the number of trades affected in Reconciliation Statistics is directly linked with the records affected in the TSR as all of them have jeopardized the reconciliation statistics".

In this context, it cannot have been the intention of the co-legislators to have created a reporting obligation that could be at best useless, if not misleading

787. As the Board clarified in its recent decisions[439], TRs have the obligation to provide Regulators with direct and immediate access to correct and reliable details of derivatives contracts they need to fulfil their respective responsibilities and mandates.

788. If the requirement is not met, this constitutes the infringement set out at Point (b) of Section III of Annex I of the Regulation.

789. Further to that, the Board considers that the obligation set by Article 81(2) of the Regulation has to be read in combination with the obligation stemming from Articles 55 (1) and (4), 56(1) and (3) of the Regulation and Article 19 of Delegated Regulation (EU) No 150/2013.

790. Pursuant to Articles 55 (1) and (4), 56(1) and (3) of the Regulation, integrated by Article 19 of Delegated Regulation (EU) No 150/2013, the PSI, at the material time of the Currencies incident, had the obligation to have in place procedures to verify the compliance of the Reporting Parties with the reporting requirements and the correctness of the information reported (for the purpose of the present decision, also described as 'appropriate validation procedures'). The obligation, which existed as a condition for registration as a TR, has to be complied with at any time.

791. The Board duly took into account the PSI's defensive arguments and developed its analysis, as described above (paras. 712-734).

792. On this basis, the Board finds that the PSI should have verified the completeness and correctness of the data received by the Reporting Parties before providing direct and immediate access to them to the Regulators.

793. In the specific circumstances of the Reporting level incident, due to the lack of appropriate controls performed by the PSI, the Regulators were provided with wrong and unreliable reports.

794. On this basis, the Board finds that - due to the wrong and unreliable reports delivered to the Regulators - Article 81(2) of the Regulation was infringed. Further to that, the infringement is attributable to the PSI for a direct causal effect stemming from the lack of application of appropriate validation rules the PSI was responsible for.

795. The infringement regarding the Reporting level incident started on 1 November 2017 and continued until 28 November 2020.

[439] Decision 2021/6 of 8 July 2021 [esma41-356-187_decision_-_dtcc_derivatives_repository.pdf (europa.eu)] and Decision 2021/7 of 21 September 2021 [esma41-356-233_decision_-_unavista_limited.pdf (europa.eu)].

11.2 Intent or negligence

796. The factual background does not lead to objective factors which demonstrate that the PSI, its employees, or senior managers acted deliberately to commit the infringement.

797. Moreover, on the basis of a thorough assessment of the complete file submitted by the IIO and having taken into account the written submissions made by the PSI, the Board did not find negligence on the part of the PSI. In accordance with the relevant provisions of the Regulation, no fine would be imposed for such an infringement.

11.3 Supervisory measure

798. Regard must be had to Article 73, paragraphs 1 and 2, of the Regulation.

799. Given the factual findings in the present case and in particular the fact that the PSI permanently solved the issue on 22 June 2020, the only supervisory measure considered appropriate with regard to the nature and the seriousness of the infringement is the adoption of a public notice as set out in Article 73(1)(c) of the Regulation.

800. It must thus be held that a public notice is to be issued.

On the basis of the above Statement of Findings, the Board hereby

DECIDES

that

REGIS-TR, S.A. committed:

- with negligence, the infringement set out set out at Point (c) of Section II of Annex I of the Regulation (by not ensuring integrity of the data previously reported to it as a result of the Collateral update incident);
- with negligence, the infringement set out at Point (b) of Section III of Annex I of the Regulation (EU) 648/2012 (by providing incorrect reports to the Regulators as a result of the Collateral update incident);
- with negligence, the infringement set out at Point (b) of Section III of Annex I of the Regulation (EU) 648/2012 (by failing to provide the Regulators with access to the data reported by the Reporting Parties in the required format and within the required timeframe as a result of the XML incident);
- with negligence, the infringement set out set out at Point (c) of Section II of Annex I of the Regulation (by not ensuring integrity of the data correctly reported to it as a result of the Compression incident);
- with negligence, the infringement set out at Point (b) of Section III of Annex I of the Regulation (EU) 648/2012 (by incorrectly rejecting data correctly submitted to it and thus not providing such data to the Regulators as a result of the Compression incident);
- without negligence, the infringement set out at Point (b) of Section III of Annex I of the Regulation (EU) 648/2012 (by providing incorrect and unreliable reports to the Regulators as a result of the Currencies incident);
- without negligence, the infringement set out at Point (b) of Section III of Annex I of the Regulation (EU) 648/2012 (by providing incorrect and unreliable reports to the Regulators as a result of the LEI incidents);
- without negligence, the infringement set out at Point (b) of Section III of Annex I of the Regulation (EU) 648/2012 (by providing incorrect and unreliable reports to the Regulators as a result of the Reporting level incident).

IMPOSES

the following fines:

- EUR 64 000 for the infringement set out at Point (c) of Section II of Annex I of Regulation (EU) 648/2012 (Collateral update incident)

- EUR 64 000 for the infringement set out at Point (b) of Section III of Annex I of Regulation (EU) 648/2012 (Collateral update incident)
- EUR 56 000 for the infringement set out at Point (b) of Section III of Annex I of Regulation (EU) 648/2012 (XML incident)
- EUR 66 000 for the infringement set out at Point (c) of Section II of Annex I of Regulation (EU) 648/2012 (Compression incident)
- EUR 66 000 for the infringement set out at Point (b) of Section III of Annex I of Regulation (EU) 648/2012 (Compression incident)

Upon having applied Article 65(4), second paragraph, of Regulation (EU) No 648/2012:

- in respect of the fines imposed for the infringements set out at Point (c) of Section II and Point (b) of Section III of Annex I of Regulation (EU) No 648/2012 in relation to the Collateral update incident, whereby the fine of EUR 64 000 is applied for both infringements;

- in respect of the fines imposed for the infringements set out at Point (c) of Section II and Point (b) of Section III of Annex I of Regulation (EU) No 648/2012 in relation to the Compression incident, whereby the fine of EUR 66 000 is applied for both infringements,

for the overall amount of **EUR 186 000**

and

ADOPTS

supervisory measures in the form of a **public notice** to be issued in respect of each of the above-mentioned infringements.

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.** – 42, Avenue John F. Kennedy, L-1855, Luxembourg (Grand Duchy of Luxembourg)

Done at Paris, on 22 March 2021

For the Board of Supervisors

[The Vice Chair]

Erik Thedéen

[signed]