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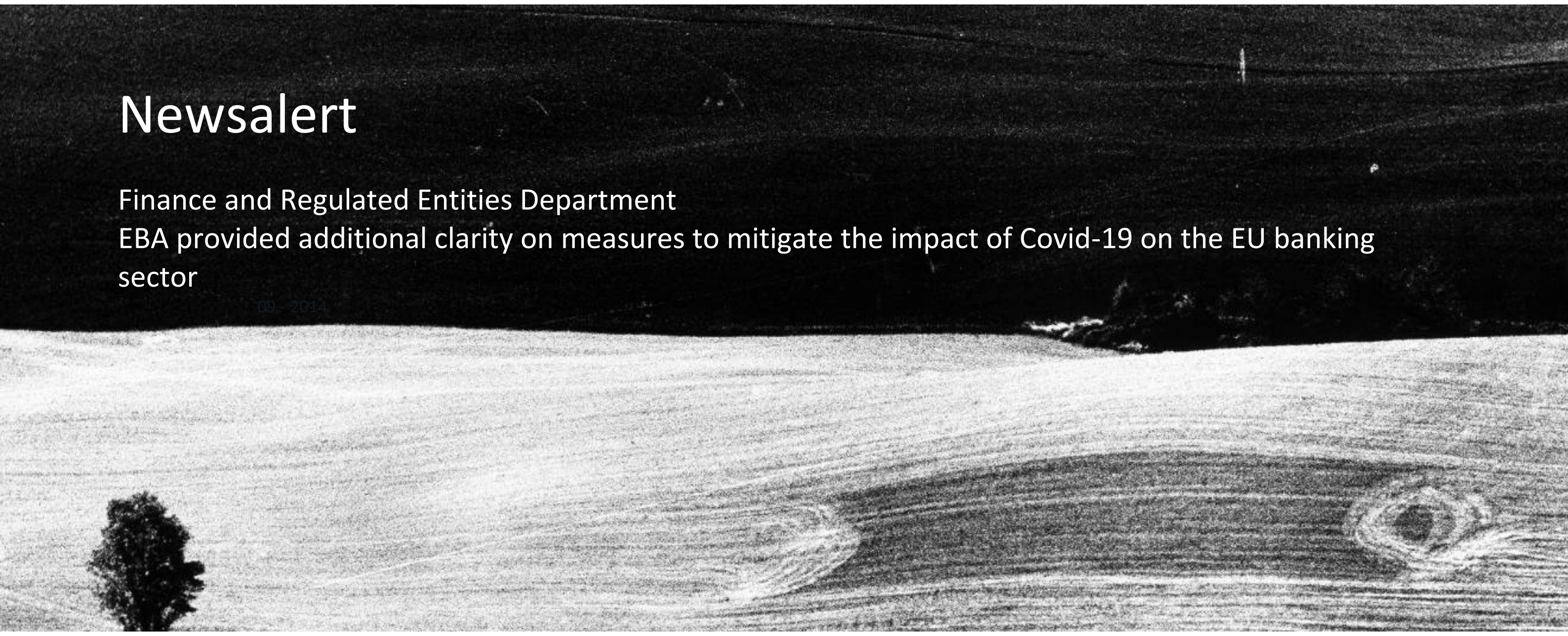

Newsalert

Finance and Regulated Entities Department
EBA provided additional clarity on measures to mitigate the impact of Covid-19 on the EU banking sector

On 31 March 2020, the European Banking Authority (EBA) provided clarity to banks and competent Authorities on supervisory reporting and Pillar 3 disclosures, dividends distribution, share buybacks and variable remuneration and also with regard to actions to mitigate financial crime risks.

Supervisory reporting and Pillar 3 disclosures

In its statement of March 31, 2020, EBA provides details on its call for competent authorities to offer leeway on reporting dates and on certain other measures, as follows:

a. Supervisory reporting

EBA states that competent and resolution authorities should assess the extent to which a delayed submission of all the data or subsets of the data included in the EBA reporting framework would be justified in these extraordinary circumstances. For the time being, such supervisory actions are only being considered for submissions due between March and end of May 2020. In this context, institutions should be allowed up to one additional month for submitting the required data[1] and each competent and resolution authority should clarify the precise terms for institutions in their jurisdiction.

However, such exception should not apply to:

- Information on the liquidity coverage ratio (LCR) and on the Additional Monitoring Metrics (ALMM) and data sets identified as priority by the competent or resolution authority. This data should be reported in accordance with the deadlines specified in the applicable reporting standard;
- Reporting for resolution planning purposes: Information on the institution’s liability structure, including intra-group financial connections should be reported to resolution authorities by the set date in the applicable reporting standard (30 April 2020 or earlier if set by the resolution authority).

[1] The remittance for funding plans data has been extended by two months (see EBA statement ‘EBA provides clarity to banks and consumers on the application of the prudential framework in light of COVID-19 measures’ of 25 March 2020).

Furthermore, in order to facilitate operational efficiency, a specific timeframe for updating, correcting and resubmitting the data can be discussed and agreed with the competent authority.
EBA clarifies that, to the extent of the EBA reporting framework, institutions should normally adopt the new reporting framework version 2.9 from March 31, 2020, as envisaged by the adopted Implementing Act.

Finally, in light of the current situations, EBA asked to competent and resolution authorities to not prioritize their supervisory actions towards ad-hoc data collections that are not specifically needed to monitor institutions in the context of the Covid-19 outbreak.

b. Pillar 3 disclosure

In consideration of the difficulties that institutions may face to prepare their Pillar 3 reports within the usually applicable deadlines, EBA encourages competent authorities to be flexible when assessing the institutions' compliance with the deadlines for the publication of their Pillar 3 reports as set out in accordance with Article 106 CRD[2]. In this context, EBA states that when institutions reasonably anticipate that publication of their Pillar 3 reports will be delayed, they are expected to inform their competent authorities and market participants of the delay, the reasons for such delay and to the extent possible the estimated publication date.

Finally, the EBA emphasizes the importance of transparency and Pillar 3 disclosures to address uncertainties on the risks faced by institutions. Competent authorities and institutions should therefore assess the need for additional Pillar 3 disclosures on prudential information that may be necessary in order to properly convey the risk profile of the institution in the context of the Covid-19 outbreak. When doing this assessment, they should take into account the extraordinary measures that competent authorities, central banks, national governments, and other EU bodies have announced to address the adverse systemic economic impact of the outbreak.

Dividends distribution, share buybacks and variable remuneration

Following the EBA's statement of 12 March 2020, which urged banks to follow prudent dividend and other distribution policies, including variable remuneration, and use capital for ensuring continuous financing to the economy, the EBA confirmed the absolute necessity that banks' capital resources – in particular those resulting from the relief measures adopted by competent Authorities in response to Covid-19 crisis – are to be used to finance the corporate and household sectors and not to increase the distribution of dividends or make share buybacks for the purpose of remunerating shareholders.

In addition, the EBA declared that:

- banks should revert to their competent Authorities in case they consider themselves legally required to pay-out dividends or make share buybacks (or perform other activities that imply the distribution of dividends);

- capital distributions within a banking group should serve the need to support the local and the broader European economies, as well as to ensure the proper functioning of the Single Market in this time of crisis;

- competent Authorities should ask banks to review their remuneration policies, practices and awards to ensure that they are consistent with and promote sound and effective risk management also reflecting

[2] EBA clarifies that when exercising this flexibility, competent authorities should consider the requirement for those institutions with securities issuances traded in a regulated market to publish their Pillar 3 reports "in conjunction with" the date of publication of their financial statements, that is, on the same date or as soon as possible thereinafter. In this regard, competent authorities should take into account the expectations set by ESMA in the public statement published on 27 March 20204 in respect of need for flexibility when supervising compliance with the deadlines set out in the Transparency Directive for the publication by issuers of whose securities are admitted to trading on regulated markets of their annual and half-yearly financial report.
Similarly, competent authorities should consider similar flexibility when assessing the compliance of the deadlines set in accordance with Article 106 CRD for those institutions preparing their financial statements according to their national accounting law and that are not under the scope of the Transparency Directive.

the current economic situation. Remuneration, in particular its variable portion, should be set at a conservative level and a larger part of the variable remuneration could be deferred for a longer period and a larger proportion could be paid out in equity instruments, in order to achieve an appropriate alignment with risks stemming from the Covid-19 pandemic.

Actions to mitigate financial crime risks

The EBA clarified that, in order to preserve the effectiveness and stability of the EU's financial system, it is essential for credit and financial institutions to continue to put in place and maintain effective systems and controls to ensure that the EU's financial system is not abused for money laundering or terrorist financing (ML/TF) purposes.

The EBA called on competent Authorities to support credit and financial institutions' ongoing AML/CFT efforts by:

- making clear that financial crime remains unacceptable;

- continuing to share information on emerging ML/TF risks and setting clear expectations of the steps credit and financial institutions should take to mitigate those risks;

- considering how to adapt the use of their supervisory tools temporarily to ensure ongoing compliance by credit and financial institutions with their AML/CFT obligations.

a. New and emerging ML/TF risks

Experience from past crises suggests that in many cases, illicit finance will continue to flow and new techniques and channels of laundering money are likely to emerge in the current context. Therefore, EBA urgeed competent Authorities to:

- work closely with credit and other financial institutions, Financial Intelligence Units (FIU) and law enforcement Authorities to identify, and raise awareness of, new ML/TF typologies;

- ensure that credit and other financial institutions remain alert to new ML/TF techniques and, where necessary, update their ML/TF risk assessments accordingly (e.g. financial products that become less attractive for ML purposes due to diminishing returns, or ML techniques that give rise to an increased risk of detection, such as early repayment of loans);

- remind credit and other financial institutions to continue monitoring transactions and pay particular attention to any unusual or suspicious patterns in customers' behavior and financial flows. Credit and other financial institutions should in particular take risk-sensitive measures to establish the legitimate origin of unexpected financial flows stemming from customers in sectors that are known to have been impacted by the economic downturn and Covid-19 mitigation measures (e.g. cash-intensive businesses in the retail sector, companies involved in international trade, any type of shell companies in sectors facing the economic downturn which will keep a similar volume of financial flows in the absence of real economic activity). The ESAs' Guidelines on ML/TF risk factors and simplified and enhanced customer due diligence have further information on these points;

- remind credit and other financial institutions to continue to report suspicions of ML/TF to the relevant FIU.

b. Adjusting AML/CFT supervision

The EBA declared that the current situation may require temporary adjustments in supervisory activity and potentially, an adjustment of supervisory priorities and plans to ensure that AML/CFT supervision remains effective.

The EBA therefore called on competent Authorities to consider making full use of the flexibility embedded in the EU's AML/CFT framework and to plan supervisory activities in an effective as well as pragmatic and risk-sensitive way. This may entail, for example, a temporary postponement of non-essential onsite inspections on a case-by case basis even after current restrictions on movement have been lifted, a move towards virtual meetings and inspections where appropriate, or an extension of submission dates for AML/CFT questionnaires. Competent Authorities should refer to the ESAs' Guidelines on Risk Based AML/CFT Supervision for additional information.

For further information, please reach out to your usual Chiomenti contact.