

EU Insight: COVID-19 (Coronavirus) – Regulatory Measures and Announcements

In response to the Coronavirus crisis, the European Central Bank (ECB), the European Banking Authority (EBA) and the European Securities and Markets Authority (ESMA) issued numerous statements and clarifications aiming to relieve the (regulatory) burden on banks and other financial institutions so that they can focus on the operational maintenance of their business operations, in particular the provision of credits to both the real economy and consumers.

1. ECB publications

All ECB statements are comprised in a FAQ tool on the ECB [website](#). Important publications of the ECB are:

- Updated [recommendations](#) to banks on **dividend payments**. In order to strengthen banks' ability to absorb losses and support the provision of credits to households, small businesses and companies during the Coronavirus pandemic, banks should not pay dividends for the financial years 2019 and 2020 at least until 1 October 2020. No share buybacks to compensate shareholders are to be carried out either. Dividends already paid are not to be reclaimed. This is to ensure that the banks' capital resources are preserved and that they can be used primarily for the provision of credits. Shareholder interests are of secondary importance.
- The EU-wide **bank stress test** planned for 2020 has been postponed to 2021. Stress tests represent a high organisational effort and require personnel resources. In the current situation, all resources of banks should be preserved as far as possible so that they are available for operational business.
- To meet the **capital requirements** of the Pillar 2 Requirements, institutions may use capital instruments that do not qualify as Common Equity Tier 1 (CET1), e.g. Additional Tier 1 (AT1) or Tier 2 (T2) capital. This was originally only to come into force with the revision of the Fifth Capital Adequacy Directive in January 2021 and will provide more flexibility to banks on how to meet capital requirements in an extremely stressed market surrounding. Also, institutions may temporarily operate below the capital requirements of the Pillar 2 Guidance, the Capital Conservation Buffer (CCB) and the Countercyclical Capital Buffer (CCyB). The idea is that banks build up capital buffers in good economic times so that they can use them to maintain the provision of credits in times of crisis. More information is available [here](#).

All measures taken by the ECB are aimed at relieving banks of regulatory burdens while continuing to ensure adequate supervision. Given the tight market situation which threatens the existence of large and small enterprises and entrepreneurs, a functioning credit system is crucial.

2. EBA publications

The EBA has provided a [statement](#) on the application of the prudential framework regarding Default, Forbearance and IFRS9 in light of COVID-19 measures:

- Loans that cannot be serviced by debtors as a result of the Coronavirus crisis should not automatically be classified by banks as **defaulted**. Institutions should make use of the possibility to restructure loan agreements and thus enable the debtor to continue to service its credit liabilities in the long term.
- Under the **IFRS9** (International Financial Reporting Standard 9), banks assess whether there is an increased credit risk in relation to the entire term of the product. If a deferral of loans is provided for by law, as for example the German legislator decided in the course of the Coronavirus crisis, this should not automatically lead to the loans being valued with a higher credit risk. Rather, the institutions should examine individually whether a long-term deterioration in repayment ability can be assumed.

A sound identification of credit impaired assets on banks' balance sheets must be ensured at all times. The consistency and comparability of risk indicators is a precondition for banks, supervisory authorities and the general public to monitor the effects of the current crisis. In order to be able to properly reflect the actual credit risk in their balance sheets, institutions should therefore not make use of automatic mechanisms when assessing whether there is an increased credit risk.

3. ESMA publications

With regard to the provision of investment services, ESMA has published, inter alia,

- A [statement](#) to clarify issues regarding the MiFID II requirements on **taping calls**. MiFID II states that mandatory records to be kept by firms include recording of telephone conversations relating to transactions concluded when dealing on own account and the provision of client order services that relate to the reception, transmission and execution of orders. Such requirements have also to be met when staff is using mobile devices. If, under the exceptional scenario of the Coronavirus crisis, firms are unable to record voice communications, ESMA expects them to consider what alternative steps they could take to mitigate the risks related to the lack of recording. This could include the use of written

minutes of telephone conversations when providing services to clients, subject to prior information being provided to the client of the impossibility to record the call. In these scenarios, firms should also ensure enhanced monitoring and ex-post review of relevant orders and transactions.

- ESMA also published a [statement](#) on the postponement of the reporting obligations related to securities financing transactions under the Securities Financing Transactions Regulation (SFTR). The **SFTR** mandates reporting of all Securities Financing Transactions (SFTs) to a registered Trade Repository (TR). TRs centrally collect and maintain the records of SFTs and play a central role in enhancing the transparency of SFTs markets and reducing risks to financial stability. The SFTR envisages a phased-in approach to the reporting obligation (from April to October 2020). In light of the Coronavirus crisis and the limited time left ahead of the SFT reporting obligation start date, ESMA therefore expects national competent authorities not to prioritise their supervisory actions towards SFTR reporting obligations.
- ESMA also issued the [statement](#) to clarify issues regarding the publication by execution venues and firms of the general best execution reports required under RTS 27 and 28 of **MiFID II**. Due to the Coronavirus crisis, execution venues and firms encounter difficulties in preparing these reports in time. ESMA encourages national competent authorities not to prioritise supervisory action against execution venues and firms in respect of the deadlines of the general best execution reports.

In the area of investment services, which are often (also) provided by banks, ESMA aims to ensure that institutions can concentrate on their operational business and that, for example, deadlines for regulatory reporting are handled flexibly. In addition, ESMA adapts to the increased provision of financial services from staff working remotely and interprets supervisory requirements accordingly so that business operations can be maintained.

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