



FAQ COVID-19

Updated 30 July 2020

FAQ Covid-19 / 30 July 2020

Acronyms

B – Banks
PI/EMI – Payment institutions/ electronic money institutions
IF – Investment firms
PFS SP – Specialised PFS
PFS SU – Support PFS
UCI – Undertakings for collective investment
SIF – Specialised investment funds
SICAR – Investment companies in risk capital
AIFM - Alternative investment fund managers
ManCo – Management companies
PF – Pension funds
SU – Securitisation undertakings
MAF – Securities markets
AUD – Audit profession

Update information

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Date	Question	B	PI/EMI	IF	PFS SP	PFS SU	UCI	SIF	SICAR	AIFM	ManCo	PF	SU	MAF	AUD
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Question 20.a) Can the remuneration benchmarking exercise of the European Banking Authority (EBA) be postponed?

Published on 19 June 2020 - Applies to: Banks, Investment firms

The EBA decided to postpone the data collection for its remuneration benchmarking exercise by three months. The institutions concerned by this exercise are the same as last year. The CSSF will soon send a mail inviting them to provide the relevant data by 30 September at the latest.

Question 20.b) Can the remuneration benchmarking exercise at national level be postponed?

Published on 19 June 2020 - Applies to: Banks, Investment firms

The CSSF decided to postpone the data collection for the remuneration benchmarking exercise at national level by one month. The institutions concerned by this exercise are the same as last year, except for the institutions that have been newly authorised in 2019 which would be included in the scope of the exercise. The CSSF will soon send a mail inviting all the institutions concerned to provide the relevant data by 30 October at the latest.

QUESTION 19. Can the data collection exercise regarding high earners by the European Banking Authority (EBA) be postponed?

Published on 19 June 2020 - Applies to: Banks, Investment firms

The EBA decided to postpone its data collection exercise regarding high earners by three months. The institutions concerned by this exercise are the same as last year, except for the institutions that have been newly authorised in 2019 which would be included in the scope of the exercise. The CSSF will soon send a mail inviting all the institutions concerned to provide the relevant data by 30 September at the latest.

QUESTION 18. Can the deadlines for the submission of the closing documents of specialised PFS be postponed?

Published on 13 May 2020 – Applies to: Specialised PFS

The CSSF decided that the deadline extensions for the submission of usual closing documents may, where



appropriate, be exceptionally granted upon reasoned request to be sent by email to the usual contact person at the CSSF. Nevertheless, submission on time is encouraged, where the submission can be made within the usual time limits without compromising the quality of the submitted documents and in line with the health rules to contain the spread of Covid-19.

As regards the management letter and the audit report of the *réviseur d'entreprises agréé*, prepared pursuant to CSSF Regulation N° 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing, an extension of up to three months following the initial date of the ordinary general meeting is possible.

QUESTION 17. What is the prudential treatment of payment moratoria?

Published on 29 April 2020 – Applies to: Banks, specialised PFS

Following the [EBA publication on 25 March](#) and [2 April 2020 \(EBA/GL/2020/02\)](#) on payment moratoria in a COVID-19 context, the CSSF would hereby summarise the main aspects related to the prudential treatment of private (also called non-legislative) moratoria.

1. What is the general prudential treatment of a moratorium and how should it be applied to COVID-19 private industry-wide moratoria?

1.1. General treatment foreseen by the Capital Requirements Regulation (CRR)

A moratorium generally triggers an assessment of forbearance as defined in Article 47b CRR. If the forbearance measures qualify as distressed restructuring, i.e. they result in a diminished financial obligation, the restructuring would correspond to an unlikelihood-to-pay (UTP) event that triggers a classification in default according to Article 178(3)(d) CRR and in line with paragraph 49 of the EBA Guidelines on the definition of default (EBA/GL/2016/07)¹.

The counting of the days past due for assessing default status according to Article 178(1)(b) CRR² is based

¹ Note that, according to paragraph 51 of the same EBA GL, default is triggered once the distressed restructuring test based on the change in NPV is larger than 1% or a percentage below 1% where the institution has set a lower internal threshold.

² Taking into account the materiality thresholds per Article 178(2)(d) CRR, supplemented by Commission Delegated Regulation (EU) 2018/171 on the materiality

on the revised schedule of payments resulting from the application of the moratorium, in line with paragraph 16 of the EBA Guidelines on the application of the definition of default.

These treatments are applicable to all moratoria with the exception described under 1.2.

1.2. Dedicated treatment allowed under certain COVID-19 private industry-wide moratoria

Institutions may classify as not forborne and performing the exposures that are in scope of “eligible” industry-wide private moratoria which have been set up in response to the COVID-19 pandemic (see 2.).

The general principles of sound and prudent banking practices (see 3.) continue to apply whatever moratorium is put in place.

2. How can institutions invoke the dedicated prudential treatment related to the COVID-19 private industry-wide moratoria?

In order to be eligible for the dedicated treatment described under 1.2., private moratoria must comply with the EBA GL/2020/02, in particular with paragraph 10. According to that paragraph, such moratoria must be based on a private initiative agreed or coordinated within the banking industry or a material part thereof, and applied to a large group of obligors predefined on the basis of broad criteria.

Institutions that would like to benefit from the dedicated treatment under 1.2, have to become party to an eligible moratorium initiative. In that case, all obligors in scope of the moratorium can request the application of the moratorium and the institution is obliged to grant the moratorium.

A private moratorium initiated by a single institution is not deemed sufficiently broad, therefore not qualifying as an eligible moratorium in the sense of EBA GL/2020/02. In Luxembourg, as of 16 April 2020, an eligible industry-wide private moratorium initiative has been set up under the coordination of the Association des Banques et Banquiers Luxembourgeois (ABBL). It broadly applies to loans to corporate clients, SMEs and individual professionals established in Luxembourg.

Where moratoria are implemented in Luxembourg with the view to benefit from the treatment under 1.2, CSSF considers that such moratoria may only cover performing obligors who did not experience payment

threshold for credit obligations past due as further specified in Article 14 of Regulation CSSF 18-03.



difficulties before the application of the moratorium. In addition, it follows from paragraph 11 of EBA GL/2020/02, that exposures that had already been subject to forbearance measures at the moment of the application of such moratoria cannot be reclassified (upgraded) as a result of applying a moratorium.

Institutions that adhere to an eligible moratorium shall comply with the requirements on documentation and notification in paragraphs 17 and 19 of the EBA GL/2020/02.

3. Are the exposures under the scope of the discussed private moratoria exempt from other usual prudential requirements?

The CSSF recalls that institutions must continue to identify those situations where obligors face long-term financial difficulties and classify their exposures in accordance with the existing regulation on forbore and defaulted exposures. Thus, institutions shall carefully monitor and assess the credit quality of exposures benefiting from moratoria, including those eligible for the dedicated treatment under 1.2., and identify any situation in which obligors become unlikely to pay (in line with the CRR definition of default). Institutions should continue to apply sound and robust policies for the regular reviews of indications of UTP considering the most up-to-date schedule of payments. It is expected that institutions will apply these policies in a risk-based manner, paying particular attention to and prioritising the assessment of those obligors who are most likely to experience payment difficulties. Likewise, institutions must continue to count the days past due of their exposures according to the restructured schedule of payments in line with paragraphs 16 to 18 of the EBA GL/2016/07.

Institutions shall ensure that all risks remain identified and measured in a true and accurate manner and that capital adequacy is maintained.

QUESTION 16.a) Do passive investment breaches (i.e. a breach beyond the control of the UCITS) by a UCITS of the global exposure limit of Article 42(3) of the 2010 Law (and more generally of investment restrictions applicable to UCI) have to be notified to the CSSF?

Published on 16 April 2020 – Applies to: UCITS

No.

QUESTION 16.b) Can breaches of the VaR limit (either the maximum limit laid down in regulation (20% for absolute VaR or 200% for relative VaR as the case may be) or any other more restrictive internal limit set below the above regulatory thresholds, as laid down in the sales prospectus) by UCITS as a result of the increase of volatility in financial markets (in the absence of any new positions increasing the risk of the portfolio) be considered as passive breaches?

Published on 16 April 2020 – Applies to: UCITS

Yes.

QUESTION 16.c) What are the expectations of the CSSF in case of a passive breach (i.e. beyond the control of the UCITS, e.g. increase of volatility in the financial markets) of the regulatory VaR limit or the internal VaR limit laid down in the prospectus?

Published on 16 April 2020 – Applies to: UCITS

Investment fund managers should take appropriate steps to meet the limit within a reasonable time period, thereby taking due account of the prevailing market conditions and of the best interests of investors. For that purpose, they have to closely monitor the situation of the UCITS as well as the defined remediation plan.

Upon occurrence of a passive breach, any additional risk exposure taken by the UCITS increasing the overall level of risk of the portfolio (i.e. VaR usage increasing) should be viewed as an active investment breach.

The passive breach should however not preclude the UCITS from continuing to manage the fund (for example, concluding investments following subscriptions in the fund). If a new position does not increase the level of risk of the UCITS (i.e. VaR consumption is not increasing), it should not be viewed as an active breach.

QUESTION 16.d) What information do UCITS have to communicate to the CSSF (opc.prud.sp@cssf.lu) in relation to an active breach of the VaR limit (whether the maximum limit laid down in regulation – 20% for absolute VaR or 200% for relative VaR - or the internal limit, below the above regulatory thresholds, as laid down in the sales prospectus)?

Published on 16 April 2020 – Applies to: UCITS

The notification to the CSSF should include at least the following information:

- the legal name of the notifying person/entity and the corresponding CSSF identifier of the entity;

- the legal name of the fund and the sub-fund, and the corresponding CSSF code of the fund and the sub-fund;
- the VaR computation method (absolute VaR or relative VaR);
- the internal VaR limit (if prospectus mentioned a limit below the regulatory limit);
- the VaR limit consumption;
- the date when the active breach occurred and the date when the breach ended;
- the reason(s) of the breach (i.e. new position, redemptions which miss to be managed by the fund manager, etc...);

If needed, the CSSF may ask additional explanations.

For these notifications investment fund managers do not have to use the standard 02/77 template set out under the following link: <https://cssf.lu/en/document/notification-form-in-accordance-with-circular-cssf-02-77/>

QUESTION 15. What is the CSSF's position concerning the deadlines applicable under the UCITS Directive and under the AIFMD for annual and half-yearly reports?

Published on 14 April 2020 – Applies to: UCI, SIFs, SICARS, management companies, alternative investment fund managers

The CSSF intends to comply with the public statement

https://www.esma.europa.eu/sites/default/files/library/esma34-45-896_public_statement_on_publication_deadlines_in_fund_management_area.pdf published on 9 April 2020 by the European Securities and Markets Authority (ESMA).

Consequently,

1. The investment fund managers which anticipate that the annual and half-yearly reports will be published beyond the regulatory deadlines, must inform the CSSF promptly thereof, only by email and solely at the following address opc@cssf.lu, with an indication of the reasons for the delay and, to the extent possible, the estimated date of publication.

2. They must also inform the investors as soon as practicable of this delay, the reasons for such a delay and, to the extent possible, the estimated date of publication.

QUESTION 14. What is the flexibility offered by IFRS 9 in order to mitigate volatility in the banks' regulatory capital, financial statements and reporting of the banks regarding the COVID-19 pandemic?

Published on 14 April 2020 – Applies to: Banks

This FAQ describes the flexibility allowed by the IFRS 9 accounting framework to address the temporal impact of adverse economic conditions linked to the COVID-19 pandemic. It reflects the statements and guidance issued by European and international bodies³ and covers two points:

- 1) "Procyclicality"; and
- 2) Transitional arrangements.

While banks are encouraged to use such flexibility when preparing their accounting and risk statements, they are required to **continue to apply sound and prudent risk management**, in particular with respect to the potential crystallisation of COVID-19 related risks. Sound and prudent risk management requires that the deterioration of borrowers' creditworthiness (beyond COVID-19 related, purely short term transitional impacts) is fully reflected in the financial situation and the risk and regulatory metrics of the banks. Furthermore, it cannot be excluded that exposures, which are given the short term flexible treatment outlined below, bring about losses beyond the short term horizon. Therefore, banks are required to monitor key financial statements (forbearance and non performing exposures, expected credit loss) and regulatory metrics (solvency) under the assumption that the flexible treatment for such exposures is no longer warranted.

1) How should banks address the procyclicality in IFRS 9?

"IFRS 9 is based on a set of principles that, by nature are not mechanistic and require the application of a

³ EBA: <https://eba.europa.eu/eba-provides-clarity-banks-consumers-application-prudential-framework-light-covid-19-measures>

ESMA: https://www.esma.europa.eu/sites/default/files/library/esma32-63-951_statement_on_ifrs_9_implications_of_covid-19_related_support_measures.pdf

ECB: <https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr200320~4cddbcbf466.en.html>

IASB: <https://cdn.ifrs.org/-/media/feature/supporting-implementation/ifrs-9/ifrs-9-ecl-and-coronavirus.pdf>



*certain degree of judgment*⁴. The following is a list of suggestions that banks should consider in order to reduce undue procyclicality in IFRS 9 resulting from transitional COVID-19 impacts.

When assessing the Significant Increase in Credit Risk (“SICR”)

- The public and private economic support programs related to COVID-19 aim at minimizing the short term risk of default on a financial instrument. Banks should not consider the use of such programs as an automatic trigger of significant increase in credit risk (SICR), i.e. requiring a transfer from stage 1 to stage 2, but should assess the financial instruments on a case-by-case basis.
- For the recognition of SICR, banks should distinguish between obligors for which the credit standing would not be significantly affected by the current situation in the long term from those that would be unlikely to restore their creditworthiness.
- As a reminder, in IFRS 9, the value of collateral or the occurrence of any guarantee (e.g. public guarantees on banks’ exposures) during the lifetime of a financial asset does not affect the SICR assessment.
- Pursuant to paragraph B5.5.20, the banks can rebut the 30 days past due presumption for the SICR assessment as soon as the banks have reasonable and supportable information available that demonstrates that the 30 days past due criterion does not represent a significant increase in the credit risk. Such a rebuttal shall be carefully examined by banks on a case-by-case basis, giving due consideration to the COVID-19 context including associated economic support and relief measures.

When estimating the Expected Credit Loss (“ECL”)

The CSSF endorses the European Central Bank’s “Guidance on the use of forecasts to estimate the ECL”⁵. The guidance offers ways to avoid excessively procyclical assumptions in the IFRS 9 models to determine provisions when estimating the ECL. This guidance relates in particular to the following considerations.

- Collective assessment of the SICR: When banks apply macroeconomic forecasts and other information to assess SICR on a collective level, the outcome might indicate that the portfolio has suffered a SICR as a

⁴ EBA: “Statement on the application of the prudential framework regarding Default, Forbearance and IFRS9 in light of COVID19 measures” of 25 March 2020

⁵ ECB letter to SIs:

https://www.bankingsupervision.europa.eu/press/letterstobanks/shared/pdf/2020/ssm.2020_letter_IFRS_9_in_the_context_of_the_coronavirus_COVID-19_pandemic.en.pdf?b543f9408a8480e04748a3b0185d8cf3

whole even if this increase will, most likely, not affect all clients equally. Banks should consider a top-down approach to stage transfers (IFRS 9.B5.5.6 and .IE39), and in the context of that approach, recognise lifetime expected credit losses on a portion of the financial assets for which credit risk is deemed to have increased significantly without the need to identify which individual financial instruments have suffered a SICR.

- Use of macroeconomic forecasts in scenarios to include forward looking information:

When banks apply scenarios to include forward looking information in ECL estimates, they may use macroeconomic forecasts for specific years and long-term macroeconomic forecasts. In the current COVID-19 context, the forecasts should “give a greater weight to long-term stable outlook as evidenced by past experience and take into account the relief measures granted by public authorities”⁶. Forecasts beyond the horizon of next two calendar years are preferable as they are less subject to the current high range of uncertainty.

The historical information used in long-term forecasts should cover at least one representative full economic cycle and be otherwise adjusted to avoid biases, e.g. availability bias focusing only on recent information.

Where the banks use forecasts for specific years, they should adjust them to reflect all relevant COVID-19 related information. Such information should include the factors that adversely impact the economy, such as the lockdowns and the severe social distancing restrictions imposed on the various economies, as well as the supporting factors such as the substantive public support measures credibly announced and implemented across countries.

2) Is the application of the IFRS 9 transitional arrangements necessary and when should a bank apply for it?

The CSSF highlights the possibility for banks to use the transitional arrangement related to the IFRS 9 implementation as set out in Article 473a of the Capital Requirements Regulation and suggests such practice even when banks have decided not to use it at the initial application of IFRS 9. Banks that plan to apply for the transitional arrangements, shall request a prior authorization from the CSSF.

⁶ ECB recommendation: https://www.bankingsupervision.europa.eu/press/pr/date/2020/html/ssm.pr200320_FAQs-a4ac38e3ef.en.html



The transitional arrangement allows banks to add back to CET1 part of the ECL recognised in accounting due to the IFRS 9 volatility from 2020 until the end of the foreseen transitional period.

QUESTION 13. What is the CSSF policy stance as regards banks' distribution policies aimed at remunerating shareholders, as well as on variable remuneration in the COVID-19 context?

Updated on 30 July 2020 – Applies to: Banks (that are not Significant Institutions under the SSM)

The CSSF intends to comply with [the ECB Recommendation on dividend distributions during the COVID-19 pandemic \(ECB/2020/35\) published on 27 July 2020](#) (hereinafter the "ECB Recommendation") which repeals Recommendation ECB/2020/19 and with [the ESRB Recommendation on restriction of distributions during the COVID-19 pandemic \(ESRB/2020/7\) published on 27 May 2020](#) (hereinafter the "ESRB Recommendation"). The CSSF also endorses [the EBA "Statement on dividends distribution, share buybacks and variable remuneration" dated 31 March 2020](#) (hereafter the "EBA Statement") and remains committed to the aim of ensuring a globally coordinated response to the COVID-19 pandemic under the umbrella of the Basel Committee on Banking Supervision and the Financial Stability Board.

Recommendation on dividend distributions, share buy-backs and variable remuneration:

1. The management bodies of Luxembourg credit institutions⁷ shall refrain from taking decisions on distributions that would constrain their bank's capacity to meet the COVID-19 induced needs for liquidity and credit of the customers in the markets they serve and/or would have the effect of reducing the quantity or quality of the bank's own funds or reducing their loss absorbing capacity for the duration of the COVID-19 related crisis.

Decisions under the preceding paragraph include amongst others paying out or irrevocably committing to pay out dividends, buying-back shares or paying or committing to pay out variable remuneration for the performance years 2019 and 2020. The term 'dividend' as used here refers to any type of cash pay-out in connection with Common Equity Tier 1 capital which has the effect of reducing the quantity or quality of own funds and does not include stock dividends. Banks that have already submitted dividend distribution

⁷ For the significant supervised entities and significant supervised groups, the approach of the Single Supervisory Mechanism (SSM) applies.



proposals for their upcoming general shareholders' meeting are expected to amend such proposals in line with the ECB Recommendation and the ESRB Recommendation. In line with the ECB Recommendation and the ESRB Recommendation, the CSSF does not require credit institutions to retroactively invalidate dividends already paid out for the financial year 2019 or any decision on variable remuneration already taken and validated by their management body.

2. In its Statement, the EBA "considers that ensuring the efficient and prudent allocation of capital within banking groups is crucial". "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." This statement holds equally true at the level of the global financial system.

While the recommendation is primarily addressed to banks at the highest level of consolidation, the CSSF expects that the management bodies of Luxembourg banking subsidiaries engage with their shareholders and subsidiaries so as to ensure that their distribution policy is compatible with the broad objectives framed in the preceding paragraphs.

3. In line with the ECB and ESRB Recommendations, this recommendation applies until 1 January 2021.

4. Banks that encounter difficulties to comply with points 1. to 3. shall without delay explain the underlying reasons to CSSF.

Luxembourg credit institutions that intend to pay out dividends or undertake an irrevocable commitment to pay out dividends to their parent which is established outside the euro-zone (SSM area) should contact the CSSF to determine whether such pay-outs would be appropriate.

5. Given the temporary nature of this measure, the CSSF will further evaluate the economic situation and, together with other relevant authorities, consider whether further suspension of payouts is advisable after 1 January 2021.

A Circular letter informing on the above CSSF recommendation has been sent to credit institutions under direct CSSF supervision and is also published on the CSSF website (<https://www.cssf.lu/en/document/circular-letter-300720/>).

QUESTION 12. Can the deadlines for the reports to be submitted by payment institutions and electronic money institutions be extended?

Published on 30 March 2020 – Applies to: Payment institutions/electronic money institutions

The CSSF has decided that the deadlines for the submission of the documents listed below may, where necessary, be exceptionally extended, upon reasoned request to be sent by email to the usual contact person at the CSSF. Nevertheless, submission on time is encouraged, where the submission can be made within the usual time limits without compromising the quality of the reporting and in line with the health rules to contain the spread of Covid-19. The list below will, where necessary, be periodically updated.

- The reports of the internal control functions to be submitted on 31 March;
- The reports of the management on the state of the internal control to be submitted on 31 March;
- The reports on the assessment of major operational and security risks to be submitted on 31 March;
- The fraud data reporting for the year 2019 to be submitted on 30 April.

With regard to the regulatory reporting, the CSSF published, in its communiqué of 23 March 2020, its approach which consists in refraining from applying enforcement measures in the case of deadlines justified by operational difficulties related to the current context of Covid-19. To this end, the CSSF must be informed before the expiry of the submission deadline laid down in the regulations.

With regard to long form reports, please refer to the communiqué of 25 March 2020 which provides for the possibility to extend the submission deadline up to four months following the initial date of the ordinary general meeting.

QUESTION 11. Can the deadlines for the reports to be submitted by the investment firms be extended?

Published on 30 March 2020 – Applies to: Investment firms

The CSSF has decided that the deadlines for the submission of the documents listed below may, where necessary, be exceptionally extended, upon reasoned request to be sent by email to the usual contact person at the CSSF. Nevertheless, submission on time is encouraged, where the submission can be made within the usual time limits without compromising the quality of the reporting and in line with the health rules to contain the spread of Covid-19. The list below will, where necessary, be periodically updated.

- The audit report and the audited annual accounts to be submitted one month after the ordinary general meeting;
- The minutes and the attendance list of the ordinary general meeting to be submitted one month after the ordinary general meeting;
- The management report to be submitted one month after the ordinary general meeting;
- The statement of compliance with Circular CSSF 12/552 to be submitted one month after the ordinary general meeting;
- The reports of the internal control functions to be submitted one month after the ordinary general meeting;
- The ICAAP report to be submitted one month after the ordinary general meeting;
- The compliance report on the assessment of knowledge and competence in accordance with the ESMA guidelines to be submitted one month after the ordinary general meeting;
- The annual reports or the audited financial statements of the direct and indirect shareholders to be submitted one month after the ordinary general meeting;
- The annual reports on the activities and business volumes of the representative offices to be submitted one month after the ordinary general meeting;
- The report of the *réviseur d'entreprises* (statutory auditor) on compliance with the professional obligations as regards the fight against money laundering and terrorist financing (concerns only Luxembourg branches of investment firms having their registered office in or outside the European Union) to be submitted six months after the closing date;
- The report of the *réviseur d'entreprises* on the conduct of business under MiFID II (concerns only Luxembourg branches of investment firms having their registered office in or outside the European Union) to be submitted six months after the closing date;
- The recovery plans for which the submission dates are set individually in feedback letters.

With regard to the regulatory reporting, the CSSF published, in its communiqué of 23 March 2020, its approach which consists in refraining from applying enforcement measures in the case of deadlines justified

by operational difficulties related to the current context of Covid-19. To this end, the CSSF must be informed before the expiry of the submission deadline laid down in the regulations.

With regard to long form reports, please refer to the communiqué of 25 March 2020 which provides for the possibility to extend the submission deadline up to four months following the initial date of the ordinary general meeting.

QUESTION 10. Can the deadlines for the reports to be submitted by the support PFS be extended?

Published on 30 March 2020 – Applies to: Support PFS

The CSSF has decided that the deadlines for the submission of the documents listed below may, where necessary, be exceptionally extended, upon reasoned request to be sent by email to the usual contact person at the CSSF. Nevertheless, submission on time is encouraged, where the submission can be made within the usual time limits without compromising the quality of the reporting and in line with the health rules to contain the spread of Covid-19. The list below will, where necessary, be periodically updated.

- The documents relating to the accounting closing date to be submitted to the CSSF in accordance with Circular CSSF 12/544 within seven months after the end of the financial year;
- The management letter of the *réviseur d'entreprises* (statutory auditor) to be submitted one month after the general meeting.

With regard to the regulatory reporting, the CSSF published, in its communiqué of 23 March 2020, its approach which consists in refraining from applying enforcement measures in the case of deadlines justified by operational difficulties related to the current context of Covid-19. To this end, the CSSF must be informed before the expiry of the submission deadline laid down in the regulations.

As regards the Risk Assessment Reports (RARs) and Descriptive Reports (DRs) (including the specific reports relating to internal control), the CSSF has decided that the deadline for the submission of these reports may, where necessary, be exceptionally extended up to four months following the initial date of the annual general meeting of the entity, excluding the deadlines granted for such annual general meetings by the government through exceptional measures. Both deadlines shall not be applied cumulatively. Nevertheless, submission on time is encouraged, where the submission can be made within the usual time limits without compromising the quality of the reporting.

QUESTION 9. What are the purpose and the main elements covered in the publications of the EBA dated 25 March 2020 in the context of COVID-19?

Updated on 14 April 2020 – Applies to: Banks, payment institutions/electronic money institutions, specialised PFS

The EBA has published *two statements and a note in the context of regulatory actions to mitigate the impact of COVID-19 on the EU banking sector.*

Statement on the application of the prudential framework regarding Default, Forbearance and IFRS9 in light of COVID-19 measures

This statement clarifies how public and private moratoria should be taken into account by banks when assessing whether an exposure is in default or forborne and when performing the assessment of significant increase in credit risk under IFRS9. The statement emphasizes that moratoria will not trigger an automatic classification in default or forborne status.

The FAQ 14 discusses in detail the flexibility allowed by the IFRS 9 accounting framework to address the temporary impact of adverse economic conditions linked to the COVID-19 pandemic.

Statement on consumer and payment issues in light of COVID-19

This statement emphasises that even more in times of crisis consumer protection remains a priority and therefore calls on all lenders to act in the interest of consumers. The statement further highlights the importance of orderly payments services during this period and calls on payments services providers (PSPs) to facilitate consumers' ability to make payments without the need for physical contact.

To support issuing and acquiring payment service providers' efforts to focus on their customers, their obligation to report to NCAs by 31 March 2020 on their readiness to meet the strong customer authentication requirements for e-commerce card-based transactions is removed.

Further actions to support banks' focus on key operations: postponed EBA activities

In order to support banks' focus on key operations and to limit non-essential requests in the short-term, the EBA has extended deadlines with respect to certain ongoing activities such as public consultations, data collections or questionnaires.

QUESTION 8. Can the deadlines for the prudential reporting tables to be submitted by specialised PFS be extended?

Published on 26 March 2020 – Applies to: Specialised PFS

The CSSF has decided that delays for the submission of the monthly/quarterly prudential reporting tables to be submitted by specialised PFS may, where necessary, be exceptionally granted, upon reasoned request, to be sent by email to the usual contact person at the CSSF. Nevertheless, submission on time is encouraged, where the submission can be made within the usual time limits without compromising the quality of the content of the prudential reporting and in line with the health rules to contain the spread of Covid-19.

QUESTION 7. Can the deadlines for the reports to be submitted by UCIs, SIFs, SICARs, investment fund managers, pension funds and securitisation undertakings be extended?

Updated on 13 May 2020 – Applies to: UCIs, SIFs, SICARs, investment fund managers, pension funds and securitisation undertakings

The deadlines for the documents listed below may be extended provided that the CSSF is informed thereof. The communication to the CSSF must only be made by email and exclusively to the address opc@cssf.lu. Nevertheless, submission on time is encouraged, where the submission can be made within the usual time limits without compromising the quality of the reporting and in line with the health rules to contain the spread of Covid-19.

- The annual reporting O 4.1./ O.4.2 (UCI) on the basis of Circular IML 97/136 to be submitted to the CSSF within four months (for UCITS)/six months (for non-UCITS) as from the reference date - this deadline may be extended until 30 June 2020;
- The monthly reporting O 1.2. (UCIs with formal guarantee) to be submitted to the CSSF within 10 days following the end of the month - this deadline may be extended until 30 June 2020;
- The quarterly reporting G.2.1. (SIAG/FIAAG) on the basis of Circular CSSF 18/698 to be submitted to the CSSF within 20 calendar days following the end of the preceding month - this deadline may be extended until 31 August 2020;
- The quarterly reporting G.2.1. (management companies subject to Chapters 15 and 16, AIFMs) on the basis of Circular CSSF 15/633 to be submitted to the CSSF within 20 calendar days following the end of

the preceding month - this deadline may be extended to 40 calendar days following the end of the preceding month;

- The management letter to be communicated to the CSSF on the basis of Circulars IML 91/75 and CSSF 19/708 within four months (for UCITS)/six months (for non-UCITS) after the closing date - an additional period of three months may be granted;
- As regards the UCI long form reports to be communicated to the CSSF on the basis of Circular CSSF 02/81 within four months (for UCITS)/six months (for non-UCITS) after the closing date, a period of four months after the ordinary general meeting for SICAVs, as stated in the official CSSF communiqué of 25 March 2020 - "Long form reports", or a period of four months after the regulatory deadline for FCPs, may be granted;
- The semi-annual reporting K3.1 (SICAR) on the basis of Circular CSSF 08/376 to be submitted within 45 calendar days following the reference date - this reporting may be suspended until further notice;
- The semi-annual reporting URR (UCITS Risk Reporting) to be submitted within 45 calendar days following the reference date - the CSSF will notify of a possible postponement in due time;
- The closing documents to be provided annually by IFMs pursuant to sub-points (3) to (15) of point (3) of Annex 2 to Circular CSSF 18/698 to be submitted within five months following the closing date of the IFM's financial year - for the IFMs which closed their financial year on 31/12/2019, this deadline may be extended until 31/08/2020; for the IFMs whose financial year closed after 31/12/2019, this deadline may also be extended by three months;
- The management letter to be submitted by IFMs within the month following the ordinary general meeting that approved the annual accounts and at the latest seven months after the closing date of the IFM's financial year - an additional period of one month may be granted;
- The quarterly reporting of authorised AIFMs with the list of managed AIFs - this deadline is extended until 30 June 2020;
- The quarterly reporting to be submitted by pension funds within 20 calendar days following the end of the preceding quarter - this deadline may be extended until 20 July 2020;
- The management letter to be submitted by pension funds within six months following the closing date of the financial year - this deadline is extended until 31 August 2020;

- The actuarial report to be submitted by pension funds within six months following the closing date of the financial year - this deadline may be extended until 30 September 2020;
- The management letter to be submitted by authorised securitisation undertakings within six months following the closing date of the financial year - an additional period of two months may be granted;
- The quarterly reporting VaR & Leverage (UCITS) - this reporting, which is only relevant for a limited number of UCITS that have, in the past, been contacted directly by the CSSF, may be suspended until further notice by sending a notification to the address opc@cssf.lu;
- The monthly reporting Money Market Funds (UCITS/AIF) - this reporting, which is only relevant for a limited number of UCITS/AIFs that have, in the past, been contacted directly by the CSSF, may be suspended until further notice by sending a notification to the address opc@cssf.lu. This reporting must not be confused with the MMF reporting established by Article 37 of MMF Regulation 2017/1131;
- “The reporting Early Warning on large redemptions (UCITS), which is only relevant for a limited number of UCITS that have, in the past, been contacted directly by the CSSF, is suspended until further notice following the introduction of the “IFM Notification – Fund issues/Large redemptions.”⁸

As announced by ESMA in a [statement dated 31 March 2020](#), the submission of reporting files to National Competent Authorities (NCAs) under Article 37 of the Money Market Funds Regulation has been postponed to September 2020. ESMA will publish shortly an amended XML schema (version 1.1) and reporting instructions on its website. The reference period for the first reporting remains however Q1 2020.

Based on this statement and by way of derogation from Circular CSSF 20/736, managers of Luxembourg domiciled MMFs may therefore postpone the submission of the quarterly reportings for Q1 and Q2 2020 to September 2020.

Nevertheless, as the CSSF will implement the amended XML schema as soon as possible, submission of the reportings before the September deadline is encouraged. The CSSF will issue a separate communication once reporting entities may use the amended XML schema to provide the reporting files.

⁸ updated on 13 May 2020



QUESTION 6. Can the deadlines for the reports to be submitted by the banks be extended?

Updated on 8 May 2020 – Applies to: Banks

The CSSF has decided that delays for the submission of the documents listed below may, where necessary, be exceptionally granted, upon reasoned request, to be sent by email to the usual contact person at the CSSF. As regards significant banks, these requests will, if necessary, be dealt with in consultation with the European Central Bank. Nevertheless, submission on time is encouraged, where the submission can be made within the usual time limits without compromising the quality of the reporting and in line with the health rules to contain the spread of Covid-19. The list below will, where necessary, be periodically updated.

- The ICAAP/ILAAP reports to be submitted on 31 March;
- The reports of the internal control functions to be submitted on 31 March;
- The IT risk questionnaire sent to certain banks and to be submitted on 31 March;
- The Annual self-assessment questionnaire on requirements for UCI depositary banks to be submitted by 10 April;
- The reports of the *réviseurs d'entreprises* (statutory auditors) regarding branches of banks having their registered office in the European Union to be submitted on 30 June;
- The reports of the *réviseurs d'entreprises* (statutory auditors) regarding branches of banks having their registered office outside the European Union to be submitted on 30 June;
- The recovery plans for which the submission dates are set individually in feedback letters.

“With regard to the supervisory reporting, the CSSF is following the EBA statement of 31 March 2020 on the postponement of the remittance dates in certain areas of supervisory reporting (i.e. ITS on supervisory reporting and ITS on supervisory benchmarking) that fall between March and end of May 2020. Banks may delay the submission of their supervisory data by one month for remittance dates between March 2020 and end of May 2020. Information on funding plans can be delayed by two months. The postponement of the remittance dates is not applicable for the reporting of the LCR and ALMM templates, as such supervisory information is a priority for monitoring closely institutions’ financial and prudential situation.”⁹

With regard to long form reports, please refer to the communiqué of 25 March 2020 which provides for the

⁹ updated on 8 May 2020



possibility to extend the submission deadline up to four months following the initial date of the ordinary general meeting.

QUESTION 5. Temporary waiver of prior authorisation / notification requirements for cloud-based outsourcing

Published on 23 March 2020 – Applies to: Banks, investment firms, support PFS, specialised PFS, payment institutions/electronic money institutions, UCIs, SIFs, SICARs, alternative investment fund managers, management companies, pension funds and securitisation undertakings

As part of the adaptation of their working environment in response to the Covid-19 situation, supervised entities may opt for cloud-based tools and solutions (e.g. collaborative tools, virtual desktop infrastructure, etc.).

To facilitate a rapid implementation of these solutions, prior authorisation by or notification to the CSSF, as requested in paragraphs 26.b to 26.g of the Circular CSSF 17/654 (as amended by Circular CSSF 19/714) are not required as long as this exceptional situation lasts. A simple communication by email to the CSSF contact agent of the concerned entity is considered sufficient at this stage.

This is without prejudice to the entity's obligation to carry out appropriate due diligence and risk assessment of such cloud outsourcing.

Also, we remind the entities falling under the scope of this circular that those cloud outsourcings, whether they are material or not, must be recorded in the cloud register required in paragraph 26.a of the circular. This register shall be transmitted to the CSSF upon request.

QUESTION 4.a) Can UCIs (UCITS, UCI Part II & SIFs) increase the swing factor to be applied on the NAV up to the maximum level laid down in the prospectus?

Published on 20 March 2020 – Applies to: UCITS, UCI Part II & SIFs

Yes, this can be done without prior notification to the CSSF.



QUESTION 4.b) Can UCIs increase the applied swing factor beyond the maximum swing factor laid down in the fund prospectus in the following situations:

- **where the fund prospectus formally offers the possibility to the Board of Directors of the UCI or, if applicable, the Management Company to go beyond the maximum level under certain predefined conditions?**
- **where the fund prospectus does not offer the possibility to the Board of Directors of the UCI or, if applicable, the Management Company to go beyond the maximum level laid down in the prospectus?**

Updated on 7 April 2020 – Applies to: UCITS, UCI Part II & SIFs

In the first case, the Board of Directors of the UCI or, if applicable, the Management Company can decide to increase the swing factor in accordance with the provisions and conditions of the prospectus. The decision must be duly justified and take into account the best interest of the investors.

In the second case, the CSSF permits on a temporary basis the Board of Directors of the UCI or, if applicable, the Management Company, given the current exceptional market circumstances involved by the COVID-19, to increase the swing factor beyond the maximum level mentioned in the UCI prospectus. This decision must again be duly justified and take into account the best interest of the investors.

The UCI has to provide the CSSF (case officer in charge of UCI) with a detailed notification of the resolution, including a specific explanation on the reasons for such resolution.

In both cases, the Board of Directors must communicate this decision to current as well as new investors through the usual communication channels as laid down in the prospectus. For the second case, the communication to investors has to be made before applying an increase of the swing factor beyond the maximum swing factor laid down in the fund prospectus. The CSSF must simultaneously receive a copy of this communication to investors.

Furthermore, for the second case, an update of the UCI prospectus to formally provide for the possibility to the Board of Directors of the UCI or, if applicable, the Management Company to go beyond the maximum level under certain predefined conditions, has to be performed at the earliest convenience.

QUESTION 4.c) To what extent can a UCI increase the applied swing factor beyond the maximum swing factor disclosed in the fund prospectus?

Updated on 7 April 2020 – Applies to: UCITS, UCI Part II & SIFs

The CSSF usually observes that the maximum swing factors laid down in the UCI prospectus vary between 1% and 3%.

In accordance with question b) above, the maximum swing factor could be raised beyond the maximum level laid down in the UCI prospectus on a temporary basis provided the following minimum elements are observed:

- the revised swing factors are the result of a robust internal governance process and are based on a robust methodology (including market / transaction data based analysis) that provides for an accurate NAV which is representative of prevailing market conditions;
- an appropriate communication is made to investors through the usual communication channels, such as the ordinary notice to investors, through the fund's internet website or other way as disclosed in the prospectus. When the fund prospectus does not yet offer the possibility to go beyond the maximum level laid down in the fund prospectus, this communication must be made before applying the increased swing factor beyond the maximum level laid down in the fund prospectus.

For a swing factor adjustment going beyond the maximum swing factor laid down in the UCI prospectus in force, the CSSF can ask the UCI to justify on an ex-post basis the level of the swing factor applied and to provide documentary evidence that such factor was at any time representative of the prevailing market conditions.

QUESTION 3. The ECB has communicated on a number of measures to alleviate the impacts of COVID-19 on Significant Institutions. Will Less Significant Institutions also be able to benefit from similar measures?

Updated on 20 April 2020 – Applies to: Banks

In the context of the COVID-19 pandemic, all banks, irrespective of their size, are being put under significant stress and are likely to face problems with respect to their capacity to respect prudential ratios and regulatory deadlines, as well as to continue playing their key role in the financing of the real economy. Therefore Less Significant Institutions (LSIs) will be able to benefit from identical measures to those decided by the ECB

Banking Supervision for Significant Institutions (SIs).

For further details on the practical application of these measures, LSIs are invited to consult the [ECB Banking Supervision Press release](#) and [FAQs on COVID-19](#) published on the ECB Banking Supervision website.

For example, [in line with the ECB press release of 12 March 2020](#) with respect to SIs, LSIs will be allowed to partially use capital instruments that do not qualify as Common Equity Tier 1 (CET1) capital, for example Additional Tier 1 or Tier 2 instruments, to meet the Pillar 2 requirements (“P2R”). As a general rule, LSIs may fulfil P2R with a minimum of 56.25% CET1 and a minimum of 75% Tier 1 capital.

In contrast to the ECB’s decision on relief measures regarding the operational aspects of supervision as laid out in Section 2 of its FAQs, such as existing deadlines for remedial actions imposed in the context of on-site inspections, an extension of a deadline will only be granted to LSIs upon submission of a reasoned COVID-19 related request. This approach is meant to keep supervision at a normal level, as far as justified given COVID-19, thus avoiding backlogs. This stance has been rendered possible by the strong operational capacity that Luxembourg banks have been able to maintain despite COVID-19.

Branches in Luxembourg of credit institutions having their head office in a third country (“third country branches”) may benefit, where applicable, under the same conditions, from the flexibility measures offered to LSIs.

LSIs and third country branches that intend to make use of these measures should inform the CSSF via their usual point of contact.

QUESTION 2. Does the recommendation made to financial institutions subject to the CSSF’s prudential supervision to favour work from home in the framework of their business continuity plan (cf. question 1) also apply to support PFS?

Published on 18 March 2020 – Applies to: Support PFS

Yes, given the extraordinary and temporary situation related to Covid-19, this recommendation applies to all supervised entities and, thus, also to support PFS, including in the context of the services they provide to the financial sector, subject to satisfactory IT security conditions.

To ensure rapid and effective implementation of these measures, prior authorisation by the CSSF is not required.

As regards the services provided to clients, a support PFS must, however, receive authorisation from its client for any service provided from home by the employees of the PFS, which involves access to the IT environment of the client, including for the implemented security measures.

Similarly to its responsibility with respect to authorised access from home by its own employees (cf. question 1), each supervised entity is responsible to define the conditions, including the IT security conditions, under which it authorises remote access on its IT environment to the employees of external providers in proportion to the risks to which it is exposed. These risks are, in particular, based on the role and the access rights of the provider's employees concerned, the duration of this remote access and the sensitivity of the systems and data involved.

The security recommendations defined in question 1 apply also to support PFS and to the supervised entities in the framework of access granted to employees of external providers from their home.

QUESTION 1. What are the minimum IT security conditions recommended for remote access implemented to meet the exceptional situation created by Covid-19?

Published on 3 March 2020 – Applies to: Supervised entities

In its press release dated 2 March 2020 on Covid-19

(<https://cssf.lu/en/2020/03/coronavirus-covid-19-clarification-from-the-cssf-regarding-the-conduct-to-adopt-by-supervised-entities/>), the CSSF states, inter alia, that: "Starting out from an exceptional and temporary situation, a professional might decide to ask one or more of its employees to work from home, subject to satisfactory IT security conditions."

The CSSF would like to remind that each entity is responsible for defining the conditions, including relating to IT security, under which it authorises one or more of its employees to work from home in proportion to the risks to which it is exposed. These risks are, in particular, based on the role and the access rights of the relevant employees, the duration of this remote access and the sensitivity of the systems and data involved.

The CSSF therefore issues the following minimum recommendations:

- High privileged access: Professionals should identify the user profiles with the highest risks (such as IT administrators, employees in charge of transactions/payments, etc.). At least for these higher risk profiles and, where possible, more broadly, proper security measures should be implemented: strong

authentication, access from a secure laptop which is managed by the professional, logging and ex post review of the sensitive actions carried out.

- Securing communication: Connections should be secured by encrypting the communication channel (e.g. use of VPN solution with AES-256, RSA-2048 encryption).
- Connection monitoring: Professionals should have controls in place which ensure, at least, that the remote connections are consistent with the recourse to teleworking. Thus, remote access should be disabled outside office hours, the originating IP address connecting remotely should come from Luxembourg or the neighbouring countries (geofencing).
- Exceptional situation and limited time period: This remote access is an answer to the exceptional situation arising from the Covid-19 virus and should be considered as a temporary and time-limited measure. Professionals should define activation/triggering conditions (trigger event) to authorise the remote access and they should ensure that it is disabled once this exceptional situation is over.

