Commission de Surveillance du Secteur Financier

Version of 1 April 2020

FAQ Covid-19

Covid-19

Published on 1 April 2020

Question 13. What is the CSSF policy stance as regards banks' distribution policies aimed at remunerating shareholders?

The CSSF intends to comply with the "Recommendation on dividend distributions during the COVID-19 pandemic" (hereafter the Recommendation) issued on 27 March 2020 by the European Central Bank (ECB). It also endorses to the EBA "Statement on dividends distribution, share buybacks and variable remuneration" (hereafter the Statement) dated 31 March 2020.

As a result,

1. Given the Recommendation's objective to ensure that "credit institutions can continue to fulfil their role to fund households, small and medium businesses and corporations amid the coronavirus disease 2019 (COVID-19)-related economic shock", the management bodies of all Luxembourg credit institutions shall refrain from taking decisions that could result in distributing (accumulated) profits whenever such decisions 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.

   Decisions under the preceding paragraph include amongst others paying out or irrevocably committing to pay out dividends for the financial years 2019 and 2020 or buying-back shares. Banks that have already submitted dividend distribution proposals for their upcoming general shareholders' meeting are expected to amend such proposals in line with the Recommendation. However, the Recommendation does not retroactively invalidate dividends already paid out for the financial year 2019.

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."

   While the Recommendation is addressed to banks at the highest level of consolidation within Member States participating in the Single Supervisory Mechanism, it is expected that the management bodies of Luxembourg banking subsidiaries engage with their shareholders so as to ensure that their dividend policy is compatible with the broad objectives framed in the preceding paragraph.

3. The Recommendation applies until 1 October 2020. This means that decisions to distribute profits under 1. are compliant with the CSSF policy as long as they foresee the deferral of such distributions to the period beyond 1 October 2020. This deadline could be extended if required by the economic situation.

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

Published on 30 March 2020

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

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.

Published on 30 March 2020

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

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.

Published on 30 March 2020

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

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.

Published on 27 March 2020

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?

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, forborne, or IFRS9 status.

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.

Published on 26 March 2020

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

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.

Published on 26 March 2020

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?

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 on the basis of Circular CSSF 02/81 to be submitted to the CSSF within four months (for UCITS)/six months (for non-UCITS) as from the reference date - an additional period of three months 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 may be suspended until further notice;
- The monthly reporting Money Market Funds (UCITS/AIF) - this reporting may be suspended until further notice;
- The reporting Early Warning on large redemptions (UCITS) - this reporting may be suspended until further notice.

Published on 26 March 2020

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

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 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 delays 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.

Published on 23 March 2020

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

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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.

Published on 20 March 2020

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?

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

Published on 20 March 2020

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?**

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.

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.

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 addition for the second case, an update of the UCI prospectus to formally provide for the possibility for 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.

Published on 20 March 2020

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

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.

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.

Published on 20 March 2020

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?

In the context of the COVID-19 pandemic, all banks, irrespective 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), including branches in Luxembourg of credit institutions having their head office in a third country (third country branches), will be able to benefit from identical measures to those decided by the ECB Banking Supervision for significant institutions.

For further details on the practical application of these measures, LSIs and third country branches are invited to consult the ECB Banking Supervision Press release and FAQs on COVID-19 published on the ECB Banking Supervision website

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

Published on 18 March 2020

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?

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.

Published on 17 March 2020

Last week, the WHO has characterised COVID-19 as a pandemic.

Given the exponential development of the disease, and the call by the Luxembourg and EU governments to limit circulation of people to the extent possible, the CSSF is urging financial institutions under its prudential supervision to favour working from home as part of their business continuity plans.

As already mentioned in the communication of 2 March, satisfactory IT security conditions should be guaranteed and no prior authorisation is needed for such work arrangements.

Published on 3 March 2020

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

In its press release dated 2 March 2020 on Covid-19 (http://www.cssf.lu/fileadmin/files/Publications/Communiques/Communiques_2020/C_Coronavirus_covid-19_conduct_supervised_entities_020320.pdf), 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.