



April 2020

## Regulatory flexibility in the face of COVID-19

Regulators are known for flexing their muscles; not for showing flexibility or exercising forbearance. However in these extraordinary times, some national and European regulatory bodies have taken exceptional measures. Some have altered their business as usual requirements, extending reporting and filing deadlines. Others have implied or recommended that enforcement action will or should not be taken for certain technical breaches which may occur due to operational difficulties faced by firms from COVID-19. Examples of some of these measures are set out below.

### *Initiatives to help businesses*

#### Central Bank of Ireland

The countercyclical capital buffer which banks are required to hold was reduced from 1% to 0% on 1<sup>st</sup> April 2020 and the Central Bank of Ireland (“CBI”) said that it does not intend to announce an increase in this capital buffer before quarter 1 2021. The CBI expects this to free up about one billion in capital in the banking system to absorb losses and allow banks to support additional credit supply to households and firms. A link to the announcement is here: [Link](#).

The CBI has also launched a COVID-19 hub on its website where relevant information and policy decisions by the CBI and other European authorities will be uploaded as new information becomes available: [Link](#).

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## Revenue Commissioners

The Revenue Commissioners have extended several reporting deadlines and made some concessions as regards claiming payroll tax reliefs and exemptions, due to the pandemic. These include disregarding the presence in the State of an individual for corporation tax purposes, for a company of which the individual is an employee, director, service provider or agent, where the individual's presence in the State is shown to result from COVID-19 travel restrictions. The same concession will also be applied in the converse situation, where an individual is in another jurisdiction but would otherwise have been in the State, were it not for the COVID-19 travel restrictions.

Revenue has also extended the filing deadlines for all 2019 share scheme returns from 31<sup>st</sup> March 2020 to 30<sup>th</sup> June 2020. Further detail of the various measures introduced by Revenue can be found here: [Link](#).

## Companies Registration Office

The Registrar of Companies has announced that all annual returns due to be filed by any company from 20<sup>th</sup> March 2020 up to 30<sup>th</sup> June 2020 will be deemed to have been filed on time, if all elements of the annual return are completed and filed by that date. The 30<sup>th</sup> June 2020 date will be kept under review and may be extended depending on how the situation develops. Further information is available here: [Link](#).

## European Commission

The European Commission has extended the deadlines for some consultations. These include an extension of the deadline for the MiFID II consultation to 18<sup>th</sup> May 2020, and for the NFRD consultation to 11<sup>th</sup> June 2020. Further details of the extensions to various consultation deadlines can be found here: [Link](#).

## *Regulatory forbearance?*

## Data Protection Commission

The Data Protection Commission ("DPC") has acknowledged that the COVID-19 crisis may affect organisations' ability to action GDPR requests from individuals, such as subject access requests. It said that although the timelines for responding to individuals' requests are set down in law and cannot be changed, it was aware of the need for a proportionate regulatory approach due to current circumstances. The DPC said that if a complaint is made to it concerning an organisation's failure to respond to a request within the statutory timelines, the facts of each case - including any organisation specific extenuating circumstances - will be taken into account. The DPC's website

sets out steps which organisations should take if they are encountering difficulties in responding to GDPR requests as a result of the current pandemic: [Link](#).

## ESMA

The European Securities and Markets Authority (“ESMA”) has recommended that national competent authorities show flexibility as regards some regulatory requirements in light of COVID-19. A non-exhaustive list of some of ESMA’s recent statements and recommendations is referred to below.

- ▣ *Best Execution Reports:* ESMA has recognised the difficulties encountered by execution venues in preparing general best execution reports required under RTS 27 and RTS 28 of MiFID II, due to the pandemic and has recommended that national competent authorities take these circumstances into account by considering the possibility that execution venues unable to publish RTS 27 reports due by 31<sup>st</sup> March 2020 may only be able to publish them as soon as practicable after that date and no later than by the following reporting deadline (i.e. 30<sup>th</sup> June 2020), and that firms may only be able to publish RTS 28 reports due by 30<sup>th</sup> April 2020 on or before 30<sup>th</sup> June 2020.

ESMA has also encouraged national competent authorities not to prioritise supervisory action against execution venues and firms in respect of the deadlines of the general best execution reports for the above periods, and recommended that they apply a risk-based supervisory approach in their day-to-day enforcement of RTS27 and RTS 28 concerning these deadlines. A link to the ESMA statement is here: [Link](#).

- ▣ *SFTR Reporting Requirements:* ESMA has confirmed that the first phase of SFTR reporting requirements - which applies to credit institutions, investment firms, and relevant third-country entities - will be postponed by three months to 13<sup>th</sup> June 2020. It has also said that it does not require any trade repositories to register with it ahead of 13<sup>th</sup> April 2020. A link to the relevant statement is here: [Link](#).
- ▣ *Call Taping:* ESMA has acknowledged that due to the exceptional circumstances created by the COVID-19 outbreak, that in some situations, notwithstanding steps taken by a firm, it may not be practicable to record telephone conversations as required by MiFID II. However ESMA said if such a scenario occurs, it would expect firms to consider what alternative steps they could take to mitigate the risks related to the lack of recording. A link to the statement is here: [Link](#).

## EBA

The European Banking Authority (“EBA”) has recommended that competent and resolution authorities should assess the extent to which the delayed submission of data included in the EBA reporting framework would be justified, as a result of the difficulties facing institutions due to COVID-19.

The EBA has recommended that in general, institutions should be allowed up to one additional month to submit the required data, with certain specific data sets being excluded from this measure. It has also suggested that competent and resolution authorities do not prioritise their supervisory actions towards ad-hoc data collections that are not specifically required to monitor institutions, in the context of the COVID-19 outbreak. It has also encouraged competent authorities to be flexible when assessing institutions' compliance with the deadlines for the publication of their Pillar 3 reports. Further information is available here: [Link](#).

### Comment

It is good that regulators are recognising the pressures and challenges which businesses are facing as a result of COVID-19. Some of these measures will give organisations a bit of breathing space to focus on the key operational matters which they are prioritising at this time.

### Contact information

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