

## Luxembourg Tax Alert

### COVID-19: Mitigation measures within the EU banking sector

9 April 2020

#### **Dividend distributions, share buy-backs, and variable remuneration Recommendations from the European Central Bank**

On 27 March 2020, the European Central Bank (ECB) adopted a Recommendation on dividend distributions in response to COVID-19 (the "Recommendation").

The ECB considers it crucial that credit institutions are able to continue to fulfil their role in funding households, small- and medium-sized businesses, and corporations amid the COVID-19-related economic shock. It is therefore essential that credit institutions conserve capital to retain their capacity to support the economy in an environment of heightened uncertainty. To this end, capital resources to support the real economy and absorb losses should take priority at present over discretionary dividend distributions and share buy-backs.

Credit institutions (i.e. significant or less significant) should refrain from making dividend distributions and performing share buy-backs aimed at remunerating shareholders during this period.

The recommendations are as follows:

- Until 1 October 2020, credit institutions should (i) not pay out dividends, nor undertake irrevocable commitment to pay out dividends for the financial year 2019 and 2020, and (ii) should refrain from share buy-backs aimed at remunerating shareholders
- Credit institutions that are unable to comply with this Recommendation because they consider themselves legally required to pay out dividends should immediately explain the underlying reasons to their joint supervisory team
- This Recommendation applies on a consolidated level of a significant supervised group, and on an individual level of a significant supervised entity, if such a significant supervised entity is not part of a significant supervised group<sup>1</sup>.

## Statement from the European Banking Authority

On 31 March 2020, the European Banking Authority (EBA) issued a Statement on dividends distribution, share buy-backs, and variable remuneration (the "Statement").

In response to COVID-19, the EBA supports all measures taken so far by Member States to ensure the banks maintain a sound capital base and provide the needed support to the economy.

Furthermore, the EBA recommends for competent authorities to ask the banks to review their remuneration policies, practices, and rewards to ensure they are consistent with, and promote, sound and effective risk management, reflecting the current economic situation.

Subsequently, the EBA recommends that remuneration and, in particular, its variable portion should be set at a conservative level.

- To achieve an appropriate alignment under the risks associated with COVID-19, a larger part of the variable remuneration could be (i) deferred for a longer period and (ii) paid out in equity instruments.

## Commission de Surveillance du Secteur Financier

On 1 April 2020, the Commission de Surveillance du Secteur Financier (CSSF) published a 'Frequently Asked Questions' document on the COVID-19 crisis ("the FAQ"), especially addressing its policy (the "CSSF policy") regarding banks' distribution policies aimed at remunerating shareholders as described in the Statement.

As stated in the FAQ, the CSSF intends to comply with the Recommendation and endorses the Statement. Furthermore, it provides the additional details:

- 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
- The Recommendation does not retroactively invalidate dividends already paid out for the financial year 2019
- The CSSF expects that the management bodies of Luxembourg's banking subsidiaries engage with their shareholders (i.e. highest level of consolidation within Member States participating in the Single Supervisory Mechanism) so as to ensure that their dividend policy is compatible with the Recommendation.

## Additional documentation

Please click the following link for further details:

- [https://www.ecb.europa.eu/ecb/legal/pdf/ecb\\_2020\\_19\\_f\\_sign.pdf](https://www.ecb.europa.eu/ecb/legal/pdf/ecb_2020_19_f_sign.pdf)
- [Statement on dividends distribution, share buybacks and variable remuneration | European Banking Authority](#)
- [https://www.cssf.lu/fileadmin/files/FAQ/FAQ\\_Covid\\_19\\_eng.pdf](https://www.cssf.lu/fileadmin/files/FAQ/FAQ_Covid_19_eng.pdf)

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