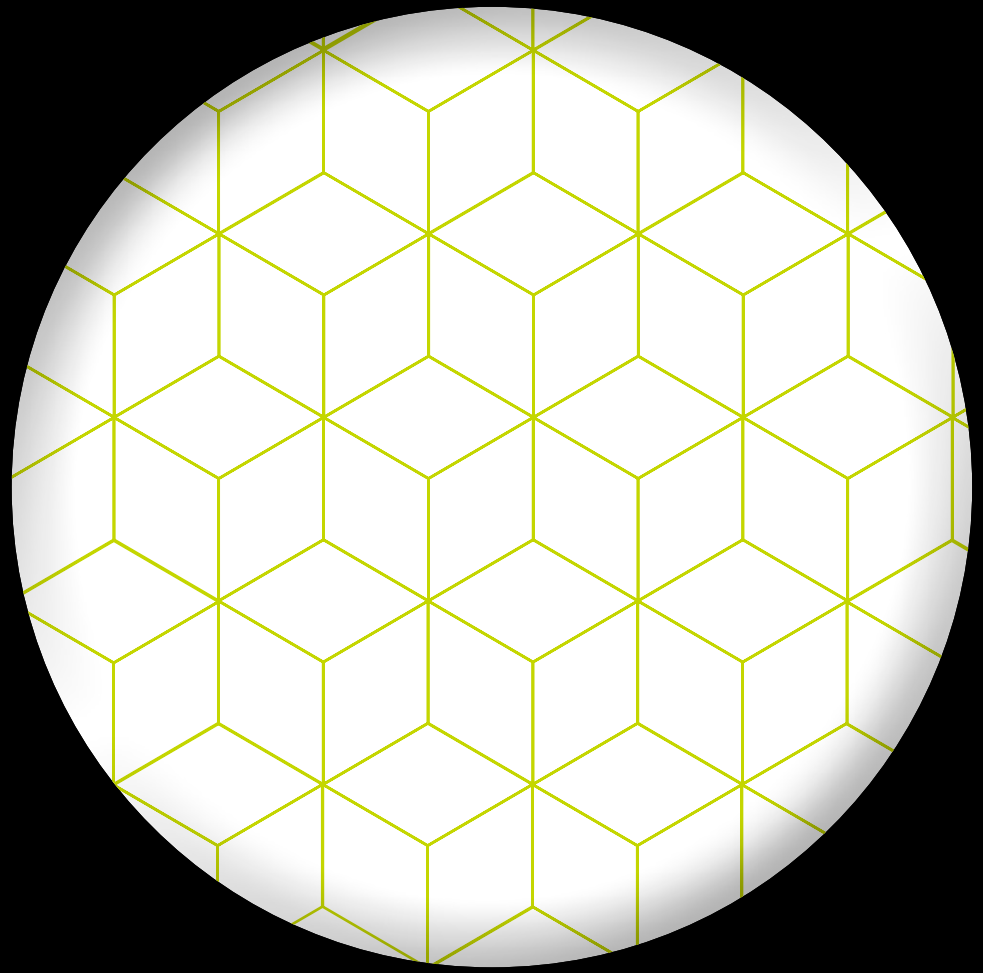
EU & Luxembourg
Regulatory update

APRIL 2020



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As we enter the second quarter of 2020, April is the ideal month to update our regulatory poster and analyze our necessary deviation from the linear agenda that was originally planning our year.

The COVID-19 situation has, of course, altered many plans and in the following update, we would like to emphasize three main points for your attention:

01. An overview of measures taken to combat the financial effects of COVID-19 (until mid April 2020)
02. A reminder that although the COVID-19 situation takes much of our time, it does not obviate every other piece of regulation
03. Short-term areas of action.

COVID-19: Measures taken

Global and local regulators have taken significant measures to manage or facilitate the response of financial intermediaries to the situation. Broadly speaking, such measures can be classified into three categories:

A → Rules to support the economy and prudential capital

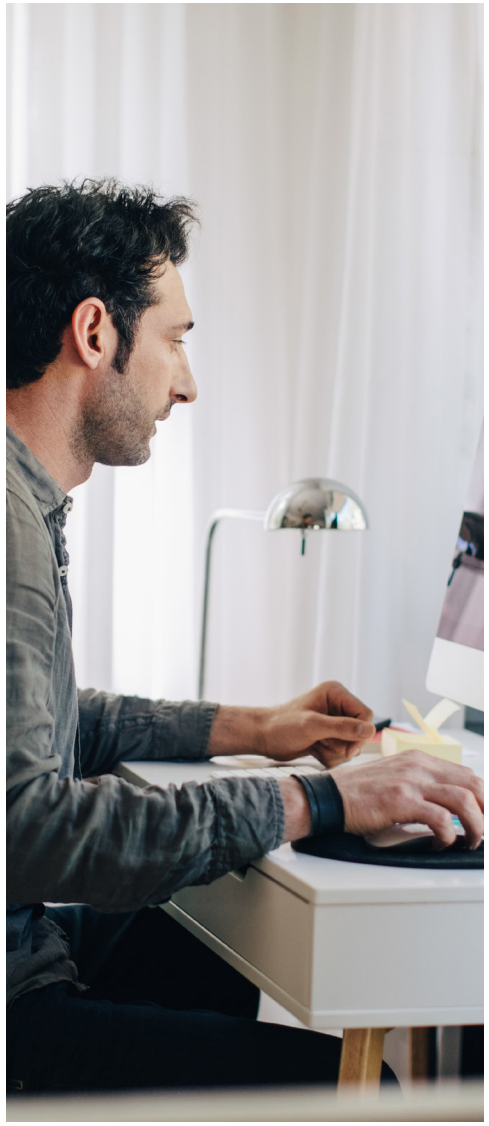
These measures, often taken at national level, have mainly targeted banks in order to facilitate access to loans and other credits for their clients. The ECB, European Commission, and EBA have implemented measures to ease the access and use of prudential capital via flexibility offered in use of Tier 2 capital. Both at a Member State and EU Institutions level, the ECB has issued a requirement stopping the distribution of dividends to preserve available means. EBA and other regulators have also raised potential issues regarding the application of IFRS 9 and specifically on the marking to market and hedge accounting. Finally for prudential regulation a big news coming from the global regulatory body: the Basel Committee will postpone the application of Basel III.

B → Rules regarding removal of work

The ESMA and EBA have both issued notes and communications following advice from national supervisory authorities to apply **forbearance on the quality of reporting** and for some, even pushing the reporting deadlines to a future date as exemplified by the MMFR and SFTR. This applies to a variety of reportings where the authorities will tolerate some fluctuation in the quality and timeliness. In Luxembourg, the CSSF invites reporting entities to contact them so they can further explain why delays may be granted. In light of these communications, and to manage their own organizations, all open **consultations have been postponed for several weeks**. The Luxembourg government has also taken measures to respond to tax matters (i.e. postponement of tax declarations). There are as well measures taken to favor distant meeting of obligations like the law on the possibility to organize AGM via digital tools.

C → Rules maintaining market integrity

Both at a Member State and ESMA level, measures have been taken to **maintain market integrity**, notably if not mostly via temporary **bans on short selling** on shares and related instruments. The application of swing prices has also been emphasized by the CSSF and ESMA to maintain funds' and market integrity. Another example is the possibility to organize AGMs and management meetings via video conference; this has either been granted or is in the process of being granted in nearly every Member State.



Besides these, every authority has highlighted the need to protect and support clients and the economy and to ensure that business continuity plans (BCP) and remote work are organized where possible until the end of confinement, now targeting at the earliest the second half of May. And from global to local level authorities recalled that AML/CFT principles remains and are even more under stress due to distant or remote communication as well as potential scams organized during this period.

Business as usual regulations

First and foremost, the **ESG and green agenda continues as a priority** for the European Commission and other authorities. The group of technical experts appointed by the European Commission has produced their final taxonomy document alongside other interesting documents on green bond standards. The ESMA has confirmed the **application of new tick size** (from 1 April) in a MIFIR equity trading context. The EU progresses with its **capital market union review** with the publication of their expert's interim report. In Luxembourg, the **AMLD V law and DAC6 were officially incorporated within** laws at the very end of March. Both the ESMA and EBA have issued several consultations on EMIR, or standards for FRTB or MIFID application. The major difference being that consultation delays are a bit longer than usual. And, as if nothing has changed, **Brexit continues** despite both sides coping with key leaders who have tested positive for COVID-19.

Short-term actions

These will consist of managing three pressing issues:
First and for many already well under way, **is ensuring that BCP function**—among which the remote working possibilities of staff with the necessity to build stable and reliable IT capacities—is in progress. The impact on medium- to long-term work habits may be interesting to see, so keep these adaptions in mind once sustainable finance demands materially arrive.

Secondly, for funds and asset management services, is the **capacity to handle volatility and volumes** of trades as well as mandatory reportings, with an additional twist for funds that may be confronted by unusual liquidity demands, CSSF has invited, through its FAQs on Covid-19, entities concerned to use or refer to the flexibilities offered via the swing pricing mechanisms.

Finally, specifically for banks, is the **preparation of activities to cope with governments' demands for loans** so that clients—corporates and retail alike—have access to finance to avoid economic collapse, hence the importance to address management of urgency-based loan procedures, covering access to data, and/or remote KYC.

Next Steps

If you want to know more about the different measures and solutions available, please speak to your Deloitte expert and check with the Deloitte Regwatch team for regulatory updates. Be safe and come back next month for a new update.

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