BERNITSAS briefing

April 2020

BANKING BRIEFING: Special Edition - Vol.2

Latest Developments in Banking Sector: Urgent Measures Relating to the Covid-19 Pandemic

This Briefing provides an overview of Covid-19 pandemic emergency measures relating to the Banking Sector

In This Issue

A. Basel Committee Additional Measures to Alleviate the Impact of Covid-19
B. EBA Statements
C. EBA Guidelines on Treatment of Public and Private Moratoria in light of Covid-19 Measures
D. Suspension of Deadlines for the Presentation and Payment of Securities

A. Basel Committee Additional Measures to Alleviate the Impact of Covid-19

The Basel Committee on Banking Supervision on 3 April 2020 set out additional measures to alleviate the impact of Covid-19 on the global banking system. These measures support the provision of lending by banks to the real economy and provide additional operational capacity for banks and supervisors to respond to the immediate financial stability priorities. In particular:

1. **Extraordinary support measures introduced by Governments to alleviate the impact of Covid-19:** the Committee published technical clarifications to ensure that banks reflect the risk-reducing effect of the said governmental measures, which include a range of government guarantee programs for bank loans and the introduction of payment moratoria, when calculating their regulatory capital requirements;
2. **Expected credit loss (ECL) accounting:** the Committee expects banks to continue to apply the ECL accounting frameworks and notes that ECL frameworks are not designed to be applied mechanistically and banks should use the flexibility inherent in these frameworks to take account of the mitigating effect of the extraordinary support measures related to Covid-19; in addition, the Committee has agreed to amend its transitional arrangements for the regulatory capital treatment of ECL accounting[1] to provide jurisdictions with greater flexibility on deciding whether and how to phase in the impact of expected credit losses on regulatory capital; and
3. **Margin requirements for non-centrally cleared derivatives:** the Committee has agreed with the International Organization of Securities Commissions to extend by one year the deadline for completing the final two implementation phases of the margin requirements for non-centrally cleared derivatives. This extension will provide additional operational capacity for firms

[1] Adjustments available at: https://www.bis.org/bcbs/publ/d498.htm

to respond to the immediate impact of Covid-19 and at the same time, facilitates covered entities to act diligently to comply with the requirements by the revised deadline; with this extension, the final implementation phase will take place on 1 September 2022, at which point covered entities with an aggregate average notional amount (AANA) of non-centrally cleared derivatives greater than €8bn will be subject to the requirements.

As an intermediate step, from 1 September 2021 covered entities with an AANA of non-centrally cleared derivatives greater than €50bn will be subject to the requirements[2].

B. EBA Statements

On 31 March 2020, following its call for flexibility in the prudential framework and supervisory approaches to support lending into the real economy, the European Banking Authority (EBA) clarified its expectations in relation to dividend and remuneration policies, provided additional guidance on how to use flexibility in supervisory reporting and recalled the necessary measures to prevent money laundering and terrorist financing.

1. **EBA Statement on Dividend Distributions, Share Buybacks and Variable Remuneration by Credit Institutions**

   EBA issued a statement on dividends distribution, share buybacks and variable remuneration by credit institutions. In particular, EBA:

   a. supports all the measures taken so far to ensure banks maintain a sound capital base and provide the needed support to the economy;
   b. emphasizes that the capital relief resulting from the measures adopted by competent authorities in response to Covid-19 crisis are to be used to finance the corporate and household sectors and not to increase the distribution of dividends or make share buybacks for the purpose of remunerating shareholders;
   c. acknowledges that some banks have already communicated a postponement of their decisions and urges all banks to refrain from dividends distribution or share buybacks which result in a capital distribution outside the banking system, in order to maintain its robust capitalization;
   d. urges banks to revert to their competent authorities in case they consider themselves legally required to pay-out dividends or make share buybacks;
   e. considers that ensuring the efficient and prudent allocation of capital within banking groups is crucial and should be monitored by competent authorities; and
   f. suggests that competent authorities should ask banks to review their remuneration policies, practices and awards in order to achieve an appropriate alignment with risks stemming from the Covid-19 pandemic, including to set the variable portion of remuneration at a conservative level, to adjust deferral thereof at larger part and for a longer period and to pay out a larger proportion thereof in equity instruments.

2. **EBA Statement on Supervisory Reporting and Pillar 3 Disclosures in Light of Covid-19**

   EBA published a Statement on supervisory reporting and Pillar 3 disclosures in light of Covid-19, aiming to detail further possible actions to be taken by institutions or competent and resolution authorities to mitigate the impact of Covid-19, in relation to the supervisory reporting and Pillar 3 disclosures.

   In particular, EBA:

   a. calls competent authorities to offer leeway on reporting dates, as institutions should be allowed up to one additional month for submitting the required data, for reports with remittance dates between March and the end of May 2020;
      Such exception should not apply to:

[2] A revised version of the margin requirements for non-centrally cleared derivatives is available at: https://www.bis.org/bcbs/publ/d499.htm

i. information on the liquidity coverage ratio (LCR) and on the Additional Monitoring Metrics (ALMM); and
ii. reporting for resolution planning purposes;

b. suggests that competent and resolution authorities do not prioritise their supervisory actions towards ad-hoc data collections that are not specifically needed to monitor institutions in the context of the Covid-19 outbreak;
c. decided, in coordination with the Basel Committee on Banking Supervision (BCBS), to cancel the Quantitative Impact Study based on June 2020 data;
d. encourages competent authorities to be flexible when assessing the institutions' compliance with the deadlines for the publication of their Pillar 3 reports as set out in accordance with Article 106 (1) CRD; and
e. urges competent authorities and institutions to assess the need for additional Pillar 3 disclosures on prudential information that may be necessary in order to properly convey the risk profile of the institution in the context of the Covid 19 outbreak.

3. **EBA Statement on Actions to Mitigate Financial Crime Risks in the Covid-19 Pandemic**

By its statement on actions to mitigate financial crime risks in the Covid-19 pandemic, EBA calls on competent authorities that are responsible for the AML/CFT supervision of credit and financial institutions under Directive (EU) 2015/8492 to support credit and financial institutions' ongoing AML/CFT efforts. In particular, EBA urges competent authorities to:

a. work closely with credit and other financial institutions, Financial Intelligence Units (FIU) and law enforcement authorities to identify, and raise awareness of, new ML/TF typologies;
b. ensure that credit and other financial institutions remain alert to ML/TF techniques that might change due to the economic downturn and where necessary, update their ML/TF risk assessments accordingly. Examples include financial products that become less attractive for ML purposes due to diminishing returns, or ML techniques that give rise to an increased risk of detection, such as early repayment of loans;
c. remind credit and other financial institutions to continue monitoring transactions and pay particular attention to any unusual or suspicious patterns in customers' behaviour and financial flows. Credit and other financial institutions should in particular take risk-sensitive measures to establish the legitimate origin of unexpected financial flows, where these financial flows stem from customers in sectors that are known to have been impacted by the economic downturn and Covid-19 mitigation measures. Examples of such customers include cash-intensive businesses in the retail sector, companies involved in international trade, and any type of shell companies in sectors facing the economic downturn which will keep a similar volume of financial flows in the absence of real economic activity;
d. remind credit and other financial institutions to continue to report suspicions of ML/TF to the relevant FIU; and
e. consider making full use of the flexibility embedded in the EU's AML/CFT framework and to plan supervisory activities in an effective as well as pragmatic and risk-sensitive way. This may entail, for example, a temporary postponement of non-essential onsite inspections on a case-by case basis even after current restrictions on movement have been lifted, a move towards virtual meetings and inspections where appropriate, or an extension of submission dates for AML/CFT questionnaires where these are being used. Competent authorities should refer to the ESAs' Guidelines on Risk Based AML/CFT Supervision for information on different tools competent authorities can use to ensure AML/CFT supervision of credit and financial institutions remains effective.

C. EBA Guidelines on Treatment of Public and Private Moratoria in light of Covid-19 Measures

On 2 April 2020, following the publication of its statement on the application of the prudential framework regarding default, forbearance and IFRS9 in light of Covid-19 measures, EBA published a detailed guidance on the criteria to be fulfilled by legislative and non-legislative moratoria applied before 30 June 2020.

The aim of these Guidelines is to clarify the requirements for public and private moratoria, which if fulfilled, will help avoid the classification of exposures under the definition of forbearance or as defaulted under distressed restructuring.

EBA sees the payment moratoria as effective tools to address short-term liquidity difficulties caused by the limited or suspended operation of many businesses and individuals resulting from the impact of Covid-19.

In this context, the Guidelines clarify that payment moratoria do not trigger classification as forbearance or distressed restructuring if the measures taken are based on the applicable national law or on an industry or sector-wide private initiative agreed and applied broadly by the relevant credit institutions.

In addition, the Guidelines recall that institutions must continue to adequately identify those situations where borrowers may face longer-term financial difficulties and classify exposures in accordance with the existing regulation. The requirements for identification of forborne exposures and defaulted obligors remain in place.

D. Suspension of Deadlines for the Presentation and Payment of Securities

Law 4682/2020 (Official Government Gazette 76/A, dated 3 April 2020) introduced a number of amendments regarding the suspension of the deadlines for presentation and payment of securities provided for in Article 2 of the Act of Legislative Content dated 30 March 2020 (see our firm's relevant briefing here). In particular, the new Law provides that:

1. the 75-days suspension concerns all cheques, bills of exchange and promissory notes electronically notified to the banks by the persons having a right or an obligation under those securities;
2. the deadline for the notification of the securities is extended from three business days to 6 business days from the issuance of the Act of Legislative Content dated 30 March 2020 or (if applicable) of the issuance of any Act of Legislative Content pursuant to which the relevant business undertaking is included in the list of severely affected businesses. This means that for business undertakings already included in the list of severely affected businesses, the notification of the relevant securities must be completed until 7 April 2020. The Hellenic Bank Association on its announcement dated 2 April 2020 clarified that for the period within which the notification of the securities must take place, the deadline for their presentation and payment is suspended;
3. the implementation of this measure may be extended to include securities other than the above by virtue of a Ministerial Decision to be issued;
4. the measures do not prevent the person liable for payment to give to the credit institution an order for payment of the security, while the parties concerned may still agree on payment of the relevant securities on the initial due date. Details of application and any other procedural and technical issues with respect to the above will be set out in a Ministerial Decision to be issued to this effect.

Contacts

Athanasia Tsene

Partner

E atsene@bernitsaslaw.com