

PUBLIC STATEMENT

Actions to mitigate the impact of COVID-19 on the EU financial markets regarding publication deadlines under the Transparency Directive

The European Securities and Markets Authority (ESMA) is issuing this Public Statement to promote coordinated action by National Competent Authorities (NCAs) regarding issuers' obligations to publish periodic information for reporting periods ending on 31 December 2019 or after in the context of the COVID-19 outbreak.

ESMA and national competent authorities are aware of the difficulties encountered by issuers whose securities are admitted to trading on regulated markets to prepare their financial reports and publish them within the deadline set out in the national law transposing the Transparency Directive¹ (TD) and the significant challenges faced by auditors concerning the timely audit of the accounts due to the COVID-19 pandemic and the related actions taken by the Member States to prevent contagion.

In accordance with Article 31(2) of the ESMA Regulation², ESMA is issuing this Public Statement to promote coordinated action by NCAs in response to these adverse events and provide clarity to issuers.

Background

Issuers whose securities are admitted to trading on a regulated market³ are required to publish an annual financial report at the latest four months after the end of each financial year in accordance with Article 4(1) of the TD. For 31 December 2019 financial year-ends, the latest publication date is 30 April 2020. The annual financial report must include audited financial statements⁴.

Issuers of shares or debt securities are furthermore required to make public a half-yearly financial report covering the first six months of the financial year at the latest within three months from the end of the six-month period in accordance with Article 5(1) of the TD. For issuers where that six-month period ended on 31 December 2019, the latest publication date is 31 March 2020.

¹ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

² Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (OJ L 331, 15.12.2010, p. 84).

³ Note that references to an 'issuer' in this note also refer to, in the case of depository receipts admitted to trading on a regulated market, the issuer of the securities represented, whether or not those securities are admitted to trading on a regulated market (Article 2(1)(d) of the TD).

⁴ In accordance with Article 4(2)(a) and (4) of the TD.

ESMA acknowledges that the COVID-19 outbreak brings significant challenges for issuers and auditors as an increasing number of Member States impose unprecedented national measures. ESMA appreciates that due to these measures, issuers are faced with constraints which may substantially impair the ability of issuers to publish their financial reports within the TD deadlines referred to above. Concerning the auditing implications of the COVID-19 outbreak, ESMA notes that the Committee of European Audit Oversight Bodies (CEAOB) has issued a statement⁵ to address this matter on 25 March 2020.

Publication deadlines for periodic information

ESMA highlights that financial reporting is an important anchor for economic decisions of users of financial information as well as for exercising their rights to vote or otherwise influence management actions. The preparation of periodic information must continue to be carried out in accordance with the applicable financial reporting framework to ensure investor protection and to preserve the integrity and proper functioning of EU financial markets. ESMA highlights that issuers are expected to exercise their best efforts to prepare their financial reports and publish them within the legislative deadline.

While recognising the importance of timely and transparent disclosure of financial reports, ESMA is of the view that the burdens on issuers associated with the COVID-19 outbreak should be taken into account by NCAs in a coordinated way. This is in the interest of investor protection and contributes to the integrity of financial markets in the Union.

ESMA therefore, in coordination with NCAs and considering that issuers may be prevented from fulfilling the requirements due to COVID-19, expects NCAs during this specific period not to prioritise supervisory actions against issuers in respect of the upcoming deadlines set out in the TD regarding:

- a. annual financial reports referring to a year-end occurring on or after 31 December 2019 but before 1 April 2020 for a period of two months following the TD deadline; and
- b. half-yearly financial reports referring to a reporting period ending on or after 31 December 2019 but before 1 April 2020 for a period of one month following the TD deadline.

Furthermore, ESMA encourages NCAs to generally apply a risk-based approach in the exercise of supervisory powers in their day-to-day enforcement of applicable legislation in the area of the TD concerning the publication deadline of financial reports.

Nevertheless, where issuers reasonably anticipate that publication of their financial reports will be delayed beyond the deadline set out in national laws transposing the TD, they are expected to inform their NCA of this and inform the market of the delay, the reasons for such delay and to the extent possible the estimated publication date.

⁵ https://ec.europa.eu/info/sites/info/files/business_economy_euro/banking_and_finance/documents/200325-ceaob-statement-covid-19_en.pdf

ESMA reminds issuers that they continue to be subject to the disclosure obligations laid down in Article 17 of the Market Abuse Regulation⁶. In particular, issuers must continue to inform the market as soon as possible of any inside information that directly concerns them.

ESMA, together with NCAs, will continue to closely monitor the situation and will take or recommend any measures necessary to mitigate the impact of COVID-19 on timely and appropriate financial disclosure by issuers. ESMA will, as necessary, re-assess any potential need to amend the forbearance period that NCAs are expected to apply under this Public Statement.

ESMA acknowledges that in some Member States legislative changes were implemented to extend, inter alia, the applicable publication deadlines for financial reports. Therefore, this public statement will be of relevance to those jurisdictions where such legislative changes have not taken place or are not going to take place.

Finally, ESMA highlights that the actions do not mitigate possible requirements stemming from, for example, national company law.

⁶ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).