



An Coimisiún um  
**Rialáil Cumarsáide**  
Commission for  
**Communications Regulation**

# Update on Regulatory Governance Settlement Agreement with Eircom.

## Information Notice

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**Version:** Final  
**Date:** 17 February 2020

**Additional Information**

Document No:	20/10
Date:	17 February 2020

1. On 10 December 2018, the Commission for Communications Regulation (“ComReg”) entered into a settlement agreement with Eircom Limited (“Eircom”) (the “Settlement Agreement”)<sup>1</sup>. As part of the Settlement Agreement, ComReg and Eircom agreed a set of commitments which, when fully implemented, will result in the establishment and operation of an enhanced Regulatory Governance Model (“RGM”) in Eircom. Those commitments are known as the RGM Undertakings and are detailed in the Settlement Agreement. A number of the key RGM Undertakings are underpinned by a cash amount of €9 million which was allocated against various performance milestones (referred to in the settlement agreement as Notional Milestone Amounts) to be achieved by certain dates. The €9 million was placed in escrow by Eircom. If Eircom meets its various milestones on time it is to receive a repayment of the associated Notional Milestone Amount from the escrow account. If milestones are delivered late or not at all certain amounts (“Late Delivery Payments”) may be transferred by ComReg from the escrow account to its own account.
2. ComReg decided in June 2019 that Eircom had achieved its Early Milestones on the basis that, as agreed, Eircom had appointed two members to the Independent Oversight Body (“IOB”) and had submitted relevant documentation to ComReg<sup>2</sup>. Accordingly, Eircom was refunded €4.5 million from the escrow account.
3. Milestones due for evaluation by ComReg by 20 December 2019 (referred to as the Mid-Term Milestones) were as follows:
  - by 30 September 2019, a reviewed and updated risk and control matrix (“RACM”) with all risks (operational, non-operational and system) would be provided to the IOB.
  - by 30 September 2019, Eircom would carry out a comprehensive analysis, and prepare a written report, to be provided to the IOB and ComReg, on the risks associated with the use of unstructured data as set out in paragraph 61 of the RGM Undertakings.
  - by 1 December 2019, Eircom would prepare and have executed a remediation plan in order to remediate risks associated with unstructured data as set out in paragraph 61 of the RGM Undertakings.
4. The total aggregate Notional Milestone Amount for these three Mid-Term Milestones was €2,250,000 which was to be refunded to Eircom by 20 December 2019 from the escrow account if the milestones were achieved.
5. Eircom provided ComReg with documentation, and clarifications, in respect of the work it had completed in respect of these milestones. ComReg decided that, although Eircom had completed a significant body of work, the milestones had not been achieved. Accordingly, no amounts were refunded from the escrow account. Eircom did not agree with ComReg’s view and under the terms

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<sup>1</sup> ComReg Document No. 18/110, dated 10 December 2018, “Wholesale Compliance Litigation Update - Outcome of Cases 481 and 568 and related litigation”.

<sup>2</sup> See ComReg Information Notice, ComReg Document No. 19/72 dated 28/06/2019 which provided an update on the Early Milestones.

of paragraph 17 of the Settlement Agreement the parties agreed to make a good-faith effort to settle the dispute amicably.

6. On foot of these discussions Eircom and ComReg have agreed the following by way of an amendment to the Settlement Agreement.
  - a) The fourth, tenth and eleventh milestones, being the Mid-Term Milestones, in the Performance Agreement set out in Schedule 1 of Annex 2 to the Settlement Agreement now read as set out in the Annex to this Information Notice.
  - b) Eircom and ComReg agreed the risk analysis process documents<sup>3</sup> to be used by Eircom in order to complete Milestones 4 and 10.
  - c) No Late Delivery Payments from the escrow account will be made to ComReg on foot of the original due dates of these milestones, although such payments will fall due if the new delivery dates are not achieved.
  - d) ComReg agreed to transfer, by close of business 14 February 2020, €1m from the escrow account to Eircom in recognition of work done to date.
  - e) In order to ensure consistency between the revised milestones and paragraph 3 of the RGM Undertakings (contained in Annex 1 of the Settlement Agreement) paragraph 3 has been amended as follows:

*“The parties acknowledge the RGM Internal Documentation is subject to ongoing review in line with Eircom’s regulatory obligations. Eircom agrees to ensure that a full review of the entire risk environment will be completed by 30 September 2020. An evaluation of existing controls as documented in the Risk and Control Matrix (“RACM”) will take place in parallel. Eircom agrees to implement any additional controls identified as part of this process by 1 December 2020.”*

END

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<sup>3</sup> These are Eircom’s Business Unit Process Compliance Review (BUPCR) documents which set out the methodology underpinning Eircom’s risk analysis process and its scope.

## Annex

### Amended Mid-Term Milestones and associated dates and Notional Milestone Payment

Milestone 4 in Schedule 1 of the Performance Agreement shall be amended to read as follows:

Category	Milestone Number	Performance Milestone	To be achieved by (end of) (Column B)	Notional Milestone Payment (Column C)
<b>Assurance and Oversight</b>	4	<p>(a) A reviewed and updated RACM with all risks (operational, non-operational and system) will be provided to the IOB and copied to ComReg.</p> <p>To achieve this eir will carry out a BUPCR (Business Unit Process Compliance Review) for all risks in accordance with the methodology set out in the document entitled '<i>All Risks BUPCR Review Document</i>' set out in Appendix 1 to the Second Side Letter. The output of the BUPCR which will be submitted to the IOB and copied to ComReg, will be consistent with the requirements set out in Step 4 of the All Risks BUPCR Review Document and will include a remediation plan.</p>	30 September 2020	€0.05 million
	4	(b) eir will implement the proposed remediations identified in its report on the All Risks BUPCR Review. eir will confirm in writing to ComReg that this remediation plan has been implemented.	1 December 2020 <sup>4</sup>	€0.05 million

<sup>4</sup> Milestone 4 will be assessed at the Third Reconciliation Date of 1 December 2020.

Milestones 10 and 11 in Schedule 1 of the Performance Agreement shall be amended to read as follows:

<b>Category</b>	<b>Milestone Number</b>	<b>Performance Milestone</b>	<b>To be achieved by (end of) (Column B)</b>	<b>Notional Milestone Payment (Column C)</b>
<b>IT Systems /Data/CRI</b>	10	<p>eir will carry out a BUPCR (Business Unit Process Compliance Review) in relation to Unstructured CRI Data in accordance with the methodology set out in the document entitled '<i>Unstructured CRI Data BUPCR Review Document</i>' which is set out in Appendix 2 to the Second Side Letter.</p> <p>The output of the BUPCR which will be provided to the IOB and copied to ComReg will be consistent with the requirements set out in Step 4 of the Unstructured CRI Data BUPCR Review Document and will include a remediation plan.</p>	1 May 2020 <sup>5</sup>	€0.9 million
	11	eir will implement the proposed remediation plan as identified in its report on the Unstructured CRI Data BUPCR review. eir will confirm in writing to ComReg that this remediation plan has been implemented.	1 August 2020 <sup>6</sup>	€0.250 million

<sup>5</sup> A new reconciliation date of 1 June 2020 is associated with this and milestone 12.

<sup>6</sup> A new reconciliation date of 1 September 2020 is associated with this milestone.