



An Coimisiún um
Rialáil Cumarsáide
Commission for
Communications Regulation

Update on the implementation of the Settlement Agreement between ComReg and Eircom Limited of 10 December 2018

Information Notice

Reference: ComReg 21/15R

Version: Final

Date: 11/03/2021

An Coimisiún um Rialáil Cumarsáide
Commission for Communications Regulation

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Additional Information

Document No:	21/15R
Date:	11 March 2021

1. In December 2018, under a Settlement Agreement between Eircom and ComReg¹, Eircom agreed a set of commitments which were intended to result in the establishment and operation of an enhanced Regulatory Governance Model (“RGM”) in Eircom. Those commitments to implement the RGM are referred to as the RGM Undertakings and are detailed in the Settlement Agreement. A number of the key RGM undertakings (“Performance Milestones”) were underpinned by a Performance Agreement. This provided for a cash amount of €9 million to be placed in escrow by Eircom, which could be drawn down by ComReg in the event of a late or non-delivery of the Performance Milestones by Eircom.
2. The Early Performance Milestones (Milestones 1, 2, 3, 6, 7, 8, 9, 14, 15 and 16)² were due for delivery on or before 31 May 2019, the Mid-Term Milestones (Milestones 4, 10 and 11) on or before 31 December 2019 and the 2020 Milestones (Milestones 5, 12 and 13) were the Milestones due to be delivered after 1 January 2020. Descriptions of the Performance Milestones are included in the table in Annex 1 of this Information Note.
3. In June 2019, ComReg determined that Eircom had achieved the 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 ComReg³. Instructions were given to the Escrow Agent for the repayment of the associated amount of €4.5 million.
4. In respect of the Mid-Term Milestones (Milestones 4, 10 and 11) in February 2020 Eircom and ComReg agreed to amend the Settlement Agreement and revise the text of the Mid-Term Milestones, the associated dates for completion were amended as follows:⁴
 - Milestone 4: it was agreed that Eircom would provide an updated Risk and Control Matrix (RACM) for all risks (operational, non-operational and system), reviewed according to an agreed process, by 30 September 2020 and implement the remediations required by 1 December 2020;
 - Milestone 10: it was agreed would review the risks associated with the use of unstructured data by 1 May 2020. Whether Eircom had achieved Milestone 10 would be considered by ComReg in June 2020, together with one of the original 2020

¹ Settlement Agreement, dated 10 December 2018 published in ComReg Information Notice: “Wholesale Compliance Litigation Update - Outcome of Cases 481 and 568 and related litigation” dated 10 December 2018, ComReg Document No. 18/110, <https://www.comreg.ie/publication/wholesale-compliance-litigation-update/>

² The RGM Undertakings including the 16 Milestones are published as part of ComReg Information Notice No. 18/110. The Milestones are not numbered in the Performance Agreement (Annex 2 of the Settlement Agreement), the numbers used here refer to the order in which they are listed in the table in Schedule 1 of the Performance Agreement, pp. 36-38 of the Settlement Agreement.

³ See ComReg Information Notice, ComReg Document No. 19/72 dated 28 June 2019.

⁴ ComReg Information Notice: “Update on Regulatory Governance Settlement Agreement with Eircom” dated 17 February 2020, ComReg Document No. 20/10. An amount of €1 million was refunded to Eircom on 14 February 2020 in recognition of work completed in respect of the Mid-Term Milestones (Milestones 4, 10 and 11).

Milestones, Milestone 12. Under Milestone 12, Eircom was required to provide a report on the progress of the remediation of high risk IT systems by 31 March 2020; and

- Milestone 11: it was agreed that Eircom would prepare and have executed a remediation plan of the risks associated with the use of unstructured data by 1 August 2020.

Milestones 10, 11 and 12

5. In July 2020, ComReg confirmed, after seeking a number of clarifications from Eircom, that Eircom had met both Milestone 10 and Milestone 12 and instructions were given to the Escrow Agent for the payment of the associated amount of €1 million.⁵ In September 2020, ComReg confirmed to Eircom that Milestone 11 had been met and instructions were given to the Escrow Agent for the payment of the associated amount of €250,000.

Milestones 4, 5 and 13

6. Milestones 4, 5 and 13 were due for assessment by ComReg in December 2020.
7. Milestone 5 required Eircom to produce one annual cycle of reports and submit them to the IOB, which Eircom confirmed to ComReg it had done by 30 September 2020 in accordance with the requirements of the Settlement Agreement. As for Milestone 13, it required Eircom to have completed the full systems remediation for structured data as set out in the RGM Undertakings. Following engagement with Eircom, on 1 December 2020, Eircom submitted documents to ComReg which ComReg found met the requirements of the Performance Agreement.
8. ComReg instructed the Escrow Agent to make a refund payment of €1.025 million to Eircom with respect to Milestone 5 and €1.125 million with respect to Milestone 13.

Milestone 4

9. On 30 September 2020, Eircom provided an updated RACM and an associated report which Eircom considered fulfilled its obligations with respect to Milestone 4. However, on review of the documentation provided, ComReg considered that a number of aspects of Milestone 4 remained to be addressed and both parties agreed to amend the Settlement Agreement in order to provide additional time for Eircom and ComReg to resolve this disagreement. The dates for the completion of Milestone 4 were amended by way of a side letter to the Settlement Agreement⁶ which is included in Annex 2 to this Information Note.

⁵ See ComReg Information Notice, ComReg Document No. 20/67 dated 23 July 2020.

⁶ Third side letter to the Settlement Agreement between Eircom Ltd and ComReg dated 16 December 2020.

10. Eircom is now required to provide an updated RACM for all risks (operational, non-operations and system), reviewed according to the agreed process, by 31 March 2021 and to implement the associated remediation plan by 30 April 2021.
11. Milestone 4 is the final Milestone to be completed under the Performance Agreement. It requires Eircom to carry out a risk review of the Eircom organisation in order for regulatory risks to be identified and controls⁷ to be implemented. One of the outputs of Milestone 4 is a RACM which is a document which sets out the full risk environment and the system of controls in place to manage those risks. Therefore, as the identification of risks and the development and operation of a corresponding control environment is essential for effective regulatory governance, ComReg considers that the output of Milestone 4 has particular significance in terms of Eircom's overall implementation of the Settlement Agreement and the operation of its RGM.

⁷ Milestone 4 requires Eircom to update its RACM in order to record all risks identified during the risk review and the controls in place. The controls are operated by the Eircom Business Units where the risk has been identified.

Annex 1

Performance Milestone Table

The completion dates in the table below reflect the various amendments to the Settlement agreement agreed between Eircom and ComReg.

Category	Performance Milestone (Column A)	To be achieved by	Notional Milestone Payment
Assurance and oversight	<ul style="list-style-type: none"> Facilitate creation of the IOB through the appointment of eir members to the IOB and allocation of IOB Secretariat. <p>Milestone 1</p>	31 January 2019	€1 million
	<ul style="list-style-type: none"> Internal Audit [3rd Line of defence] will provide a multi annual audit plan for a 2 year period. <p>Milestone 2</p>	31 May 2019 or 1 st Meeting of IOB	€0.75 million
	<ul style="list-style-type: none"> Internal Audit provide a resource plan in line with the IOB charter. <p>Milestone 3</p>	31 May 2019 or 1 st Meeting of IOB	€0.75 million

Category	Performance Milestone (Column A)	To be achieved by	Notional Milestone Payment
	<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>' which is 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> <p>b) eir will implement the proposed remediations as identified in its report on the All Risks BUPCR Review. eir will confirm in writing to ComReg that this remediation plan has been implemented.</p> <p>Milestone 4</p>	31 March 2021	€0.05 million
	<ul style="list-style-type: none"> • Produce one annual cycle and provide to IOB all reports set out in Schedule 2 of the IOB Charter and as agreed by IOB and eir in line with the IOB Charter. <p>Milestone 5</p>	30 September 2020	€1.025 million

Category	Performance Milestone (Column A)	To be achieved by	Notional Milestone Payment
IT Systems /Data /CRI	<ul style="list-style-type: none"> Eir will design and implement a data asset register as per paragraph 62 of the RGM Undertakings. <p>Milestone 6</p>	31 March 2019	€0.25 million
	<ul style="list-style-type: none"> Provide a written report to the IOB and ComReg documenting the review of IT systems which hold CRI or have access to systems with CRI as set out in paragraph 55 of the RGM Undertakings. <p>Milestone 7</p>	31 May 2019	€0.25 million
	<ul style="list-style-type: none"> Provide the IOB and ComReg a written protocol for all future systems development as set out in paragraph 60 of the RGM Undertakings. <p>Milestone 8</p>	31 May 2019	€0.25 million
	<ul style="list-style-type: none"> Provide to the IOB and ComReg eir's overarching written policy on the management of Confidential Regulated Information as set out in paragraph 59 of the RGM Undertakings. <p>Milestone 9</p>	31 May 2019	€0.25 million

Category	Performance Milestone (Column A)	To be achieved by	Notional Milestone Payment
	<ul style="list-style-type: none"> • eir will carry out a BUPCR (Business Unit Process Compliance Review) in relation to CRI in Unstructured 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. • 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>Milestone 10 (Additional CRI Milestone)</p>	1 May 2020	€0.9 million
	<ul style="list-style-type: none"> • 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. <p>Milestone 11</p>	1 August 2020	€0.250 million
	<ul style="list-style-type: none"> • Eir will provide a written report on progress of the remediation of high risk systems and will provide an updated review of the low risk systems. <p>Milestone 12</p>	31 March 2020	€0.1 million
	<ul style="list-style-type: none"> • Completion of full systems remediation for Structured Data as set out in paragraph 58 of the RGM Undertakings <p>Milestone 13</p>	1 December 2020	€1.125 million

Category	Performance Milestone (Column A)	To be achieved by	Notional Milestone Payment
Other	<ul style="list-style-type: none"> Provide to the IOB and ComReg a written report on the provisions of the Regulatory Code of Practice as detailed in Group HR policies and on-going monitoring of compliance. <p>Milestone 14</p>	31 May 2019 or 1 st Meeting of IOB	€0.33 million
	<ul style="list-style-type: none"> Provide to the IOB and ComReg a written report on the policy for remuneration of Wholesale staff members (including for avoidance of doubt networks) specifically showing that incentives are based solely on performance of Wholesale division and that this is embedded in staff performance review metrics. <p>Milestone 15</p>	31 May 2019 or 1 st Meeting of IOB	€0.33 million
	<ul style="list-style-type: none"> Provide to the IOB and ComReg a written report on an incentive scheme for Internal Audit based on objectives of Internal Audit. <p>Milestone 16</p>	31 May 2019 or 1 st Meeting of IOB	€0.34 million

Annex 2



Commission for
Communications Regulation

Ms Carolan Lennon
CEO Eircom
2022 Bianconi Avenue
Citywest Business Campus
Dublin 24, D24 HX03

22 December 2020

Dear Carolan,

THIRD SIDE LETTER TO THE SETTLEMENT AGREEMENT BETWEEN EIRCOM LIMITED AND THE COMMISSION FOR COMMUNICATIONS REGULATION DATED 10 DECEMBER 2018

BACKGROUND

We refer to the Settlement Agreement dated 10 December 2018 between Eircom Limited (eir) and the Commission for Communications Regulations (ComReg) (subsequently amended by side letters dated 21 June 2019 and 12 February 2020).

1. AGREEMENT

1.1 The purpose of this side letter (the 'Third Side Letter') is to agree a variation to the Performance Agreement contained in Annex 2 of the Settlement Agreement and to Annex 1 of the Settlement Agreement (see Clause 1.4 below).

1.2 In this Third Side Letter, expressions defined in the Settlement Agreement and used in this letter have the meaning set out in the Settlement Agreement.

1.3 In consideration of our respective obligations under this letter, we agree to vary the Performance Agreement in Annex 2 as follows:

1.3.1 Milestones 4a and 4b in Schedule 1 of the Performance Agreement as amended by the side letter of 12 February 2020 are now to be achieved by 31 March 2021 and 30 April 2021 respectively or as otherwise agreed between the parties by 1 February 2021.

1.3.2 A new definition of a 2021 Milestone in Section 1.1 of the Performance Agreement (Definitions) shall be inserted as follows:

‘2021 Milestone’ means any Milestones in Schedule 1 of the Performance Agreement due for delivery after 1 January 2021 and by 30th April 2021.

For the avoidance of doubt, Milestone 4 shall no longer be treated as a 2020 Milestone, including for the purposes of Clause 1.6 of the Performance Agreement.

1.3.3 A new definition of a reconciliation date shall be inserted in Section 1.1 of the Performance Agreement (Definitions) as follows:

‘2021 Reconciliation Date’ is 30 April 2021 or as otherwise agreed between the parties.

1.3.4 The definition of Reconciliation Date shall be amended by the addition of the words “2021 Reconciliation Date” after the words ‘Additional CRI Reconciliation Date, Additional Remediation Reconciliation Date’.

1.3.5 Clause 1.5 of the Performance Agreement shall be amended by the addition of the words “or the 2021 Reconciliation Date” after ‘or the Additional CRI Reconciliation Date or the Additional Remediation Reconciliation Date as applicable’.

1.3.6 Clause 1.8 of the Performance Agreement shall be amended by the addition of new clauses 1.8.3A after clause 1.8.3 as follows:

‘1.8.3A for the 2021 Milestone as soon as possible after the 2021 Reconciliation Date’.

1.3.7 Clause 1.10 of the Performance Agreement shall be amended by the addition of the words “and 2021 Milestone” after the words ‘and 2020 Milestone’.

1.3.8 Clause 1.11 of the Performance Agreement shall be amended by the addition of the words “or the 2021 Reconciliation Date” after the words ‘Additional CRI, Additional Remediation or Third Reconciliation Date’.

1.3.9 Clause 1.12 of the Performance Agreement shall be amended by the addition of the words “or the 2021 Reconciliation Date” after the words ‘Additional CRI, Additional Remediation and Third Reconciliation Date’.

1.4 Eir has provided ComReg with documentation that it considers demonstrates that it has fulfilled its obligations with respect to Milestone 4, but ComReg is not in agreement with eir’s position. In order to provide additional time for Eir and ComReg to resolve this disagreement, including the possibility of additional work by either or both parties if it is necessary, it is agreed that the dates in Paragraph 3 of Annex 1 of the Settlement Agreement should be amended so that it reads as follows:

“The parties acknowledge the RGM Internal Documentation is subject to ongoing review in line with eir’s regulatory obligations. Eir agrees to ensure that a full review of the entire risk environment will be completed by 31 March 2021. An evaluation of existing controls as documented in the Risk and Control Matrix (“RACM”) will take place in parallel. Eir agrees to implement any additional controls identified as part of this process by 30th April 2021.”

1.5 It is agreed between the parties that:

- a) the CEO of Eir and a ComReg Commissioner will meet, together with relevant staff members, by 15 January 2021 to agree the scope of remaining work required to fulfil the requirements of milestone 4.;
- b) ComReg, in coming to a determination in relation to Milestone 4, may request whatever evidence is reasonably necessary to address concerns that arise about whether Eir has performed an All Risks BUPCR in accordance with the methodology described in the *All Risks BUPCR Document*. ComReg will provide reasons at the time of any such request.

2. INTENTION TO BE BOUND

The parties intend this letter to be legally binding.

3. THIRD PARTY RIGHTS

No one other than a party to this letter, their successors and permitted assignees, shall have any right to enforce any of its terms.

4. GOVERNING LAW

This letter and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with Irish law.

5. COMMUNICATION

Information in relation to this side letter may be published by ComReg in an Information Notice. The contents of any such Information Notice will be entirely at ComReg’s sole and absolute discretion, subject to the removal of any confidential or commercially sensitive information. ComReg will consult with Eircom about the contents of any such Information Notice in advance of publication.

6. JURISDICTION

Each party irrevocably agrees that the Irish courts shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this letter or its subject matter or formation.

Please acknowledge receipt and acceptance of this letter by signing, dating and returning the enclosed copy.

Yours sincerely,



.....

JEREMY GODFREY

ON BEHALF OF THE COMMISSION FOR COMMUNICATIONS REGULATION

We hereby acknowledge receipt and accept the contents of this letter

CAROLAN LENNON

ON BEHALF OF EIRCOM LIMITED

Signed

Date

