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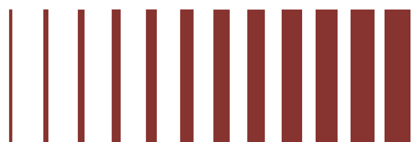

EBA publishes Guidelines on treatment of public and private moratoria in light of COVID-19 measures

Following the publication of its statement on the application of the prudential framework regarding default, forbearance and IFRS9 in light of COVID-19 measures, the **European Banking Authority (EBA)** published on 2 April 2020 more detailed guidance on the criteria to be fulfilled by legislative and non-legislative moratoria applied before 30 June 2020.

These guidelines clarify which legislative and non-legislative moratoria should not change the classification of exposures under the definition of forbearance in accordance with Article 47b of Regulation (EU) No 575/2013 or change whether they are treated as distressed restructuring in accordance with Article 178(3)(d) of that Regulation.

Specifically, the conditions to be fulfilled in order the general legislative and non-legislative moratoria not to be considered forbearance are:

1. The moratorium was launched in response to the COVID-19 pandemic and is announced and applied before 30 June 2020. If necessary, depending on the further developments, this time limit may be extended at a later point in time.

2. The moratorium has to be broadly applied. For the change of the schedule of payment due to the application of the moratorium not to be considered forbearance, the moratorium has to be based on a sufficiently broad initiative. For this purpose, an initiative of a single institution is not considered sufficiently broad, as it would therefore be a tailor-made solution. In such a case, the institution would have to analyse the exposures subject to the moratorium and apply the definition of forbearance on a case-by-case basis.

3. The moratorium has to apply to a broad range of obligors. Examples of such broad criteria include, but are not limited to, a specific exposure class or sub-exposure class (e.g. retail, private individuals, SMEs or corporates), a specific product range (e.g. mortgage loans) or obligors from specific regions or certain industry sectors that are most affected by the crises caused by the COVID-19 pandemic. For the purpose of the application of these guidelines, the moratorium cannot apply to obligors based on their creditworthiness.

4. The same moratorium offers the same conditions. It is possible that different moratoria apply to different segments of exposures or obligors. However, in any case, it has to be ensured that the moratorium applies broadly and to a large number of obligors of an institution.

5. The moratorium changes only the schedule of payments. The moratorium should not affect other conditions of the loan, in particular the interest rate, unless such change only serves for compensation to avoid losses which an institution otherwise would have due to the delayed payment schedule under the moratorium, which would allow the impact on the net present value to be neutralised. The application of state guarantee associated to the moratorium is not considered to change the terms and conditions of the loan, regardless the way these guarantees are treated under the applicable accounting framework.

6. The moratorium does not apply to new loans granted after the launch of the moratorium.

Where a general payment moratorium meets the conditions referred to above, it should be treated in accordance with paragraphs 16 to 18 of the EBA Guidelines on the application of the definition of default. Consequently, for the purpose of Article 178(1)(b) of Regulation (EU) No 575/2013 and in accordance with Article 178(2)(e) of that Regulation, institutions should count the days past due based on the revised schedule of payments, resulting from the application of any moratorium. Likewise, for the purpose of Article 47a(3)(c) of Regulation (EU) No 575/2013 institutions should count the days past due based on the revised schedule of payments, resulting from the application of any moratorium.

Throughout the duration of the moratorium, institutions should assess the potential unlikeliness to pay of obligors subject to the moratorium in accordance with policies and practices that usually apply to such assessments, including where these are based on automatic checks of indications of unlikeliness to pay. Where manual assessments of individual obligors are performed, institutions should prioritise the assessment of obligors for whom the effects of the COVID-19 pandemic are most likely to transform into longer-term financial difficulties or insolvency.

In the assessments of unlikeliness to pay of individual obligors following the end of the application of the moratoria referred to in paragraph 10, institutions should prioritise the assessment of the following cases:

(a) where obligors experience payment delays shortly after the end of the moratorium;
(b) where any forbearance measures are applied shortly after the end of the moratorium.

Institutions should perform the assessment of unlikeliness to pay based on the most up-to-date schedule of payment, resulting from the application of the general payment moratorium. Where any additional supportive measures set out by public authorities in response to the COVID-19 pandemic are available to the obligor and may affect its creditworthiness, these should be taken into account in the assessment of unlikeliness to pay. However, any form of credit risk mitigation such as guarantees provided by third parties to institutions should not exempt institutions from assessing the potential unlikeliness to pay of the obligor or affect the results of such an assessment.

Furthermore, the EBA Guidelines provide for certain reporting obligations of the credit institutions and the national competent authorities.

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