

Guidelines amending guidelines EBA/GL/2020/02 on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis, (EBA/GL/2020/15)

These guidelines from the European Authority Banking (EBA) are addressed to competent authorities, as defined in point (i) of Article 4(2) of Regulation (EU) No 1093/2010, and to credit institutions as defined in point 1 of Article 4(1) of Regulation (EU) No 575/2013.

The EBA published on 2 of April 2020 the guidelines on legislative and non-legislative moratoria on loan repayments applied in light of the COVID-19 crisis (EBA/ GL/2020/02). The Executive Commission of the Bank of Spain, in its capacity as the competent authority for the direct supervision of less significant credit institutions, as well as specialized lending institutions, adopted them as their own on 19 May 2020.

Subsequently, on 25 June 2020, the EBA published an amendment (EBA/GL/2020/08) of the previous guidelines, where the application date was extended. Precisely, the moratoria, that had been previously required to put in place before 30 June 2020, was then extended to 30 September 2020.

The Executive Commission of the Banco de España, in its role of competent authority for the direct supervision of the less significant credit institutions as well as specialized lending institutions adopted the amendments made by these guidelines on 14 July 2020.

In September, the EBA decided not to extend the guidelines again, and invited institutions to return to their normal credit practices. However, the severity of the second wave of the Covid-19, and the restrictions put in place by many European jurisdictions, have led the EBA to reconsider its decision, and the EBA/GL/2020/02 were reactivated last December.

This reactivation took place through the guidelines EBA/GL/2020/15 published on 2 December 2020. The EBA revised Guidelines will apply until 31 March 2021, and include additional safeguards to avoid an increase of unrecognized losses on institutions' balance sheet.

The Executive Commission of the Bank of Spain, in its capacity as the competent authority for the direct supervision of less significant credit institutions, as well as specialized lending institutions, has adopted the guidelines EBA/GL/2020/15 as their own on 22 January 2021.



EBA/GL/2020/15

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Guidelines amending Guidelines EBA/GL/2020/02

on legislative and non-legislative moratoria on loan repayments
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1. Executive summary

The European Banking Authority (EBA) Guidelines on legislative and non-legislative moratoria on loan repayments (EBA/GL/2020/02, GL on moratoria), published in the early phases of the COVID-19 pandemic on 2 April 2020,¹ provided significant flexibility as well as certainty on the application of the regulatory framework to various forms of payment moratoria introduced by banks in the EU to support their obligors. Moreover, acknowledging the unfolding of COVID-19 pandemic, the EBA decided to extend the application period of its guidelines by 3 months, with the end date moving from 30 June to 30 September 2020.²

The EBA communicated on 21 September the phase-out of its GL on moratoria³ and extended an invitation to return to a normalisation of banks' credit practices whereby any rescheduling of payments of loans should follow a normal approach, which might lead to loans being classified as defaulted or forborne.

Since this communication, the EBA has been closely monitoring the development of the COVID-19 pandemic. In the light of the second COVID-19 outbreak and the resulting government restrictions in many EU countries, many businesses and private individuals continue to be severely affected by the crisis. The EBA is of the view that it is important to ensure that there are no operational constraints on the continued availability of credit to these borrowers. Furthermore, the EBA notes that the aim of the support provided is restricted to bridging liquidity shortages resulting from the prolonged lockdowns. Therefore, the EBA has decided to reactivate the GL on moratoria by introducing a new deadline for the application of moratoria of 31 March 2021, replacing the previous date of 30 September 2020.

However, the EBA also recognises that the prolonged lockdowns significantly heighten the risk that some customers and firms may become insolvent. Given the importance of ensuring that this risk continues to be well reflected in the capital positions of banks, the reactivation of the guidelines is conditional on additional constraints, which will apply also to existing moratoria. These constraints aim to ensure that credit losses continue to be reflected in banks' balance sheets, including in relation to loans that are covered by the current 69 EU general payment moratoria that have been reported to the EBA.⁴

In particular, when a change in the payment schedule of a loan is granted under a general payment moratorium, this should not lead to an exposure being reclassified as forborne and treated as distressed restructuring if the change in the payment schedule is limited to a total period of 9 months. This cap acts at exposure level by constraining the overall length of payment holidays granted under general payment moratoria after 30 September 2020. This implies that any

¹ <https://eba.europa.eu/eba-publishes-guidelines-treatment-public-and-private-moratoria-light-covid-19-measures>

² <https://eba.europa.eu/eba-extends-deadline-application-its-guidelines-payment-moratoria-30-september>

³ <https://eba.europa.eu/eba-phases-out-its-guidelines-legislative-and-non-legislative-loan-repayments-moratoria>

⁴ See the [notification of general payment moratoria](#).



rescheduling of payment granted after 30 September 2020 should take into account payment holidays already granted under general payment moratoria before 30 September 2020. To be clear, however, payment holidays exceeding the 9-month cap granted under general payment moratoria before 30 September would be eligible for the treatment set out in these guidelines. Furthermore, institutions are requested to notify to the relevant competent authority or authorities their plans for ensuring that assessments of customers' unlikelihood to pay in relation to exposures subject to the moratoria are performed in an adequate manner.



2. Background and rationale

1. The outbreak of the COVID-19 pandemic and the response measures that have been adopted in many countries across the globe and in the EU, including various forms of population confinement, have had significant economic consequences. In particular, many businesses and private individuals affected by the crisis may face liquidity shortages.
2. In this context, the EBA has taken a number of steps to clarify the flexibility embedded in the regulatory capital framework and provide operational relief in response to the COVID-19 pandemic. One of the main decisive EBA actions was the publication of the Guidelines on legislative and non-legislative moratoria on loan payments applied in the context of the COVID-19 crisis (EBA/GL/2020/02, GL on moratoria).
3. The GL on moratoria specify the criteria that legislative and non-legislative moratoria must fulfil such that the automatic reclassification to forbearance and the automatic assessment of distress restructuring measures do not have to be applied. Among the conditions, it was agreed that the GL on moratoria would be time-constrained; consequently, the moratorium had to be announced and applied before 30 June 2020, which meant that changes in the payment schedule of the loan contract had to be agreed between the obligor and the institution before that date. With EU economies not yet fully reopened, and considering that the COVID-19 crisis has been affecting EU countries in different ways and at different paces, the EBA decided on 18 June to extend the application of the GL on moratoria by 3 months to 30 September 2020.⁵
4. In consideration of the easing of governmental sanitary restrictions during the summer, the EBA communicated on 21 September the phase-out of its GL on moratoria⁶ and extended an invitation to return to a normalisation of banks' credit practices whereby any rescheduling of payments of loans should follow a case-by-case approach, which might lead to loans being classified as defaulted or forborne.
5. Since this communication, the EBA has been closely monitoring the development of the COVID-19 pandemic. In the light of the second COVID-19 outbreak and the resulting government restrictions in many EU countries, the EBA has decided to reactivate the GL on moratoria by introducing a new deadline for the application of moratoria of 31 March 2021, replacing the previous date of 30 September 2020. Moreover, as previously communicated, it is the EBA's intention to continue monitoring the situation on the basis of data from the templates introduced under the Guidelines on reporting and disclosure of exposures subject to measures applied in response to the COVID-19 crisis (EBA/GL/2020/07).⁷

⁵ <https://eba.europa.eu/eba-extends-deadline-application-its-guidelines-payment-moratoria-30-september>.

⁶ <https://eba.europa.eu/eba-phases-out-its-guidelines-legislative-and-non-legislative-loan-repayments-moratoria>.

⁷ <https://eba.europa.eu/eba-issues-guidelines-address-gaps-reporting-data-and-public-information-context-covid-19>.



6. Whereas the current severity of the COVID-19 second wave justifies the extension of the application of the GL on moratoria to 31 March 2021, the EBA is greatly aware of the increased risk that obligors' long-term payment difficulties will not be recognised in banks' balance sheets. This reactivation of the GL on moratoria, therefore, comes with some additional constraints aimed at tackling the trade-off between facilitating banks' support to customers facing short-term liquidity issues and ensuring that issues with the obligors' solvency are properly recognised in the institutions' balance sheets.
7. First and foremost, it must be recognised that the longer is the duration of the payment postponement, suspension or reduction towards the same obligor, the higher is the risk that the obligor is in fact facing insolvency challenges. What started, in fact, as a liquidity shortage may have developed into insolvency issues, and could, in the medium term, affect a bank's capital position and overall stability. In general, this is also the reason why the prudential framework takes a prudent approach to the recognition of these risks. Nonetheless, in the current situation, the temporary lockdowns of the EU economy, in various degrees, do cause an exceptional set of circumstances, which should be duly recognised.
8. In order to mitigate the risk faced by banks, a constraint has been introduced at the level of each single exposure on the overall length of the payment extension. In particular, the period of time for which payments on a certain loan can be suspended, postponed or reduced as a result of the application (and reapplication) of general payment moratoria should not exceed an overall length of 9 months.
9. Figure 1 illustrates the relationship between the timeline of the GL on moratoria and the timeline of changes in payment schedules (i.e. limited periods of time for which payments of principal amounts, interest or full instalments can be suspended, postponed or reduced) agreed by obligors and credit institutions. The first timeline relates to the deadline for the application of the moratorium scheme, extended to 31 March 2021, whereas the second timeline shows for fictive examples the potential periods during which payments may be postponed, suspended or reduced, which are now constrained to a total of 9 months.
10. For a loan contract where a payment suspension of 6 months has already been granted before 30 September 2020, under a general payment moratorium, credit institutions may agree to a further payment suspension of not more than 3 months under a general payment moratorium in accordance with these guidelines. This is the case for loan 1 shown in Figure 1. Where a payment suspension meets this condition, institutions will not have to reclassify the exposure as forborne or treat it as distressed restructuring, as a result of the application of a general payment moratorium. This condition ensures that the overall agreed payment extension does not exceed 9 months. This constraint should ensure that the GL on moratoria continue to help banks to alleviate the short-term liquidity challenges of their borrowers while reducing the risk of unidentified issues with obligors' (long-term) insolvency.
11. Changes in the payment schedules agreed on loan contracts before 30 September 2020 are not subject to this constrained length of 9 months and, therefore, it may be that some already

agreed payment extensions exceed the 9-month cap. In this respect, the guidelines clarify that these changes in payment schedules, agreed prior to 30 September 2020, are not affected by the amendment to the guidelines. This implies that, as illustrated in Figure 1, if on 1 May 2020 payments on loan 2 have been suspended for 13 months until 31 May 2021, under the amended guidelines, the obligor would benefit from the treatment for the full 13 months.

Figure 1: Illustration of the timeline of the EBA GL on moratoria and the timeline of changes in the payment schedules of individual loans



12. Second, an additional documentation requirement has been introduced, whereby institutions are requested to notify to the relevant competent authority or authorities their plans for assessing borrowers' unlikeliness to pay in relation to exposures subject to (legislative or non-legislative) general payment moratoria. This plan should contain, in particular, information on the process for the assessment of potential unlikeliness to pay, the sources of information feeding into it and responsibilities in the context of the assessment. This information should allow supervisors to assess the robustness of the institutions' processes for the assessment of unlikeliness to pay in the current crisis. In this protracted crisis, in fact, an appropriate unlikeliness to pay assessment acts as a crucial safeguard, since it should ensure the identification of obligors under a moratorium that have long-term solvency issues. It is therefore of great importance that banks continue their efforts to recognise solvency issues, including in relation to loans subject to payment moratoria.

13. Third, transitional arrangements have been specified for exposures subject to changes in the schedule of payments agreed between 1 October and 1 December 2020. In particular, where an exposure has been classified as defaulted due to distressed restructuring and/or forbore between 1 October 2020 and 1 December 2020 (i.e. before the date of application of these



guidelines), on the basis of a moratorium that otherwise (i.e. were it not for the date of application being after the original deadline of 30 September 2020) would have met the conditions set out in the GL on moratoria, this classification can be revisited and potentially reversed in accordance with the treatment set out in the amended guidelines. However, the 9-month cap requirement applies to changes in the payment schedule agreed in relation to such exposures. In Figure 1 above, loan 3 illustrates a situation where the revised payment schedule between the obligor and the bank was agreed after 30 September and, therefore, was not eligible for the treatment set out under the original EBA guidelines with a deadline of 30 September. If all the conditions of the amended EBA guidelines are met, the treatment set out in these guidelines can be applied to this exposure, thus revising its earlier classification.

14. Finally, in order to establish whether a loan has been granted after the date when the moratorium was announced, and therefore whether it should be considered new for the purposes of the guidelines, it is important to clarify how to evaluate whether a moratorium is new or just a modification of an existing one. In particular, a moratorium should only be considered new if it covers a new scope of exposures not considered by a previous moratorium. If a moratorium has a different set of conditions but applies to a similar set of exposures to a previous moratorium, this should be treated as a modification of the existing moratorium. In this case, the original date on which the moratorium was launched should be used to decide on the treatment of the loan for the purposes of the guidelines (i.e. whether it should be considered a “new” loan or not).
15. The EBA will continue to monitor the situation closely and aim to provide transparency to the public on the use of moratoria and coverage of public guarantees.⁸ Furthermore, the EBA will continue to ensure that any lack of clarity on the application of the guidelines is addressed, which has already been done in the EBA Report on the implementation of select COVID-19 policies.⁹ This report already contains several clarifications, in the form of FAQs, on the implementation of the guidelines, and it also clarifies issues related to the EBA COVID-19 reporting framework and other aspects.
16. Due to the urgency of the matter and the specific focus of these guidelines on COVID-19 pandemic-related measures, the EBA decided not to carry out public consultations or a cost–benefit analysis in this case. The EBA has notified the Banking Stakeholder Group (BSG) of its intention to issue the guidelines but has not requested the BSG’s advice.

⁸ A first assessment of this use was published by the EBA on 20 November 2020 (<https://eba.europa.eu/banks-report-significant-use-covid-19-moratoria-and-public-guarantees>).

⁹ The most up-to-date version of this report can be found at <https://eba.europa.eu/regulation-and-policy/credit-risk/guidelines-legislative-and-non-legislative-moratoria-loan-repayments-applied-light-covid-19-crisis>



EBA/GL/2020/15

2 December 2020

Guidelines amending EBA/GL/2020/02

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1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹⁰. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the guidelines.
2. Guidelines set the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to which guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Reporting requirements

3. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA whether they comply or intend to comply with these guidelines, or otherwise give their reasons for non-compliance, by 2 February 2021. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website with the reference 'EBA/GL/2020/15'. Notifications should be submitted by persons with the appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to the EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3) of Regulation (EU) No 1093/2010.

¹⁰ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).



2. Addressees

5. These guidelines are addressed to competent authorities as defined in point (i) of Article 4(2) of Regulation (EU) No 1093/2010 and to credit institutions as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013.

3. Implementation

Date of application

6. These guidelines apply from 02/12/2020.

4. Amendments

7. Guidelines EBA/GL/2020/02 on legislative and non-legislative moratoria on loan payments applied in the light of the COVID-19 crisis are amended as follows:

(1) Letter (f) of paragraph 10 is amended as follows:

‘(f) the moratorium was launched in response to the COVID-19 pandemic and was applied before 31 March 2021.’

(2) The following sub-section is added after paragraph 10 as follows:

Criteria for exposures subject to moratoria

‘10(bis) For the purpose of these guidelines, the total period of time by which the payment schedule of a certain loan contract is changed according to paragraph 10(c), as a result of the application of general payment moratoria, should not exceed 9 months. However, this 9-month cap requirement does not apply to changes in the schedule of payments agreed on loan contracts before 30 September 2020 under a general payment moratorium where the total length of the change exceeds 9 months.’

(3) Paragraph 11 is amended as follows:

‘11. Where a general payment moratorium meets the conditions referred to in paragraph 10 and applies to all of the exposures of an institution within the scope of the moratorium, and where the exposures subject to the moratorium meet the condition referred to in paragraph 10(bis), such measures 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. Consequently, the application of the general payment moratorium in itself should not lead to reclassification of the exposure as forborne (either performing or non-performing) unless an exposure has already been classified as forborne at the moment of the application of the moratorium.’

(4) Paragraph 13 is amended as follows:

‘13. Where a general payment moratorium meets the conditions referred to in paragraph 10 and where the exposures subject to the moratorium meet the condition referred to in paragraph 10(bis), it should be treated in accordance with paragraphs 16 to 18 of the EBA Guidelines on the application of the definition of default, issued under Article 178 of Regulation (EU) No 575/2013. 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.'

(5) The following paragraph is added after paragraph 17:

'17(bis) Institutions should notify their relevant competent authorit(y/ies) the plan outlining the process, sources of information and responsibilities in the context of the assessment of the potential unlikeliness to pay of obligors subject to any legislative or non-legislative general payment moratorium as referred to in paragraph 14.'

(6) The following subsection is added after paragraph 19:

Classification of exposures for the period between 1 October 2020 and 1 December 2020

'20. Institutions may apply these guidelines to reclassifications of exposures as defaulted due to distressed restructuring and/or forbore on the basis of moratoria that: (a) were applied between 1 October 2020 and 1 December 2020; and (b) otherwise meet the requirements of Article 10. Where institutions do so, the 9-month cap requirement of paragraph 10(bis) applies to changes in the payment schedule agreed in relation to such exposures.'