

FINANCE

COVID-19: EBA Guidelines on Payment Moratoria: Application to Securitisations

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The European Banking Authority (EBA) has [clarified](#) how its [Guidelines on legislative and non-legislative moratoria on loan repayments applied in light of COVID-19](#) (the **Moratoria Guidelines**) apply to securitisations.

As mentioned in our recent briefing ([COVID-19: EBA Guidelines on Payment Moratoria](#)), in its Moratoria Guidelines, the EBA clarified the circumstances in which a COVID-19-related moratorium on principal repayments and/or interest payments under a loan will:

- not trigger a forbearance classification for that loan; and
- not be treated as a distressed restructuring of that loan.

The EBA subsequently published a [statement on additional supervisory measures in the COVID-19 pandemic](#) (the **Securisation Statement**) which, among other matters, clarified how the Moratoria Guidelines:

- apply to securitisations; and
- interact with the restrictions on the provision of implicit support by originators and sponsors in Article 250 of the Capital Requirements Regulation (the CRR), and with the EBA's [Guidelines on implicit support for securitisation transactions \(October 2016\)](#) (the **Implicit Support Guidelines**).

The Moratoria Guidelines

The Moratoria Guidelines provide that where a legislative or non-legislative moratorium introduced in response to COVID-19:

- meets the criteria to be deemed to be a “*general payment moratorium*” within the

meaning of the Moratoria Guidelines; and

- applies to all in-scope “*exposures of an institution*”,

the application of that moratorium will:

- not trigger a forbearance classification for the relevant loan; and
- not be treated as a distressed restructuring of the relevant loan.

In the context of the non-legislative payment breaks granted by, among others, the five Irish retail banks, this means that where those payment breaks meet the “*general payment moratorium*” criteria (summarised in our recent briefing [here](#)), the fact that a payment break is granted should not cause the relevant loan to be re-classified as being in forbearance, or change its existing classification. As the EBA will not treat “*non-legislative moratoria*” or “*legislative moratoria*” as forbearance measures if they meet those criteria, the EBA has confirmed that those moratoria should not trigger a distressed restructuring classification.

How do the Moratoria Guidelines apply to a securitisation?

As mentioned in our briefing on the Moratoria Guidelines, a moratorium granted under a legislative or non-legislative moratorium scheme implemented across the EU will amend schedules for principal repayments and/

or interest payments (but cannot (if it wants to qualify as a “*general payment moratorium*” for the purposes of the Moratoria Guidelines) amend other terms of the relevant loan (such as the interest rate)).

Any deferred principal and interest will still fall due for payment after the moratorium expires on terms agreed between the bank and the relevant borrower. For instance, the scheduled repayments may be increased over the existing term of the loan, or a term extension may be agreed.

As pools of securitised assets may comprise, in whole or in part, assets that are subject of a “*general payment moratorium*”, the EBA has confirmed that:

- where the “*general payment moratorium*” is a **legislative moratorium**: the servicer **must** defer the collection of payments for those assets until the end of the moratorium period without triggering an event of default under the assets;
- where the “*general payment moratorium*” is a **non-legislative moratorium**: (the payment breaks granted by the five Irish retail banks are non-legislative), the servicer may also defer those collections and this will also not trigger an event of default.

Regulatory Capital Treatment

When an institution is calculating its regulatory capital requirements on

securitisation positions held by it, and where the underlying securitised exposures are subject to a “*general payment moratorium*”, it must classify those exposures in accordance with the Moratoria Guidelines.¹

By way of reminder, the Moratoria Guidelines clarify that when a COVID-19 moratorium (such as the non-legislative payment breaks granted by the five Irish retail banks) meets the criteria necessary to be deemed to be a “*general payment moratorium*” for the purposes of the Moratoria Guidelines, the granting of a moratorium under that scheme to a borrower will not, of itself:

- change an existing classification in respect of the relevant loan; or
- trigger a forbearance classification for the loan in respect of which it is granted; or
- be treated as a distressed restructuring of that loan.

The Securitisation Statement goes on to clarify that a “*general payment moratorium*” should not of itself lead to securitised exposures being treated as in default or in forbearance when carrying out certain calculations in respect of the risk-weighted exposure amount for a securitisation position,² provided that those securitised exposures were not already classified as being in default or forbearance before the relevant “*general payment moratorium*” came into effect.

Assessing unlikelihood to pay

The EBA has confirmed that, during the moratorium, institutions should assess the potential unlikelihood to pay of those obligors that are subject to the moratorium in accordance with their usual policies and procedures (including where these are based on automatic checks).

Where manual assessments of unlikelihood to pay are being carried out in respect of individual obligors, institutions should prioritise assessments for those obligors who are most likely to suffer longer-term financial difficulties as a result of the COVID-19 pandemic. These assessments should be based on the schedule of payments that resulted from the “*general payment moratorium*”.

Additional public support measures that are available to the obligor can also be factored into the assessment, where they might affect the obligor’s creditworthiness. However, any credit risk mitigation provided to the institution

by a third party will not absolve the institution of the requirement to assess creditworthiness, and should not affect the outcome of those assessments.

Documentation and Notification Obligations

The obligation on an institution under the Moratoria Guidelines to notify its national competent authority when it is applying a non-legislative moratorium, and to provide certain information (including selection criteria, number of obligors, exposure amounts, conditions for offering the moratorium and the distribution of obligors and exposures across ratings grades) will not apply to securitisation positions held by investor institutions or by originator institutions (however, the originator institution must have excluded the underlying exposures from its calculation of risk-weighted exposure amounts in accordance with Article 244 of the CRR).

Implicit Support

Article 250 of the CRR, and the related Implicit Support Guidelines (as mentioned above) restrict the provision of implicit support by a sponsor or originator of a securitisation. Implicit support is not permitted if:

- the support exceeds the originator’s or sponsor’s contractual obligations; and
- the aim of the support is to “*reduce the potential or actual losses to investors*”.

A moratorium that meets the test to be a “*general payment moratorium*” under the Moratoria Guidelines will involve a rescheduling of either or both of principal repayments and interest payments under a loan. The EBA has clarified that, in the context of a securitisation:

- where the originator suspends, postpones or reduces payments in respect of a securitised asset, or grants a new loan in line with a “*general payment moratorium*”, this will not be automatically viewed as prohibited implicit support because:
 - if the moratorium is a legislative moratorium, the originator is complying with a legal obligation (this is not relevant in the context of the payment breaks granted in Ireland, as they are granted on foot of a non-legislative moratorium);
 - whether the “*general payment moratorium*” is legislative or not, complying with it is not designed to “*reduce the potential or actual losses to investors*”, but instead addresses

exceptional public health, economic and market circumstances;

- for the same reasons, the following should not be automatically viewed as prohibited implicit support:
 - the replacement (where allowed) by the originator, sponsor or servicer, of securitised assets in the pool which are already subject to a “*general payment moratorium*” with assets that are not subject to a “*general payment moratorium*”, but have a similar risk profile;
 - (where allowed) the restructuring or amendment of the contractual documents governing the securitised assets by the originator, sponsor or servicer, so as to implement or comply with the “*general payment moratorium*”; or
 - the originator, sponsor or servicer refraining from making a claim (in relation to the securitised assets that are subject to a “*general payment moratorium*”) against a protection provider in a synthetic securitisation during the moratorium period;
 - the provision, by the originator, sponsor or servicer, of temporary up-front liquidity or other temporary financial support to the securitisation to address any shortfall that might arise as a result of a “*general payment moratorium*” provided that repayment of such amounts ranks at the top of the securitisation’s priority of payments.

Where any of the above apply, the obligation on the originator and sponsor to notify the relevant competent authority under Article 250 of the CRR continues to apply, notwithstanding that the above will not be treated as implicit support.

Subsequent Developments

The Moratoria Guidelines, and the Securitisation Statement, were promptly followed by:

- the European Commission’s [Interpretative Communication](#) on the application of the accounting and prudential frameworks to facilitate EU bank lending in the context of the COVID-19 pandemic; and
- targeted ‘*quick-fix*’ amendments to the CRR ([Coronavirus response: Banking Package to facilitate bank lending - Supporting households and businesses in the EU](#)).

These will be the subject of a further briefing shortly.

¹ This is without prejudice to the application to the securitisation positions of any definition of “event of default”, “acceleration event”, “credit restructuring event” or similar definition in connection with a “*general payment moratorium*” under the contractual documentation governing the securitisation.

² KIRB and KSA under Article 255 (Determination of KIRB and KSA) of the CRR, and KA under Article 261 (Calculation of risk-weighted exposure amounts under the Standardised Approach (SEC-SA)) of the CRR.

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