

Single Rulebook Q&A

Question ID	2022_6527
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Model validation
Article	178
Paragraph	5
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	EBA/GL/2016/07 - Guidelines on the application of the definition of default under Article 178 CRR
Article/Paragraph	73(b) and 73(c)
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Return to non default status
Question	Can any delay in payments be allowed in the context of the minimum conditions for reclassification to a non-defaulted status as stated in Section 7 of the EBA Guidelines on the new Definition of Default (DoD)?
Background on the question	Section 7 of the new EBA Guidelines on the definition of default (DoD) sets out different criteria for the return to a non-defaulted status for distressed restructuring and the other default cases. For defaults other than distressed restructuring, according to paragraph 71(a) of said guidelines, institutions should consider that no trigger of default continues to apply for at least 3 months. According to paragraph 73(b) and 73(c) in Section 7 of the guidelines, institutions should reclassify the exposures of defaulted distressed restructuring cases to a non-defaulted status whether during the 1 year probation period “payments have been made regularly according to the schedule applicable after the restructuring arrangements” and “there are no past due credit obligations according to the schedule applicable after the restructuring arrangements”, respectively. On the other side, Paragraph 232 of the FINREP reporting instructions (Annex V of Commission Implementing Regulation (EU) 451/2021, repealing Implementing Regulation (EU) 680/2014) clarifies that where the conditions referred to in paragraph

231 are not met at the end of the one year period specified in point (b) of Article 47a(6) CRR, the exposure shall continue to be identified as non-performing forborne exposure until all conditions are met and that the conditions shall be assessed at least on a quarterly basis.

Furthermore, Q&A_2429 says that a delay in payments up to 3 months does not trigger a discontinuation of the 1 year period as defined in point b of Article 47a(6) CRR.

Final answer

For defaults other than those related to a distressed restructuring in accordance with Article 178(3)(d) CRR, paragraph 71(a) of the EBA/GL/2016/07 requires the assessment of whether, at the end of the observation period of at least three months, any trigger of default continues to apply to a previously defaulted exposure. Therefore, delays in payments up to 90 days and non-material past due amounts do not represent, per se, an automatic trigger to keep such exposures in the default status. However, according to paragraph 71(d) of the EBA/GL/2016/07, at the end of the observation period of at least 3 months institutions should perform an assessment, and, where the institution still finds that the obligor is unlikely to pay its obligations [...] the exposures should continue to be classified as defaulted”.

Pursuant to paragraph 73(b) of the EBA/GL/2016/07, credit obligations classified as defaulted due to a distressed restructuring in accordance with Article 178(3)(d) CRR may not be reclassified to the non-defaulted status at the end of the observation period of at least one year as referred to in paragraph 73 of the EBA/GL/2016/07 if during the probation period the payments have not been made regularly according to the schedule applicable after the restructuring arrangements.

In order to reclassify credit obligations subject to a distressed restructuring in accordance with Article 178(3)(d) CRR to the non-defaulted status institutions have to ascertain - at the end of the observation period of at least one year (or subsequently with a minimum quarterly frequency) - that all payments envisaged in the schedule applicable after the restructuring arrangements have occurred in a way that no past due credit obligations exist at the end of the observation period. No materiality threshold applies in this respect.

It should however be noted that the return to a non- defaulted status is not solely assessed on the absence of days past due at the end of the probation period, but also with other criteria specified in paragraph 73(d). In particular, Paragraph 73(d) of the guidelines on the definition of default requires that ‘no indications of unlikeliness to pay as specified in Article 178(3) of Regulation (EU) No 575/2013 or any additional indications of unlikeliness to pay specified by the institution apply’. In particular, according to paragraph 54 of the guidelines on the definition of default, exposures classified as forborne non-performing should be classified as default. Since

	Article 47a(3)(c) of the CRR requires an exposure that has been under distressed restructuring to be considered as non-performing in the case it becomes more than 30 days past due, there is a rebuttable presumption that the probation period referred to in paragraph 72 of the guidelines on the definition of default should be reset as soon as the exposure becomes more than 30 days past due, unless this delayed payment is not related to financial difficulties of the obligor.
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