



**Single
Rulebook
Q&A**

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| Question ID | 2014_1411 |
| Status | Final Q&A |
| Legal act | Regulation (EU) No 575/2013 (CRR) |
| Topic | Supervisory reporting - FINREP (incl. FB&NPE) |
| Article | 99 |
| Paragraph | - |
| Subparagraph | - |
| COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations | Draft ITS on Supervisory Reporting of Institutions |
| Article/Paragraph | 243 |
| Date of submission | 01/08/2014 |
| Published as Final Q&A | 05/03/2021 |
| Disclose name of institution / entity | No |
| Type of submitter | Credit institution |
| Subject matter | Embedded forbearance clauses |
| Question | Does it lead to a forborne status of the contract if executing embedded forbearance clauses (e.g. payment holiday and partial write off), incorporated in Dutch Nationale Hypotheek Garantie mortgages? |
| Background on the question | In the Netherlands, Stichting Waarborgfonds Eigen Woningen (WEW) was founded by the government aimed at increasing private property. By means of a guarantee (Nationale Hypotheek Garantie) the repayment of Dutch mortgages was ensured. Measures that could be executed in case of troubled |

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| | <p>debt are payment holidays and partial write offs. Banks are therefore willing to offer a lower interest rate on these mortgages.</p> |
| EBA answer | <p>According to paragraph 243 of Annex V to Regulation (EU) no 680/2014 (ITS on Reporting), embedded forbearance clauses (clauses which, when enforced at the discretion of the debtor, enable the latter to change the terms of the contract), lead to the recognition of forbearance when the institution approves their use by a debtor that is assessed in financial difficulties. In this case, the triggering of such embedded clauses qualifies as a concession.</p> <p>Paragraphs 252 and 254 nevertheless provide that the use of forbearance clauses embedded in the contract by a debtor who is under non-performing status or who would be considered as non-performing without the use of these clauses, mandatorily leads the forborne status. Furthermore, applying forbearance measures to debtors who are 30 days past-due or who would be 30 days past-due in their payments without the exercise of these clauses is a rebuttable presumption that forbearance as taken place.</p> <p>The agreement to the use of embedded forbearance clauses when the debtor faces financial difficulties (evidenced in any case by a non-performing status, and presumably evidenced by a 30 days past-due status) is indeed similar to modifying the contract to improve the debt service ability of the debtor.</p> <p>To summarize, exposures guaranteed by a Nationale Hypotheek Garantie shall be identified as forborne whenever this guarantee is executed for a debtor in situation of financial difficulties, or in situations covered in paragraphs 252 and 254. On the other hand, exposures guaranteed by a Nationale Hypotheek Garantie, whose clauses are not executed, or are executed for reasons other than the financial difficulties of the debtor or than situations in paragraphs 252 and 254, shall not be identified as forborne.</p> |
| Link | <p>https://www.eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2014_1411</p> |