22 April 2020

EBA statement on additional supervisory measures in the COVID-19 pandemic

1. Following up to its strategic communications of 12th , 25th, 31st March and 2nd April, the EBA has identified the need to further specify how some additional flexibility and relief can be implemented in supervisory areas while also stressing the importance of enhancing some key elements of the supervisory toolbox.

2. In particular, this statement explains how the principles of effectiveness, flexibility and pragmatism will guide supervisory approaches in relation to the Supervisory review and Evaluation Process (SREP), Recovery Planning, Digital Operational resilience and the application of the Guidelines on payment moratoria to securitisations.

Supervisory review and evaluation process (SREP)

3. The European Banking Authority (EBA) recognises the need for a pragmatic and effective supervisory review and evaluation process (SREP), specific for the 2020 exercise.

4. Such a pragmatic approach in undertaking the SREP will entail a risk-driven supervisory assessment focusing on the most material risks and vulnerabilities driven by the crisis based on most recent information received by supervisors. The ability of institutions to respond to current challenges, including operational continuity, will be key elements of the supervisory focus.

5. Consequently, the 2020 SREP may not embrace a thorough and comprehensive assessment of all risks and vulnerabilities of institutions. For some SREP elements, considered not directly affected by the crisis or where no new relevant information is available, the previously assigned supervisory assessment could be maintained.

6. At the same time, without preventing the use of buffers decided in the context of supervisory reactions to the crisis, the EBA emphasises that drawing supervisory conclusions on the viability of institutions and their ability to meet the capital and liquidity requirements is paramount.

7. The EBA will engage with competent authorities to ensure that further clarity on such approach will be made available as necessary in order to safeguard and preserve convergent supervisory approaches and outcomes enabled by the SREP GLs also in this context of crisis.

Recovery planning

8. Financial institutions should be able to focus on core operations in the context of the COVID19 pandemic and the European Banking Authority (EBA) recognises the need for credit institutions to maintain a strong focus on effective crisis management and preparedness. In this context, recovery plans, which aim at restoring the institutions' financial and economic viability under stress, should be kept reviewed and updated in order to be implemented timely and effectively if needed.

Key elements of recovery plans in the current crisis

9. In light of the specific COVID-19 stress, while monitoring all recovery indicators, institutions should enhance their focus on understanding which recovery options are necessary and available under the current stressed conditions and adjust this analysis if the situation changes.

10. Under this fast evolving crisis situation, information of the recovery plans could become quickly outdated. Hence, it is of utmost importance that institutions and competent authorities stay promptly informed about any sign of deterioration in the institutions' financial situation and business viability, which might require the activation of their recovery plans.

11. Competent authorities should monitor that recovery plans are updated regularly and on an ad-hoc basis, in particular following changes with potential material impact on the plans or where material deficiencies have been identified[1].

12. While the current COVID-19 stress evolves, the EBA reminds that, in accordance with the existing regulatory framework[2], institutions should:

    a. monitor their recovery plan indicators and timely report to the competent authority any breach even if it does not result in the implementation of recovery actions,

    b. regularly review and update their list of credible and feasible recovery options included in their recovery plans, taking into account the current COVID-19 system-wide stress, and

    c. where feasible and necessary, take any preparatory measures to increase the institutions' ability to quickly implement these recovery options.

13. Moreover, institutions should analyse how the COVID-19 stress might evolve for their institution and estimate their overall recovery capacities[3] for liquidity and capital.

[1] Pursuant to Article 5(2).BRRD "Competent authorities shall ensure that the institutions update their recovery plans at least annually or after a change to the legal or organisational structure of the institution, its business or its financial situation, which could have a material effect on, or necessitates a change to, the recovery plan'.

[2] Directive 2014/59/EU (BRRD), Delegated Regulation (EU) 2016/1075, EBA GL on the minimum list of qualitative and quantitative recovery plan indicators (EBA/GL/2015/02); EBA GL on the range of scenarios to be used in recovery plans (EBA/GL/2014/06).

[3] Overall recovery capacity pursuant to Article 12(3) Delegated Regulation (EU) 2016/1075.

14. Competent authorities, including in supervisory colleges, should be kept informed with a sufficient frequency about institutions' own current monitoring efforts, specifically on:

    a. full set of institutions' recovery indicators, in order to ensure constant monitoring of their development (e.g. on a weekly basis where needed);

    b. institutions' updated assessment of the recovery options taking into account the latest impact of the COVID-19 stress on the availability, credibility and feasibility of the institutions' options and its overall recovery capacity (e.g. on a quarterly basis).

15. In case of institutions subject to simplified obligations and not required to update annually the recovery plans, competent authorities may require updated information on specific contents of their plans in advance of the regular reporting cycle or when needed require the submission of an updated recovery plan.[4]

Operational relief for institutions

16. Some elements of recovery plans could be under operational relief in the 2020 recovery planning cycle, without compromising the ability of institutions to react to the current COVID-19 stress.

17. It should be made possible for institutions to submit only key elements of their recovery plans in 2020 to the competent authorities, with the possibility to postpone the submission of other parts of the plans until the following assessment cycle. The operational relief should only apply to institutions that have already developed their recovery plans in previous exercises and in the absence of significant changes since the last submission of the recovery plan or of material deficiencies identified.

18. The operational relief could concern elements relatively stable from one version to the other of the recovery plan or cover information available also in other sources of regulatory information, or/and are less relevant in the context of the current situation, such as:

    a. Business-as-usual governance (the update might focus on updating the escalation process for monitoring indicators and activating recovery options if needed);

    b. Description of the institution/entities covered by a group recovery plan (including interconnectedness); description of critical functions and core business lines, as well as their mapping (unless there was a substantial merger or reorganisation since the previous submission of the recovery plan);

    c. Communication plan.

[4] In case of institutions subject to simplified obligations in terms of contents or frequency of update of recovery plans, according with BRRD Articles 4(3) and 4(4) competent authorities retain their powers to take crisis prevention or crisis management measures and maintain the possibility to withdraw simplified obligations at any time.

19. The update of the scenarios may be limited to the description of a system-wide COVID-19 scenario, being other scenarios not affected by the pandemic or its economic impact not necessary to review or submit.

20. Moreover, institutions that had been requested or planning to perform dry-runs or fire-drill exercises in 2020, might postpone them to focus on the current situation and report on their real-life experiences instead. The significant operational relief outlined above will facilitate institutions' work on the key focus points.

21. Each competent authority should communicate to Institutions under its jurisdiction any operational relief granted in line with this statement

Digital operational resilience

22. The European Banking Authority (EBA) recognises financial institutions are now providing the vast majority of their services online, accompanied by a significant increase in the number of their staff working remotely from home.[5] Under the current situation, financial institutions face additional challenges in ensuring both the business continuity and the security of their services. At the same time, customers rely on the availability and smooth functioning of these services, in order to continue their business or cover their private needs.

23. **This extraordinary stressful situation affirms the utmost importance of operational resilience** to ensure business continuity, adequate information and communication technology (ICT) capacity and security risk management, and to prevent cybercriminal activities and cyber disruption as malign actors are actively exploiting these circumstances to target remote workers, businesses and individuals alike[6]. Indicatively, the President of the European Commission warned[7] that cybercrime in the EU has increased due to the coronavirus outbreak while the World Health Organization (WHO) warned[8] of suspicious email messages attempting to take advantage of the COVID-19 emergency.

24. The EBA Guidelines on ICT and security risk management[9] (EBA/GL/2019/04 of 28 November 2019), the application of which starts on 30 June 2020, form part of operational resilience as they set requirements for financial institutions in the EU (credit institutions, investment firms and payment service providers) in relation to the mitigation and management of their ICT and security risks. The Guidelines implicitly cover the need for cybersecurity within a financial institution's information security measures and aim to ensure a consistent and robust approach across the single market.

25. Considering the ongoing COVID-19 outbreak, and given that financial institutions are required to make every effort to comply with EBA Guidelines in accordance with Article 16(3) of the EBA Regulation[10], the EBA calls on financial institutions:

    a. To ensure that financial institutions have adequate internal governance and internal control framework (including firm-wide risk management framework) in place for operational resilience (business continuity, ICT and security risks management), including involvement of management body and senior management in effective decision-making and priority setting;

    b. To ensure appropriate ICT and security risk management, focusing on the mitigation of the most significant ICT risks, the management of relevant areas such as information

[5] https://www.enisa.europa.eu/tips-for-cybersecurity-when-working-from-home

[6] https://www.europol.europa.eu/newsroom/news/covid-19-joint-statement

[7] https://audiovisual.ec.europa.eu/embed/index.html?ref=I-187195&lg=EN

[8] https://www.who.int/about/communications/cyber-security

[9] https://eba.europa.eu/regulation-and-policy/internal-governance/guidelines-on-ict-and-security-risk-management

[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).

security and monitoring, ICT operations and business continuity management (including third party providers), taking into account the evolving environment;

c. To take the necessary measures to ensure the capacity of their IT systems support their most critical activities, including those enabling their customers to carry out their operations remotely;

d. To stay vigilant in their cyber security monitoring and measures, as the current situation might pose additional cyber threats;

e. To ensure effective crisis communication measures with all relevant internal and external stakeholders, including appropriate engagement with customers in light of potential additional cyber-crime activities or operational disruptions;

f. To monitor and seek assurance on the level of compliance of their third party providers with the financial institution's security objectives, measures and performance targets;

g. To ensure that the business continuity plans are up to date and adapted, including considerations related to potentially longer-term nature of the measures applied for COVID-19.

26. In light of the above mentioned priority areas, the EBA calls on competent authorities to work closely with their supervised institutions to ensure effective prioritisation of efforts in accordance with the principle of proportionality and to apply reasonable supervisory flexibility when assessing the implementation of the Guidelines. Moreover, supervisory attention and support could be focused on the provisions relating to information security, ICT operations and business continuity management (where financial institutions should aim to maximise their abilities to provide services on an ongoing basis and to limit losses in the event of severe business disruption).

27. The EBA will continue to support competent authorities and financial institutions in applying these Guidelines with training and sharing of good practices in the pursuit of practical and targeted outcomes.

Securitisation

28. As referred to in its Statement of 25 March on the application of the prudential framework regarding Default, Forbearance and IFRS9 in light of COVID19 measures[11], the EBA broadly supports the various measures in the form of general payment moratoria that several national governments of EU Member States and industry bodies around the Union have implemented or proposed so far to address the adverse systemic economic impact of the COVID-19 pandemic.

29. The EBA would like to clarify certain ambiguities arising from the application of those general payment moratoria, in particular:

    a. how the EBA Guidelines EBA/GL/2020/02 of 02 April 2020 on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis[12] (the 'Guidelines on COVID 19') apply to securitisations;

    b. the interpretation of 'implicit support' as per Article 250 of Regulation (EU) 575/2013 (the 'CRR') and in connection with the Guidelines on COVID 19.

30. Any reference to a 'general payment moratorium' herein should be understood as a reference to the definition in paragraph 10 of the Guidelines on COVID 19.

31. Any other reference to the Guidelines on COVID 19 herein should be construed as a reference to the entire Guidelines unless otherwise stated.

Application of the Guidelines on COVID 19 in relation to securitised exposures

32. As set out in their paragraph 11, the Guidelines on COVID 19 apply in relation to 'all of the exposures of an institution within the scope of the moratoria'. For the purpose of applying the Guidelines on COVID 19 to securitised exposures, 'exposures of an institution' should be understood as follows:

    a. in traditional securitisations, any underlying exposures which remain on the originator institution's balance sheet in accordance with the applicable accounting standards or which the originator institution has not excluded from its calculation of risk-weighted exposure amounts and, where relevant, expected loss amounts, in accordance with Article 244 of the CRR (recognition of significant risk transfer);

[11] https://eba.europa.eu/coronavirus

[12] https://eba.europa.eu/regulation-and-policy/credit-risk/guidelines-legislative-and-non-legislative-moratoria-loan-repayments-applied-light-covid-19-crisis

b. in synthetic securitisations, any underlying exposures in respect of which the transfer of risk to third parties is achieved through credit derivatives or guarantees, and the exposures being securitised remain on the originator institution's balance sheet, regardless of the treatment for risk-weighted exposure amount calculation purposes in accordance with Article 245 of the CRR.

Application of the Guidelines on COVID 19 in relation to securitisation positions

33. Moratoria schemes in place in various Member States envisage changes to the schedule of payments of eligible assets[13], by suspending, postponing or reducing payments of principal amounts, interest or of full instalments, for a predefined limited period of time. The suspended collections will become due again after that period of time has elapsed[14].

34. Pools of securitised assets may comprise, fully or partly, assets falling under the scope of such general payment moratoria and, in the case of legislative moratoria, the servicer would be obliged to defer the collection of payments for those assets until the end of the moratorium period without triggering an event of default under the assets. In the case of non-legislative moratoria, the servicer may also defer the collection of payments depending on implementation details and this too would not trigger an event of default under the assets.

35. When calculating the regulatory capital requirements on securitisation positions that they hold, institutions should classify the underlying securitised exposures in accordance with the Guidelines on COVID 19 where those exposures are subject to a general payment moratorium. Accordingly, the entry into force of a general payment moratorium should not automatically lead to reclassifying securitised exposures as in default or in forbearance for the purposes of calculating the pool's Kirb or Ksa in accordance with Article 255 of the CRR as well as to calculate Ka in accordance with Article 261 of the CRR, where those securitised exposures were not classified as exposures in default or in forbearance prior to the date of entry into force of the general payment moratorium. Institutions should continue to assess the potential unlikeliness to pay of obligors subject to the moratorium (including, in particular, as regards the impact on the pool's expected and unexpected losses) in accordance with paragraphs 14 to 16 of the Guidelines on COVID 19, as appropriate.

36. Paragraph 17 of the Guidelines on COVID 19 does not apply in relation to securitisation positions held by investor institutions or by originator institutions, where, in the latter case, the originator institution has excluded the underlying exposures from its calculation of risk-weighted exposure amounts in accordance with Article 244 of the CRR.

[13] Eligible assets refer to those assets which within the scope of legislative or non-legislative moratoria schemes as defined in the Guidelines on COVID 19.

[14] For the avoidance of doubt, the reference to "payment" moratoria should be understood as including a suspension of collections of recoveries in connection with non-performing exposures

37. The above-referred regulatory capital treatment on the securitised exposures should be understood without prejudice to the application to the securitisation positions of any definition of event of default, acceleration event, credit restructuring events or similar definition in connection with a general payment moratorium under the contractual documentation governing the securitisation.

'Implicit support' in the event of a payment moratorium

38. Article 250 of the CRR precludes the sponsor and the originator of a securitisation from 'providing support, directly or indirectly, to the securitisation *beyond its contractual obligations with a view to reducing the potential or actual losses to investors*'" where the originator is taking advantage of the option to apply Article 247(1) and (2) of the CRR, so as to no longer be required to hold regulatory capital on the securitised exposures.

39. Implicit support is precluded to maintain the integrity, permanence and soundness of the capital relief granted to the originator at the inception of the transaction pursuant to Article 247(1) and (2) of the CRR. Where the originator has transferred to the investors a significant amount of the risk embedded in the securitised exposures, it must treat the securitisation on an arms' length basis (that is, as if it were a mere investor) and may not seek to re-expose itself to the transferred risk as a means of subsidising or indemnifying the investors.

40. On 3 October 2016, the EBA issued Guidelines EBA/GL/2016/08 on implicit support for securitisation transactions[15] (the 'Guidelines on Implicit Support').

41. Both Art. 250 of the CRR and the Guidelines on Implicit Support provide that implicit support is precluded where the following two tests are met: (i) the relevant support behaviour goes beyond the originator's or sponsor's contractual obligations, as these are defined in the contractual documents governing the securitisation; and (ii) the support's purpose is to 'reduce the potential or actual losses to investors'.

42. Given that general payment moratoria referred to in the Guidelines on COVID 19 may provide for the suspension, postponement or reduction in payments principal amounts, the EBA notes the following, to the extent that they relate to a securitisation:

    a. where an originator institution suspends, postpones or reduces payments due under securitised assets or grants their obligor a new loan as per a general payment moratorium in force, this should not be automatically regarded as prohibited implicit support for the purposes of Article 250 of CRR and, accordingly, does not undermine the on-going achievement of significant risk transfer. This is because:

        - where those actions are taken under a legislative moratorium, they represent

[15] https://eba.europa.eu/regulation-and-policy/securitisation-and-covered-bonds/guidelines-on-implicit-support-for-securitisation-transactions

compliance with a legal obligation, hence they cannot be considered as a breach of the prohibition of implicit support laid out in Article 250 of the CRR;

- moreover, the purpose of any such action of suspension, postponement or reduction of payments is not aimed at reducing the actual or potential losses to investors from the securitised assets. Rather, its purpose is to comply with the applicable general payment moratorium, legislative or non-legislative which, in turn, addresses the set of exceptional public health, economic and market circumstances triggered by the surge and spread of COVID 19 in the EU and the rest of the world.

b. furthermore and for the same reasons laid out in paragraph (a), the following should not automatically be regarded as prohibited implicit support for the purposes of Article 250 of CRR:

- where permitted, the originator or sponsor institution's or the servicer's replacing securitised assets in the pool which are subject to a general payment moratorium with assets of a similar risk profile not subject to any such moratorium, subject in each case to the contractual documentation governing the replacement of assets in the securitisation;

- where permitted, the originator or sponsor institution's or the servicer's restructuring or amending the contractual documentation governing the securitised assets as appropriate or necessary to implement or comply with the general payment moratorium;

- the originator or sponsor institution's or the servicer's not making a claim during the moratorium period against a protection provider in a synthetic securitisation in connection with securitised assets subject to a general payment moratorium;

- the originator or sponsor institution's or the servicer's providing up-front liquidity or other form of financial support to the securitisation on a temporary basis and to address any shortfall in the securitisation that may occur as a result of a general payment moratorium, provided that the repayment of the liquidity facility or applicable financial support is given the highest seniority in the securitisation's priority of payments.

c. where securitised assets are subject to any of the actions referred to in paragraphs (a) and (b) in accordance with a general payment moratorium, institutions are reminded of their obligation to notify these circumstances to the competent authority in accordance with Article 250(3) of the CRR and the Guidelines on Implicit Support.