

Measures to mitigate the negative impact of COVID-19. Deferral of loan payments



The National Bank of Romania (“NBR”) together with the Romanian Government have responded swiftly to the economic shock created by the COVID-19 pandemic by announcing several measures aimed to alleviate the adverse impact of COVID-19 on individuals and small & medium-sized enterprises (“SMEs”) and short-term liquidity resulting from the decreasing business activities.

EU Background

The wide-spread of COVID-19 has generated significant challenges for the society and higher risks for the economic outlook.

Under these circumstances, on March 12, 2020, the European Banking Authority (“EBA”) issued a press statement^[1] regarding a series of actions aimed to mitigate the impact of COVID-19 on the EU banking sector.

The key takeaways: (i) EBA encourages competent authorities (“CA”, in Romania case, NBR) to make full use of flexibility embedded in existing regulations which are designed to be used in order to maintain soundness through crisis and provide critical functions to the economy and (ii) EU-wide stress test is postponed to 2021 in order to allow banks to prioritise operational continuity.

Following the call for action^[2] on March 12, EBA issued a second statement designed to explain some interpretative aspects on the functioning of the prudential framework regarding aspects related to (i) the classification of loans in default, (ii) the identification of forborne exposures and (iii) the accounting treatment.

- **Regarding the classification of loans in default/forborne exposures** – EBA clarified that generalised payment deferrals, derived from legislative initiatives addressed to all borrowers do not automatically lead to a classification in default (in contrast with the 90 days past due criterion), forborne or unlikeliness to pay, considering that individual assessment of the likeliness to pay is carefully carried on.
- **Regarding the accounting treatment** – EBA considered that the application of public or private moratorium aimed to address the adverse economic of COVID-19 pandemic should not be considered by themselves as an automatic trigger to conclude that a significant increase in credit risk has occurred. Hence, when applying IFRS 9, institutions are expected to distinguish between obligors for which the credit standing would not be significantly affected by COVID-19 in the long term, from those that would be unlikely to restore their credit worthiness^[3].

Further, EBA highlighted that consumer protection continues to be a priority and that financial institutions should (i) ensure full disclosure; (ii) act in the interest of customers; (iii) consider any new additional charges (avoid any hidden costs, specifically those introduced in relation to contingency measures) and (iv) accept that such temporary measures should not automatically lead to negative implications for the consumer's credit rating.

Romanian core principles – NBR Supervisory Committee clarifies the application of the prudential framework in COVID-19 context (“the NBR Clarification”)

According to the NBR Statement^[4] issued on March 24, the NBR's Supervisory Committee convened in an emergency meeting in order to clarify the way banks and non-bank financial institutions (“NBFIs”) in Romania should apply the existing regulations in the context of the COVID-19 pandemic.

In Short

1. Payment delays derived from a general legislative measure or based on direct negotiations with clients granted in the context of COVID-19 should not be automatically considered as being in financial distress.
2. Thus, loans should not be reclassified, and credit institutions should not set up provisions for loans, as a result of restructuring (such an operation is not considered a restructuring measure because it did not result from the borrower's financial distress).
3. The existing regulations allow banks and NBFIs to delay payments of the loans of any individual affected by COVID-19 pandemic without applying the requirements established under the NBR Regulation no. 17/2012 on certain lending conditions (i.e. the level of indebtedness, the loan-to-value limit and the maximum maturity of consumer credit).
4. However, the operations where banks negotiate a payment delay measure, on an individual basis, which is not linked to the COVID-19 pandemic, should be classified as restructuring.

The NBR Statement is in line with the above-mentioned EBA's considerations while also establishing that:

I. For credit institutions

The prudential regulatory framework encompasses a series of specially designed tools for situations such as the existing one, in order to ensure the conditions for overcoming the difficult times while preserving banks' financial soundness.

Prior to COVID-19 outbreak, banks built up capital buffers according to European and national regulations adopted by the NBR based on the recommendations of the National Committee for Macroprudential Oversight.

In the context of COVID-19, NBR allows banks to temporarily use the previously built up capital buffers, while also keeping in place the legal requirements for such flexibilities.

Furthermore, the **NBR allows banks not to comply with the minimum liquidity ratio**, for the purpose of using these reserves to contribute to the smooth functioning of the banking sector, while also helping banks to ensure sufficient liquidity to firms and households in need.

The NBR will further inform banks about the particular manner in which they can use the flexibility of the prudential framework to reflect payment delay measures.

Each time a credit institution **negotiates a payment delay measure, on an individual basis, which is not linked to the COVID-19 pandemic**, this operation **should be classified as restructuring**.

Moreover, credit institutions are expected to continue to adequately assess the quality of all exposures from loans in order to identify all indications of unlikelihood to pay.

II. For non-bank financial institutions (NBFIs)

NBFIs registered with the General Register

The NBR confirms that the restructuring of loans granted to individuals negatively affected by the COVID-19 pandemic through suspending/freezing of the outstanding payments for a determined period of time does not automatically require for specific credit risk provisions to be set up, considering that this mechanism will not involve the build-up of overdue days for the payment of loan instalments.

NBFIs registered with the Special Register

The NBR confirms that the restructuring of loans granted to individuals affected by the COVID-19 pandemic does not entail the automatic classification of said loans into a lower risk bucket, nor, implicitly, additional provisioning requirements.

Also, the NBR confirms that if temporary non-compliance with credit exposure limits stems from the NBFIs implementing measures to support debtors or to stimulate lending in the context of the COVID-19 pandemic, it is a duly justified exceptional case, for which the affected NBFIs should notify the NBR so that it agrees on a timeframe for complying with the limits provided under the NBR Regulation no. 20/2009.

Romanian Government measures – Emergency Ordinance for deferrals of loan payments

Following the NBR position, the Romanian Government announced (on March 26) an Emergency Ordinance (“**EGO**”) for the deferral of loans payment up to 9 months, but no longer than December 31, 2020.

Hence, the maturity date of such credit facilities will be extended with the time period for which the payment was deferred, which is up to 9 months or less, depending on the debtor’s request.

As the EGO has not yet been published in the Romanian Official Gazette up to this moment (March 29), our analysis is based on the public statements of the Minister of Public Finance after the Government meeting and on the latest draft EGO released just before the Government meeting.

Who may benefit from the deferrals of loan payments?

The EGO will apply to: (i) natural persons; (ii) PFAs (Authorised Natural Person, in Romanian, *persoana fizica autorizata*) and other similar entities covered by EGO no. 44/2008; (iii) SMEs – as defined under article 3 para. (1) of Law no. 346/2004 on fostering the setting up and development of SMEs and (iv) NBFIs registered with the General Registry acting in their capacity as borrowers (the “**Debtors**”).

What type of credit facilities fall under the scope of the EGO?

All types of credit facilities granted to the Debtors appear to fall under the scope of the EGO, including

consumers loans, mortgaged credit granted to consumers etc.

General conditions for benefiting from the payment deferrals

1. The credit facility has not reached the maturity date prior to the EGO's entry into force (the moment when the EGO is published in the Official Gazette);
2. The credit facility has not been accelerated prior to the EGO's entry into force;
3. The Debtor has not accumulated overdue payments before the state of emergency was declared (March 16);
4. The Debtors request the deferral of loan payments via electronic means/postal services/telephone lines at least until the state of emergency ceases.
5. The Debtor's revenues were directly or indirectly affected by the COVID-19 outbreak.

Specific requirements/aspects regarding payment deferrals

1. In case of SME's – in order to benefit from payment deferrals

the SMEs should not be insolvent;

the SMEs:

- should have completely or partially suspended their activity due to the measures taken by the authorities (i.e. those activities which were completely or partly shut down by the authorities, such as the activity of serving food or alcoholic/non-alcoholic beverages in restaurants, hotels, coffee shops; cultural, scientific, artistic activities organised in closed spaces, medical supplies export, dental clinics, shops opened within shopping centres premises, airlines etc. – as indicated in the Military Ordinances no. 1, 2 and 3); or
- the SMEs activity has diminished due to COVID-19 outbreak and the company is not able to pay the salaries because it has recorded a decrease of revenues in the last month of at least 25% less than the average revenues for January – February 2020.

Regarding **the second condition** – at least in case where the activity was completely/partially suspended due to measures taken by authorities, it refers to SMEs which fulfil the conditions for obtaining the Certificate for Emergency Situations issued by the Ministry of Economy.

There are two types of Certificates for Emergency Situations (as detailed in the Order of the Ministry of Economy no. 791/2020), of interest for both creditors and debtors:

- The **Certificate for Emergency Situations Type 1 (Blue)** – may be obtained by the SMEs which totally or partially suspended their activity due to the measures imposed by the authorities (as indicated in the Military Ordinances no. 1, 2 and 3); and
- The **Certificate for Emergency Situations Type 2 (Yellow)** – which may be obtained by the SMEs which registered a decrease of revenues in March 2020 of at least 25% less than the average revenues for January – February 2020.

In order to fulfil the second condition in case of SMEs, although the EGO does not expressly state that a Certificate for Emergency Situations is needed, it is reasonable to assume that in order to benefit from the EGO, SMEs should first obtain a Certificate for Emergency Situations from the Ministry of Economy.

However, further clarifications and applicability conditions are expected in the next days, under the Implementation Norms.

2. In case of natural persons

The postponement of the maturity date will depend on (i) the age of the client and (ii) on the type of financing.

In case of natural persons who would exceed the age limit for a credit facility, the loans will be restructured in order to fall within the age limit of the individual.

As regards the mortgage loans (granted to natural persons), the EGO provides that *“the principal amount increased with the value of the interest accrued during the suspension period shall be repaid and rescheduled up until the new maturity, once the suspension period ends, except for the mortgage credits in case of which it shall be repaid and rescheduled for maximum 5 years”*.

Although this provision lacks in clarity, it is likely that the EGO intends to state that the interest related to mortgage credits accrued during the suspension period shall be rescheduled for maximum 5 years. This interpretation is also based on the fact that the repayment of the interest related to mortgage credits accrued during the deferral of payments is guaranteed by the Romanian State.

Key Points on the deferral of loan payments

1. It will only apply to natural persons and SMEs whose revenues were directly or indirectly affected by the COVID-19 outbreak.
2. The deferral of repayments is up to 9 months, but no longer than December 31, 2020.
3. The deferral applies to the capital rates, interest and commissions.
4. In order to benefit from the deferral of loan repayments, the Debtors should request it at least until the state of emergency ceases to exist (currently, April 16, but it is likely that the state of emergency shall be extended).
5. The Romanian Government will guarantee 100% the payment of the capitalised interest related to mortgage loans granted to natural persons.
6. Pending clarifications from the Government are expected in the form of Implementation Norms.

[1] <https://eba.europa.eu/eba-statement-actions-mitigate-impact-covid-19-eu-banking-sector>

[2]

<https://eba.europa.eu/eba-provides-clarity-banks-consumers-application-prudential-framework-light-covid-19-measures>

[3] See the Statement on the application of the prudential framework regarding Default, Forbearance and IFRS9 in light of COVID19 measures

[4] <https://www.bnr.ro/page.aspx?prid=17656>