The financial sector and the federal government are making efforts to attenuate the financial impact of the coronavirus pandemic on businesses and households

Q&As for credit institutions

These Q&As were drawn up to the best of our ability on the basis of current knowledge and information. It is only the final legal texts that will be binding. The final texts may deviate from these Q&As.

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The federal government, the National Bank of Belgium and the Belgian financial sector have agreed on the provision of temporary support for businesses, self-employed persons and households. Individuals experiencing payment problems as a result of the coronavirus crisis may delay their mortgage loan payments. Sound businesses and self-employed persons can also request postponement of their loan repayments. In their case, two guarantee schemes will also be implemented for new loans and credit lines.

In addition to these Q&As, reference is made to the charters (in French and in Dutch), as well as to the related Q&As in which banks have set out their commitments concerning the arrangements for postponing payments on mortgage loans and business loans respectively.

1. General (high level principles agreement and background)

1.1 What is in the agreement?

The agreement comprises two pillars:

1. The financial sector undertakes to allow viable non-financial businesses, SMEs, self-employed persons and non-profit organisations, and likewise mortgage borrowers, with payment problems due to the coronavirus crisis to delay payments (hereunder moratoria).

2. The government activates two guarantee schemes for new loans and credit lines (but not refinancing loans) granted by banks:

    - until 31 December 2020 to viable non-financial businesses, SMEs, self-employed persons and non-profit organisations with a maximum term of 12 months, on the basis of the Royal Decree of 14 April 2020 granting a State guarantee for certain loans in the fight against the consequences of the coronavirus (hereinafter “the first guarantee scheme”)[1];
    - until 30 June 2021 to small or medium-sized non-financial enterprises with a term of 12 to 5 years, on the basis of the Law of 20 July 2020 granting a State guarantee for certain loans to SMEs in the fight against the consequences of the coronavirus and amending the Law of 25 April 2014 on the legal status and supervision of credit institutions and stockbroking firms (hereinafter “the second guarantee scheme”)[2].

[1] The first guarantee scheme initially guaranteed loans granted until 30 September 2020; this period was extended until 31 December 2020 by Royal Decree of 16 September 2020.

[2] The second guarantee scheme initially guaranteed loans granted until 31 December 2020 with a term of 12 to 36 months. The granting period was extended until 30 June 2021 and the term to 5 years by Royal Decree of 24 December 2020.

1.2 Why did the federal government (supported by the National Bank of Belgium) conclude this agreement with the financial sector?

The coronavirus does not only threaten our health, it also has a particularly severe impact on our economy. Despite the range of exceptional measures already taken by the federal government under the Federal Plan for Social and Economic Protection to cope with the economic shock[3], many businesses, self-employed persons and individuals still face substantial fixed costs. They have to repay loans, pay rent and settle invoices, resulting in cash flow problems. We need to prevent sound businesses from going under, and households from encountering payment problems. That would trigger a negative spiral and make the current crisis even more serious. The agreement is intended to maintain the financing of the economy.

1.3 When will the agreement come into effect?

1 April 2020 for the moratorium and the first guarantee scheme; 24 July 2020[4] for the second guarantee scheme.

1.4 Does the scheme also apply to listed companies?

Yes. A company's eligibility for the moratorium or the guarantee schemes is not affected by whether or not it is listed.

2. Moratorium

The financial sector has undertaken to allow companies and individuals with payment problems as a result of the corona crisis to defer payments.
Initially, payments (from April 2020) could be deferred for up to six months, which was subsequently extended until the end of the year (see the first Charter for business credit deferral and the first Charter for mortgage credit deferral).
In December 2020, it was decided to allow general deferrals of payments for businesses and individuals once again (see the second Charter for business credit deferral and the second Charter for mortgage credit deferral), on condition that the combined deferrals granted under the first and second Charter never exceed 9 months. In February 2021, it was also decided to authorise the second Charter for business credit deferral for due dates up until 30 June 2021, and to grant additional credit deferral to sound enterprises/organisations that already benefited from a maximum credit deferral of 9 months under the first and/or second Charter for business credit deferral (see the third Charter for business credit deferral).

For a detailed explanation, reference is made to the relevant Charters and the Q&A below.

a. Scope in the case of businesses (business loans)

2.1 Who is this scheme aimed at?

[3] Examples include delayed payment of personal income tax, payroll tax, VAT and social contributions. The rules on temporary lay-offs on account of force majeure were also relaxed, and a bridging entitlement was introduced for the self-employed.
[4] Publication date of the law of 20 July 2020 in the Belgian Official Gazette.

The target public of the moratorium encompasses all permanently in Belgium based viable non-financial businesses, SMEs, self-employed persons (including unincorporated self-employed persons) and non-profit organisations, in so far as they are experiencing payment problems due to the coronavirus crisis.

Enterprises and organisations that already benefited from a maximum credit deferral of 9 months under the first and/or second Charter for business credit deferrals are eligible for additional credit deferrals as long as they are "sound", as defined in the third Charter for business credit deferral.

A postponement of payment can be requested for one of the following business loans:

- loans with a fixed repayment plan
- cash credits
- fixed advances

Public authorities cannot request a postponement of payment.

2.2 What is meant by "payment problems due to the coronavirus crisis"?

The banking sector has drawn up a uniform approach for determining "payment problems due to the coronavirus crisis" for (segments of) individuals and businesses in two Charters (mortgage credit - business credit).

b. Scope in the case of individuals (mortgage loans)

2.3 Who is this scheme aimed at?

Mortgage borrowers (individuals) experiencing payment problems due to the coronavirus crisis. The scheme does not apply to borrowers who, before the outbreak of the coronavirus crisis, were already in arrears on the mortgage for which a delay is requested (see Charters). The mortgage loan must have been taken out for the sole and principal residence in Belgium of the borrower(s) at the time of the request for postponement. At the time of the request for postponement of payment, the total movable assets in current and savings accounts and in an investment portfolio with the borrower's own bank or another bank must be less than EUR 25,000. Pension savings are not taken into account for this calculation.

2.4 What is meant by "payment problems due to the coronavirus crisis"?

The banking sector has drawn up a uniform approach for determining "payment problems due to the coronavirus crisis" for (segments of) individuals and businesses in the Charters concerned

c. Operation of the payment delay

2.5 (question is deleted)

2.6 Is the payment delay granted automatically?

No. Businesses and households will have to demonstrate that they are affected by the coronavirus crisis and have to ask their bank for a payment delay. Each case will be assessed individually. A uniform approach was devised in the Charters so that all banks would apply this in the same way.

2.7 For how long must the banks grant a payment delay?

A distinction should be made between the moratorium for individuals (mortgage loans) and the moratorium for business loans.

a) Loans to individuals (mortgage loans)

On the basis of the first Charter for mortgage credit deferral, a payment delay could be requested any day from 1 April 2020 to 20 September 2020; if the liquidity problems were due to the coronavirus crisis, and the conditions laid down in the first Charter were met, the delay was always to be granted for a maximum of 6 months. This means:

- All requests up to 30 April 2020: delay for a maximum of 6 months
- Requests after 30 April 2020: delay until ultimately 31 October 2020

However, the payment delay granted according to the above-mentioned conditions could be extended until 31 December 2020.[5] In all cases, the extension request was to be made between 1 and 20 September 2020.

On the basis of the second Charter for mortgage credit deferral, deferrals may be granted for an additional period of up to 3 months, provided that the combined deferrals granted under the first and second Charter never exceed 9 months. In addition, the payment deferral thus obtained will take effect at the earliest from the due date of January 2021. The deadline for applying for a deferral is 31 March 2021; any deferral granted can therefore never exceed the end of June.

b) Business loans

On the basis of the first Charter for business credit deferral, a payment delay could be requested any day from 1 April 2020 to 20 September 2020; if the liquidity problems are due to the coronavirus crisis, and the conditions laid down in the first Charter were met, the delay was always to be granted. The payment delay was initially[6] granted for a maximum of 6 months but could be extended until 31 December 2020 as of the adaptation of the original Charter.

For a previously authorised payment delay (with a due date no later than 31 October 2020), an extension could be requested until 31 December 2020 at the latest.

For initial delays until the end of September 2020 at the latest, the extension request could be made 30 to 10 days before the due date of the initial delay.

For initial delays until the end of October 2020, the extension request could be made between 1 and 20 September 2020. The bank was allowed to provide longer terms for submitting the request but could not extend the deadline for submission beyond 20 September 2020.

On the basis of the second Charter for business credit deferral, an additional payment deferral may be requested for future due dates until 30 June 2021 at the latest, provided that the requests for payment deferrals are made no later than 10 calendar days before the maturity date of the credit and no later than 31 March 2021, and that the combined deferrals granted under the first and second Charter never exceed 9 months.

On the basis of the third Charter for business credit deferral, "sound" enterprises/organisations that have already benefited from a maximum payment deferral of 9 months under the first and/or second Charter for business credit deferral can still apply for an additional payment deferral for future maturities until 30 June 2021 at the latest, provided that the requests for payment deferrals are made

[5] In the initial version, the payment delay could be granted until 31 October 2020 at the latest. This was modified to enable an extension until 31 December 2020.

[6] See footnote 4.

at least 10 calendar days before the maturity date of the credit. For maturities after 30 June 2021, the banks will look for bespoke solutions together with these companies/organisations.

2.8 Is a payment delay only possible until the dates mentioned in the Charters?

Amendments of the Charters involved provided for the possibility to extend the payment delay until 30 June 2021 at the latest for individuals and for business credits. The terms for obtaining an extension are set out in point 2.7. If, however, a payment delay is granted outside the conditions of the first and/or second Charter for mortgage / business credit deferral or in accordance with the conditions of the third Charter for business credit deferral, the bank cannot use the flexible framework drawn up in the EBA statement on COVID-19 measures, published on 25 March 2020 (and further developed in the EBA Guidelines on moratoria).

2.9 Does the payment delay cover both the capital and the interest?

In the case of mortgage loans to **natural persons** a distinction is made between delay for individuals in the vulnerable group (see the definition in the Charter) and other individuals.

- Delay of capital and interest for the **vulnerable group:** the borrower may defer payment of his/her mortgage credit without additional interest during the deferral period. Once this period is over, payments will resume at the same monthly charge as before.

- Delay of capital and interest for **other customers**: the borrower may postpone the payment of his/her mortgage loan. Once the deferral period is over, payments will resume at an adjusted monthly rate because the deferred interest will be credited.

For **non-financial businesses, SMEs and self-employed persons (including unincorporated self-employed persons) and non-profit organisations**, the delay only applies to the capital repayments as regards their credit for professional purposes.

2.10 Delayed payment of interest is prohibited by law in the case of credit to individuals: is it agreed that Article VII.145 of the Code of Economic Law will be temporarily breached?

Yes. This possibility was explicitly introduced by Royal Decree No 11 of 22 April 2020 on measures regarding the terms and conditions of mortgage loans in the context of the coronavirus crisis. Following the extension of the payment delay for mortgage loans, this temporary exception was reconfirmed by the Law of 20 December 2020 on temporary support measures due to the COVID-19 pandemic.

d. Charges

2.11 No charges can be imposed for granting a payment delay. What charges are meant?

No arrangement nor administrative fees can be charged for postponing payment in the case of natural persons or businesses.

3. First guarantee scheme

a. Scope

3.1 Who is this scheme aimed at?

All non-financial businesses, SMEs, self-employed persons (including unincorporated self-employed persons) and non-profit organisations without payment arrears on 1 February 2020 or less than 30 days in payment arrears on 29 February 2020, which did not undergo active debt restructuring on 31 January 2020 and which were not an undertaking in difficulty within the meaning of Regulation No 651/2014 as of 31 December 2019.

The payment arrears referred to include arrears on both bank loans and tax and social security contributions.

3.2 What is meant by "non-financial businesses"?

A non-financial business is an undertaking which does not fall within one of the following categories: (i) a financial counterparty within the meaning of Article 3 point (3) of EU Regulation 2015/2365, a payment institution or electronic money institution or a special purpose securitisation vehicle, (ii) a natural person, legal person or group of such persons granting exclusively or in principal loans for their own account as part of their usual commercial or professional activities, or (iii) a natural person, legal person or group of such persons exercising direct control over an entity as referred to under (i) and (ii).

Although the scheme is aimed at a wider public, it is clarified that the following sectors/activities also qualify:

- Non-profit organisations, both social enterprises and others, including hospitals
- Non-financial institutions having a public shareholdership
- Banking and insurance intermediaries (agents and brokers)
- Regulated real estate companies
- Holding companies whose main activity consists in holding shares in NFCs

Conversely, counterparties connected with government (e.g. PSEs, associations of local authorities, public social assistance centres, etc.) are excluded insofar as they are designated as S13 in column D of the list of public units published by the National Accounts Institute.

Apart from large undertakings, the payment delay also applies to SMEs, self-employed persons and those in the liberal professions not operating through a company.

3.3 Does the scheme apply to foreign businesses?

The scheme is only available to Belgian residents. Belgian residents could be both undertakings incorporated under Belgian law and branches with a permanent establishment in Belgium. Legal provisions have been introduced to ensure that the guaranteed loans are used for the benefit of the undertakings' Belgian activities and that the loans are not in a large part used for the financing of the foreign activities of the borrower (the loan contract has to exclude such use or limit it to 10% of the guaranteed loan; losses on guaranteed loans which do not exclude such use are not compensated). A provision has also been inserted to ensure that in such case local facilities for financing, whether or not under local guarantee schemes, are being exhausted for these foreign activities. However, banks are free to grant loans outside the scope of the guarantee scheme, which contractually state that they can only be used for the non-Belgian activities of the Belgian resident.

3.3/1 Does the guarantee scheme also apply to loans granted to companies established in Belgium whose core business is conducting trading activities aimed at exporting and importing goods to or from abroad?

Yes, the guarantee scheme applies to such loans. In other words, such business is regarded as activities conducted in Belgium and not as 'qualifying foreign activities', the financing of which can

only be covered by the guarantee scheme under strict conditions and restrictions (cf. Art. 22, 3°, b) of the Royal Decree).

3.4 Is there to be a threshold for payment arrears in the case of viable businesses?

Credit obligations past due, for the purpose of defining non-financial corporations, SMEs, self-employed persons and non-profit organisations who had, on 1 February 2020, no arrears and were in arrears of less than 30 days on 29 February 2020, shall be subject to a materiality threshold as defined in the EBA Final draft RTS on the materiality threshold for credit obligations past due and the ECB regulation (EU) 2018/1845. For non-retail, the absolute threshold is set at 500 euro and the relative threshold at 1%, consistent with the threshold applied for the Definition of Default.

3.5 Does the customer have to confirm the viability condition by signing a "sworn declaration"?

This must form part of the contractual conditions which the customer undertakes to respect. The sector can draw up standard clauses for use in this connection.

Among other things the contractual conditions must also include confirmation that the total capital sum of the outstanding (taken up and non-repaid) or available (non-taken up) guaranteed loans for the customer or group of associated customers does not exceed the limit of €50 million.

3.6 Exclusion criteria: How does a bank have to provide proof that there were no payment arrears on 1 February 2020, or less than 30 days' payment arrears on 29 February 2020? Or is no proof required?

The bank does not have to provide any "proof", but the bank needs to check the criteria as far as possible. This should also form part of the contractual conditions which the customer undertakes to respect.

b. Operation of the guarantee scheme (envelope, calculation of losses, etc.)

3.7 How big is the guarantee scheme?

There is provision for a sum of € 50 billion. This means that new additional loans up to that amount are eligible for the guarantee scheme. This figure concerns the capital sum of the guaranteed loans. Lenders are free to either use the entire envelope allocated to them for this (first) guarantee scheme or to reserve up to 20% of the envelope for the second guarantee scheme (see Section 4 below).

3.8 How exactly does the guarantee scheme work?

All banks can include part of the envelope in new additional loans and credit lines up to a maximum term of 12 months in proportion to their market share in outstanding loans and credit lines (all loan terms) granted to viable non-financial businesses, SMEs, self-employed persons and non-profit organisations on 31 December 2019. This market share is ascertained on the basis of FINREP (table 20.04) and scheme A (table 02.11) reporting and notified to all institutions by an individual standard NBB letter.

The guarantee does not apply to individual loans but to the whole portfolio of new additional loans granted by the bank concerned to Belgian non-financial businesses, SMEs, self-employed persons and non-profit organisations.

Once the guarantee scheme ends, the amount of losses recorded on loans under the guarantee scheme will be examined.

3.9 How long does the guarantee scheme apply?

In terms of time, the guaranteed loans are those granted between 1 April 2020 and 31 December 2020 for a maximum term of 1 year. The first guarantee scheme initially guaranteed loans granted until 30 September 2020. This period was extended until 31 December 2020 by Royal Decree of 16 September 2020. The King may, by a decree adopted after consultation in the Council of Ministers, extend this deadline and term if that is necessary owing to the severity and duration of the adverse impact of the coronavirus on the economy.

3.9/1 The Royal Decree, which was published on 15 April 2020, applies to loans granted from 1 April 2020. What does this retroactivity mean for loans granted between 1 and 15 April 2020?

The Royal Decree applies to these loans as well. There are three possibilities:

i. The loan falls outside the scope of the Royal Decree (e.g. reinstatement, refinancing etc.). No special action is required.
ii. The loan qualifies as a "guaranteed loan" within the meaning of Article 4, § 1 of the Royal Decree. Two options:
    a. Unless the bank deselects the loan in accordance with Article 4, § 1, 4°, the Royal Decree applies to the loan and the bank should, where appropriate, agree with the customer on an amendment to the loan agreement;
    b. The bank deselects the loan to exclude it from the guarantee scheme (see question 3.17 et seq. for further details). The choice to deselect may only be made at the time the loan is granted; as such a choice can only be made in casu from 15 April 2020, banks exceptionally will have until the first planned monthly reporting to deselect loans granted between 1 and 15 April 2020.

3.10 What is the impact on the allocation if banks refuse their share?

The system is compulsory for banks (credit institutions under Belgian law and branches of foreign credit institutions) which had more than €20,000 in outstanding loans and credit lines to non-financial businesses, SMEs, self-employed persons and non-profit organisations on 31 December 2019.

3.11 When will the losses be calculated ?

The total state-guaranteed reference-portfolio will only be known on 1 January 2021, so that, at that time, the final 3% and 5% thresholds can be calculated for each credit institution on the actual total amount of until 31 December 2020 granted loans of maximum 12 months to the before the crisis viable Belgian non-financial undertakings which do not constitute a refinancing or a reinstatement of credit granted before 1 April 2020 to those customers and which do not exclusively serve to finance the foreign activities of the undertaking concerned. This reference-portfolio may be lower than, or at most equal to, the share of the € 50 billion envelope allocated to each bank. From 1 October 2021, and thereafter on the first day of each successive quarter, a bank will be able to submit an application requesting an interim advance from the federal government.

3.12 What commitment has the federal government taken on?

The burden will be shared between the financial sector and the government as follows:

- The first 3% of the losses on the whole reference-portfolio will be borne entirely by the bank.
- For losses between 3% and 5%, the bank and the government will each bear 50% of the losses.

- For losses exceeding 5%, the government will bear 80% of the losses and the bank will bear 20%.

3.13 How exactly will the losses guaranteed by the government be calculated?

The losses will be calculated at the level of the total portfolio of new additional loans for each bank. In practice, this means that if bank X incurs a loss of 4 % on its total reference-portfolio, bank Y incurs a loss of 1% and bank Z a loss of 6%, then the guarantee will be activated for banks X and Z according to the losses suffered (50 % government guarantee for losses between 3% and 5%, and 80% for losses in excess of 5%).

3.14 Which banks are covered by the guarantee scheme?

The guarantee scheme applies to Belgian banks and branches of foreign banks (both those from EU countries and those with their head office in a non-EU country). Institutions which, at the end of 2019, did not have a credit portfolio for businesses, SMEs and non-profit organisations amounting to more than € 20,000 are not covered by the guarantee scheme (*de minimis*). This is without prejudice to the fact that those banks may be covered by the arrangements concerning payment delays for mortgage borrowers.

3.15 Which loans are covered by the guarantee scheme?

In principle, all new additional loans and credit lines to viable Belgian undertakings with a maximum term of 12 months granted by the bank between 1 April 2020 and 31 December 2020[7], including the credits which have been repaid before 31 December 2020 must be covered by the guarantee scheme (until the bank's share in the total envelope is reached).

The following credits do not fall within the scope of the guarantee scheme:

1. refinancing loans which serve to repay loans granted before 1 April 2020;
2. reinstatements of credits granted before 1 April 2020;
3. credits granted to persons where the contract states that they can exclusively be used for the non-Belgian activities of this person;
4. credits which have been specifically identified by the bank as deselected credits, for which the bank opts to keep them out of the scope of the guarantee scheme (cf. infra);
5. leasing contracts;
6. factoring contracts;
7. consumer loans and mortgage loans which are governed by Book VII of the Code of Economic Law.

Loans up to a maximum of € 50 million are guaranteed for each business or group of associated businesses (cf. definition of associated company in the Companies Code) on outstanding (reinstated and not repaid) or available (not taken up) amounts. The "rolling stock" principle is used for the calculation of this amount, which means that guaranteed credits which have been repaid partially or in whole before 31 December 2020 can be replaced by new guaranteed loans. For larger amounts, government approval must be obtained. The application procedure for the approval is governed by a Ministerial Decree of 29 April 2020.

3.15/1 Should any financing related to working capital and working capital reconstitution always be provided under the federal guarantee and therefore in the form of a loan with a term of less than 12 months?

[7] The first guarantee scheme initially guaranteed loans granted until 30 September 2020. An amending Royal Decree is being drafted to extend this period until 31 December 2020. For the purposes of these FAQs, it is assumed that this extension already applies.

No. The federal guarantee applies to all eligible loans with a maximum term of 12 months, regardless of the destination of the funds provided (see questions 3.15 and 3.16). Longer-term financing, which may inter alia be related working capital, falls outside the scope of the guarantee scheme, but can, if necessary, benefit from other government support measures. It is certainly not the intention of the federal guarantee scheme to prevent such financing in the longer term. Article 24 of the Royal Decree of 14 April 2020 does contain an anti-avoidance provision if the duration of a loan apparently deviates from the practice followed by the lender before 29 February 2020 and the lender would not be able to justify this deviation on objective grounds.

3.16 Does the guarantee scheme apply to all loan products (cash loans, overdraft facilities, investment loans, documentary credits, etc.)?

The guarantee scheme applies to all new additional loans and credit lines to all before the crisis viable customers with a maximum term of 12 months, except for the credits mentioned in the answer to question 3.15, and taking account of the limit of € 50 million (per counterparty or group of related counterparties), above which government approval must be obtained.

3.16/1 Do loans of indefinite duration (e.g. cash loans, straight loans, credit openings) fall under the guarantee scheme or not?

Only if these loans can be terminated by the lender or borrower in the first twelve months after they have been granted. In this context, one can think, for example, of lines of credit granted for an indefinite period of time but which can be terminated by the lender on a discretionary basis, even if the borrower satisfies the contractual conditions regarding of solvency and liquidity. As regards termination clauses for other loans with an initial duration of more than 12 months, and more in general, reference can also be made to the anti-circumvention rules in Article 24 of the Royal Decree and the anti-abuse provision in Article 35, 4° of the Royal Decree.

3.16/2 Does the guarantee scheme cover loans for which there is no liquidity need e.g. guarantee loans, given the limitation of the guaranteed principal laid down in Article 8, § 1 of the Royal Decree of 14 April 2020?

For the purposes of Article 8, § 1 of the Royal Decree, the NBB assumes that it should always be possible to determine a liquidity need on the basis of which the loan is granted and that, pursuant to Article 4 of the Royal Decree, eligible loans are hence guaranteed by the State guarantee. For guarantee loans specifically, the liquidity needs can be filled in as “the need for commitments by the borrower underlying the granting of the bank guarantee”.

3.17 How many loans that are in principle eligible for compensation under the guarantee scheme may be identified by a bank as remaining outside the scope of the guarantee scheme (so-called 'deselected loans')?

Each bank may exclude up to a maximum of 14.875 rounded off to 15 % of the total loans granted from the scope of the guarantee scheme. In other words, of 100 eligible loans, a minimum of 85 must be included in the guarantee scheme and a maximum of 15 must not be included; hence the draft Royal Decree refers to a deselection factor, which divides the total 'deselected' loans by the total guaranteed loans granted between 1 April 2020 and 31 December 2020, of a maximum of 0.175 (i.e. around 15/85). For the calculation of these amounts, a duration-average volume ratio is applied. For an example to illustrate the calculation of the deselection factor, see question 3.20.

3.18 When should a bank choose to keep a loan that is in principle eligible for compensation under the guarantee scheme outside the scope of the guarantee scheme (so called "deselected loan”)?

The choice of whether or not to include a loan in the guarantee scheme is made exclusively when the loan is granted and is irrevocable. In this context, it is possible to grant both guaranteed and non-guaranteed loans to the same borrower.

3.19 Are the so-called "deselected loans" part of the reference portfolio based on which the amount of State aid is calculated?

Yes, they are. The deselected loans are not covered by the guarantee and the guarantee fee does not have to be paid, but the loans remain part of the reference portfolio together with the guaranteed loans. Moreover, if banks exceed the deselection factor of 0.175 (i.e. 'deselect' more than 14.875 rounded off to 15 % of the loans eligible under the guarantee scheme, an additional fee has to be paid on the guaranteed loans, while the deselected loans remain outside the scope of the guarantee scheme.

3.20 What is the sanction if the so-called 'deselected loans' represent more than 15 % of the reference portfolio?

On 31 December 2020, a deselection factor (exclusion factor) is calculated which is defined as a fraction with the following numerator and denominator:

- the numerator consists of the sum of the maximum available principal amount of each deselected loan on the date of granting, for all (deselected) loans granted from 1 April 2020 until 31 December 2020, multiplied in each case by a factor equal to the duration of the deselected loan, expressed in days. Deselected loans with a contractual maturity date prior to 31 December 2020 are also included in this numerator;
- the denominator consists of the sum of the maximum available principal amount of each guaranteed (not deselected) loan on the date of granting, for all guaranteed (not deselected) loans granted from 1 April 2020 until 31 December 2020, multiplied in each case by a factor equal to the duration of the guaranteed loan, expressed in days. Guaranteed loans with a contractual maturity date prior to 31 December 2020 are also included in this denominator.

If there is a positive difference between the deselection factor and 0.175, the guarantee fee due on the guaranteed (not deselected) loans is multiplied by a factor equal to one plus twice the aforementioned difference.

Example by way of illustration: a bank grants loans between 1 April 2020 and 31 December 2020 for a total amount of 100 on the date of granting:
- on 1 April, a deselected loan of 10 for a term of 30 days
- on 1 May, a loan of 30 for a term of 60 days
- on 1 June, a loan of 55 for a term of 120 days
- on 1 September, a deselected loan of 5 for a term of 360 days

Deselection factor = [(10 * 30) + (5 * 360)] / [(30 * 60) + (55 * 120)] = 0.25

In the above example, the reference portfolio on the basis of which the State's intervention is calculated is 100, even if the 'deselected' loans are not covered by the guarantee and the guarantee fee for these credits does not have to be paid. However, given that the deselection factor exceeds 0.175, the guarantee fee payable on the guaranteed (unselected) credits has to be multiplied by a factor of 1.15 (i.e. one plus twice the difference between the deselection factor of 0.25 and 0.175).

3.21 Can banks request additional securities for loans that were already running on 1 April 2020 or for so-called deselected loans?

Yes it can, provided that a proportional part of these securities, taking into account the available or outstanding principal amount of all loans concerned, is allocated to the secured loans granted by the

bank to that borrower. If not, the guaranteed loss is reduced by all losses on the guaranteed loans granted by the bank to that borrower. A notable exception to this are contractual arrangements that were already in force between the bank and the borrower on 1 April 2020. These include margin calls or the conversion of mortgage mandates. In addition, the above condition does not apply to securities for new loans falling outside the scope of the guarantee scheme, e.g. investment loans with a maturity of more than 12 months.

3.22 Can businesses take on guaranteed loans of up to €50 million per bank without government approval?

No. The guarantee applies to the whole of the outstanding or available amounts on new and additional loans obtained from all Belgian banks up to a maximum of €50 million per business or group of associated businesses. If the aggregate outstanding or available amount of guaranteed new and additional loans exceeds that figure, government approval must be obtained and the bank therefore cannot take the decision alone.

3.22/1 What are the options for a loan application exceeding 50 million euro (e.g. 60 million euro)?

The general framework of the Royal Decree provides as follows:

- Article 4, § 1: The definition of "guaranteed loans" is not limited to "new money" loans of less than 50 million euro, so if a loan of 60 million euro is not "deselected", it is considered a guaranteed loan in its entirety.
- Articles 7 and 8:
  - a loan of > 50 million euro is guaranteed by the State only up to a maximum of 50 million euro...
  - … unless a derogation is authorised by the Minister (Article 8, § 2)
  - Result: losses on a loan of 60 million euro are (only) eligible for the portfolio guarantee for 5/6 of the loan
- Article 15: A loan of 60 million euro is taken into account in its entirety in the reference portfolio (so not only for 5/6) for the purpose of calculating the loss thresholds
- Article 27: The fee on a guaranteed loan of 60 million euro is not limited to the first 50 million euro

In this context, a bank that wishes to grant a loan of 60 million euro has the following options, among others:

- split the loan in 50/10 million euro and grant the loan of 10 million euro for a duration of more than one year without a discretionary termination clause, in which case the loan of 10 million euro is completely excluded from the guarantee scheme. In these circumstances, the fact that the loan of 10 million euro is granted for a duration of more than one year should not be considered circumvention behaviour as determined in Article 24 of the Royal Decree
- the borrower requests a derogation for a loan of > 50 million euro pursuant to Article 8, § 2, so the entirety of the loan of 60 million euro falls under the guarantee scheme; this derogation requires a request from the customer to the Minister and should be approved by a Royal Decree deliberated on in the Council of Ministers
- split the loan in 50/10 million euro and deselect the loan of 10 million euro (in which case the loan of 10 million euro is not guaranteed and there is no guarantee fee payable on it, but it is still taken into account in the reference portfolio)
- deselect the loan of 60 million euro in its entirety, in which case it is not guaranteed and there is no guarantee fee payable, but the loan is still taken into account in the reference portfolio

- simply grant the loan of 60 million euro, in which case the part which exceeds 50 million euro is not guaranteed but there is a guarantee fee payable on the entire 60 million euro and the entire loan is taken into account in the reference portfolio

3.23 Does the guarantee scheme also apply to syndicated loans?

Yes, insofar the distinct credit of the participating bank in the syndicate constitutes a sufficiently separated engagement. The guarantee scheme also does not apply to syndicated loans with a maximum duration above 12 months nor to deselected syndicated loans.

3.24 If there are also foreign banks in the syndicate, does the Belgian share still qualify for the guarantee?

Belgian banks in the syndicate are eligible for the guarantee for their share of the loan. The share of the banks concerned must constitute a sufficiently separate commitment per bank.

3.25 What about renewal of a loan/credit line already existing on 1 April and expiring before the end of December 2020?

That is a reinstatement of an existing credit/existing credit line which is not covered by the guarantee scheme.

3.26 Is it possible to submit multiple applications for the same counterparty under the guarantee scheme?

It is possible to grant multiple loans under the guarantee scheme; however, the guaranteed loan limit of € 50 million must be respected. The counterparty must state contractually whether the limit of € 50 million is not exceeded by granting this loan.

3.27 Can a bank give customers a new/higher credit line if they still have scope in their credit line?

Yes, the difference between the higher line (e.g. € 110,000) and the existing line (€ 100,000) is then a new loan that comes under the guarantee scheme. This new loan must then be structured as a separate new loan (of € 10,000, for example) with additional security where possible.

3.28 Can a customer request a new loan or credit line while still having unused scope under an existing credit line?

Yes, it is up to the bank to decide whether or not to grant it. However, the drawings on the existing credit line do not fall under the guarantee scheme.

3.29 Can a bank refuse to grant loans or credit lines to certain customers?

Yes, in the case of new additional loans or credit lines in relation to the amount of loans and credit lines outstanding on 1 April 2020. The guarantee scheme aims at facilitating the granting of new additional credits or credit lines.

3.30 Do loans qualify if they are not used in connection with liquidity problems due to the crisis but are requested for other liquidity or investment needs?

Yes, all new additional loans that meet the conditions (viable customer, maximum term of 12 months, limit of €50 million), with the exception of the loans mentioned in question 3.15, must be covered by the guarantee scheme.

In this respect, a clear distinction has to be made between the amount of loans/credit lines on 1 April 2020 (=OLD MONEY) and the additional liquidity needs of the customers (=NEW MONEY).

Specifically:

- If the new loan is used to repay (= refinancing) or reinstate a loan or credit line outstanding at the date of entry into force of the guarantee scheme that has reached maturity, it does not fall under the guarantee scheme, regardless of whether the borrower encounters payment difficulties due to the corona crisis (= OLD MONEY)

- if the new loan is also used to cover additional liquidity needs, it falls under the guarantee scheme, regardless of whether the borrower faces payment difficulties as a result of the corona crisis (=NEW MONEY). Banks are free to grant a limited amount of such credits with a term of maximum 12 months outside the scope of the guarantee scheme ("deselected credits").

Example: on 1 April 2020, a company has outstanding loans amounting to 100, 50 of which will mature on 1 May 2020,

- a company that has not (or only slightly) been affected by the corona crisis applies for a new loan with a term of maximum 12 months of 60 => 50 does not fall under the guarantee scheme, 10 falls under the guarantee scheme,
- a company that has been affected by the corona crisis benefits from a payment deferral for 50 (moratorium) and applies for a new credit with a term of maximum 12 months of 10 => 10 falls under the guarantee scheme, unless the bank has chosen to "deselect" the credit and to grant it outside the scope of the guarantee scheme.

3.30/1 May normal repayments of both capital and interest of loans granted before 1 April 2020 be included in the simulator-based liquidity assessment ? Are loans taken out to service these repayments covered by the State guarantee?

It should be noted that, if the loan amount is less than double the total annual wage costs, including social charges, or less than 25% of the borrower's turnover in the last closed financial year, liquidity needs do not necessarily have to be taken into account for granting a loan under the second guarantee scheme, as a result of the amendment of art. 8, §1, 2° of the Royal Decree of 14 April 2020 by art. 5, b) of the Royal Decree of 16 September 2020, which entered into force on 28 September 2020.

If they are nevertheless taken into account, Article 8, § 1, 2° of the Royal Decree of 14 April 2020 limits the guaranteed principal to the amount of the borrower's liquidity needs, other than for refinancing loans taken out to repay or reinstate loans granted before 1 April 2020. The financing of repayments of a loan granted by the same or another lender prior to 1 April 2020 qualifies as a refinancing loan within the meaning of Article 1, 13° of the Royal Decree regulating the State guarantee, falls outside the guarantee scheme and may therefore not be included in determining the liquidity needs under Article 8 of the Royal Decree. The reason is that a guaranteed loan is not intended to be used to repay an existing loan (OLD MONEY). Moreover, if the conditions of the Business Loan Charter are met, (capital) repayments are eligible for deferral of payment.
On the other hand, the lender should identify the overall liquidity needs of the borrower in order to be able to correctly assess the risks. However, the lender may include repayments of loans granted before 1 April 2020 in this exercise without, however, including them in determining the liquidity needs under the (specific) framework of Article 8 of the Royal Decree. Therefore, for the purposes of determining the amounts covered by the guarantee scheme (NEW MONEY), the repayments are best treated separately in the liquidity simulator.

3.30/2 Should the maximum guaranteed principal of the guaranteed loans granted to a borrower be assessed at group level, and can the borrower thus borrow in excess of his liquidity need at solo level as long as this falls within the limits of the maximum guaranteed principal at group level?

Yes. The EU Temporary Framework establishes conditions and thresholds applying to the "beneficiary" of the aid, i.e. the "undertaking" to which the aid is granted. The notion of "undertaking" encompasses all entities controlled by the same natural or legal person (for further explanation see Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, *OJ* C 95, 16.4.2008, p. 1).

For example: A, B and C form a group. A has a liquidity need of 40, B of 10 and C of 50. Thus, the maximum guaranteed principal for the group is 100.
The maximum guaranteed principal for which A can take out loans under the guarantee scheme is not limited to 40 (which is its actual liquidity need), but to 100. However, if A were to take out a loan for 60, this would limit B and C's collective credit possibilities to 40. Naturally, the general principles of creditworthiness and the economic interest of the borrower should be taken into account.

3.30/3 What is the maximum amount that can be granted to a borrower under the first guarantee scheme?

The guaranteed principal of the guaranteed loans granted to a borrower may not exceed the highest of the following amounts, calculated at the level of the group to which the borrower belongs:

1° the borrower's liquidity needs during a period (starting from the intended date of the granting of the guaranteed loan) of 18 months for SMEs within the meaning of Regulation No 651/2014 and 12 months for other enterprises, as estimated by the borrower in a duly reasoned written statement;

2° the double of the borrower's total annual wage costs, including social charges, in the last closed financial year;

3° 25 % of the borrower's turnover in the last closed financial year.

Points 2° and 3° above were added to art. 8, §1, 2° of the Royal Decree of 14 April 2020 by art. 5, b) of the Royal Decree of [x September] 2020, which entered into force on [x September] 2020.

The resulting maximum guaranteed principal should be reduced by the principals of the loans granted to the borrower or other companies belonging to the group of the borrower under the second guarantee scheme.

3.30/4 Does the term "wage cost" as referred to in Article 8, § 1, 2° of the RD of 14 April 2020 also include the remuneration of the manager?

Yes, it may be taken into account insofar as it concerns a remuneration (this in contrast to payments for capital, which may not be counted).

3.31 Can a bank grant new loans which are not covered by the guarantee scheme?

Yes, the credits enumerated in question 3.15, as well as new additional loans for a term of longer than 12 months or in excess of the € 50 million limit.

3.32 If the bank wants to consider delays on a due date or multiple due dates jointly on loans already outstanding on 1 April 2020 and group them in the form of a new loan, is this refinancing or not?

Yes, that is refinancing which is not covered by the guarantee scheme.

3.33 Does the guarantee scheme also apply to existing loans?

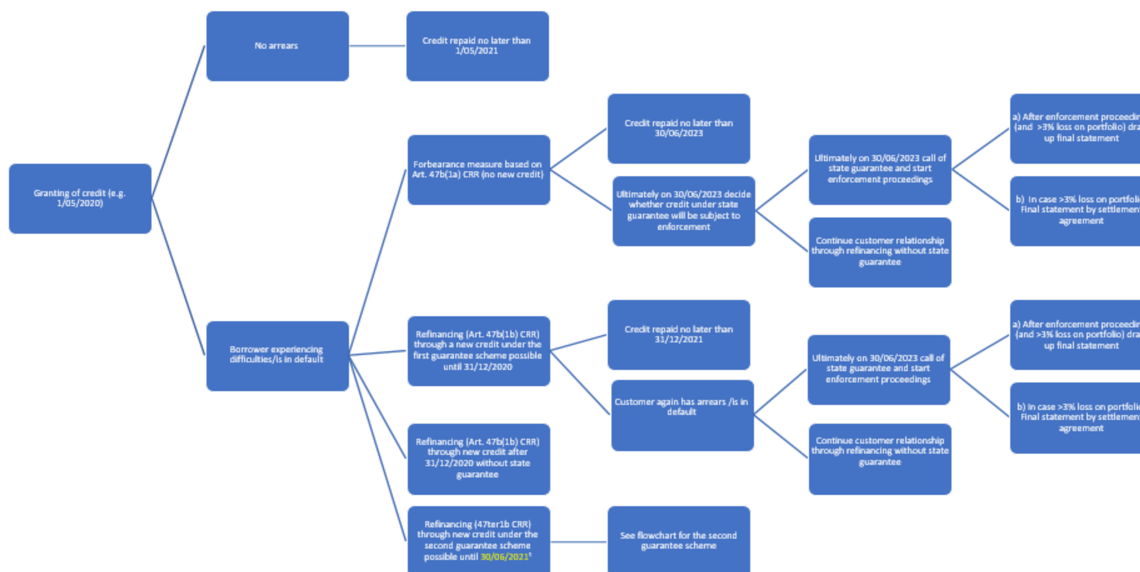
No. The guarantee scheme does not apply to the on 1 April 2020 existing loans, nor to the unused amounts on the on 1 April 2020 existing credit lines.

3.34 Can the guarantee scheme still be used if a customer requests a forbearance measure but the bank consequently decides to classify the customer under pre-litigation in order to monitor the case?

Yes, but only for new additional loans to that customer (in addition to loans and credit lines outstanding on1 April 2020), see scope.

3.35 How does the "recovery" take place in case a guaranteed loan cannot be repaid by the customer?

Banks must call on the State guarantee by 30 June 2023 at the latest for the guaranteed loans, and this independently of the date of granting or the duration of the loan. Only then should a decision be taken as to whether or not to terminate the customer relationship. In the meantime, forbearance measures can be taken. The diagram below gives an overview of the various possibilities:



[1] A refinancing under the second guarantee scheme can only be applied to a (non-deselected) loan for which the lender expects that he will have to take a forbearance measure on its maturity date and of which the borrower falls in the scope of the second guarantee scheme.

3.35/1 If a forbearance measure is a deferral of payments (e.g. in the form of a repayment schedule, extension of the initial loan or otherwise) on the guaranteed loan, are the parties bound by the maximum period of the guaranteed loan (12 months under the first guarantee scheme)?

No, the maximum period of 12 months does not apply here. Please refer to the schedule as included in question 3.35: a forbearance measure can only be granted up to the last date on which the State

can be called upon to honour the State guarantee. This last date is 30 June 2023 for the first guarantee scheme.

3.35/2 Is an additional premium payable by the borrower if a forbearance measure is a deferral of payments (e.g. in the form of a repayment schedule, extension of the initial loan or otherwise) on the guaranteed loan?

No. If the borrower is unable to repay the loan on the contractual maturity date, the authorised payment deferral must be regarded as a forbearance measure within the meaning of Article 47b(1)(a) of Regulation (EU) No 575/2013 and no additional premium is due. In this case, however, the requirements of Article 22, 1° Royal Decree of 14 April 2020 must be taken into account (see question 3.35/3).

3.35/3 How should the "proportionate application" of forbearance measures (taking into account the available or outstanding principal and the maturity date) be understood exactly (Article 22, 1° Royal Decree of 14 April 2020)?

“Proportionate application” means that, if a forbearance measure is granted in the form of a deferral of payments on a guaranteed loan, the other loans not covered by the State guarantee should also benefit from a payment deferral for at least the same period.

For example, if a forbearance measure is granted for a guaranteed loan, in the form of a payment deferral (e.g. repayment of a 6-month loan postponed by 6 months), all other current loans must also benefit from a deferral for the same period of at least 6 months (e.g. a 5-year investment loan must also benefit from a deferral of at least 6 months).

If there are other current loans covered by the State guarantee, the proportional payment deferral has no impact on the maintenance of the State guarantee.

For example, for a loan granted under the first guarantee scheme with a contractual term of 12 months, a payment deferral of 6 months is granted. Suppose that the same borrower also has a current loan with a contractual term of 36 months covered by the second guarantee scheme. By granting a 6-month deferral of payments on the guaranteed loan under the first guarantee scheme, the loan covered by the second guarantee scheme must also benefit from a 6-month payment deferral (in accordance with the principle of proportionality), thereby exceeding the initial repayment period of 36 months. However, this extension of the repayment period pursuant to a forbearance measure for a loan covered by the State guarantee under the first guarantee scheme does not result in the loss of the State guarantee for the loan covered by the second guarantee scheme.

3.35/4 Does the proportional application referred to in question 3.35/3 apply to any forbearance measure, including, for example, refinancing?

No. The principle of proportionality only applies to the forbearance measures referred to in Article 47b(1)(a) of Regulation (EU) No 575/2013.

3.36 When it is decided to terminate the customer relationship and to call on the guarantee, what should a bank do to ensure that the losses relating to the guaranteed loans are taken into account in calculating the State guarantee (enforcement privilege)?

The bank will first have to "enforce" the customer (i.e. draw on all of the customer's funds, collateral, guarantees, etc.) before the residual amount can be considered as a loss for calculating the State guarantee. This enforcement does not have to occur or be finalised at the moment that the State guarantee is called on.

3.37 Can a bank transfer one or more guaranteed loans?

In principle it cannot, except as collateral for any financing granted to a bank by the National Bank of Belgium in the context of its legal mission.

3.38 How do the different guarantees provided by the Regions and the federal State interact?

Clarification with an example:

A retail business has an outstanding loan of € 500,000 with the bank, with a total interest rate (incl. fee) of 1.5%. This is the only outstanding loan of the borrower with the bank. The term of the loan is 1 year and interest is paid at the end of the year. This loan complies with the conditions of the federal guarantee scheme and was not deselected. When the loan was taken out, the commercial property was also included in the guarantee. The (realisable) value of the property is estimated at 150,000. If the retail business goes bankrupt, there will still be €10,000 cash in the bank and the business owns a van worth €10,000.

Case (a): no other (e.g. regional) guarantees were provided for this loan. In this case, the loss is determined by first liquidating all of the business's assets (including the cash, the van) and by selling the trading premises. The estimated value thereof is € 170,000. The remainder of the amount (principal of the loan plus interest) € 500,000*(1 + 1.5%) - € 170,000 = € 337,500 is included in the "loss" taken into account on the basis of the first paragraph of Article 14 of the R.D. when applying the State guarantee to the loan portfolio of the bank in question. Whether this loss will ultimately be (partially) compensated by the State depends on whether the losses of the total portfolio of the bank exceed 3% (first loss) of the bank's reference portfolio.

Case (b): The loan also benefits from a regional guarantee (without pari passu clause) covering a loss of €100,000. In this case, the loss is determined by first liquidating all of the business's assets (including the cash, the van), and by selling the trading premises. Subsequently, the regional guarantee is called on for the full amount of the losses covered. The estimated recoverable value amounts thus to €170,000 + €100,000. The amount that cannot be recovered by the bank, namely € 500,000*(1 + 1.5%) - € 170,000 - € 100,000 = € 237,500, is included in the "loss" taken into account on the basis of the first paragraph of Article 14 of the R.D. when applying the State guarantee to the loan portfolio of the bank in question. Whether this loss will ultimately be (partially) compensated by the State depends on whether the losses of the total portfolio of the bank exceed 3% (first loss) of the bank's reference portfolio.

Case (c): The loan also benefits from a regional guarantee (with pari passu clause) covering a loss of €100,000. In this case, the loss is determined by first liquidating all of the business's assets (including the cash, the van) and by selling the trading premises. We assume that the pari passu qualification of the guarantee granted by the Region makes it clear that this guarantee is reduced by half as a result of the fact that the guaranteed loss of € 100,000 can also be covered within the framework of the bank's portfolio guarantee. In this case, the Region will not reimburse €100,000 on the basis of the guarantee, but only €50,000. Article 14, second paragraph of the R.D. stipulates that the amounts that cannot be recovered from the Regions because of the pari passu clause (in this case €50,000) will be included in the loss. The estimated recoverable value amounts thus to €170,000 + € 50,000. The remainder of the amount € 500,000*(1 + 1.5%) - € 170,000 - € 50,000 = € 287,500 is included in the "loss" taken into account on the basis of the first paragraph of Article 14 of the R.D. when applying the State guarantee to the loan portfolio of the bank in question. Whether this loss will ultimately be (partially) compensated by the State depends on whether the losses of the total portfolio of the bank exceed 3% (first loss) of the bank's reference portfolio.

Case d): The loan also benefits from a regional guarantee covering a loss of €100,000 and an additional Credendo guarantee of €50,000 (both with pari passu clause). In this case, the loss is determined by first liquidating all of the business's assets (including the cash, the van) and by selling the trading premises. We assume that the pari passu classification of the guarantees granted by the Region and Credendo make it clear in each case that these guarantees are proportionally reduced as a result of the fact that part of the guaranteed loss can also be covered within the framework of the bank's portfolio guarantee. Such pari passu arrangements involve a pro-rata allocation of the losses between the different parties. With regard to the first loss tranche of €50,000, the pari passu clauses stipulated by the Region and Credendo have the consequence that they each reimburse a loss of only € 16,666.66. For the second loss tranche of €50,000, the pari passu clause in the guarantee of the Region has the consequence that the Region will only pay €25,000. Pursuant to Article 14, second paragraph of the R.D., the amount that cannot be recovered from the Region or Credendo because of the pari passu clauses is included in the loss. The estimated recoverable value is thus € 170,000 + 2* € 16,666.66 + € 25,000. The remainder of the amount € 500,000*(1 + 1.5%) - € 170,000 - 2* € 16,666.66 - €25,000 = €279,170 is included in the "loss" taken into account on the basis of the first paragraph of Article 14 of the R.D. when applying the State guarantee to the loan portfolio of the bank in question. Whether this loss will ultimately be (partially) compensated by the State depends on whether the losses of the total portfolio of the bank exceed 3% (first loss) of the bank's reference portfolio.

c. Charges and fees

3.39 Can the banks charge normal arrangement fees for new loans under the guarantee?

For new loans, it is permitted to make the usual charges applicable before the coronavirus crisis, such as arrangement fees and commitment fees.

3.40 How will payment of the fees be organised (one shot or pro rata)?

State guarantee fee for guaranteed loans (not for deselected loans):

a. pricing = EU minimum for SMEs according the Belgian definition (25 basis points) and large corporates (50 basis points)
b. pro rata according to the term of the loan (if shorter than 12 months), due on the whole of the capital regardless of whether the loan was actually taken up in whole or in part
c. payable by the bank to the government; reporting by each bank
    1. line per line details of all qualifying loans granted since 1 April 2020, including those already repaid or terminated in whole or in part
    2. the Treasury calculates the premium on the basis of the reporting (capital x term as a fraction of 12 x premium)

Further rules on the procedure for the payment of the fee will be defined by Ministerial Decree.

3.41 What happens if the guarantee fee is unpaid or not paid in full?

Execution of the State guarantee is suspended if the premium is unpaid or not paid in full.

3.42 What charges must businesses pay on guaranteed loans?

For a new additional loan or credit line under the guarantee scheme, the nominal maximum interest is 1.25% (excluding the “fee”). This fee comes to 25 basis points for SMEs and 50 basis points for large corporates pro rata according to the term of the loan (12 months). Such a fee is compulsory

under the EU rules on State aid. The credit institution can also choose to charge a total interest to the customer, without specifying the part covered by the fee.

3.43 Will all banks charge interest at 1.25% (excluding the fee) on new loans?

No, this is a maximum; free competition applies here.

3.44 Does the fee form part of the maximum interest that can be charged in the case of non-financial businesses, SMEs and self-employed persons?

No. The fee of 25 basis points for SMEs and 50 basis points for large corporates is compulsory under the EU rules on State aid and is additional to the maximum 1.25% interest rate.

3.45 How is the guarantee fee calculated in individual cases, given that the guarantee covers only part of the exposures?

This fee has to be paid on the whole capital of new additional loans and credit lines, i.e. the whole amount of the loan (including unused amounts on new additional credit lines).

3.46 Is the guarantee fee also payable for new additional loans expiring earlier than 31/12/2020?

Yes. The guarantee fee is also payable for loans granted as of 1 April 2020 and repaid before 1 January 2021.

3.47 Is the guarantee fee also covered by the State guarantee?

Yes, the State guarantee covers principal and interest, including the guarantee fee.

3.48 Is the fee also due on deselected loans?

No, it is not, and nor is the guarantee applicable to those loans.

4. Second guarantee scheme

a. Scope

4.1 Who is this second guarantee scheme aimed at?

All small or medium-sized non-financial enterprises (including unincorporated self-employed persons, see questions 4.2-4.3 for definition), with the exception of:

i. companies which are subject to collective insolvency proceedings;
ii. companies which have received rescue aid that has not been repaid;
iii. companies which have received restructuring aid and are still subject to a restructuring plan;
iv. medium-sized enterprises according to the EU definition (see question 4.2) that were considered undertakings in difficulty within the meaning of Article 2(18) of Regulation (EU) No 651/2014 as of 31 December 2019;
v. family estate companies;
vi. management companies;
vii. public entities (see question 4.3);
viii. financial counterparties (see question 4.3);
ix. (natural or legal) persons granting exclusively or in principal loans for their own account as part of their usual commercial or professional activities;

x. (natural or legal) persons who directly or indirectly exercise control over an entity referred to under (viii) and (ix).

Where a loan is granted to a company that does not meet the above requirements regarding the scope of the second guarantee scheme and thus is not eligible for the new scheme, or where the principal of the loan exceeds legal limits, this constitutes unlawful aid to the borrower. The State guarantee is a support for the borrower who, because of that guarantee, is able to obtain a loan that otherwise would not be granted, moreover on terms that would have been less attractive without the guarantee. The unlawful aid concerned will be recovered from the borrower by the State.

Under certain circumstances, there may also be grounds for the State to question the validity of the State guarantee with regard to the credit institution. This will particularly be the case in the event of negligence on the part of the relevant credit institution in granting a loan which is subsequently proven to constitute unlawful State aid to the borrower.

Negligence on the part of the lender will not be suspected and will have to be demonstrated by the State on the basis of the concrete elements of a dossier. There is no negligence if the credit institution, in granting guaranteed loans, exercises the normal prudence of a professional banker and verifies the elements that are usually verified by the lender in banking practice. In this respect, a lender may, where appropriate, also obtain sworn declarations from the borrower regarding elements that cannot reasonably be verified independently by the lender.

Regarding the question of whether the borrower is subject to collective insolvency proceedings, the normal prudence of the lender implies an online search through RegSol (the database of insolvency proceedings).

Rescue or restructuring aid is limited to aid measures in favour of firms in difficulty as defined in the Guidelines on State aid for rescuing and restructuring non-financial undertakings in difficulty issued by the European Commission, *OJ* C 249, 31.7.2014, p. 1. The following link allows the search for rescue and restructuring aid to Belgian companies:
https://ec.europa.eu/competition/elojade/isef/index.cfm?clear=1&policy_area_id=3

You must indicate at "Member State" Belgium together with:
at “Primary Objective (Main)”:

- Rescuing firms in difficulty
- Rescuing undertakings in difficulty
- Restructuring firms in difficulty
- Restructuring undertakings in difficulty

at “EU Secondary legal basis”:

- Rescue and restructuring-Rescue and Restructuring Guidelines, 1999
- Rescue and Restructuring-Rescue and Restructuring Guidelines, 2004-2012
- Rescue and Restructuring-Rescue and Restructuring Guidelines, 2014-2020

Whether a company is subject to collective insolvency proceedings or whether it has received rescue and/or restructuring aid should be verified at group level at the moment the loan is granted. For the assessment of these criteria, the lender may rely on a sworn declaration provided by the borrower (see question 4.1/2). In this respect, the lender is expected to exercise the normal prudence of a professional banker and, among other things, subject the information and sworn declarations provided by the borrowers to a marginal review. If this is not the case at group level but one of the entities of the group to which the applicant belongs is in this situation, the loan agreement should include a clause prohibiting the borrower from using the funds of the agreement for the (direct or indirect) financing of the entity in this situation.

It is not always possible for the lender to check the information gathered about the group context and the situation of group members in a simple and independent way.
To prove their status, SMEs themselves are also allowed to make use of declarations made in good faith when they are unable to establish all the information precisely, as stated, inter alia, in Article 3(5) of Annex 1 (SME definition) of the General Block Exemption Regulation (651/2014) of 17 June 2014.[8]
When assessing the exclusion criteria at group level, the creditor may also, where appropriate, obtain declarations on honour from the borrower regarding those elements which cannot reasonably be independently investigated by the creditor.

Moreover, it is recalled that, although in principle this check takes place at the (individual) level of the borrower, the borrower is obviously not allowed to transfer the borrowed funds to another company within the group that would be subject to collective insolvency proceedings. Such conduct would constitute an abuse of law and run counter to the borrower's obligation not to claim the guaranteed loan while he knows or ought to know that he is not complying with the conditions.

This reasoning also applies to groups that include financial businesses, foreign activities (which do not meet the conditions) and/or family estate or management companies. For the latter, this only applies on the condition that the activities involved (management or family estate management) are limited to one or more companies (and hence do not represent the activity of the group as a whole).

4.2 What is meant by small or medium-sized enterprises?

These are "micro-enterprises", "small enterprises" or "medium-sized enterprises" according to the EU definition:

- "micro-enterprises": enterprises which employ fewer than 10 persons and which have an annual turnover or annual balance sheet total not exceeding € 2 million;
- "small enterprises": enterprises which employ fewer than 50 persons and which have an annual turnover or annual balance sheet total not exceeding € 10 million;
- "medium-sized enterprises": enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding € 50 million and/or an annual balance sheet total not exceeding € 43 million, but which (i) employ at least 50 persons or (ii) have an annual turnover or annual balance sheet total exceeding € 10 million.

4.3 What is meant by "non-financial businesses"?

A non-financial business is an undertaking which does not fall within one of the following categories: (i) a financial counterparty within the meaning of Article 3 point (3) of EU Regulation 2015/2365, a payment institution or electronic money institution or a special purpose securitisation vehicle, (ii) a natural person, legal person or group of such persons granting exclusively or in principal loans for their own account as part of their usual commercial or professional activities, or (iii) a natural person, legal person or group of such persons exercising direct or indirect control over an entity as referred to under (i) and (ii).

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[8] See inter alia Article 3(5) of Annex 1 (SME definition) of the Block Exemption Regulation (651/2014) of 17 June 2014: 5. Enterprises may make a declaration of status as an autonomous enterprise, partner enterprise or linked enterprise, including the data regarding the thresholds set out in Article 2. The declaration may be made even if the capital is spread in such a way that it is not possible to determine exactly by whom it is held, in which case the enterprise may declare in good faith that it can legitimately presume that it is not owned as to 25 % or more by one enterprise or jointly by enterprises linked to one another. Such declarations are made without prejudice to the checks and investigations provided for by national or Union rules.

Although the scheme is aimed at a wider public, it is clarified that the following sectors/activities also qualify, insofar as they do not fall under the exception (see question 4.1):

- Non-profit organisations, both social enterprises and others, including hospitals
- Non-financial institutions having a public shareholdership
- Banking and insurance intermediaries (agents and brokers)
- Regulated real estate companies
- Holding companies whose main activity consists in holding shares in NFCs

Conversely, counterparties connected with government (e.g. PSEs, associations of local authorities, public social assistance centres, etc.) are excluded insofar as they are designated as S13 in column D of the list of public units published by the National Accounts Institute.

4.4 Does the scheme apply to foreign businesses?

The scheme is only available to Belgian residents. Belgian residents could be both undertakings incorporated under Belgian law and branches with a permanent establishment in Belgium. Legal provisions have been introduced to ensure that the guaranteed loans are used for the benefit of the undertakings' Belgian activities and that the loans are not in a large part used for the financing of the foreign activities of the borrower (the loan contract has to exclude such use or limit it to 10% of the guaranteed loan; losses on guaranteed loans which do not exclude such use are not compensated). A provision has also been inserted to ensure that in such case local facilities for financing, whether or not under local guarantee schemes, are being exhausted for these foreign activities.

4.5 Does the second guarantee scheme also apply to loans granted to companies established in Belgium whose core business is conducting trading activities aimed at exporting and importing goods to or from abroad?

Yes, the guarantee scheme applies to such loans. In other words, such business is regarded as activities conducted in Belgium and not as 'qualifying foreign activities', the financing of which can only be covered by the guarantee scheme under strict conditions and restrictions.

b. Operation of the guarantee scheme (envelope, calculation of losses, etc.)

4.6 What is the budget for the second guarantee scheme?

One fifth of the € 50 billion budget for the first guarantee scheme will be transferred to the second guarantee scheme. This means that, under the second guarantee scheme, loans with a maximum joint principal of € 10 billion are eligible for the State guarantee.

4.7 How exactly does the second guarantee scheme work?

All banks can include part of the envelope in new additional loans and credit lines in proportion to their market share in outstanding loans and credit lines (all loan terms) granted to viable non-financial businesses, SMEs, self-employed persons and non-profit organisations on 31 December 2019. This market share was ascertained on the basis of FINREP (table 20.04) and scheme A (table 02.11) reporting and notified to all institutions by individual standard NBB letter of 14 April 2020. Institutions may use up to 20% of the envelope thus allocated to them to grant guaranteed loans under the second guarantee scheme.

Unlike the first guarantee scheme, the second guarantee scheme is optional. Consequently, at the moment a loan is granted, the lender should specifically identify the loans he wishes to include in the

guarantee scheme. In other words, the choice for the guarantee scheme is made (at the latest) at the moment the loan is granted, subject to the agreement of the borrower.

The guarantee applies to individual loans, for which 80% of the losses will be borne by the State.

4.8 How long does the second guarantee scheme apply?

Initially, the guarantee scheme could be used for loans granted between the date of entry into force of the Law (24 July 2020) and 31 December 2020 for a term of 12 to 36 months. The King may, by a decree adopted after consultation in the Council of Ministers, extend this deadline and term if that is necessary owing to the severity and duration of the adverse impact of the coronavirus on the economy.

The granting period was extended until 30 June 2021 and the term to 5 years by Royal Decree of 24 December 2020.

4.9 What is the impact on the allocation if banks refuse their share?

None. The second guarantee scheme is optional for banks (credit institutions under Belgian law and branches of foreign credit institutions) which had more than € 20,000 in outstanding loans and credit lines to non-financial businesses, SMEs, self-employed persons and non-profit organisations on 31 December 2019.

4.10 When will the losses be calculated ?

The total state-guaranteed credit portfolio will only be known on 1 July 2021. This portfolio may be lower than, or at most equal to, the share of the € 10 billion envelope which may be used by each bank.
The State guarantee must be called on by 30 June 2025[9] at the latest. While the guarantee applies to individual loans, lenders should call on the guarantee for the total amount of the guaranteed loans (the portfolio) granted by that lender. This prevents an undesirable overload of guarantee claims for each individual loan. The use of the guarantee does not require that a loss on the portfolio has already been established or can be demonstrated. It only confirms that the lender expects to suffer a guaranteed loss on his portfolio. A lender calling on the State guarantee should, from that date, initiate the foreclosure of the guaranteed loans in his portfolio for which the borrower is in default. A Royal Decree will determine the manner in which the final payment is to occur and lay down the arrangements for the payment of the interim advances to which the lender is entitled.

4.11 What commitment has the federal government taken on?

The State will bear 80% of a lender's loss on a loan. The remaining 20% of the loss will continue to be borne by the lender concerned.

4.12 Which banks are covered by the second guarantee scheme?

Belgian banks and branches of foreign banks (both those from EU countries and those with their head office in a non-EU country) may call on the second guarantee scheme. Institutions which, at the end of 2019, did not have a credit portfolio for businesses, SMEs and non-profit organisations amounting to more than € 20,000 are not covered by the guarantee scheme (*de minimis*). This is without prejudice to the fact that those banks may be covered by the arrangements concerning payment delays for mortgage borrowers.

4.13 Which loans are covered by the second guarantee scheme?

[9] This date will change in the context of the extension of the second guarantee scheme.

In principle, all new additional loans and credit lines to small or medium-sized non-financial enterprises with (see questions 4.1-4.3 for definition) a term of 12 to 36 months (prolonged to five years by Royal Decree of 24 December 2020). granted by the bank between the date of entry into force of the Law (24 July 2020) and 31 December 2020 (prolonged to 30 June 2021 by Royal Decree of 24 December 2020), including the credits which have been repaid before 30 June 2021, are (optionally) eligible for the second guarantee scheme (until the bank's share in the total € 10 billion envelope is reached).

The following credits do not fall within the scope of the guarantee scheme:

1. refinancing loans which serve to repay loans granted before the date of entry into force of the Law (a loan or a part of a loan which is granted to repay a non-deselected loan covered by the first guarantee scheme and for which the lender expects that he will have to take a forbearance measure on its maturity date is not considered a refinancing loan);
2. reinstatements of credits granted before the date of entry into force of the Law;
3. leasing contracts;
4. factoring contracts;
5. consumer loans and mortgage loans which are governed by Book VII of the Code of Economic Law.

4.14 Under what conditions are refinancing loans which serve to repay loans covered by the first guarantee scheme eligible for the second guarantee scheme?

The loan covered by the first guarantee scheme (i) must have been granted to a borrower who falls within the scope of the second guarantee scheme, (ii) must not have been deselected by the lender and (iii) the lender expects that he will have to take a forbearance measure on its maturity date. This does not necessarily mean that the guaranteed loan must already be in default or in arrears. It may be sufficient that the lender, on 30 June 2021 at the latest (i.e. the expiry date of the second guarantee scheme), considers it probable that the customer will be unable to repay the loan covered by the first guarantee scheme on a maturity date and that refinancing is authorised on that basis on that date (30 June 2021) at the latest.

4.15 Does the second guarantee scheme apply to all loan products (cash loans, overdraft facilities, investment loans, documentary credits, etc.)?

All new additional loans and credit lines to all small or medium-sized non-financial enterprises (see questions 4.1-4.3 for definition) with a term of 12 to 36 months (prolonged to five years by Royal Decree of 24 December 2020) are eligible for the guarantee scheme, except for the credits mentioned in the answer to question 4.13.

4.16 Can banks request additional securities for loans that were already running on the date of entry into force of the Law?

Yes it can, provided that a proportional part of these securities, taking into account the available or outstanding principal amount of all loans concerned, is allocated to the secured loans granted by the bank to that borrower. If not, the guaranteed loss is reduced by all losses on the guaranteed loans granted by the bank to that borrower. A notable exception to this are contractual arrangements that were already in force between the bank and the borrower on the date of entry into force of the Law. These include margin calls or the conversion of mortgage mandates. In addition, the above condition does not apply to securities for new loans not covered by the guarantee scheme.

4.17 Are syndicated loans also eligible for the second guarantee scheme?

Yes, insofar the distinct credit of the participating bank in the syndicate constitutes a sufficiently differentiated engagement. That bank's engagement is sufficiently differentiated from the engagements of the other lenders if the former engages to make a fixed maximum amount available (the "commitment"). In that case, the bank's engagement is considered a separate credit (and only the amount made available by this bank is taken into account for the calculation of the premium and the guaranteed amount).

4.18 If there are also foreign banks in the syndicate, does the Belgian share still qualify for the guarantee?

Belgian banks in the syndicate are eligible for the guarantee for their share of the loan. The share of the banks concerned must constitute a sufficiently differentiated commitment per bank.

4.19 What about renewal of a loan/credit line already existing on the date of entry into force of the Law and expiring before the end of June 2021?

That is a reinstatement of an existing credit/existing credit line which is not covered by the guarantee scheme.

4.20 Is it possible to submit multiple applications for the same counterparty under the guarantee scheme?

It is possible to grant multiple loans under the guarantee scheme.

4.21 Can a bank give customers a new/higher credit line if they still have scope in their credit line?

Yes, the difference between the higher line (e.g. €110,000) and the existing line (€100,000) is then a new loan which is eligible for the guarantee scheme. This new loan must then be structured as a separate new loan (of €10,000, for example).

4.22 Can a customer request a new loan or credit line while still having unused scope under an existing credit line?

Yes, it is up to the bank to decide whether or not to grant it. However, the drawings on the existing credit line are not eligible for the guarantee scheme.

4.23 Can a bank refuse to grant loans or credit lines to certain customers?

Yes, in the case of new additional loans or credit lines in relation to the amount of loans and credit lines outstanding on the date of entry into force of the Law. The guarantee scheme aims at facilitating the granting of new additional credits or credit lines.

4.24 Should the maximum guaranteed principal of the guaranteed loans granted to a borrower be assessed at group level, and can the borrower thus borrow in excess of his liquidity need at solo level as long as this falls within the limits of the maximum guaranteed principal at group level?

Yes. The EU Temporary Framework establishes conditions and thresholds applying to the "beneficiary" of the aid, i.e. the "undertaking" to which the aid is granted. The notion of "undertaking" encompasses all entities controlled by the same natural or legal person (for further explanation see

Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings, *OJ* C 95, 16.4.2008, p. 1).

For example: A, B and C form a group. A has a liquidity need of 40, B of 10 and C of 50. Thus, the maximum guaranteed principal for the group is 100.
The maximum guaranteed principal for which A can take out loans under the guarantee scheme is not limited to 40 (which is its actual liquidity need), but to 100. However, if A were to take out a loan for 60, this would limit B and C's collective credit possibilities to 40. Naturally, the general principles of creditworthiness and the economic interest of the borrower should be taken into account.

4.25 What is the maximum amount that can be granted to a borrower under the second guarantee scheme?

The guaranteed principal of the guaranteed loans granted to a borrower may not exceed the highest of the following amounts, calculated at the level of the group to which the borrower belongs:

1° the borrower's liquidity needs during a period of 18 months from the intended date of the granting of the guaranteed loan, as estimated by the borrower in a duly reasoned written statement;
2° the double of the borrower's total annual wage costs, including social charges, in the last closed financial year;
3° 25 % of the borrower's turnover in the last closed financial year

The resulting maximum guaranteed principal should be reduced by the principals of the loans granted to the borrower (or other companies belonging to the group of the borrower) under the first guarantee scheme, insofar as they are not refinanced by loans covered by the second guarantee scheme.

4.25/1 Does the term "wage cost" as referred to in Article 8, § 2, 2° of the Law of 20 July 2020 also include the remuneration of the manager?

Yes, it may be taken into account insofar as it concerns a remuneration (this in contrast to payments for capital, which may not be counted).

4.26 May normal repayments of both capital and interest of loans granted before the date of entry into force of the Law be included in the simulator-based liquidity assessment ? Are loans taken out to service these repayments covered by the State guarantee?

It should be noted that, if the loan amount is less than double the total annual wage costs, including social charges, or less than 25% of the borrower's turnover in the last closed financial year, liquidity needs do not necessarily have to be taken into account for granting a loan under the second guarantee scheme.

If they are nevertheless taken into account, Article 8, § 1, 1° of the Law specifies in this regard that the relevant liquidity needs limiting the guaranteed principal do not include the borrower's needs to repay or reinstate loans granted before the date of entry into force of the Law. However, a loan or a part of a loan which is granted to repay a non-deselected loan covered by the first guarantee scheme and for which the lender expects that he will have to take a forbearance measure on its maturity date is not considered a refinancing loan. Thus, the financing of repayments of a loan granted by the same or another lender prior to the date of entry into force of the Law qualifies in principle as a refinancing loan within the meaning of Article 3, 12° of the Law, is not eligible for the guarantee scheme and may therefore not be included in determining the liquidity needs under Article 8 of the Law. The reason is that a guaranteed loan is not intended to be used to repay an existing loan (OLD MONEY). Moreover, if the conditions of the Business Loan Charter are met, (capital) repayments are eligible for deferral of payment.

On the other hand, the lender should identify the overall liquidity needs of the borrower in order to be able to correctly assess the risks. However, the lender may include repayments of loans granted before the date of entry into force of the Law in this exercise without, however, including them in determining the liquidity needs under the (specific) framework of Article 8 of the Law. Therefore, for the purposes of determining the amounts covered by the guarantee scheme (NEW MONEY), the repayments are best treated separately in the liquidity simulator.

4.27 If the bank wants to consider delays on a due date or multiple due dates jointly on loans already outstanding on the date of entry into force of the Law and group them in the form of a new loan, is this refinancing or not?

Yes, that is refinancing which is not in principle eligible for the guarantee scheme.

4.28 Are existing loans also eligible for the second guarantee scheme?

No. The guarantee scheme does not apply to loans existing on the date of entry into force of the Law, nor to the unused amounts on credit lines existing on the date of entry into force of the Law.

4.29 Can the second guarantee scheme still be used if a customer requests a forbearance measure but the bank consequently decides to classify the customer under pre-litigation in order to monitor the case?

Yes, but only for new additional loans to that customer (in addition to loans and credit lines outstanding on the date of entry into force of the Law) or for loans which serve to refinance loans granted under the first guarantee scheme, see scope.

4.30 How does the "recovery" take place in case a guaranteed loan cannot be repaid by the customer?

Banks must call on the State guarantee by 30 June 2025[10] at the latest for the guaranteed loans, and this independently of the date of granting or the duration of the loan. Only then should a decision be taken as to whether or not to terminate the customer relationship. In the meantime, forbearance measures can be taken. The diagram below[11] gives an overview of the various possibilities:

[1] or later date resulting from an amendment to Article 15 of the Law of 20 July 2020

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[10] This date will change in the context of the extension of the second guarantee scheme.

[11] Once the new deadline for calling on the guarantee is known, this diagram will be adapted to the extension of the second guarantee scheme.

4.30/1 If a forbearance measure is a deferral of payments (e.g. in the form of a repayment schedule, extension of the initial loan or otherwise) on the guaranteed loan, are the parties bound by the maximum period of the guaranteed loan (36 months under the second guarantee scheme, prolonged to five years by Royal Decree of 24 December 2020)?

No, the maximum period of 36 months (prolonged to five years by Royal Decree of 24 December 2020) does not apply here. Please refer to the schedule as included in question 4.30: a forbearance measure can only be granted up to the last date on which the State can be called upon to honour the State guarantee. This last date is 30 June 2025[12] for the second guarantee scheme.

4.30/2 Is an additional premium payable by the borrower if a forbearance measure is a deferral of payments (e.g. in the form of a repayment schedule, extension of the initial loan or otherwise) on the guaranteed loan?

No. If the borrower is unable to repay the loan on the contractual maturity date, the authorised payment deferral must be regarded as a forbearance measure within the meaning of Article 47b(1)(a) of Regulation (EU) No 575/2013 and no additional premium is due. In this case, however, the requirements of Article 19, 1° Law of 20 July 2020 must be taken into account (see question 4.30/3).

4.30/3 How should the "proportionate application" of forbearance measures (taking into account the available or outstanding principal and the maturity date) be understood exactly (Article 19, 1° Law of 20 July 2020)?

“Proportionate application” means that, if a forbearance measure is granted in the form of a deferral of payments on a guaranteed loan, the other loans not covered by the State guarantee should also benefit from a payment deferral for at least the same period.

For example, if a forbearance measure is granted for a guaranteed loan, in the form of a payment deferral (e.g. repayment of a 15-month loan postponed by 6 months), all other current loans must also benefit from a deferral for the same period of at least 6 months (e.g. a 5-year investment loan must also benefit from a deferral of at least 6 months).

If there are other current loans covered by the State guarantee, the proportional payment deferral has no impact on the maintenance of the State guarantee.

4.30/4 Does the proportional application referred to in question 4.30/3 apply to any forbearance measure, including, for example, refinancing?

No. The principle of proportionality only applies to the forbearance measures referred to in Article 47b(1)(a) of Regulation (EU) No 575/2013.

4.31 When it is decided to terminate the customer relationship and to call on the guarantee, what should a bank do to ensure that the losses relating to the guaranteed loans are taken into account in calculating the State guarantee (enforcement privilege)?

The bank will first have to "enforce" the customer (i.e. draw on all of the customer's funds, collateral, guarantees, etc.) before the residual amount can be considered as a loss for calculating the State guarantee. This enforcement does not have to occur or be finalised at the moment that the State guarantee is called on.

[12] This date will change in the context of the extension of the second guarantee scheme.

4.32 Should existing "all sums" securities always be used as guarantees for loans covered by the second guarantee scheme?

No. The lender and the borrower may, prior to or at the time of the granting of the loan covered by the second guarantee scheme (hereinafter "the guaranteed loan"), make arrangements in relation to the division of the realisation of "all sums" securities. These arrangements may in particular exclude the guaranteed loan from the proceeds of an "all sums" security, or provide that this security should be used primarily to pay loans granted before the date of the guaranteed loan and only secondarily to pay the guaranteed loan.

4.33 Can a bank transfer one or more guaranteed loans?

In principle it cannot, except as collateral for any financing granted to a bank by the National Bank of Belgium in the context of its legal mission. The collateral may relate to the loans themselves or to the securities issued by the Bank for the securitisation of these loans.

4.34 How do the different guarantees provided by the Regions and the federal State interact?

Clarification with an example:

A retail business has an outstanding loan of € 500,000 with the bank, with a total interest rate (incl. fee) of 1.5%. This is the only outstanding loan of the borrower with the bank. This loan was brought under the second guarantee scheme by the bank. When the loan was taken out, the commercial property was also included in the guarantee. The (realisable) value of the property is estimated at 150,000. If the retail business goes bankrupt, there will still be €10,000 cash in the bank and the business owns a van worth €10,000.

Case (a): no other (e.g. regional) guarantees were provided for this loan. In this case, the loss is determined by first liquidating all of the business's assets (including the cash, the van) and by selling the trading premises. The estimated value thereof is € 170,000. The remainder of the amount (principal of the loan plus interest) € 500,000*(1 + 1.5%) - € 170,000 = € 337,500 is included in the "loss" taken into account on the basis of the first paragraph of Article 12 of the Law when applying the State guarantee to the loan in question.

Case (b): The loan also benefits from a regional guarantee (without pari passu clause) covering a loss of €100,000. In this case, the loss is determined by first liquidating all of the business's assets (including the cash, the van), and by selling the trading premises. Subsequently, the regional guarantee is called on for the full amount of the losses covered. The estimated recoverable value amounts thus to €170,000 + €100,000. The amount that cannot be recovered by the bank, namely € 500,000*(1 + 1.5%) - € 170,000 - € 100,000 = € 237,500, is included in the "loss" taken into account on the basis of the first paragraph of Article 12 of the Law when applying the State guarantee to the loan in question.

Case (c): The loan also benefits from a regional guarantee (with pari passu clause) covering a loss of €100,000. In this case, the loss is determined by first liquidating all of the business's assets (including the cash, the van) and by selling the trading premises. We assume that the pari passu qualification of the guarantee granted by the Region makes it clear that this guarantee is reduced by half as a result of the fact that the guaranteed loss of € 100,000 can also be covered within the framework of the bank's portfolio guarantee. In this case, the Region will not reimburse €100,000 on the basis of the guarantee, but only €50,000. Article 12, second paragraph of the Law stipulates that the amounts that cannot be recovered from the Regions because of the pari passu clause (in this case €50,000) will be included in the loss. The estimated recoverable value amounts thus to

€170,000 + € 50,000. The remainder of the amount € 500,000*(1 + 1.5%) - € 170,000 - € 50,000 = € 287,500 is included in the "loss" taken into account on the basis of the first paragraph of Article 12 of the Law when applying the State guarantee to the loan in question.

Case d): The loan also benefits from a regional guarantee covering a loss of € 100,000 and an additional Credendo guarantee of € 50,000 (both with pari passu clause). In this case, the loss is determined by first liquidating all of the business's assets (including the cash, the van) and by selling the trading premises. We assume that the pari passu classification of the guarantees granted by the Region and Credendo make it clear in each case that these guarantees are proportionally reduced as a result of the fact that part of the guaranteed loss can also be covered within the framework of the bank's portfolio guarantee. Such pari passu arrangements involve a pro-rata allocation of the losses between the different parties. With regard to the first loss tranche of € 50,000, the pari passu clauses stipulated by the Region and Credendo have the consequence that they each reimburse a loss of only € 16,666.66. For the second loss tranche of € 50,000, the pari passu clause in the guarantee of the Region has the consequence that the Region will only pay € 25,000. Pursuant to Article 12, second paragraph of the Law, the amount that cannot be recovered from the Region or Credendo because of the pari passu clauses is included in the loss. The estimated recoverable value is thus € 170,000 + 2* € 16,666.66 + € 25,000. The remainder of the amount € 500,000*(1 + 1.5%) - € 170,000 - 2* € 16,666.66 - € 25,000 = € 279,170 is included in the "loss" taken into account on the basis of the first paragraph of Article 12 of the Law when applying the State guarantee to the loan in question.

c. Charges and fees

4.35 Can the banks charge normal arrangement fees for new loans under the guarantee?

For new loans, it is permitted to make the usual charges applicable before the coronavirus crisis, such as arrangement fees and commitment fees.

4.36 How will payment of the fees be organised (one shot or pro rata)?

State guarantee fee for guaranteed loans:

a. pricing = EU minimum of 50 or 100 basis points on an annual basis according to the duration of the credit (whether or not exceeding 36 months)
b. pro rata according to the term of the loan, due on the whole of the capital regardless of whether the loan was actually taken up in whole or in part
c. payable by the bank to the government; reporting by each bank
    1. line per line details of all qualifying loans granted since the date of entry into force of the Law, including those already repaid or terminated in whole or in part
    2. the Treasury calculates the premium on the basis of the reporting (maximum available capital x term, expressed in days, divided by 360 x premium)

Further rules on the procedure for the payment of the fee will be defined by Royal Decree.

4.37 What happens if the guarantee fee is unpaid or not paid in full?

Execution of the State guarantee is suspended if the premium is unpaid or not paid in full.

4.38 What charges must SMEs pay on guaranteed loans under the second guarantee scheme?

A distinction should be made here according to whether or not the duration of the guaranteed credit exceeds 36 months:

- For a new additional loan or credit line with a maximum maturity of 36 months: the nominal maximum interest is 2% (excluding the "fee"). The fee comes to 50 basis points pro rata according to the term of the loan.
- For a new additional loan or credit line with a with a maturity of more than 36 months and maximum 5 years: the nominal maximum interest is 2,5% (excluding the "fee"). The fee comes to 100 basis points pro rata according to the term of the loan.

The fee is compulsory under the EU rules on State aid. The credit institution can also choose to charge a total interest to the customer, without specifying the part covered by the fee.

4.39 Will all banks charge interest at 2% or 2,5% (excluding the fee) on new guaranteed loans under the second guarantee scheme?

No, this is a maximum (depending on whether or not the maturity of the guaranteed credit exceeds 36 months); free competition applies here.

4.40 Does the fee form part of the maximum interest that can be charged in the case of non-financial SMEs?

No. The fee of 50 or 100 basis points (depending on whether or not the maturity of the guaranteed credit exceeds 36 months) is compulsory under the EU rules on State aid and is additional to the maximum interest rate of respectively 2% or 2,5%.

4.41 How is the guarantee fee calculated in individual cases, given that the guarantee covers only part of the exposures?

This fee has to be paid on the whole capital of new additional loans and credit lines, i.e. the whole amount of the loan (including unused amounts on new additional credit lines).

4.42 Is the guarantee fee also payable for new additional loans expiring earlier than 30 June 2021?

Yes. The guarantee fee is also payable for guaranteed loans granted from the date of entry into force of the Law (24 July 2020) and repaid before 30 June 2021.

4.43 Is the guarantee fee also covered by the State guarantee?

Yes, the State guarantee covers principal and interest, including the guarantee fee.

5. Reporting and monitoring

5.1 Who is responsible for monitoring the agreement?

The National Bank of Belgium has set up a monitoring system with Febelfin to monitor the establishment of moratoria and loans to businesses and individuals in general, and the banks' commitments under the guarantee schemes in particular.

Sanctions apply if a bank abuses or fails to respect its commitments.

5.2 How is the monitoring of both guarantee schemes organised (global cap, cap by bank, cap on counterparty, reporting method (template), information channel, …)?

By extending the reporting to BECRIS with 2 features:

- First guarantee scheme:
  - o Inclusion of an attribute in the characteristics of the credit instrument that explicitly states (i) whether or not the instrument has been selected and (ii) the associated fee.
- Second guarantee scheme:
  - o Inclusion of an attribute in the characteristics of the protection stating that it is a Covid-19 State guarantee.
  - o Since it is not possible to declare protection that does not exist and this protection is optional, it is not explicitly mentioned that no use is made of the guarantee.

5.3 *Should the borrower be recorded in the CICR as defaulting for the duration of the payment delay?*

No. To this end, an exemption from Article VII.133 of the Code of Economic Law was provided for in Royal Decree No 11 of 22 April 2020 on measures regarding the terms and conditions of mortgage loans in the context of the coronavirus crisis.

5.4 Is the bank under a declaration/reporting obligation in regard to the guaranteed loans under both guarantee schemes?

Yes, see question 5.2. The “reporting specification” and “validation checks” that have to be added in the BECRIS reporting were communicated by the NBB to the sector on 3 April 2020.

5.5 Regarding the calculation of the € 50 million limit of the first guarantee scheme, must each Belgian lender in the syndicate declare its share or should there be overall reporting for the syndicate as a whole?

Each Belgian lender in the syndicate reports its own share.

5.6 How will the follow up of the requests with regard to the guaranteed credits, requested by the Parliament, be organized?

Each bank should keep a register in which all requests with regard to the guaranteed credits are held, including the identity of the business entity formulating the request and the requested amount. The result of each request also needs to be registered. Credit institutions shall have to submit monthly reports to the NBB containing information on the total credit requests received and the result of these requests. Detailed information on the requirements regarding the submission was communicated in the course of April.

5.7 Is it possible to obtain an exhaustive overview of the different questions of reporting towards the NBB and the Treasury?

The fiche “Reporting and Monitoring” was formalized in a charter between the different parties involved (sector, NBB and Treasury).

6. Prudential and accounting implications

Note: The answers provided below reflect the views of the NBB based on the factual elements known at the time of writing, on the statements published by the EBA, the ECB and ESMA and may need to be revised in light of evolving knowledge on the matter.

MORATORIUM - PRUDENTIAL TREATMENT

On 29 January 2021 the EBA published a fourth version of the COVID-19 report containing a number of questions and answers regarding the prudential treatment of moratoria and we would like to refer to section 2 of this document in this regard.

6.1 The covered bond legislation reduces the valuation of loans which are more than 30 days or more than 90 days in arrears to 50% and 0% respectively. If loans for which a bank grants a payment extension have to be recorded as in arrears, what impact will this have on the covered bond valuation?

- The Royal Decree of 11 October 2012 - *Koninklijk besluit betreffende de uitgifte van Belgische covered bonds door kredietinstellingen naar Belgisch recht* stipulates in Article 3, § 6 that exposures which defaulted should not be included in the covered pool and according to Article 6, § 7 the coverage of these exposures is valued at 0. In addition, according to Article 6, §7 exposures which are past due for more than 30 days can only be accounted for 50% of the coverage value as determined in Article 6. The days past due should be counted based on the revised schedule of payments, resulting from the application of the moratorium. If the moratorium is applied to an exposure which is in arrears at the time the moratorium is applied, and
  (1) only future payments and not the existing arrears are adjusted, the days past due will continue to be counted as long as these amounts remain due and unpaid
  (2) future payments are adjusted and existing arrears are suspended, the counting of the days past due will be frozen on the day following the application of the moratorium. After the expiry of the moratorium, the counting of the days past due will be resumed.
- The mortgage and business loan payment extension charters state that a payment extension can only be obtained for future monthly repayments. As a result, (i) for a loan which is not in arrears at the time the moratorium is applied, the days past due counter will remain at zero during the payment extension period and (ii) for a loan which is in arrears at the time the moratorium is applied, the days past due will continue to be counted until the existing arrears are cleared. The valuation rules set out in Article 6 of the Royal Decree of 11 October 2012 on the issuance of Belgian covered bonds by credit institutions governed by Belgian law will be applied in accordance with this calculation of the days past due.

6.2 Does the moratorium lead to forbearance?

According to the EBA guidelines (EBA/GL/2020/02 - Final report - Guidelines on legislative and non-legislative moratoria on loan repayments applied in the light of the COVID-19 crisis of 2 December 2020), public and private moratoria that meet the criteria to be considered general do not have to be automatically classified as forbearance measures.

6.3 How is the moratorium treated in relation to default?

The days past due should be counted based on the revised schedule of payments, resulting from the application of the moratorium.
The EBA report clarifies in the answer to question 23 in the second section that the way in which the days past due are counted depends on how the schedule of payments is modified. There are three scenarios: the moratorium:

(1) changes only future payments,
(2) changes future payments and suspends repayment of existing arrears
(3) changes both future and existing arrears.

If the exposure is already in arrears when the moratorium is applied, and

a) scenario 1 applies, the days past due will continue to be counted as long as these amounts remain due and unpaid.

b) scenario 2 applies, the counting of the days past due will be frozen on the day following the application of the moratorium. After the expiry of the moratorium, the counting of the days past due will be resumed.
c) scenario 3 applies, it is possible that there will be no more arrears the day after the moratorium was applied (days past due = 0). The counting is resumed if the borrower is again in arrears based on the revised schedule of payments. It is possible that under scenario three there may still be arrears at the time the payment schedule is changed (e.g. the moratorium does not apply to all the borrower's loans), in which case the days past due counter should not be set to zero.

Institutions are still obliged to assess the debtor's unlikeliness to pay on a case-by-case basis. This assessment refers to the modified schedule of payments, and where there are no concerns in that regard the exposure may remain in performing status.

6.3/1 The EBA statement provides that the counting of days past due is suspended during the moratorium period. However, does this also apply to loans that were already in arrears before the moratorium was applied to them?

Concrete example for illustrative purposes: a loan for which the payment obligation on 31 March was not met and for which the moratorium was requested and granted on 15 April. Should banks suspend the counting of days past due for the payment of 31 March on 15 April until the moratorium expires in October, or should the counting continue?

The EBA Guidelines on payment moratoria (EBA/GL/2020/02) state that the days past due should be counted based on the revised schedule of payments, resulting from the application of the moratorium. For loans that were already in arrears before the moratorium was applied, the days past due will continue to be counted as long as the arrears are not cleared and if the moratorium only changes future payments.
The borrower in the example is eligible for the moratorium as he was not yet in arrears on 1 February 2020 but misses a first payment on 31 March. The bank has to count the days past due from 31 March. Upon request, this borrower will be granted the moratorium on 15 April and only future payments will be changed. The days past due will continue to be counted as long as the arrears are not cleared.

However, banks should continue assessing indications of unlikeliness to pay according to their internal policies and the prudential framework, including during the period of the moratorium.

6.4 How does the moratorium impact the PD of an internal model?

Accurate and timely measurement of risks is not waived by the moratorium. Hence, the normal application under IRB still applies. Losses that might appear, even under the moratorium framework, should be considered for LGD. With regard to the PD, there is no direct link with the PD and the moratorium, as new observed defaults cannot appear under the moratorium but only afterwards.

6.4/1 Which authority is competent to determine whether a Belgian moratorium that can be applied by credit institutions meets all the conditions set out in paragraph 10 of EBA Guidelines EBA/GL/2020/02 to be considered as a general moratorium?

The assessment of whether a moratorium meets all the conditions set out in paragraph 10 of the EBA Guidelines is performed by the NBB, which informs the ECB.

6.4/2 What are the prudential consequences of recognition as a general moratorium?

Paragraphs 11-13 of EBA Guidelines EBA/GL/2020/02 mention three prudential consequences:

- No automatic classification as a forborne exposure, unless an exposure has already been classified as forborne at the moment of the application of the payment moratorium;
- No automatic reclassification as distressed restructuring;
- The days past due are counted based on the revised schedule of payments, resulting from the application of the moratorium.

6.4/3 Can a bank use the moratorium to stop assessing the unlikeliness to pay of individual obligors?

No.

Paragraphs 14-16 of EBA Guidelines EBA/GL/2020/02 specify the following in this regard:

"Throughout the duration of the moratorium, institutions should assess the potential unlikeliness to pay of obligors subject to the moratorium in accordance with policies and practices that usually apply to such assessments, including where these are based on automatic checks of indications of unlikeliness to pay. Where manual assessments of individual obligors are performed, institutions should prioritise the assessment of obligors for whom the effects of the COVID-19 pandemic are most likely to transform into longer-term financial difficulties or insolvency.
In the assessments of unlikeliness to pay of individual obligors following the end of the application of the moratoria referred to in paragraph 10, institutions should prioritise the assessment of the following cases:
(a) where obligors experience payment delays shortly after the end of the moratorium;
(b) where any forbearance measures are applied shortly after the end of the moratorium.
Institutions should perform the assessment of unlikeliness to pay based on the most up-to-date schedule of payment, resulting from the application of the general payment moratorium. Where any additional supportive measures set out by public authorities in response to the COVID-19 pandemic are available to the obligor and may affect its creditworthiness, these should be taken into account in the assessment of unlikeliness to pay. However, any form of credit risk mitigation such as guarantees provided by third parties to institutions should not exempt institutions from assessing the potential unlikeliness to pay of the obligor or affect the results of such an assessment."

6.4/4 Which Belgian moratoria currently meet the conditions of a "general moratorium" as stipulated in the EBA Guidelines?

The non-legislative moratorium on business loans (cf. Febelfin charter - first version and second version) and the legislative moratoria on mortgage loans (cf. Febelfin charter - first version and second version -, Royal Decree no. 11 dated 22 April 2020 and Articles 60-62 of the Law of 20 December 2020) and consumer loans meet these conditions. The third Charter for business credit deferral does not, however, meet these conditions (see the last paragraph of this answer).

It should be stressed, however, that if these moratoria are applied after 31/03/2021, they will no longer meet the conditions to be considered as general moratoria, unless this date is further postponed by the EBA. In addition, condition (e) of Article 10 of the EBA Guidelines states that general moratoria cannot be applied to new loans granted after the date when the moratorium was announced. The EBA Guidelines (EBA/GL/2020/15) and in particular paragraph 14 clarify that moratoria on mortgages and corporate loans as defined in the second version of the Febelfin charters should not be considered new but as modifications of the existing moratorium. Consequently, it is not possible to grant a payment extension in the form of a general moratorium on loans falling under the guarantee schemes.
The final report of the EBA Guidelines on payment moratoria (published on 2 December 2020) introduced an additional constraint for new moratoria or extensions of existing moratoria granted

after 30 September 2020. According to Article 10(bis) of the EBA Guidelines (EBA/GL/2020/15), the overall length of a payment extension granted under the moratoria referred to above should not exceed 9 months. This additional constraint, which applies at the level of each individual loan, should ensure that the EBA Guidelines on payment moratoria allow banks to address short-term liquidity issues while reducing the risk of belatedly identified or unidentified issues with borrowers' (long-term) insolvency.

The moratorium on leasing contracts does not meet condition (d) of paragraph 10 of the EBA Guidelines as this moratorium does not impose the same conditions for changes to the schedule of payments on all exposures subject to the moratorium, even though its application is not compulsory for obligors. On its website, the Belgian Leasing Association (Belgische Leasingvereniging/Association belge de leasing) specifies in this respect that every leasing company can decide for itself how to implement this.

The third Charter for business credit deferral allows an additional payment extension for credits that already benefited from an overall 9-month payment extension under the first and/or second Charter for business credit deferral. Therefore, this moratorium does not meet the condition set out in Article 10(a) of the EBA Guidelines (EBA/GL/2020/02 - consolidated version of 2 December 2020) and will not be considered as a general payment moratorium.

6.4/5 What are the prudential implications for an exposure where the overall payment extension exceeds 9 months?

The prudential treatment as defined in the EBA Guidelines (EBA/GL/2020/02 - consolidated version of 2 December 2020) can be applied to the payment extension until the overall 9-month payment extension is reached and provided the moratorium meets the general conditions for a general payment moratorium. Payment extensions granted in addition to these 9 months are considered individual forbearance measures.

1) Counting days past due

For the payment extension granted on top of the overall 9-month payment extension, the number of days past due must be counted according to Article 178 of the CRR and the EBA Guidelines on the application of the definition of default (EBA/GL/2016/07). The number of past due days shall be counted on the basis of the new payment schedule (see above question 6.3 on counting days past due).

2) The payment extension granted for a period longer than 9 months is considered as a forbearance measure.

If the borrower is or may be in financial difficulties in financial difficulties in meeting its payment obligations and a payment extension is granted in addition to an overall 9-month payment extension in accordance with a moratorium, the part of the payment extension exceeding 9 months shall be considered a forbearance measure.

3) Analyse whether the forbearance measure is considered a "distressed restructuring" in accordance with Article 178(d) CRR and the EBA Guidelines on the application of the definition of default (EBA/GL/2016/07)

As referred to in point (d) of Article 178(3) of Regulation (EU) No 575/2013, the obligor should be considered defaulted where the distressed restructuring is likely to result in a diminished financial obligation.
Institutions shall establish a threshold for the diminished financial obligation in accordance with

paragraph 51 of the EBA Guidelines (EBA/GL/2016/07) that shall not be higher than 1% and shall be calculated in accordance with the following formula:

$$Diminished\ financial\ obligation = \frac{NPV_0 - NPV_1}{NPV_0}$$

For example, for a loan that was granted a 12-month payment extension based on moratoria, an institution will only calculate the difference in the net present value of cash flows (NPV) for the payment extension beyond the 9 months (i.e. for the last 3 months). If the payment extension granted in addition to the 9 months would result in a diminished financial obligation, the debtor should be considered defaulted.

NPV_0 is net present value of cash flows (including unpaid interest and fees) expected under contractual obligations before the changes in terms and conditions of the contract (up until the overall 9-month payment extension), discounted using the customer's original effective interest rate;

NPV_1 is net present value of the cash flows expected based on the new arrangement (payment extension beyond the overall 9-month payment extension), discounted using the customer's original effective interest rate.

However, if the diminished financial obligation is below the stated threshold, and in particular if the net present value of the expected cash flows under the distressed restructuring arrangement is higher than the net present value of the expected cash flows before the changes in terms and conditions, the institution shall assess such exposures on the basis of any other indications that payment is unlikely, in accordance with paragraph 53 of the EBA Guidelines (EBA/GL/2016/07).

MORATORIUM – IFRS 9 TREATMENT

6.5 Will the moratorium lead to a transfer to stage 2?

The fact that IFRS 9 is based on principles calls for the application of expert judgment instead of strict automatism. According to the EBA statement published on 25 March 2020, the application of public or private moratoria, aimed at addressing the adverse systemic economic impact of the COVID-19 pandemic, should not be considered by themselves as an automatic trigger to conclude that a significant increase in credit risk has occurred. As highlighted by the EBA, it does not remove the obligations for credit institutions to assess the credit quality of the exposures benefiting from these measures and identify any situation of significant increase in credit risk of the exposures accordingly. This assessment is particularly important in the case of prolongation of moratoria.

When performing this assessment under IFRS 9, it is important to consider all reasonable and supportable information regarding the risk of default over the total lifetime of the exposure.

FIRST GUARANTEE SCHEME - PRUDENTIAL TREATMENT

6.6 How will the RWA's be calculated for exposures subject to the first guarantee scheme: can we assume government cover, reducing our RWA?

The setup of the guarantee scheme is a form of synthetic securitization and hence the securitization framework is applicable (CRR Article 234). This means that, once the definitive guaranteed portfolio is known on 31 December 2020, capital requirements should be calculated based on the securitization framework. Until 1 January 2021, the state guarantee cannot be recognized as a CRM

technique for the purpose of calculating capital requirements for the underlying loans. The treatment under this securitization framework is dependent on whether a significant risk transfer is present or not. The guarantee on the bank's portfolio can only be recognized under the securitization framework if a significant risk transfer took place. The secured part of the tranches can receive the same risk weight as direct exposures to the guarantor.
If the Significant Risk Transfer condition is not met or the credit institution (from 1 January 2021) chooses not to make use of this option on the basis of CRR article 247 (2) , exposures should be risk weighted as if no securitization took place, which means that in this case the guarantee cannot be taken into account.

Hence one can conclude that RWA's might be reduced under the securitization framework but will never rise compared to the RWA's of unsecured corporate exposures.

6.6/1 Can SRT analyses be made only as from end of December 2020 when the reference portfolio will be originated?

Yes, until then, the guarantee is not effective. The final portfolio to which the guarantee applies is only known end of December 2020. Till that date, the guaranteed portfolio will grow steadily by new "guaranteed loans" that comply with the eligibility criteria and that are not deselected by the institution. Hence, the final SRT analysis can only be made based on the final composition of the guaranteed portfolio end of December 2020, when the needed reliable loss parameters on the underlying debtors of the final portfolio, enabling the competent authority to judge whether capital relief is matched by significant risk transfer (crucial for SRT recognition), can be transmitted.
As a conclusion, until end of December 2020, a credit institution cannot apply the securitization framework and cannot take into account the state guarantee when calculating its capital requirements for credit risk of the underlying exposures.

6.6/2 Can a credit institution that uses the standardised approach to calculate credit risk capital requirements, for the calculation outside the securitisation framework of these capital requirements for each underlying individual loan, use the loss rates applicable per tranche on the portfolio, applying the weighted-average risk weight as shown in the example below?

Example: an underlying exposure for a total amount of 100 to a company without an external rating and in the absence of any eligible credit risk mitigating (CRM) techniques other than the state guarantee.

*The risk weight for the amount of 3 for the first tranche amounts to 100%; The weighted-average risk weight for the amount of 2 for the second tranche amounts to 50% and is equal to the weighted average of the part of the exposure without guarantee (1*100%) and the part with guarantee (1*0%), which receives the risk weight of the guarantor. The weighted-average risk weight for the amount of 95 for the third tranche amounts to 20 % [((19*100%) + (76*0%))/95].*

The weighted-average risk weight for the entire individual exposure thus amounts to 23% in this example.

	exposure amount	*weighted-average risk weight*
tranche 1	*3*	*100%*
tranche 2	*2*	*50 %*
tranche 3	*95*	*20 %*
portfolio	*100*	*23 %*

Answer to the question: The above proposed calculation of the capital requirements for an individual underlying loan of the guaranteed portfolio is NOT permitted outside the securitisation framework as mentioned in the answer to question 5.6.

It should moreover not be concluded that each individual loan benefits from the same guarantee distribution as that which applies to the portfolio (0% state guarantee for the first tranche of 3.50 % guarantee for the tranche of 3 to 5 and 80% guarantee for the tranche between 5 and 100).

A simple example illustrates this for a guaranteed portfolio amounting to 100 which consists of two underlying business loans:

- Loan 1 to borrower A for an amount of 95
- Loan 2 to borrower B for an amount of 5

Loan 2 defaults and the ex-post recovery rate is 50 %, so the final loss amounts to 2.5.
However, this loss does not meet the first loss threshold of 3% which applies to the portfolio of 100. No guarantee will be paid.

SECOND GUARANTEE SCHEME – PRUDENTIAL TREATMENT

6.7 How will the RWA be calculated for exposures covered by the second guarantee scheme: can we assume government cover, reducing our RWA?

The law governing the second guarantee scheme was drawn up in such a way and further implementing decrees regarding, among other things, the payment of advances and the final payment will be drawn up in such a way that this State Guarantee can be assessed as an eligible unfunded credit protection provided by the State amounting to 80% of the loan amount.

GUARANTEE SCHEMES – IFRS 9 TREATMENT

6.8 How to account for the guarantee scheme on a new guaranteed credit?

To answer the question, it is necessary to assess whether the state guarantee can qualify as a financial guarantee under IFRS and, if so, whether it constitutes a credit enhancement that is integral to the contractual terms of the loans. If the answers are positive, the state guarantee could be included in the measurement of the expected credit losses (ECL) in accordance with IFRS 9. If the answers are negative, the state guarantee would have to be recognised separately of IFRS9 ECL allowances.

Determining whether the state guarantee qualifies as a financial guarantee that is integral to the contractual terms of the loan involves professional judgement, based on the specific factual features of the state guarantee. Several factors or criteria may be considered and weighted to arrive at a reasonable accounting answer. Since the two state guarantee programs are different, they need to be assessed separately.

a) First guarantee scheme

The first state guarantee meets the IFRS definition of a financial guarantee as it only covers losses incurred by the banks because debtors fail to make payment when due in accordance with the terms of the loans.

When assessing whether the guarantee is integral to the loans, some elements may be considered as leading to a positive conclusion:

- The loan contracts in scope of the COVID-19 guarantee scheme refer explicitly to the cover by the state guarantee
- The state aid fee to be collected and paid is mentioned explicitly in the loan contract.

In contrast other considerations could lead to a negative conclusion:

- The non-transferability of the guarantee: while the loans are transferable, the guarantee would be lost for the loans that would be transferred (other than as collateral as defined in the law).
- The fact that the final recovery under the portfolio-based guarantee will only be determined and settled when most of the loans will already have been derecognised. The guarantee is indeed structured in such a way that it does not cover single loans but rather a portfolio or pool of loans with tranching. The reimbursement amount expected will thus depend on the performance of the other loans of the portfolio

Considering the importance of these elements, it seems a reasonable conclusion for the first state guarantee to be recognized separately, outside IFRS9 ECL allowances in accordance with IAS 37.53. In practice, it would be acceptable to recognize a recovery asset that is representative of the reimbursement amount expected to be received from the government under the financial guarantee. The contra entry would be in P&L. Under IAS 37 a reimbursement asset can be recognised only when it is virtually certain that the reimbursement will be received if the entity settles the obligation. Such a certainty can reasonably be considered as achieved when the level of impairment exceeds the lower threshold of the second loss tranche (loss rate of 3%) – after deduction of other collaterals.

b) Second guarantee scheme

Unlike the first state guarantee, the second one is optional which means that the loans benefiting from the guarantee are identified as such at origination with the agreement of the borrower. As a result, the guarantee is closely, and individually linked to each loan contract. This is a key difference with the first state guarantee.

The other features relevant for assessing the “integral part” of the loan contracts criterion are the same like for the first state guarantee (NB: the loans may also serve as collateral for financing transactions with the central bank and in this case the collateral may be the loans themselves or the instruments issued by the securitization vehicle encompassing the guaranteed loans).

Considering these factual elements, it can be considered that the second state guarantee is a credit enhancement that is integral to the contractual terms of the loans and may therefore be included in the measurement of the expected credit losses (ECL) in accordance with IFRS 9 B5.5.55 (i.e. as a reduction of the impairment allowance, where relevant as part of LGD-type parameters).

This analysis is also in line with the prudential treatment of the state guarantee (see above).

6.9 How to assess SICR under the new credits under the guarantee schemes and can exposures remain in stage 1 even if there is a significant deterioration of underlying credit risks?

The existence of a state guarantee as such, does not prevent a credit exposure to be moved from Stage 1 to Stage 2 as collateral should not be considered when assessing whether a significant increase in credit risk (SICR) took place. There should be no automatism in the assessment of a significant increase in credit risk and expert judgment should be applied (considering, for instance, to the sector to which the client belongs).

Yet, if the lifetime of the new credits is limited to 12 months (and not revolving), the impact on the ECL calculation should not lead to a cliff effect as the 12-month ECL should already be the same as the lifetime ECL.

6.10 In the case of a loan guaranteed by the State, should a bank always flag up forbearance in any case, or only in certain clearly defined cases?

New loans which fall under the guarantee scheme would not fall under the definition of forbearance as no restructuring took place.

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