

<b>Question ID</b>	2022_6633
<b>Status</b>	Final Q&A
<b>Legal act</b>	Regulation (EU) No 575/2013 (CRR)
<b>Topic</b>	Credit Risk - Non performing exposures / loan origination
<b>Article</b>	469
<b>Paragraph</b>	a
<b>Subparagraph</b>	
<b>COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations</b>	Not applicable
<b>Article/Paragraph</b>	n,a.
<b>Name of institution / submitter</b>	Finanstilsynet
<b>Country of incorporation / residence</b>	Denmark
<b>Type of submitter</b>	Competent authority
<b>Date of submission</b>	11/11/2022
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<b>Subject matter</b>	Minimum loss coverage for non-performing exposures under Article 469a
<b>Question</b>	In case a default occurred on a debt obligation originated before 26 April 2019, and if the originating bank grants the defaulted obligor a forbearance measure in the form of a partial refinancing of a debt obligation to cover past due payments on the original debt obligation and thus effectively increases the bank's total exposure towards the obligor, will the original debt obligation, which has not been increased, cease to be subject to the derogation provided for in Article 469a(1) CRR?
<b>Background on the question</b>	According to Article 469a(1) of Regulation (EU) No 575/2013 (CRR), by way of derogation from Article 36(1)(m) CRR, institutions shall not deduct the insufficient coverage for non-performing exposures from Common Equity Tier 1 items where the exposure was originated prior to 26 April 2019.

However, according to Article 469a(2) CRR, where the terms and conditions of an exposure which was originated prior to 26 April 2019 are modified by the institution in a way that increases the institution's exposure to the obligor, the exposure shall be considered as having been originated on the date when the modification applies and shall cease to be subject to the derogation provided for in the first subparagraph.

Example:

A loan of 100.000 EUR originated on March 2019 defaulted in 2020. After the default, the bank grants the obligor a new loan of 10.000 EUR to cover past due payments on the defaulted loan. In this case, the banks' total exposure towards the obligor has increased, although the original loan of 100.000 EUR has not been increased.

As the new loan of 10.000 EUR has been granted after 26 April 2019, it will not be subject to the derogation provided for in Article 469a (1) CRR.

However, it is not clear if in this example the original loan of 100.000 EUR should cease to be subject to the derogation provided for in Article 469a(1) CRR, since the total exposure to the obligor has been increased.

As stated in the recital to Regulation (EU) 2019/630 amending Regulation (EU) No 575/2013 the rules should not be applied in relation to exposures originated prior to 26 April 2019, in order to facilitate a smooth transition towards the new prudential backstop.

However, the derogation to the cut-off date as described in Article 469a(2) CRR, is presumably intended to avoid circumvention of the rules e.g. allowing new loans to be granted in existing facilities. This does not prevent the bank from effectively increasing the total exposure towards the obligor, by granting forbearance as a new facility as described in the example above. Applying the provisions in Article 469a on an individual loan/exposure basis (transaction-based) will therefore result in a lenient application of the prudential backstop.

**Final answer**

According to Article 469a second paragraph of Regulation (EU) No 575/2013

('CRR'), where the terms and conditions of an exposure which was originated prior to 26 April 2019 are modified by the institution in a way that increases the institution's exposure to the obligor, the exposure shall be considered as having been originated on the date when the modification applies and shall cease to be subject to the derogation laid down in the first sub-paragraph of that Article as of that date.

Where a forbearance measure is granted to an obligor through a total or partial refinancing of a debt obligation/exposure that increases the overall institution's exposure towards the obligor, that forbearance measure shall be considered as a change in the terms and conditions of the original exposure that increases the overall exposure of the institution towards the obligor for the purpose of Article 469a of CRR, and therefore the original exposure shall cease to be subject to the derogation and shall be considered as having been originated as of the date the forbearance measure has been granted.

*The answers clarify provisions already contained in the applicable legislation. They do not extend in any way the rights and obligations deriving from such legislation nor do they introduce any additional requirements for the concerned operators and competent authorities. The answers are merely intended to assist natural or legal persons, including competent authorities and Union institutions and bodies in clarifying the application or implementation of the relevant legal provisions. Only the Court of Justice of the European Union is competent to authoritatively interpret Union law. The views expressed in the internal Commission Decision cannot prejudice the position that the European Commission might take before the Union and national courts.*

<b>Answer prepared by</b>	Answer prepared by the European Commission because it is a matter of interpretation of Union law.
<b>Note to Q&amp;A</b>	
<b>Link</b>	<a href="https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2022_6633">https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2022_6633</a>