

## COVID-19: Payment suspension scheme for borrowers extended further in time



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### 1. The COVID-19 support package: a timeline

#### 1.1. First wave

End of March 2020, the Minister of Finance and the Belgian financial sector, through the Belgian financial sector federation (Febelfin) and in close cooperation with the National Bank of Belgium, put into place a temporary support package for businesses to deal with the economic fallout resulting from the COVID-19 pandemic (see our previous blogposts[1]). It consisted of two pillars, (i) the suspension of payments under existing credits and (ii) a general, mandatory State guarantee scheme for new additional bridge lending.

With the continuation of the effects of the pandemic and the experience that the terms of the general State guarantee scheme were too restrictive, in particular for SMEs, in July 2020 an additional State guarantee scheme for new qualifying SME loans granted up to 31 December 2020 was enacted and entered into force on 24 July 2020 (without some of the limitations of the general scheme).[2]

In September 2020, the general State guarantee scheme for bridge loans was extended for loans up to 31 December 2020 (amending the Royal Decree of 16 September 2020, published on 28 September 2020)[3].

The initial suspension of payments was provided by the Febelfin charter of 31 March 2020 on the deferral of payments under business credits[4] (the “First Business Credits Charter”) and was extended in June 2020 to provide payment deferral on qualifying loans up to 31 December 2020.

#### 1.2. Second wave

As a result of the 'second wave' of the COVID-19 crisis and the reinstatement of mandatory lockdown restrictions, it was decided on 8 December 2020 to further extend in time[5]:

- (i) the payment suspension for businesses by way of the publication on 9 December 2020 of a second Febelfin charter (the "Second Business Credits Charter")[6]; and
- (ii) the guarantee scheme for SMEs by way of the publication on 30 December 2020 of the amending Royal Decree of 24 December 2020[7].

The application period for the general State guarantee scheme was not extended and expired on 31 December 2020.

At the end of January 2021, the federal government and the financial sector also decided on the extension of the payment suspension for consumer credits for maximum 3 months with a maximum end date of 30 June 2021 (even though the use of this support measure has proven to be limited).[8]

Considering that the mandatory closure rules are still ongoing without a short-term end in sight, further action had to be taken. On the side of the banks any action had to take into account that under applicable EBA guidelines no total payment suspension granted under the First and Second Business Credits Charter could ever exceed 9 months according without the bank incurring additional regulatory costs[9]. On 8 February 2021 it was decided :

- (i) to further extend in time the payment suspension businesses can obtain under the Second Business Credits Charter (by way of the publication of an amendment to that charter), capped however to a maximum in aggregate of 9 months suspension; and
- (ii) to provide an additional payment suspension for businesses that have reached the maximum of 9 months payment suspension under the First and Second Business Credits Charters, provided they are "financially healthy"; this separate and additional payments suspension is regulated by way of a third Febelfin charter (the "Third Business Credits Charter")[10].

### 1.3 Summary

The current two-pillar support package as from 8 February 2021 can now be summarised as follows:

Payment suspension :

- o existing business credits (principal only), with a maximum due date of 30 June 2021 (with a total payment suspension of 9 months);

- o existing “healthy” business credits (principal only) with a maximum due date of 30 June 2021 (in addition to the maximum payment suspension of 9 months); and
- o residential mortgage loans (principal and interest) for maximum 3 months with maximum end date of 30 June 2021.

State guarantee scheme - the extended SME State guarantee scheme for certain new credits and credit lines granted at the latest on 30 June 2021 to SMEs with a scheduled, final maturity between 12 months and 5 years.

## **2. Payment suspension for business credits – Key features**

### 2.1. Second Business Credits Charter (extended)

The current general payment suspension regime for business credits now has the following key features:

- suspension may be requested by non-financial businesses, SMEs, self-employed professionals and non-profit organisations “permanently established in Belgium” (public authorities are excluded);
- suspension may be requested for payment dates scheduled no later than 30 June 2021, taking into account that :

â— in total, a borrower can never receive more than 9 months’ payment suspension, regardless of whether that suspension was granted under the First Business Credits Charter or the Second Business Credits Charter;

â— payment suspension can only be granted for future due dates up to at the latest 30 June 2021 (not retroactively);

â— the request must be made in a timely manner and no later than 10 calendar days before the envisaged due date of the credit and no later than 31 March 2021;

- suspension only applies to the principal, not interest;
- suspension does not apply to overdue payments;
- suspension automatically entails an extension of the maturity of the credit;
- suspension only applies to bank-type financings granted before 1 April 2020; factoring and leasing are excluded;
- the borrower must be impacted by COVID-19 (decrease in turnover, unemployment or forced closing of business);
- the borrower must have had (i) no payment default as of 1 September 2020 (credits, tax or social security contributions) or (ii), if a payment default existed as of 30 September 2020, it does not exceed 30 days; and

- the borrower must not have been in any breach under any bank credit in the period of 12 months up to 31 August 2020, nor be in “active credit restructuring” before 31 August 2020; and
- suspensions are decided case-by-case and are free of any administrative charge.

## 2.2. Third Business Credits Charter (new)

The additional payment suspension regime for business credits has the following key features:

- suspension may be requested by “healthy” businesses that already benefited from a maximum payment extension of 9 months under the First and Second Business Credits Charters.

A business is considered not “healthy” if it (i) had a negative equity (negatief eigen vermogen / fonds propres négatifs)[11] at the end of 2019 and (ii) one of the following 4 conditions is fulfilled :

- (1) the borrower had (i) a payment default as of 1 September 2020 (credits, tax or social security contributions) or (ii) a payment default exceeding 30 days existed as of 30 September 2020;
  - (2) the borrower has been in breach under any bank credit in the period of 12 months up to 31 August 2020, or has been in “active credit restructuring” before 31 August 2020;
  - (3) the borrower has made a loss in 2019; or
  - (4) the borrower’s equity is negative at the time of application and the borrower does not have the means to strengthen the capital in short term.
- suspension may be requested for future payment dates scheduled no later than 30 June 2021, taking into account that:
  - payment suspension can only be granted for future due dates up to at the latest 30 June 2021 (not retroactively);
  - the request must be made in a timely manner and no later than 10 calendar days before the envisaged due date of the credit
  - suspension only applies to the principal, not interest;
  - suspension does not apply to overdue payments;
  - suspension automatically entails an extension of the maturity of the credit;
  - suspension only applies to bank-type financings granted before 1 April 2020; factoring and leasing are excluded;
  - suspensions are decided case-by-case and are free of any administrative charge.

## **3. SME State guarantee scheme – Key features**

The key terms of the extended SME State guarantee scheme are as follows:

### Credit providers

Belgian licensed credit institutions or Belgian registered or licensed branches of foreign credit institutions.

### Credits

- New credits granted between 1 January 2021 and 30 June 2021 (unless extended because of severity or duration of coronavirus crisis);
- Duration of credits: more than 12 months, with a maximum of 5 years;
- Maximum guaranteed principal amount (at group level of borrower): the guaranteed principal amount may not exceed the highest of (i) the borrower's liquidity needs for a period of 18 months, (ii) twice the annual total wage cost of the borrower's latest closed financial year, or (iii) 25% of the turnover of the latest closed financial year;
- Loans, credit facilities, overdraft facilities or any other similar payment arrangements, excluding :
  - o refinancing credits to repay credits granted before 24 July 2020;
  - o drawdowns of credits granted before 24 July 2020;
  - o leasing agreements;
  - o factoring agreements; or
  - o consumer loans and mortgage loans.

### Limits applicable to aggregate cover

Maximum amount in aggregate for all guaranteed SME credits for all lenders: EUR 10 billion;  
For each qualifying lender, the guarantee scheme can only cover credits up to a total principal amount that does not exceed 20% of the allocated envelope of that lender.

### Borrowers

Type of borrowers: non-financial<sup>[12]</sup> SMEs (i.e. "micro", "small" and "medium-sized" enterprises in accordance with the EU definition);

Excluded are :

- undertakings that are the subject of collective insolvency proceedings;

- â—‹ undertakings that have received rescue aid that has not been repaid;
- â—‹ undertakings that may receive restructuring aid and are still subject to a restructuring plan;
- â—‹ public (governmental) entities;
- â—‹ estate management companies; and
- â—‹ management companies.

#### Allocation of loss

The guarantee is granted on a loan-to-loan basis, and the government will bear the first 80 percent of the loss incurred by a lender.

#### Protection from claw back rules

Finally, the government wants "undertakings in difficulties" (within the meaning of EU Reg 651/2014) to continue to have the possibility to obtain new credit. To achieve that, new guaranteed credits and security interests relating to such credits are to a large extent protected from typical bankruptcy "claw back" rules if the business would still be declared bankrupt later. In addition, the new legislation also aims to shelter new lenders against lender liability claims.

We continue to closely monitor the developments of the payment suspension and the State guarantee schemes. If you have any questions on these support measures, please do not hesitate to reach out.

[1] See our previous blogpost of 17 April 2020: <https://www.pwclegal.be/en/news/covid-19--state-guarantee-scheme-for-new-bank-credit-.html> and our blogpost of 28 July 2020: <https://www.pwclegal.be/en/news/covid-19--support-measures-for-borrowers-extended-in-time-and-ex.html>

[2] Wet van 20 juli 2020 tot verstrekking van een staatswaarborg voor bepaalde kredieten aan KMO's in de strijd tegen de gevolgen van het coronavirus en tot wijziging van de wet van 25 april 2014 op het statuut en toezicht op kredietinstellingen en beursvennootschappen/Loi du 20 juillet 2020 portant octroi d'une garantie de l'Etat pour certains crédits aux PME dans la lutte contre les conséquences du coronavirus et modifiant la loi du 25 avril 2014 relative au statut et au contrôle des établissements de crédit et des sociétés de bourse ("Act of 20 July 2020").

[3] KB van 16 september 2020 tot wijziging van het koninklijk besluit van 14 april 2020 tot

toekenning van een staatswaarborg voor bepaalde kredieten in de strijd tegen de gevolgen van het coronavirus/Arrêté royal du 16 septembre 2020 modifiant l'arrêté royal du 14 avril 2020 portant octroi d'une garantie d'état pour certains crédits dans la lutte contre les conséquences du coronavirus ("RD of 16 September 2020").

[4] In Dutch: <https://www.febelfin.be/nl/consumenten/artikel/charter-betalingsuitstel-ondernemingskredieten> and in French: <https://www.febelfin.be/fr/consommateurs/article/charte-report-de-paiement-credit-aux-entreprises>

[5] Shortly after the announcement by Febelfin and the bank sector, Assuralia (organisation of Belgian insurers) announced the extension of its measures and the launch of additional initiatives (in Dutch: <https://www.assuralia.be/nl/998%20verzekeringssector-solidair-met-heel-het-land-2>; in French: <https://www.assuralia.be/fr/21-coin-presse/communiques-de-presse/997-le-secteur-de-l-assurance-solidaire-avec-tout-le-pays-2>).

[6] In Dutch: <https://www.febelfin.be/nl/artikel/tweede-charter-betalingsuitstel-ondernemingskredieten> and in French: <https://www.febelfin.be/fr/article/deuxieme-charte-report-de-paiement-credits-aux-entreprises>.

[7] Koninklijk besluit van 24 december 2020 tot verlenging van de toekenningstermijn en de maximumduur van de in aanmerking komende kredieten voor een staatswaarborg voor bepaalde kredieten aan KMO's in de strijd tegen de gevolgen van het coronavirus, en daarmee verbonden maatregelen / Arrêté royal du 24 décembre 2020 portant prolongation de la période d'octroi et de la durée maximale des crédits éligibles pour une garantie de l'Etat pour certains crédits aux PME dans la lutte contre les conséquences du coronavirus, et des mesures y liées ("RD of 24 December 2020").

[8] In Dutch: <https://www.febelfin.be/nl/artikel/vragen-en-antwoorden-nieuw-betalingsuitstel-consumentenkrediet> and in French: <https://www.febelfin.be/fr/article/qr-sur-le-nouveau-report-de-paiement-des-credits-la-consommation>.

[9] Extension on 2 December 2020 of the EBA guidelines on legislative and non-legislative moratoria, see <https://www.eba.europa.eu/eba-reactivates-its-guidelines-legislative-and-non-legislative-moratoria>.

[10] In Dutch: <https://www.febelfin.be/nl/artikel/derde-charter-betalingsuitstel-ondernemingskredieten> and in French: <https://www.febelfin.be/fr/article/troisieme-charte-report-de-paiement-credits-aux-entreprises>.

[11] Considering the criterion of "equity" cannot be applied to self-employed professionals, the "health"-test will be done by examining the first and second condition.

[12] A non-financial business is an undertaking that does not fall in one of the following

categories: (i) a financial counterparty, a payment institution, an electronic money institution or a special-purpose securitisation vehicle, (ii) an undertaking granting exclusively or in principle loans for its own account as part of its usual commercial or professional activities; or an undertaking exercising direct control over an entity as referred to under (i) and (ii).