

Consiglio del 30 maggio 2018

**Punto 5 all' ODG
Addendum BCE al calendar provisioning**

**ALLEGATO 5.1
Presentazione lavoro Commissioni Tecniche**



Calendar provisioning

Massimo Ceriani

30 maggio 2017

Calendar provisioning

Cronistoria degli avvenimenti



Calendar provisioning

Principali aspetti e problematiche per il factoring

- Previsione di accantonamenti prudenziali minimi per le esposizioni deteriorate
- Accantonamenti prudenziali = accantonamenti contabili + deduzioni CET1
- Parte non garantita interamente coperta entro 2 anni
- Parte garantita interamente coperta entro 7 anni (BCE) o 8 anni (CE)
- Garanzie ammissibili: garanzie reali o personali ammesse per la mitigazione del rischio di credito



Problema del past due >90d:
Prudential backstop fino a 6x
current provisioning



Definizione di garanzie esclude, in generale, i crediti commerciali e l'assicurazione del credito



Calendar provisioning

Il documento di commento all'Addendum BCE: aspetti principali

- Si applica a nuovi NPL da 1° aprile 2018

- Factoring esplicitamente escluso da BCE dalle forme garantite...

"the definition of collateral contained in the Addendum is based on the current regulatory framework. In this context, certain types of instruments, such as personal guarantees or factoring-related instruments, are therefore currently not included. However, as stated above, in the context of the supervisory dialogue, banks will be able to outline reasons for any differences between the supervisory expectations and their actual prudential coverage on a case-by-case basis".

- ... ma è consentito, anche alle istituzioni Standard, di adottare le garanzie *eligible* per i metodi IRB...

"Ai fini di questo addendum, le seguenti tipologie di garanzie o altre forme di protezione dal rischio di credito sono considerate dalla BCE come atte ad assistere interamente o parzialmente le esposizioni deteriorate:

(a) qualsiasi tipo di garanzia immobiliare;

(b) altre garanzie reali ammissibili o altre forme di protezione dal rischio di credito che soddisfino i criteri di attenuazione di tale rischio, ai sensi della parte tre, titolo II, capi 3 e 4, del CRR, indipendentemente dal fatto che gli enti applichino il metodo standardizzato o il metodo basato sui rating interni. In questo modo si assicurano pari condizioni per tutte le banche."

- ...fra cui, a certe condizioni, i crediti commerciali

CRR, §199: "Gli enti possono utilizzare come garanzie reali ammissibili i crediti derivanti da operazioni commerciali o da operazioni con una durata originaria non superiore ad un anno"



Calendar provisioning

La consultazione CE: aspetti principali e proposte Assifact/EUF

- L'approccio CE differisce da quello BCE:
 - 8 anni invece che 7 per le esposizioni garantite
 - Progressività nella svalutazione anche entro i primi due anni
 - No estensione garanzie ammissibili IRB per istituzioni standard
 - Si applicherà ai nuovi prestiti originati a partire da entrata in vigore
- Principali proposte del settore del factoring:
 - Esenzione dal prudential backstop dei past due > 90d su crediti commerciali acquistati e dei crediti commerciali acquistati verso PA
 - Esplicita inclusione fra le garanzie ammissibili dei crediti commerciali acquistati e dell'assicurazione del credito
 - Allineamento a Addendum BCE su:
 - Estensione garanzie ammissibili IRB per istituzioni standard
 - Eliminazione progressività entro i primi due anni, mantenendo il vincolo del 100% a fine periodo



Applicazione al factoring dell'Addendum BCE in materia di aspettative di vigilanza in merito agli accantonamenti prudenziali per le esposizioni deteriorate

Versione del 2 maggio 2018

Nel marzo 2018, la Banca Centrale Europea ha pubblicato il proprio Addendum alle Linee guida della BCE per le banche sui crediti deteriorati (NPL): aspettative di vigilanza in merito agli accantonamenti prudenziali per le esposizioni deteriorate ("Addendum").

Il documento integra le linee guida precedentemente emanate dalla BCE identificando le attese della vigilanza della BCE rispetto alla valutazione dei livelli di accantonamento prudenziale per le esposizioni non performing. Tali attese poggiano, in particolare, sull'anzianità dell'esposizione non performing, ossia il lasso di tempo in cui un'esposizione è classificata come deteriorata, nonché sulla presenza o meno di garanzie reali a supporto dell'esposizione.

Pur non entrando nel merito della metodologia proposta nell'Addendum, per cui si rimanda alla lettura del documento (allegato per pronto riferimento), la presente nota riporta alcune riflessioni in merito all'applicazione al factoring dell'Addendum.

Nello specifico, i principali dubbi interpretativi per il settore del factoring riguardano la definizione di "protezione del credito a garanzia delle esposizioni".

L'Addendum prevede che:

"Ai fini di questo addendum, le seguenti tipologie di garanzie o altre forme di protezione dal rischio di credito sono considerate dalla BCE come atte ad assistere interamente o parzialmente le esposizioni deteriorate:

(a) qualsiasi tipo di garanzia immobiliare;

(b) altre garanzie reali ammissibili o altre forme di protezione dal rischio di credito che soddisfino i criteri di attenuazione di tale rischio, ai sensi della parte tre, titolo II, capi 3 e 4, del CRR, indipendentemente dal fatto che gli enti applichino il metodo standardizzato o il metodo basato sui rating interni. In questo modo si assicurano pari condizioni per tutte le banche.

Riguardo al factoring, è opportuno richiamare alcuni passaggi riportati nel feedback statement che l'EBA ha pubblicato in seguito alla consultazione pubblica, ed in particolare (pag. 6):

- *"the definition of collateral contained in the Addendum is based on the current regulatory framework. In this context, certain types of instruments, such as personal guarantees or factoring-related instruments, are therefore currently not included. However, as stated above, in the context of the supervisory dialogue, banks will be able to outline reasons for any differences between the supervisory expectations and their actual prudential coverage on a case-by-case basis".*
- *"the Addendum assumes an equal treatment of banks using the standardised approach (SA) and banks using the internal ratings based (IRB) approach with regard to eligible collateral. A more explicit clarification in this regard has been added in the final Addendum text".*

Secondo la definizione della BCE, quindi, il factoring "resterebbe escluso" dall'ambito degli strumenti assistiti da garanzie. In linea di principio, tale impostazione appare incoerente con la reale sostanza dell'operazione (che rappresenta una forma di "asset based lending" e pertanto, per propria natura, controgarantita) ma coerente con l'impianto della vigilanza prudenziale, che riflette l'impostazione contabile degli IFRS 9 secondo cui nel factoring:

- Una cessione di crediti che trasferisce sostanzialmente tutti i rischi e benefici dei crediti ceduti è rilevata in bilancio come una esposizione nei confronti dei debitori ceduti per il corrispettivo pattuito, mentre
- Una cessione di crediti che non trasferisce sostanzialmente tutti i rischi e benefici dei crediti ceduti è rilevata in bilancio come una esposizione nei confronti del cedente per l'anticipazione erogata.

In tale contesto, la disciplina prudenziale, che non ragiona necessariamente nella prospettiva dei principi IFRS, non consente nel caso del metodo standardizzato (utilizzato dalla maggioranza delle società di factoring) di considerare i crediti commerciali come garanzie rispetto all'esposizione del cedente (nel caso di operazioni pro solvendo o pro soluto non iscritte). Allo stesso modo, nel caso del pro soluto iscritto, non rileva l'assicurazione del credito (che rappresenta una garanzia di tipo personale e non reale), salvo che essa non abbia i requisiti per essere considerata *eligible* ai fini della Credit Risk Mitigation.

Sebbene non possa identificarsi una inclusione aprioristica del factoring fra le esposizioni garantite, va tuttavia evidenziato come la stessa BCE richiami il fatto che l'Addendum consente di considerare "altre garanzie reali ammissibili o altre forme di protezione dal rischio di credito che soddisfino i criteri di attenuazione di tale rischio, ai sensi della parte tre, titolo II, capi 3 e 4, del CRR, indipendentemente dal fatto che gli enti applichino il metodo standardizzato o il metodo basato sui rating interni". Si interpreta che tale disposizione consenta di considerare *eligible*, anche per chi ricorre al metodo standardizzato, gli strumenti ammissibili nel quadro del metodo IRB, al fine di evitare disparità di trattamento della stessa operazione in considerazione del metodo adottato.

In tale prospettiva, si ricorda che l'art. 199 della CRR consente di considerare come ammissibili come garanzie reali nel quadro del metodo IRB i crediti commerciali acquistati al ricorrere di alcuni requisiti, richiamati dal paragrafo 5 dello stesso articolo: *"Gli enti possono utilizzare come garanzie reali ammissibili i crediti derivanti da operazioni commerciali o da operazioni con una durata originaria non superiore ad un anno. Non sono ammissibili i crediti collegati a cartolarizzazioni, sub-partecipazioni e derivati su crediti o gli importi dovuti da soggetti affiliati"*.

Si ritiene pertanto che i crediti commerciali acquisiti nell'ambito di una operazione pro solvendo ovvero pro soluto diversa da quelle IFRS-compliant rientrino nella definizione di protezione del credito a garanzia delle esposizioni fornita dall'EBA al ricorrere delle condizioni di cui sopra.

Si ricorda, in ogni caso, che l'Addendum non è vincolante, ma bensì "funge da base per il dialogo di vigilanza". Pertanto, eventuali divergenze tra le prassi di accantonamento adottate e le aspettative di vigilanza che dovessero comunque manifestarsi (es. nel caso di debitori afferenti alla Pubblica Amministrazione) dovranno essere oggetto di comunicazione alla BCE nell'ambito del dialogo di vigilanza SREP.

Peraltro, giova ricordare che il documento contenente i feedback della BCE non rappresenta un documento di regolamentazione, ma fornisce solo le risposte del Regulator rispetto alle proposte di modifica avanzate dalle banche e da altre istituzioni in sede di consultazione pubblica. In questo contesto è stato fatto presente che non sono state prese in considerazione le garanzie personali ed anche ciò che genericamente è correlato al factoring ed infatti nella versione definitiva dell'Addendum si considerano solo le garanzie reali previste nel framework regolamentare (parte tre, titolo II, capi 3 e 4, del CRR). Non vengono invece specificatamente esclusi dal framework di riferimento i "crediti commerciali acquistati" mentre è stato accettato il suggerimento (portato all'attenzione della BCE proprio da Assifact ed EUF fra gli altri) di mettere tutte le istituzioni sullo stesso piano, sia quelle standard che quelle IRB, allargando così indirettamente l'eligibilità delle garanzie reali.



ASSIFACT

Associazione Italiana per il Factoring

Allegati

1. Addendum alle Linee guida della BCE per le banche sui crediti deteriorati (NPL): aspettative di vigilanza in merito agli accantonamenti prudenziali per le esposizioni deteriorate
2. Feedback statement - Responses to the public consultation on the draft Addendum to the ECB Guidance to banks on non-performing loans

BOLZA



Kraainem, 25 May 2018

Réf: EUF/18-02

Re.: European Commission's Consultation On The Proposal Amending Regulation (Eu) No 575/2013 As Regards Minimum Loss Coverage For Non-Performing Exposures

Dear Madam or Sir,

General View

The EU Federation for the factoring and Commercial Finance Industry agrees, in principle, with the goal of avoiding the piling up of impaired and non-performing loans within the banking balance sheets. It also understands and shares the need to address the issue of insufficient provisioning of such exposures.

The EUF would like to stress that factoring and invoice discounting are very low risk exposures if compared to traditional banking. EU-wide, the cost of risk of factoring is estimated to be 4 times lower than the cost of risk in traditional banking (0.09% vs 0.32% in low risk Countries, 0.43% vs 1.6% in high risk Countries). Even in the countries where NPEs represent a more relevant issue for banks (e.g. Italy), factoring companies are able to show excellent figures when compared to the whole banking industry in terms of amount of NPEs: the NPE ratio in Italy for factoring is 7% (of which 5.4% unlikely to pay) compared to 15% in banking (14.8% unlikely to pay).

With this in mind, the EUF understands that the backstop does not address factoring directly.

However, the EUF does not support the idea of statutory prudential backstops addressing insufficient provisioning for non-performing loans. Competent authorities in general, and the ECB/SMM in particular, already have sufficient tools at their disposal within the Pillar II framework in the form of the SREP and asset quality reviews to be able to identify banks with high levels of NPEs and level of provisioning which supervisors consider inadequate to ensure sound risk coverage. Moreover, the EUF sees a number of significant pitfalls and unintended consequences due to the design and calibration of a prudential backstop:

- an incentive to institutions to enforce immediately the collaterals any time a client falls into default status, thus reducing the likelihood of its survival, in spite of the efforts that the insolvency frameworks puts into efforts to save the business
- an increase of legal claims against institutions due to the incentive to enforce
- an alteration of the parity between European institutions and a breach of the principle of a level playing field arising from the impossibility to make provisions consistently with the legal context in which each institution operates.

In addition, the EUF urges the Commission to consider that the current design of the backstop is likely to unduly penalize low risk exposures such as factoring, by way of inconsistent and counter-intuitive treatments of specific situations that will be addressed individually in the following.

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Specific concerns

i. Definition of "newly originated loans"

In the case of short-term financing facilities such as factoring, a "newly originated loans" should be intended as a new agreement / credit line granted to the client, thus excluding mere renewal of the existing credit lines or drawing of funds according to the existing credit line.

ii. Forbearance

Although forbearance is not an issue for factoring, the EUF underlines that the backstop would discourage banks from granting forbearance measures to clients, encouraging the renegotiation of performing loans, only. This is antithetical to the indications contained in the ECB NPE Guidance. The obligation to stay in the so-called "cure period" for at least a year already constitutes a disincentive to establishing rescue measures for counterparts experiencing temporary difficulties, such as a liquidity shortage. We advise to exclude forbearance from the scope of the NPE definition.

iii. Distinction between unsecured and secured NPEs

The secured part of a non-performing exposure is defined, in the proposed Regulation, as "the part of such exposure which is covered by a funded credit protection or unfunded credit protection in accordance with Chapters 3 and 4 of Title II".

It is useful to note that despite factoring is by nature a form of secured lending, under the mentioned CRR provisions, factoring exposures may fall under the definition of unsecured exposures.

Indeed, the factoring industry presents significant variance with other forms of financing: it is based upon the purchase by a bank or financial company of trade receivables, against which the factor advances part or all of the purchase price (with the balance paid to the client when the factor collects the invoice) and thus definitely represents a form of asset-based lending. Please note that factoring usually entails a revolving facility available to the client.

Such debt purchase agreements (depending on the legal context) provide recourse to the client if the assigned debtor fails to fulfil the payment, unless the factor agrees to underwrite the risk of the receivables, upon request from the client, under a "without recourse" agreement. It is useful to highlight that from a legal point of view, in any case, "recourse to the client" means that the factor's risk is, in the first instance, related to the fulfilment by the assigned debtor of its payment obligation arising from the receivables. The agreement with the client allows recourse where there is non-fulfilment by the debtor, due to insolvency or protracted default.

According to IAS 39 and IFRS 9, the balance sheet exposures generated by such purchases depend on the substantial transfer of all risk and rewards of the receivable. To make it simple, the factor will recognize the factoring exposure as risk against the debtor based on the assignment of the receivables when "all risks and rewards" are transferred to the factor, and when this is not the case, the factor will recognize the factoring exposure as risk against the client. Please note that around Europe the International Financial Reporting

Standards are not applied uniformly, so that the factoring transaction is not represented in the same way in all countries. Additionally, accounting standards may provide different rules for provisioning.

In other instances, when the Factor purchases trade receivables, it often obtains further protection through insurance policies offered by a credit insurance company. Such policies can combine both recourse and non recourse agreements, in the latter case operating as a re-insurance of the debtor risk underwritten by the Factor. Although they provide effective protection, credit insurance policies are usually not deemed eligible as credit protection under the CRM framework.

Factoring then would represent, for the purposes of the prudential backstop, a form of unsecured lending: that assumption would generate significant bias and unrealistic levels of provisions. Moreover, an overly simplistic approach to the distinction between “secured” and “unsecured” exposures could harm the level playing field among the institutions: trade receivables are not eligible for Credit Risk Mitigation Purposes under the Standardized Approach, while – as stated above – they are eligible as funded protection (provided some requirements are fulfilled) under the IRB Approach.

In order to avoid such biases and market distortions, the EUF urges the Commission to:

1. explicitly consider trade receivables as credit protection, in addition to those that are eligible under the CRM framework,
2. explicitly consider trade credit insurance as credit protection, in addition to the above and to those that are eligible under the CRM framework, and
3. define the secured part of the exposures as “the part of such exposure which is covered by a funded credit protection or unfunded credit protection in accordance with Chapters 3 and 4 of Title II, irrespective of whether an institution uses the standardised approach or the internal-ratings-based approach” (this solution has already been adopted by the ECB in its own “Addendum to the ECB Guidance to banks on non-performing loans: supervisory expectations for prudential provisioning of non-performing exposures”)

These proposals, that are not alternative but complementary, are likely to reduce the bias in the level playing field for factoring companies.

iv. Distinction between NPEs where the obligor is past due more than 90 days and other NPEs

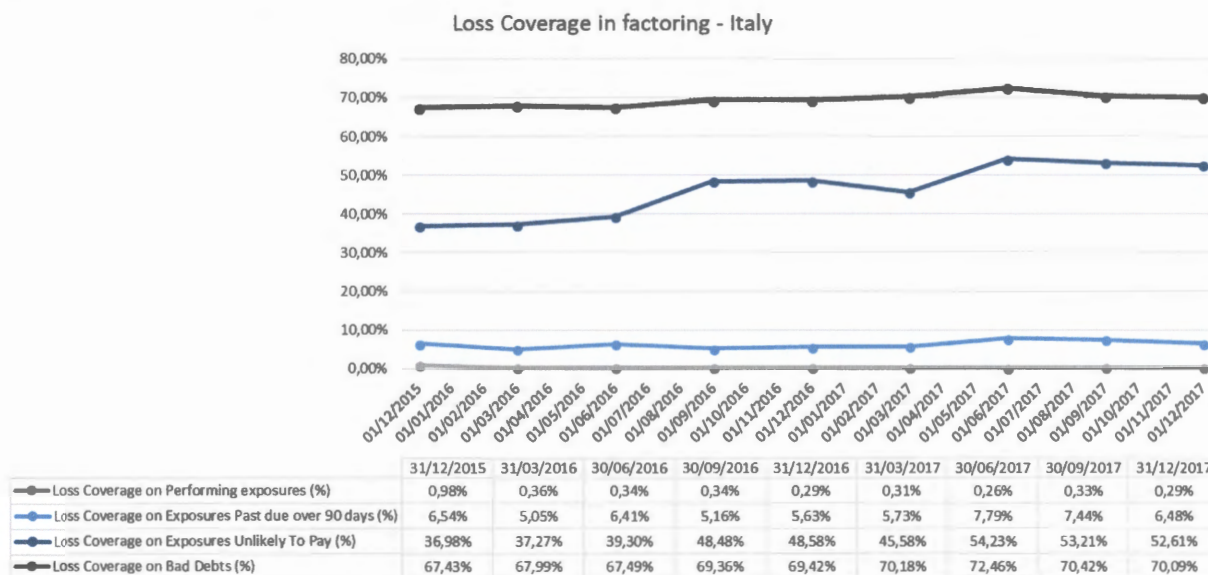
The Commission appreciates, in the explanatory memorandum, that “Since the institution still receives full payment from the obligor without excessive delay, the credit risk is in general expected to be lower than for exposures where the obligor is past due more than 90 days”. Although we agree that for certain exposures, more related to traditional banking, such statement can definitely be shared, we have to underline that it simply doesn’t hold in the case of exposures to debtors stemming from without recourse, IFRS compliant factoring operations.

Due to the link with late payments in trade relationships, the factoring industry shows, in some Countries more than in others, a significantly larger amount of default exposures to debtors due to the 90 days past due rule, which is close to 21 times the level evident in traditional banking (EUF

estimates). Such default exposures are normally not a real indicator of increasing risk, reflecting the payment practice of a businesses who often dispute debts and pay late. The EUF stresses the fact that purchased trade receivables cannot be treated as pure financial obligations, so that in this case the delay in the payment might be poorly correlated with actual default of the account debtor.

Thus, the cure ratio of those past due exposures is very high. The coverage ratio on those exposures is lower than in traditional banking reflecting the above-mentioned overestimation of default due to late payment. The negative effect of such approach to provision will be exacerbated in the future by the application of the new EBA guidelines, under which the new thresholds to detect defaults (much lower than those currently applied in many countries) as well as the introduction of a 3-month probation period will most likely increase the number of defaults for account debtors in factoring and the length of the permanence in a non-performing status.

In the case of Italy, for example, the loss coverage for past due over 90 days is dramatically lower than that of unlikely to pay exposures, in accordance to the actual credit risk represented by such class of exposures, as it is composed of automatic default driven by late payments in trade receivables. This bias is even more evident in the case of the Public Administration.



In order to avoid penalizing the factor further and without a proper rationale, with respect to other products, the EUF urges the Commission to explicitly exclude, from the application of the backstop, past due over 90 days exposures to purchased trade receivables.

To put it in numbers, applying a 35% minimum coverage ratio, as proposed, against such non-performing exposures in the above-mentioned case of factoring in Italy, would require unnecessary

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accounting provisions or deduction from CET1 for an amount close to 5 times the current amount of provisioning for credit risk, while only less than 2% of such exposures actually generated (figures to 2016) concerns on the credit quality of the account debtor.

In any case, we reiterate the fact that, depending on the business environment, purchased trade receivables, even if due by more than 90 days, may not represent a signal of credit deterioration in the context where late payments in trade relationships are common. Moreover, higher than necessary provisions could bring to unduly reclassifications of the client exposures within the national credit database, where implemented, reducing the consistence of the information in the database with the actual credit situation of the debtor.

v. Progressiveness of the backstop

Even though the EUF does not support the application of the backstop, it welcomes the introduction of progressive maximum loss coverage requirements. However, it should be considered that the assumption of collateral enforcement is not always in the first couple of years when alternative, more viable solutions can still be efficient. Furthermore, during the 2nd year it would lead to a situation where for partially secured exposures provisioning needs to be applied on the secured part, while there is no requirement yet to already fully provision the unsecured part.

In the latter case, we underline that most (even though not all) of the above-mentioned issues for factoring could be avoided by way of deleting the minimum coverage backstop for year 1 in the case of unsecured exposures allowing a more flexible provisioning within the two-year period.

Ultimately, it is noted that the ECB, under Pillar 2, only applies factors to the secured part as of year 3, while it also applies full coverage for the unsecured part at the end of year two.

Taking the above into consideration, it is proposed to delete paragraphs 2a, 2b, 3a, 3b, 3c and 3d.

vi. Distinction between Public debtors and other counterparties

The EUF advises that the Commission should also discriminate according to the counterparty: an unsecured loan to a business and an unsecured loan to a public administration bear very different risk profiles (credit risk is almost non-existent in the latter case, even though the enforcement of the loan may take a long time).

It is worth noticing that losses on public debtors are extremely infrequent (if not even non-existent), even if the delay in payments might be relevant. The long-standing experience of factoring companies active towards the public sectors in Europe and notably in Italy, Spain, Portugal, Poland and Slovakia shows that losses generated by past due receivables to the public health sector and local governments (even when distressed) are non-existent: on the contrary, past due receivables to PAs usually generate over-recoveries thanks to legal interests accruing on late payments in trade relationships. Moreover,

under several national jurisdictions, public entities are not subject to bankruptcy nor other similar proceedings that could make the full recovery of the receivables at risk, so that the only uncertainty for the creditor in such cases is about the time need to enforce the receivables.

A preliminary impact assessment shows that such approach would significantly affect the accounting reporting made by the banks, as it would compel them to take disproportionate provisions (up to several times the current level !) that will not result in losses but rather in recoveries, thus reducing the transparency to the markets. We wonder if debtors that are public entities could be exempted from such minimum level of provisioning.

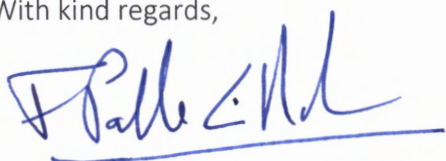
vii. Adequate time to calibrate NPE related procedures

In the near future, several regulations related to NPEs have either entered or are to enter into force. Such is the case of the definition of default, which will enter into force in 2021 (a key component for the application of art. 47a (3)); the transition regime of IFRS 9 lasting until 2022, that impacts on level of provisioning and prudential waivers; the addendum to the ECB Guidance to banks on non-performing loans that will be incorporated, for the first time, in the 2021 Supervisory Review and Evaluation Process. Therefore, the time frame for the application of the proposed statutory backstops should be adequately set so as to ensure overall consistency among all those pieces of regulation, to reduce overall compliance burden and to allow banks the time to prepare and review credit underwriting policies.

viii. Inequality in the treatment between Institutions applying Standardised Approach and IRB Approach

The EUF would like to underline that the calendar provisioning would exacerbate also the disadvantage in terms of Risk Weighted Assets for Institutions applying the Standardised Approach as the latter (unlike banks adopting IRB models) will still need to calculate RWA for the default exposure, in addition to the (unnecessary, in the case of factoring) minimum accounting coverage. Such difference makes sense in the current environment, where capital requirements under the Standardised Approach covers both expected and unexpected loss and there are no requirements to provision for those exposures. With the proposed minimum coverage requirements we feel the factoring institutions (mostly adopting the Standardised Approach) will be further penalized.

With kind regards,



Françoise Pallo Guillabert
Chair,
EUF