



Consiglio del 13 ottobre 2015

Punto 6 all' ODG

Stato di avanzamento delle attività associative sulla regolamentazione relativa al factoring

ALLEGATO 6.1.

EBA - Consultation Paper

**Guidelines on the application of the definition of default under
Article 178 of Regulation (EU) 575/2013**



DRAFT CP ON GLS ON THE APPLICATION OF THE DEFINITION OF DEFAULT



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Consultation Paper

Guidelines on the application of the definition of default under
Article 178 of Regulation (EU) 575/2013

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identification of technical delays in payments all exposures where the materiality threshold has been breached, all other cases is proposed to be treated as actual defaults. Since the CRR does not envisage any additional exceptions from the days past due criterion the notion of technical defaults is defined as one of the following situations:

- The identification of default results from the error in data or IT systems of the institution, including manual errors of standardised processes but excluding wrong credit decisions;
- The required payment has been made by the obligor before the relevant days past due criterion including the materiality threshold has been breached but default has been identified as a result of long payment allocation process within the institutions.

As in the above situation the criteria for default have not been met in practice, these exposures should not be treated as defaulted. Therefore it has been clarified that when the institution identifies such situation the exposures of this obligor should be removed from the list of defaults and should not be taken into account as defaults in the estimation of risk parameters.

3.2.3 Factoring

Due to specific characteristics of factoring contracts and uncertainty regarding how to apply the past due criterion for these types of contracts, clarification had to be provided in the guidelines. For that purpose a differentiation have been made on two types of factoring arrangements based on whether the risks and benefits related with the ceded receivables are fully transferred to the factor or not. Such a differentiation is necessary as the treatment of exposures in the financial statements of the factor differs and the exposure value for the purpose of own funds requirements calculation is based on the accounting value of exposures.

In effect it is proposed that where the risks and benefits related with the ceded receivables are not fully transferred to the factor and the factor recognises in the balance sheet only the factoring account with the client. Such an account may be treated similarly to an overdraft where a client breaches the advised limit once the account is in debit, i.e. from when the advances paid for the receivables exceed the percentage agreed between the factor and the client. On the other hand, where the risks and benefits related with the ceded receivables are fully transferred to the factor, the factor recognises direct exposures to the debtors of the client. Therefore, such exposures should be treated as purchased receivables and the counting of days past due should commence when the payment for a single receivable becomes due.

3.3 Indications of unlikelihood to pay

3.3.1 Specific credit risk adjustments (SCRA)

The draft guidelines provide clarification regarding the application of each indication of unlikelihood to pay as specified in Article 178(3) of Regulation (EU) 575/2013. In particular it is necessary to provide guidance on how to apply Article 178(3)(b), which specifies that where, as a



Question 1: Do you agree with the proposed definition of technical defaults? Do you believe that other situations should be included in this definition? If yes, please provide detailed proposals on how to address further possible situations.

21. Where there are modifications of the schedule of credit obligations, as referred to in point (e) of Article 178(2) of Regulation (EU) No 575/2013, the institution's policies should clarify that the counting of days past due should be based on the modified schedule of payments.
22. Where there are factoring arrangements whereby the risks and benefits related with the ceded receivables are not fully transferred to the factor and the factor is liable directly to the client up to a certain agreed percentage, the counting of days past due should commence from when the factoring account is in debit, i.e. from when the advances paid for the receivables exceed the percentage agreed between the factor and the client. For the purpose of determining items of the client of a factor that are past due, institutions should apply both of the following:
 - (a) compare the sum of the amount of the factoring account that is in debit and all other past due obligations of the client recorded in the balance sheet of the factor, against the absolute component of the threshold;
 - (b) compare the relation between the sum described in point (a) and the total amount of current value of the factoring account, i.e. the value of advances paid for the receivables and all other on-balance sheet exposures related with the credit obligations of the client, against the relative component of the threshold.
23. Where there are factoring arrangements where the risks and benefits related with the ceded receivables are fully transferred to the factor and the factor has exposures to the debtors of the client, the counting of days past due should commence when the payment for a single receivable becomes due. In this situation, for institutions that use the IRB Approach, by virtue of the fact that the ceded receivables are purchased receivables, where they meet the requirements of 154(5) of Regulation (EU) No 575/2013 or in the case of purchased corporate receivables the requirements of Article 153(6) of Regulation (EU) No 575/2013, the default definition may be applied as for retail exposures in accordance with Section 9 of these guidelines.

Explanatory text for consultation purposes

Due to specific characteristics of factoring contracts, the accounting treatment of such arrangements differs depending on whether they are related with full transfer of risks and benefits related with the ceded receivables to the factor or not. Taking into account that prudential treatments applies to all exposures according to their accounting value the treatment of factoring arrangements for prudential purposes should also be differentiated. In particular, where the invoices to individual debtors are recorded on the balance sheet of the factor, these invoices should be treated as separate exposures in the form of purchased receivables. Where however only the settlements with the client are reflected in the balance sheet of the factor, this should be treated as an exposure of the factor to this client. However, also in this situation a general rule would apply that the materiality threshold should apply at

the obligor level. Therefore, if the client has also other obligations towards the factor recorded on the factor's balance sheet, these obligations should be taken into account in the application of the materiality threshold for past due exposures.

Question 2: Do you consider the requirements on the treatment of factoring arrangements as appropriate and sufficiently clear? If not, please provide proposals for additional clarifications.

5. Indications of unlikelihood to pay

Non-accrued status

24. For the purposes of unlikelihood to pay as referred to in point (a) of Article 178(1) of Regulation (EU) No 575/2013, institutions should consider that an obligor is unlikely to pay where interest related with credit obligations are no longer recognised in the income statement of the institution due to the decrease of a credit quality of the obligation.

Specific credit risk adjustments (SCRA)

25. For the purposes of unlikelihood to pay as referred to in point (b) of Article 178(3) of Regulation (EU) No 575/2013, all of the following SCRA should be considered to be a result of a significant perceived decline in the credit quality of a credit obligation and hence should be treated as an indication of unlikelihood to pay:
- (a) losses recognised in the profit or loss account for instruments measured at fair value that represent credit risk impairment under the applicable accounting framework;
 - (b) losses as a result of current or past events affecting a significant individual exposure or exposures that are not individually significant which are individually or collectively assessed.
26. The SCRA that cover the losses for which historical experience, adjusted on the basis of current observable data, indicate that the loss has occurred but the institution is not yet aware which individual exposure has suffered these losses ('incurred but not reported losses'), should not be considered an indication of unlikelihood to pay of a specific obligor.
27. Where the institution treats an exposure as impaired such a situation should be considered an additional indication of unlikelihood to pay and hence the obligor should be considered defaulted regardless of whether there are any SCRA assigned to this exposure. Where in accordance with the applicable accounting framework in the case of incurred but not reported losses exposures are recognised as impaired, these situations should not be treated as an indication of unlikelihood to pay.