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**Punto 4 all' ODG  
Comunicazioni del Presidente**

**ALLEGATO 4.7**

**Fair, proportionate and harmonized regulation for factoring  
Preliminary note to the EUF ExCom by Diego Tavecchia**

# Fair, proportionate and harmonized regulation for factoring

Preliminary note to the EUF ExCom by Diego Tavecchia

Disclaimer: this note presents the results of a personal reflexion of the author on the topic and has not yet been discussed with the PRC

## 1. Overview of the issue

Prudential regulation covers different profiles of financial activities, including factoring, notably:

- Licensing
- Capital requirement
- Liquidity risk
- Accounting
- Supervisory reporting
- Internal controls, including Anti-Money Laundering

Since the implementation of the first CRD, many differences could be appreciated when comparing regulatory systems across the EU Countries.

In the recent years, the banking industry has seen many efforts from the European Regulators to reduce those differences and harmonize rules within the EU, as part of the Banking Union project. In particular

- The introduction of the CRR, which aimed to reduce dramatically room for manoeuvre on the hand of national authorities;
- The establishment of the Single Supervisory Mechanism, with the ECB taking over supervision of Significant Institutions;
- The establishment of the EBA to create a Single Rulebook on prudential risk;
- The introduction of specific requirements for exposure to “shadow banking” (which may include factoring).

Still, differences have not been erased when speaking of financial institutions other than banks, and in particular regarding whether non-banking financial institutions (OFIs) are regulated or not, and to what extent.

Although no specific regulation addressed the issue of regulation for the OFIs, the Regulatory Bodies have eventually acknowledged the situation and issued reports and opinions. In particular, the EBA has stated the following position<sup>1</sup>:

*The EBA observes that a wide range of OFIs perform credit intermediation activities outside an individual prudential framework specified in EU law (e.g. consumer and corporate lenders, such as factoring companies, leasing companies, consumer/retail/microcredit and guarantee providers; securitisation vehicles; some crowdfunding entities; credit unions and other mutuals).*

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<sup>1</sup> Opinion of the European Banking Authority on matters relating to other financial intermediaries and regulatory perimeter issues, EBA/Op/2017/13, 09/11/2017  
<https://eba.europa.eu/documents/10180/2019769/Opinion+on+OFIs+%28EBA-Op-2017-13%29.pdf>

*The prudential treatment of the OFIs varies significantly between the Member States, with some Member States applying CRDIV/CRR-like requirements to some or all OFIs in their jurisdictions, some applying bespoke requirements and some applying no prudential requirements.*

*[...] the EBA does not offer any recommendations about the overall scope of the prudential framework established under EU law or about the need for a regulatory intervention at the EU level. However, the EBA asserts that the activities and regulatory treatment of OFIs should continue to be monitored closely, including in conjunction with the European Systemic Risk Board (ESRB) regarding the scale of the activities as part of the regular shadow banking monitoring work, and taking account of evolutions in the provision of financial services (e.g. as a result of financial innovation (FinTech)).*




It is worth noticing that currently there is no “European status” for the OFIs: regulation is set at national level and normally consists alternatively in the application of, alternatively, the CRR (with or without modifications), a bespoke regime, or no prudential regime at all.

Prudential regimes applicable to factoring<sup>2</sup>

Applicable prudential regime	Member State	Total
Subject to a CRDIV/CRR regime (with or without modifications)	AT, EL, FR, IT, PT	5
Subject to a bespoke regime under national law	BE, BG, DE, HR, HU, LU, RO	7
Subject to no prudential regime	CZ, DK, ES, <sup>50</sup> NL, PL, SI	6

Overview of the prudential features of national regimes applicable to factoring

<sup>2</sup> EBA REPORT ON OTHER FINANCIAL INTERMEDIARIES AND REGULATORY PERIMETER ISSUES, <https://eba.europa.eu/documents/10180/1720738/Report+on+OFIs.pdf>

CRDIV/CRR  Bespoke  None 

Member State	Own funds	Capital	Large exposures	Liquidity	Leverage	Controlling persons	Approved persons, governance, remuneration	Supervisory reporting
AT								
BE								
BG								
CZ								
DE <sup>51</sup>								
DK								
EL <sup>52</sup>								
ES								
FR								
HR								
HU								
IT								
LU								
NL								
PL								
PT								
RO								
SI								

Regarding the requirements under the seven bespoke national regimes, these focus more on qualitative elements than on quantitative rules. The most monitored risks are the ones linked to the persons in charge of the management of the entities: all Member States with bespoke regimes impose requirements in relation to controlling persons, approved persons, governance and reporting, except in one Member State (BG). Quantitative aspects (solvency ratio, liquidity requirements, large exposures etc.) are less supervised or monitored and sometimes not at all, especially for single-activity factoring companies.

## 2. Recent developments and concerns

Although no regulatory initiatives toward OFIs has been taken yet (exemption made for the indirect impact of rules on shadow banking), it is clear that *European regulatory bodies are now aware that there is lack of harmonization between EU Countries regarding OFIs' activity and supervision.*

The current *focus on FinTech could also bring again the attention of Regulators* on non-banking factoring companies as a side effect, considering that Invoice finance is one of the most significant areas of FinTech development in business lending.

Moreover, the ECB is going to introduce for the first time a form of European supervisory reporting through AnaCredit, which is supposed to be extended to all financial companies within the next years. Even though the ECB stated the AnaCredit only serves monetary policy purposes, the incredible detail of such reporting mostly overlaps existing supervisory reporting (COREP – FINREP) as well as most of risk centralization database across Europe. Indeed, there already are projects to integrate statistical and risk reporting into the AnaCredit platform. Once data are made available via AnaCredit reporting, it becomes easy to impose a regulation.

Adding on the fact that EU regulatory bodies are willing to harmonize as far as possible the regulation, the factoring industry is facing an increasing risk of extension of regulation to non-regulated or partially regulated companies.

The lack of a European status for factoring companies other than banks also increases the risk that regulators will go the “simple way”, i.e. extending the CRR as it is to the OFIs, who will be subject to the same regulation of banks but without some of the benefits of banks (e.g. participation to ECB refinancing operations and special monetary scheme such as TLTRO).

### 3. The need for a fair, proportionate and harmonized regulation for factoring in Europe

Factoring is a peculiar form of financing which is exposed to low credit and liquidity risk, as well as to a low propension to use it for money laundering. The application of the full banking regulation is definitely as excessive measure to control risks in factoring, and can pose bias in competition, hampering the offer of factoring services due to the need to comply with improper regulation.

The EUF has been active in reacting to new regulatory pieces that could harm the industries, although the impact was not felt the same in each Country. It has been able to make some successful steps toward a proper regulation for factoring, notably:

- The introduction of specific reliefs for liquidity coverage ratio;
- A favourable treatment for net stable funding ratio;

While only partial success has been achieved in other areas of prudential regulation, such as e.g. the definition of default, which properly included some specific treatment for factoring but failed to recognize the different nature of financial and trade debt.

Until now, the EUF did not act proactively, as there was no consensus among members to propose a European status, which would inevitably involve regulation, at least to a certain extent.

Pro & Cons of supervision for the OFIs

	PRO	CONS
Micro-level (factoring company)	Increased reputation	Increased compliance costs
	Decreased funding costs (lower risk weight for supervised entities)	Decreased flexibility
Macro-level (economy as a whole)	Increases stability	Increased concentration (perhaps, not a cons from the pov of EU regulators...)
	Consolidation of the market	Reduced “biodiversity” of the industry

Currently, one of the biggest challenges for the EUF in getting results from the lobbying activity regarding prudential regulation has been the need to make adaptations to the general rule, designed for banking, in order to make it applicable to factoring. A European status for OFIs would reduce the dependence on the CRR and the need to deviate from the general rule, thus making it easier to obtain specific treatments and avoid the application of the same regulation as banks.

In particular, a “proper” regulation for factoring may entail, among other things:

- lower capital requirements (specialization reduce complexity)
- lower risk weights for factoring transactions (credit risk is lower in factoring)
- lower risk weight or unconditional eligibility as a CRM tool for Credit Insurance
- disapplication or significant easing of the past due over 90 days rule for detection of default exposures (as it is not significant in factoring, due to the impact of late payments)
- disapplication of the liquidity requirements (as they are not significant in factoring)
- minimum set of supervisory reporting requirements

- easier compliance and AML controls requirements.

In any case, there will be “winners” and “losers” (just as now, but with a different and likely fairer distribution).

In this regards the EUF must decide:

- 1) whether or not the risk of extension of the banking regulation to OFIs must be addressed
- 2) whether or not the proper way to address such risk is to proactively support the establishment of a European status for the OFIs
- 3) if yes, what specific regulation for OFIs could be considered “fair and proportionate” and to what extent