

Consiglio del 14 dicembre 2021

**Punto 6 all' ODG
EUF e DoD**

**ALLEGATO 6.1
Intervento del Presidente EBA (Campa) su factoring e DoD e reazioni EUF
Nota informativa**

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Nota informativa

Estratto dal resoconto di ASF dell'intervento di Campa (JMC) al board ASF (informativa fornita da F. Palle-Guillabert, Chair EUF):

"The fact that the NDOD does not fit with factoring is not new for the EBA. JMC underlines that some exceptions to the rule have already been granted to the factoring industry when drafting the guidelines. And there has been discussions internally. It is a big issue.

He asserts that the EBA board is very much aware of the current problems raised by factors, but that there is little appetite/empathy among its members on the subject. The board and the Committee think that it is a financial obligation that must be paid, that there are poor business practices and that there is no reason to relax the rule.

JMC and the board consider that the issues raised by factoring – and leasing – industry are commercial processes issues and not financial issues. According to him there is a financial definition of default (90 days, materiality thresholds) and it cannot be justified to twist it because of deficient commercial practices. Unpaid invoices because of commercial matters cannot become an issue for financial supervisors who can only look at the payment/nonpayment of a financial obligation.

Moreover, in some member states payment delays are not such an issue. In other member states on the opposite, he estimates that the NDOD could participate to solve the current payment delay issues by forcing parties to find solutions to avoid default.

He confirms though that an assessment of the NDOD application will be conducted in the coming months. These issues will have to be documented in this context with good evidence to convince the Board. The EBA remains open to proposals from the industry (extension of the technical delay and revision of the materiality thresholds are mentioned by Françoise Palle Guillabert and Philippe Mutin)."

Oggetto	R: NDOD : Mr Campa and ASF
Da	Fausto Galmarini
A	Francoise PALLE-GUILLABERT; Magdalena Wessel; Peter Mulroy; Herman VEERBEEK; Ignacio Pla; Vitor Graça; Pawel Kacprzak
Cc	Tavecchia Diego; Magda Barczak; Louis-Marie Durand; Mónica Martín Blanco; Antoine DE CHABOT; Isabelle VERSLYCKEN
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Dear All

many thanks Françoise for your update regarding the meeting of ASF with Ms. Campa.

If I can be frank and transparent I don't find in the argument of Mr. Campa any good news for us. In fact, it seems like a very big step backwards in the path to find a solution (it almost seems definitive, to a first reading) as he arguments exactly as the EBA did in 2015.

First: it's unbelievable that E.B.A. considers a commercial debt as a financial debt. If so, there is no reason for which in the balance sheet they have to be represented differently. Furthermore in the rating models financial debts and commercial debts are treated with different weight in relation to their substantial different impact in an insolvency.

Second: the New DoD arises from the need to identify in advance a possible default for an adequate provisioning. There is no evidence that 90 days of past due in the payment of an invoice is a real signal of increased probability of default. If we compare the cure rate of the bank lending (in Italy the best one is 9-10%) and the factoring business one (in Italy more than 90% of the past due invoices is paid), it is clear the probability of default is divergent. Why EBA asks to treat them in the same way ? Why have we to make the same provisioning?

Third: it's totally unacceptable that a rule thought for banks' capital requirements is now used *"to force parties to find solutions to avoid default"*. Past due invoices are not a default symptom, as written above, so much that most debtors with past due 90 days are big companies with good rating and Public Sector Entities that pay late but are not insolvent. For late payment there is already an EU directive, transposed by all the European countries in their Civil Law. We have to avoid a confusion between the Civil Law and the EBA GL, that have completely different purposes and should not be used to pursue cross purposes.

As regards PSEs, when addressing more specifically the GL Article 25(a), we observe that almost all the cases comply with the Article 25(b), meaning that ("...the financial situation of the obligor is sound and there are no reasonable concerns that the obligation might not be paid in full, including any overdue interest where relevant").

Unfortunately, for the PSEs, as:

- they depend in all cases from the payments coming from the related State,
- the State budgets are established on a yearly basis,
- the Factoring entities do not have any knowledge on the terms and condition of the budget transfers between the State and the PSE,
- more in general PSE have different internal administrative steps to respect, independently on NDoD (i.e. checking amount availability on State budget, required the authorization to pay, formalized the payment approval, issue a payment document and, finally, pay the invoice); this diligence has priority over the timeliness of the payments,
- in other words, requirement of New DoD and PSE administrative cycle have different contents, timing and scope: to pay within 180 days is not a priority Public Administration, its target is to respect different administrative step and to pay invoices as soon as all the formal administrative points have been satisfy, nothing can be inferred about the creditworthiness from the PSE payment patterns, the article 25(c) ("180 days") does not allow to address the payment timing exhibited by the PSE debtors.



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I think it's very difficult to collect any more data about the impact study of the New DoD. In my opinion we can more easily collect the historical data about the past due invoices paid and the past due invoices really defaulted (amount percentage) to demonstrate the obligors' solvency. We'll discuss these points at the forthcoming PRC meeting.

Kind regards

Fausto

FAUSTO GALMARINI

Presidente/Chairman



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