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OGGETTO: COMMISSIONI AMMINISTRATIVA, CREDITI E RISK MANAGEMENT, LEGALE, SEGNALAZIONI DI VIGILANZA E CENTRALE RISCHI
 Draft RTS EBA on the allocation of off-balance sheet items and UCC - Prime riflessioni

Cordiali saluti

 Il Segretario Generale
 Alessandro Carretta

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Com'è noto, il CRR3 ha modificato la definizione di “commitment” a fini prudenziali e aggiornato la calibrazione delle percentuali di conversione in esposizione degli elementi fuori bilancio, assegnando ad EBA il mandato di sviluppare Regulatory Technical Standards (RTS) che specifichino:

- i criteri di allocazione degli elementi fuori bilancio nei diversi bucket previsti dalla nuova disciplina;
- i fattori che possono limitare “de facto” la capacità delle istituzioni di revocare gli affidamenti;
- il processo per notificare EBA riguardo alla classificazione degli elementi fuori bilancio che presentano rischi simili a quelli di cui all'Annex I del CRR3.

L'EBA ha pubblicato i Draft Regulatory Technical Standards con cui intende dare attuazione a tale mandato (cfr. <https://www.eba.europa.eu/activities/single-rulebook/regulatory-activities/credit-risk/regulatory-technical-standards-allocation-balance-sheet-items-and-ucc-considerations>).

Si trasmette in allegato una nota recante alcune prime riflessioni sul tema con riferimento all'operatività di factoring.

Si invita a trasmettere a efact@assifact.it eventuali osservazioni sia sul testo della nota (in particolare sui punti individuati come “Questioni aperte”) sia sul testo dei RTS EBA (in particolare sulle domande poste direttamente nel documento) **entro lunedì 20 maggio p.v.**

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Associazione Italiana per il Factoring

Draft RTS EBA on the allocation of off-balance sheet items and UCC

Prime riflessioni

Organo associativo

Staff Assifact

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13/05/2024



Draft RTS EBA on the allocation of off-balance sheet items and UCC

Prime riflessioni

Contesto

La riforma della CRR ("CRR3") è intervenuta, fra le altre cose, sulla definizione di "commitment" e sul trattamento prudenziale delle esposizioni fuori bilancio.

Nello specifico, la definizione di commitment è modificata come segue:

(9) "commitment" means any contractual arrangement that an institution offers to a client and is accepted by that client, to extend credit, purchase assets or issue credit substitutes. Any such arrangement that can be unconditionally cancelled by the institution at any time without prior notice to the obligor or any arrangement that can be cancelled by the institution where the obligor fails to meet conditions set out in the facility documentation, including conditions that must be met by the obligor prior to any initial or subsequent drawdown under the arrangement, is also a commitment;

Contractual arrangements that meet all of the following conditions shall not be commitments:

(a) contractual arrangements where the institution receives no fees or commissions to establish or maintain those contractual arrangements;

(b) contractual arrangements where the client is required to apply to the institution for the initial and each subsequent drawdown under those contractual arrangements;

e sono introdotti diversi bucket a cui è assegnato un diverso fattore di conversione (CCF – Credit Conversion Factor, art. 111(2)):

The exposure value of an off-balance sheet item listed in Annex I shall be the following percentage of the item's nominal value after the deduction of specific credit risk adjustments in accordance with Article 110 and amounts deducted in accordance with Article 36(1), point (m):

(a) 100 % for items in bucket 1;

(b) 50 % for items in bucket 2;

(c) 40 % for items in bucket 3;

(d) 20 % for items in bucket 4;

(e) 10 % for items in bucket 5.

È inoltre previsto un mandato all'EBA di proporre dei Regulatory Technical Standards (RTS), fra le altre cose, sulle modalità di classificazione degli elementi fuori bilancio rispetto ai diversi bucket.



EBA shall develop draft regulatory technical standards to specify:

- (a) the criteria that institutions shall use to assign off-balance sheet items, with the exception of items already included in Annex I, to the buckets 1 to 5 referred to in Annex I;*
- (b) the factors that may constrain the institutions' ability to cancel the unconditionally cancellable commitments referred to in Annex I;*
- (c) the process for notifying EBA about the institutions' classification of other off-balance sheet items carrying similar risks as those referred to in Annex I.*

EBA ha pubblicato, in consultazione, una bozza di tali RTS nei quali, fra le altre cose, è richiamato il factoring:

The following items are examples of allocation into bucket 3, unless assigned to bucket 1 or bucket 5: [...]

Undrawn amounts of factoring arrangements in the context of commitments to finance the seller of receivables, invoice discount facilities, because this is a contractual arrangement to purchase assets, hence falls under the definition of commitment under article 5(9) while not being a credit substitute.

Si richiama l'attenzione che il bucket 3 è soggetto a un CCF del 40% e che, ai sensi dell'Annex 1, nel bucket 5 (CCF=10%) sono classificati i cd. UCC (Unconditionally Cancellable Commitments), ovvero gli affidamenti revocabili in qualsiasi momento senza preavviso.

È inoltre previsto nel testo dei Draft RTS l'art. 2 che intende fornire indicazioni per distinguere ciò che va incluso nel bucket 3 e ciò che può essere considerato effettivamente UCC, tenendo conto dei fattori che possono di fatto limitare la capacità dell'istituzione di revocare incondizionatamente e senza preavviso l'affidamento concesso. Anche questo punto è parte del mandato previsto nel CRR3.

Article 2

Factors that may constrain the institutions' ability to cancel the unconditionally cancellable commitments

The following factors may constrain the institutions' ability to cancel the unconditionally cancellable commitments referred to in point (b) of Article 111(8) of Regulation (EU) No 575/2013:

- a) Deficiencies in the risk management procedures, including shortcomings in the credit risk monitoring framework and in the IT systems and processes.*
- b) Commercial considerations aimed at avoiding negative impacts on the creditworthiness of the clients or on the business relationship with the clients.*
- c) Reputational risks, whereby commitments are not being cancelled by the institutions with a view to avoid creating a potential negative perception vis-a-vis market-participants.*
- d) Litigation risks*

La consultazione scade il 4 giugno p.v.



Premessa

La presente nota è stata redatta con il contributo dei coordinatori delle Commissioni tecniche Amministrativa (Massimo Ceriani), Crediti e Risk Management (Fabrizio Piscitelli), Legale (Vittorio Giustiniani) e Segnalazioni di Vigilanza e Centrale Rischi (Antonio Ricchetti).

Prime riflessioni

Il tema del trattamento prudenziale degli “impegni” nel factoring non è nuovo. Sino a questo momento, l’impatto della questione è stato attenuato dalla previsione dell’attuale CRR dell’applicazione di un CCF pari a 0 per gli UCC, che rappresentano (ad oggi) la tradizionale classe di allocazione degli affidamenti concessi dai factor (al netto delle linee “committed”).

La nuova regolamentazione modifica la definizione di commitment e i CCF applicabili, rendendo necessario esaminare nuovamente la natura degli affidamenti factoring alla luce delle nuove disposizioni.

In linea generale, rilevano per l’analisi in questione:

1. I fidi factoring concessi al cedente, e
2. I plafond pro soluto.

In primo luogo, occorre premettere che l’analisi non può prescindere dall’esame dei singoli contratti e delle singole prassi: in questa sede è possibile fornire indicazioni generiche che tengono in considerazione le prassi tradizionalmente più diffuse.

Con riferimento al fido factoring:

- La linea committed (intesa come la linea formalizzata con il cliente e non revocabile sino a scadenza) è per sua natura non revocabile. Non può pertanto applicarsi la definizione di UCC e si ritiene ammissibile la classificazione dell’eventuale margine disponibile nel bucket 3 (CCF = 40%).
- Il fido factoring non comunicato non è offerto al cliente e non può quindi essere accettato, mancando dei requisiti previsti per la definizione di commitment (*“offers to a client and is accepted by that client”*). Inoltre, nella prassi comune l’erogazione avviene su richiesta del cedente, subordinata alla volontà del Factor di effettuarla (non è un obbligo) e non sono previsti oneri o commissioni specificamente riferiti alla tenuta del fido (ma bensì alla gestione del credito). Possono quindi considerarsi soddisfatte le condizioni (a) e (b) previste per evitare la classificazione fra i commitment ai sensi della CRR. A prescindere dalla sua natura di fido revocabile in qualsiasi momento e senza preavviso, tale forma di affidamento, pertanto, non sembra rientrare nell’ambito di applicazione della disciplina prudenziale in materia di commitment.
- Il fido factoring comunicato può considerarsi “offerto” dal factor e “accettato” dal cliente. Resta ferma la facoltà del factor di non procedere all’acquisto dei crediti offerti in cessione dal cedente e di non procedere, in caso di richiesta del cedente, all’erogazione dell’anticipo. Tale affidamento, in ogni caso, è comunque revocabile in ogni momento e senza preavviso. Anche in questa linea è rispettata la condizione (b) e pertanto la classificazione come “commitment” o meno dipenderà, in linea di principio, dalla presenza di eventuali oneri e commissioni specificamente connessi alla tenuta del fido ovvero a remunerare la quota non utilizzata. Nel caso la condizione (a) non venisse rispettata, la quota non utilizzata sembra comunque rispettare le condizioni per la classificazione come UCC (CCF = 10%).

Con riferimento al plafond pro soluto rotativo, occorre evidenziare in primo luogo che esso rappresenta un impegno a garantire il credito commerciale, non a erogare l’anticipazione. In questa logica, non sembrerebbe



applicabile (secondo un'interpretazione letterale) l'inclusione nel bucket 3, in quanto presupporrebbe appunto un impegno a finanziare ("undrawn amount of factoring facilities in the context of commitments to finance the seller of the receivables...").

Inoltre, il plafond pro soluto non pare rientrare nella categoria degli accordi contrattuali finalizzati "all'acquisto di assets", in quanto appunto l'impegno assunto dal factor è di garantire, se ne ricorrono i presupposti, il buon fine del credito commerciale.

Esso è revocabile in qualsiasi momento senza preavviso ed è soggetto alla clausola di gradimento da parte del factor: valgono in questo caso le medesime considerazioni già esposte per il fido cedente in particolare rispetto al rispetto delle condizioni (a) e (b) per l'esclusione dalla categoria dei commitment. Si ritiene pertanto che il plafond pro soluto, ancorché comunicato, possa non avere i requisiti per la classificazione come "commitment" secondo la disciplina prudenziale, fatti salvi eventuali e diversi accordi intercorrenti tra cedente e factor che prevedano l'impegno di quest'ultimo all'acquisto del credito al ricorrere di condizioni pre-determinate.

Questioni aperte

1. Pro-soluto tradizionale: Nei casi in cui a monte vi sia una cessione di credito futuro per cui il credito quando sorge, è in titolarità del factor, dare prevalenza all'obbligo di erogazione o all'acquisto del credito, considerato che sono entrambi profili richiamati nel documento esaminato?
2. Quanto impattano nel caso del factoring i fattori che limitano "di fatto" la revocabilità degli affidamenti di cui all'art. 2 dei Draft RTS EBA?

Allegati

Draft regulatory technical standards on the allocation of off-balance sheet items and UCC considerations under Article 111(8) of Regulation (EU) No 575/2013

Definizione di "Commitment" - CRR3

Art. 111 – CRR3

Annex 1 – CRR3

EBA/CP/2024/08

04/03/2024

Consultation Paper

Draft Regulatory Technical Standards

on the allocation of off-balance sheet items and UCC
considerations under article 111(8) of Regulation (EU) No 575/2013

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 04.06.2024. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

Article 111 of the CRR sets out the provisions to determine exposure values under the Standardised Approach for Credit Risk, including the specification for off-balance sheet items, where a correspondence between buckets and an applicable percentage of the nominal amount of the off-balance sheet items assigned to each bucket is provided. The allocation of off-balance sheet items into those buckets is made according to a mapping specified in Annex I of the CRR.

The CRR3 introduces amendments to update the calibration of the applicable percentages, which results in the introduction of an adjusted weighting scheme and increases the number of buckets from 4 to 5. Additionally, a definition of the term “commitment” is introduced in Article 5 of the CRR. The EBA is mandated to develop draft Regulatory Technical Standards (RTS) that specify:

- a) the criteria that institutions shall use to assign off-balance sheet items, with the exception of items already included in Annex I, to the buckets 1 to 5 referred to in Annex I;
- b) the factors that may constrain the institutions’ ability to cancel the unconditionally cancellable commitments referred to in Annex I;
- c) the process for notifying EBA about the institutions’ classification of other off-balance sheet items carrying similar risks as those referred to in Annex I.

Next steps

The Final Report on the draft RTS is to be delivered by one year after of entry into force of the CRR3.

3. Background and rationale

1. Article 111 of the CRR sets out the provisions to determine exposure values under the Standardised Approach for Credit Risk, including the specification for off-balance sheet items. To determine the exposure value of off-balance sheet items, a correspondence is set out between buckets and an applicable percentage to convert the nominal amounts of off-balance sheet items¹ into on-balance sheet equivalent amounts. The allocation of off-balance sheet items into those buckets is made according to a mapping specified in Annex I of the CRR.
2. The CRR3 introduces amendments to update the calibration of the applicable percentages, which results in the introduction of an adjusted weighting scheme and an additional bucket, increasing the number of buckets from 4 to 5. Additionally, a definition of the term “commitment” is introduced in Article 5. The EBA is mandated to develop an RTS that specify:
 - a) the criteria that institutions shall use to assign off-balance sheet items, with the exception of items already included in Annex I, to the buckets 1 to 5 referred to in Annex I;
 - b) the factors that may constrain the institutions’ ability to cancel the unconditionally cancellable commitments referred to in Annex I;
 - c) the process for notifying EBA about the institutions’ classification of other off-balance sheet items carrying similar risks as those referred to in Annex I.

3.1 Understanding the conversion from off-balance sheet to on-balance sheet equivalent amounts

3. The determination of exposure values for off-balance sheet items under the Standardised Approach for Credit Risk is described in Article 111(2) of the CRR, where it is specified that those exposure values are dependent on a set of percentages, which in turn are linked to the buckets set out in Annex I. Those percentages are related to the likelihood that an off-balance sheet item exposes the institution to the risk of credit losses in case of a default event.
4. While the CRR capital requirements for credit risk under the Standardised Approach do not explicitly refer to credit conversion factors (CCF) but to percentages, it is useful to consider how such conversion factors are defined in the IRB framework of credit risk. This is because, similarly to the SA framework, the SA-CCF and IRB-CCF are used to convert an off-balance sheet amount into an on-balance sheet equivalent amount in accordance with Article 166(8) of the CRR. The notion of CCF in the CRR is conditional to the default of the underlying obligor, as

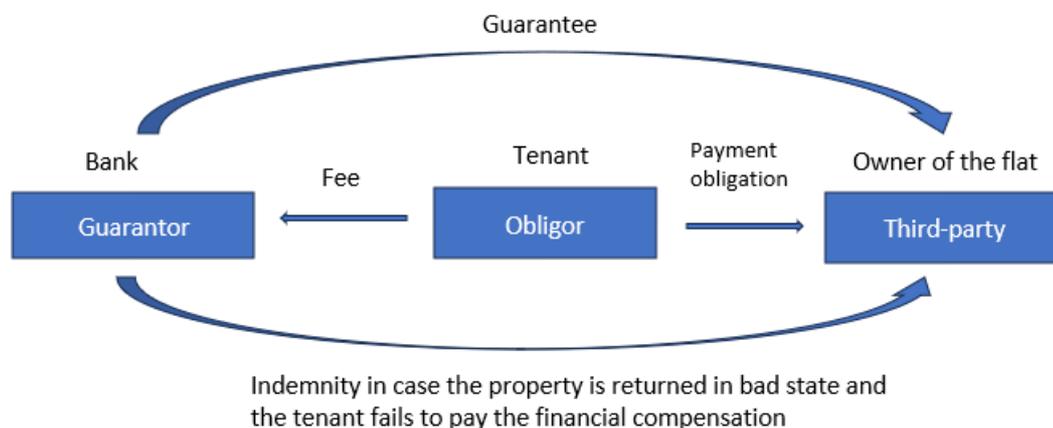
¹ After the deduction of specific credit risk adjustments in accordance with CRR Article 110 and deductions from Common Equity Tier 1 items in accordance with CRR Article 36(1), point (m).

defined under CRR Article 4(1)(56) of the CRR, which refers to ‘ratio of the undrawn amount of a commitment from a single facility that could be drawn from that single facility from a certain point in time before default and therefore outstanding at default to the undrawn amount of the commitment from that facility, the extent of the commitment being determined by the advised limit, unless the unadvised limit is higher;’.

5. Hence, the interpretation of those percentages, and the related bucket allocation listed in Annex I of the CRR, is facilitated by acknowledging the conditionality of the applicable percentage to the default of the obligor. This is notably the case of guarantees, where the likelihood that the guarantee is triggered is dependent on the probability of default of the guaranteed exposure. While this probability is low, the associated allocation into bucket 1 with a 100% percentage for guarantees having the character of credit substitutes may be therefore difficult to grasp if abstracted from the conditional default notion, which helps to substantiate the high percentage assigned to guarantees having the character of credit substitutes, as the likelihood for a guarantee to be triggered conditional to the default of the underlying obligor is high.
6. Therefore, bucket 1 covers those instances where exposing the institution to the risk of credit losses from the off-balance sheet item in case of default of the obligor is not conditional on the occurrence of any non-credit risk related event that still needs to occur. This includes any commitment accepted by the client where the client must draw certain amounts at certain points in time, according to the contractual terms. Therefore, commitments that are credit substitutes are classified in bucket 1.
7. Further, the concept of conditionality to events helps to better frame the decision flow on how to allocate those off-balance sheet items that are not already explicitly listed in Annex I, by establishing a hierarchy based on the type of conditional events that need to occur for becoming exposed to the risk of credit losses in case of a default event. As general guidance, and without prejudice to the criteria listed in the draft RTS, the associated percentages depend on whether becoming exposed to the risk of credit losses in case of a default event is additionally conditional to the occurrence of a non-credit risk related event that is described in the contractual terms.
8. Specifically bucket 2 is characterized by containing contingent items, where exposing the institution to the risk of credit losses in case of a default of the obligor depends on the occurrence of at least one event that is not related to credit risk but has not occurred yet before a default of the obligor could cause losses to the institutions. Once this event occurs, exposing the institution to the risk of credit losses from the off-balance sheet item in case of default of the obligor does no longer depend on the occurrence of any non-credit risk related condition that still needs to be fulfilled, then the item would be categorized as bucket 1 if not converted into an on-balance sheet item. It is noted that drawing from a commitment is not considered as contingent event for the purposes of these RTS.

9. These concepts allow to identify off-balance sheet items not already explicitly listed in Annex I of the CRR that fall under buckets 1 and 2, ensuring prudent identification of the items deemed as being associated with a higher risk of credit losses in case of a default event.
10. As an illustration of the allocation to bucket 1, guarantees where the payment obligation of the institution as a guarantor is solely conditional on the default of the obligor on the guaranteed credit obligation get assigned a 100% percentage according to the allocation to bucket 1 in Annex I of the CRR. On the other hand, performance bonds get assigned a lower percentage, as long as the payment obligation of the institution is not only conditional on the default of the guaranteed credit obligation, but it is also contingent on the ability of the guaranteed party to meet non-credit risk related contractual obligations, which must occur before the guaranteed credit obligation is triggered.
11. The following example in Figure 1 illustrates different bucket allocation depending on whether the contingent event has been triggered or not. It shows the case where an institution issues a guarantee to provide financial compensation to the owner of the property in case a tenant of the property does not return it in good state to the owner and the tenant fails to pay the financial compensation. The conditionality is on the property being in bad instead of in good state when it is returned, which is not related to credit risk. At inception, it is uncertain whether the bank will become exposed to the risk of credit losses in case of default of this tenant, as long as it is open whether the property is returned in either a good or bad state.
12. This contingent item is to be classified under bucket 2 and it is assigned a percentage of 50 for as long as the non-credit risk related condition is not fulfilled. However, this off-balance sheet item would be either categorized under bucket 1 with an applicable percentage of 100 or would become on-balance sheet if required by the applicable accounting framework, if and as soon as the bad state condition is fulfilled. At that stage, it would become a credit substitute due to the guarantee extended by the institution covering the tenant's obligation of paying a financial compensation towards the owner, which is triggered by the returning of the property in a bad condition. Hence the off-balance sheet allocation depends on whether the contingent event has been triggered or not.

Figure 1: Example of contingent off-balance sheet item allocated to bucket 2 until the non-credit related condition is triggered, subsequently allocated to bucket 1



13.Regarding the remaining buckets, a commitment that is not a credit substitute may be assigned to bucket 3 or bucket 5, depending on whether it meets the definition of unconditionally cancellable commitment (UCC) embedded in Article 5(10) of the CRR. This follows from explicit requirements in Annex I of the CRR for these buckets, namely that commitments not falling under another category are allocated to bucket 3 and that UCCs are allocated to bucket 5, hence no further clarification is required on this respect within these RTS, as already described in the Level 1 text. Specifically, allocation of commitments to those buckets does not trigger any notification to the EBA.

14.However, a contribution is made in these RTS to disentangle buckets 3 and 5 by specifying in Article 2 of these RTS factors that *de facto* constrain the institutions' ability to cancel unconditionally cancellable commitments, in response to point (b) of the CRR mandate under Article 111(8). From a prudential standpoint, the profile of those off-balance sheet instruments is not representative of bucket 5 and a higher percentage should be assigned. This is consistent with the Basel provision under CRE 20.100 which notes that "A 10% CCF will be applied to commitments that are unconditionally cancellable at any time by the bank without prior notice, or that effectively provide for automatic cancellation due to deterioration in a borrower's creditworthiness. National supervisors should evaluate various factors in the jurisdiction, which may constrain banks' ability to cancel the commitment in practice, and consider applying a higher CCF to certain commitments as appropriate."

3.2 Non-exhaustive list of specific off-balance sheet items

15. With a view to enhance clarity, a list of specific examples and their bucket allocation is provided below. This list is non-exhaustive and it is provided for illustrative purposes.

Figure 2: Examples of off-balance sheet item allocation

Bucket allocation	Examples of off-balance sheet items
1	<ul style="list-style-type: none"> - Forward starting loan, i.e. loan offer accepted by the client (commitment), where the agreed terms and conditions require that the client must draw certain amounts at certain points in time, be it drawn as a lump sum or in instalments, with the point in time fixed or at the discretion of the client. In those cases where the amount that must be drawn is lower than the full committed amount, only the amount that must be drawn is to be allocated under bucket 1. - Firm commitment underwriting to purchase shares in a CIU for a fixed amount at a future date, where the agreed terms and conditions require that the CIU must sell the agreed amount at a future point in time, the point in time can either be already fixed or still at discretion of the CIU due to the CIU is already obliged to sell the fixed amount and the institution is already obliged to purchase this amount - Contingent items where all relevant non-credit risk related conditions have been triggered that previously prevented exposing the institution to the risk of credit losses in case of default of the obligor, and the institution's guarantee is only conditional on a default event for the guaranteed credit obligation. - Contingent items where the conditional event that prevents exposing the institution to the risk of credit losses in case of a default has not been triggered yet but it is related to credit risk, and the institution's guarantee is only conditional on a default event for the guaranteed credit obligation. - Additional purchase price payment for an institution's equity holding in another entity, where the non-credit risk related conditions to pay the add-on to the purchase price have already been met - Binding deed of release in favour of a deposit guarantee fund, where an institution (institution A) is obliged to indemnify the deposit guarantee fund for any losses incurred in supporting another institution (institution B), of which institution A holds the majority of the voting rights or over which it can directly or indirectly exercise dominant influence. It is assigned to bucket 1 given the credit risk to which the institution A is exposed is only conditional to the default of institution B. - Binding letters of comfort, where the institution unconditionally commits to ensure that another entity will be able to meet its financial obligations as they become due. It is assigned to bucket 1 because of being a credit substitute in the form of a general guarantee of indebtedness of institution B for the guaranteed deposits (which considers that the credit risk to which the institution A is exposed is only conditional to the default of institution B).
2	<ul style="list-style-type: none"> - Documentary credits in which the underlying shipment does not act as collateral, because it is a transaction related contingent item where the trigger event, typically presentation of bill of lading, is not credit risk related. - Shipping guarantees, customs and tax bonds that do not meet the definition of trade finance, as they relate to transaction-related contingent events, where the trigger event is not credit risk related.

	<p>- Guarantees related to pending takeover bids, the latter defined as an offer or attempt to take control of a company by buying enough of its shares to do this, where there is a recognisable price offer which the acquiring company can meet by offering cash, shares or a combination of both. 1. It is assigned to bucket 2 considering the guarantee relates to the contingent event of the pending take-over bid.</p> <p>- Contingent liability where the institution which processes credit and debit card payments for merchants has explicitly committed to fully cover the loss in case of a chargeback when the merchant defaults on its obligations to refund the issuing institution</p>
3	<p>The following items are examples of allocation into bucket 3, unless assigned to bucket 1 or bucket 5:</p> <p>A takeover bid, defined as an offer or attempt to take control of a company by buying enough of its shares to do this, where there is a recognisable price offer which the acquiring company can meet by offering cash, shares or a combination of both. The purchase of assets falls under the definition of commitment under CRR article 5(9), which through Level 1 guidance in Annex I of the CRR is to be assigned to bucket 3, as not elsewhere classified.</p> <p>Undrawn amounts of factoring arrangements in the context of commitments to finance the seller of receivables, invoice discount facilities, because this is a contractual arrangement to purchase assets, hence falls under the definition of commitment under article 5(9) while not being a credit substitute.</p> <p>Revolving limits granted for overdraft on current accounts because this is contractual arrangement to extend credit, hence falls under the definition of commitment under article 5(9) while not being a credit substitute.</p>

Question 1. Do you have any comment on the non-exhaustive list of examples provided?

16. Further, an additional example is provided in the context of Article 111(4) of the CRR², relating to contractual arrangements offered by an institution, but not yet accepted by the client, where the client must draw a certain amount in the future. The example at stake is a mortgage loan offer provided by a bank but not yet accepted by the client, where the contractual arrangement specifies a certain amount must be drawn at a future point in time. It is noted that several banks may have extended mortgage loan offers to the same client.

17. It is the EBA understanding that the appropriate allocation for the amount that must be drawn would be bucket 1 considering that Article 111(4) of the CRR clarifies that contractual arrangements not yet accepted by the client fall under the scope of commitments and should receive the same treatment as if accepted. Specifically, this implies that the same percentage applies as for accepted contractual arrangements.

² Contractual arrangements offered by an institution, but not yet accepted by the client, that would become commitments if accepted by the client, shall be treated as commitments and the percentage applicable shall be the one provided for in accordance with paragraph 2."

Question 2. Which is the average period of time for a client to accept a mortgage loan offer?

Question 3. What is the applicable percentage that institutions currently apply to these commitments?

Question 4. What is the average acceptance rate by the client of a mortgage loan offered by the bank?

4. Draft regulatory technical standards on the allocation of off-balance sheet items and UCC considerations under Article 111(8) of Regulation (EU) No 575/2013

COMMISSION IMPLEMENTING REGULATION (EU) .../...

of XXX

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council as regards the allocation of off-balance sheet items and UCC considerations under article 111(8)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, and in particular Article 111(8), third subparagraph, thereof,

Whereas:

³ OJ L 176, 27.6.2013, p. 1.

- (1) The percentages associated with the buckets referred to in Annex I to Regulation (EU) No 575/2013 are related to the likelihood that an off-balance sheet item will expose the institution to the risk of credit losses in case of a default event. Considering this, items not covered in that Annex should be assigned to the relevant buckets based on whether the exposure to the risk of credit losses in case of a default event is additionally conditional to the occurrence of a non-credit related contingent event or not, where drawing from a commitment is not understood as non-credit risk related event. In particular, if a non-credit related event needs to be triggered to expose the institution to credit losses in case of a default event, the off-balance sheet item should be allocated to bucket 2; otherwise, to bucket 1.
- (2) Some commitments, while unconditionally cancellable under their contractual terms, may not be cancelled *de facto* due to the presence of factors that may constrain the institutions' ability to cancel them. In these cases, considering the actual likelihood that the institution will be exposed to the risk of credit losses in case of a default event, the commitment should be assigned to bucket 3 instead of bucket 5.
- (3) Shortcomings in the operationalisation of the contractual terms of unconditionally cancellable commitments, that may result in the institution failing to cancel them, may be represented by risk management deficiencies, commercial considerations, reputational risk or legal litigation risks.
- (4) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (5) The European Supervisory Authorities have conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁴.

HAS ADOPTED THIS REGULATION:

Article 1

Criteria for assigning off-balance sheet items not already included in Annex I of the CRR

1. Off-balance sheet items not already included in Annex I to Regulation (EU) No 575/2013 shall be assigned to the bucket 1 referred to in that Annex where the institution's exposure to the risk of credit losses in the event of default of the obligor is not contingent to any non-credit risk related event.
2. Off-balance sheet items not already included in Annex I to Regulation (EU) No 575/2013 shall be assigned to the bucket 2 referred to in that Annex where the institution's exposure to the risk of credit losses in the event of default of the obligor is contingent to at least one non-credit risk related event that has yet to occur. Where all the non-credit risk related events have occurred, the item shall be assigned to the bucket 1. Drawing from a commitment shall not be considered as a non-credit risk related event for these purposes.

⁴ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC(OJ L 331, 15.12.2010, p. 12).

3. Commitments whereby the client must draw certain amounts in the future shall be assigned to the bucket 1 referred to in Annex I to Regulation (EU) No 575/2013 within the limits of those amounts.

4. Unconditionally cancellable commitments shall be assigned to the bucket 3 referred to in Annex I to Regulation (EU) No 575/2013 where their cancellation is constrained by at least one of the factors referred to in Article 2.

Question 5. Do you have any comment on the allocation criteria proposed under Article 1?

Question 6. Do you have any suggestion regarding allocation criteria for buckets 4 and 5?

Article 2

Factors that may constrain the institutions' ability to cancel the unconditionally cancellable commitments

The following factors may constrain the institutions' ability to cancel the unconditionally cancellable commitments referred to in point (b) of Article 111(8) of Regulation (EU) No 575/2013:

- a) Deficiencies in the risk management procedures, including shortcomings in the credit risk monitoring framework and in the IT systems and processes.
- b) Commercial considerations aimed at avoiding negative impacts on the creditworthiness of the clients or on the business relationship with the clients.
- c) Reputational risks, whereby commitments are not being cancelled by the institutions with a view to avoid creating a potential negative perception vis-a-vis market-participants.
- d) Litigation risks

Question 7. Do you have any comment on the factors that may constrain unconditionally cancellable commitments proposed under Article 2?

Article 3
Notification process

The institutions' classification of other off-balance sheet items carrying similar risks as those referred to in Annex I to Regulation (EU) No 575/2013 shall be reported in accordance with Implementing Regulation (EU) 2021/451.

Question 8. Do you have any comment on the notification process proposed under Article 3?

Article 4
Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

5. Accompanying documents

5.1 Draft cost-benefit analysis / impact assessment

As per Article 10(1) of the EBA regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any regulatory technical standards developed by the EBA – when submitted to the EU Commission for adoption – shall be accompanied by an Impact Assessment (IA) annex which analyses ‘the potential related costs and benefits’. Such annex shall provide the reader with an overview of the findings as regards the problem identification, the options identified to remove the problems and their potential impacts.

A. Problem identification

The EBA is mandated to develop a RTS that specify:

- a) the criteria that institutions shall use to assign off-balance sheet items, with the exception of items already included in Annex I, to the buckets 1 to 5 referred to in Annex I;
- b) the factors that may constrain the institutions’ ability to cancel the unconditionally cancellable commitments referred to in Annex I;
- c) the process for notifying EBA about the institutions’ classification of other off-balance sheet items carrying similar risks as those referred to in Annex I.

B. Policy objectives

These RTS contribute to promote supervisory convergence and level playing field across institutions in the EU by specifying further certain provisions from the Level 1 text related to off-balance sheet items.

Further, the risk sensitivity of the framework is enhanced by specifying factors that may constrain the institutions’ ability to cancel unconditionally cancellable commitments. By ensuring that those commitments are classified according to their true risk characteristics, the RTS contributes to strengthen the off-balance sheet framework by preventing an underestimation of risk that may erode capital requirements.

C. Baseline scenario

In the absence of criteria for the classification of off-balance sheet items not explicitly listed under Annex I of the CRR, institutions may incur in bucket misallocation of those off-balance sheet items where guidance is not provided in the Level 1. This would result in capital requirements that are not aligned with the underlying risk profile of the off-balance exposures.

D. Options considered

In developing these RTS, the risk characteristics of off-balance sheet items have been considered to provide criteria that allow mapping off-balance sheet criteria not explicitly listed in Annex I with the relevant bucket. This has been done with the broadest possible interpretation of the mandate in mind, which classifies off-balance sheet items based on their characteristics, with a “similar risks” perspective. Alternatively, it was explored to develop criteria based on similarity with explicitly listed items in Annex I of the CRR, which is a narrower understanding of the mandate, whereby the criteria are linked to the nature of the specific items described in Annex I of the CRR.

E. Cost-Benefit Analysis

The benefits of these RTS are expected with respect to the correct allocation of risk and related capital requirements, together with supervisory convergence through the criteria that these RTS set out for institutions in the EU. The IT-related costs assessed as marginal as institutions are already carrying out an allocation of off-balance sheet items in the absence of an RTS, which will improve the quality of the allocation process.

F. Preferred option

The RTS follows the broad interpretation of the mandate to classify off-balance sheet items based on its characteristics, with a “similar risks” perspective.

With a view to facilitate the off-balance sheet item allocation, examples are provided in the background and rationale to further enhance clarity to stakeholders.

Question 9. For credit institutions:

- What is the materiality in your institution of the off-balance sheet items that would fall under the categories “Other off-balance sheet items carrying similar risk and as communicated to EBA” listed in each bucket of Annex I?
- Do you identify any specific item you may hold off-balance sheet that is currently classified as “Other off-balance sheet items carrying similar risk and as communicated to EBA” and that may experience a change in bucket allocation based on the criteria listed in Article 1 of these RTS? What would be the related change in the associated percentage as per article 111(2)?

5.2 Overview of questions for consultation

Question 1. Do you have any comment on the non-exhaustive list of examples provided?

Question 2. Which is the average period of time given to the client to accept the mortgage loan offer?

Question 3. What is the applicable percentage that institution currently apply to these commitments?

Question 4. What is the average acceptance rate by the client of a mortgage loan offered by the bank?

Question 5. Do you have any comment on the allocation criteria proposed under Article 1?

Question 6. Do you have any suggestion regarding allocation criteria for buckets 4 and 5?

Question 7. Do you have any comment on the factors that may constrain unconditionally cancellable commitments proposed under Article 2?

Question 8. Do you have any comment on the notification process proposed under Article 3?

Question 9. For credit institutions:

- What is the materiality in your institution of the off-balance sheet items that would fall under the categories “Other off-balance sheet items carrying similar risk and as communicated to EBA” listed in each bucket of Annex I?
- Do you identify any specific item you may hold off-balance sheet that is currently classified as “Other off-balance sheet items carrying similar risk and as communicated to EBA” and that may experience a change in bucket allocation based on the criteria listed in Article 1 of these RTS? What would be the related change in the associated percentage as per article 111(2)?

- (8) “small and medium-sized enterprise” or “SME” means a company, enterprise or undertaking which, according to the last consolidated accounts, has an annual turnover not exceeding EUR 50 000 000;
- (9) “commitment” means any contractual arrangement that an institution offers to a client and is accepted by that client, to extend credit, purchase assets or issue credit substitutes. Any *such* arrangement that can be unconditionally cancelled by the institution at any time without prior notice to the obligor or any arrangement that can be cancelled by the institution where the obligor fails to meet conditions set out in the facility documentation, including conditions that must be met by the obligor prior to any initial or subsequent drawdown under the arrangement, is *also* a commitment;
- Contractual arrangements that meet all of the following conditions shall not be commitments:
- (a) contractual arrangements where the institution receives no fees or commissions to establish or maintain those contractual arrangements;
 - (b) contractual arrangements where the client is required to apply to the institution for the initial and each subsequent drawdown under those contractual arrangements;

(42) the following Article 110a is inserted:

‘Article 110a

Monitoring of contractual arrangements that are not commitments
Institutions shall monitor contractual arrangements that meet all the conditions specified in Article 5, point (9), second subparagraph, points (a) to (e), and shall document to the satisfaction of their competent authorities their compliance with all those conditions.’;

(43) Article 111 is replaced by the following:

‘Article 111

Exposure value

1. The exposure value of an asset item shall be its accounting value remaining after specific credit risk adjustments in accordance with Article 110, additional value adjustments in accordance with Article 34 related to the non-trading book business of the institution, amounts deducted in accordance with Article 36(1), point (m), and other own funds reductions related to the asset item have been applied.

2. The exposure value of an off-balance sheet item listed in Annex I shall be the following percentage of the item's nominal value after the deduction of specific credit risk adjustments in accordance with Article 110 and amounts deducted in accordance with Article 36(1), point (m):
 - (a) 100 % for items in bucket 1;
 - (b) 50 % for items in bucket 2;
 - (c) 40 % for items in bucket 3;
 - (d) 20 % for items in bucket 4;
 - (e) 10 % for items in bucket 5.
3. The exposure value of a commitment on an off-balance sheet item as referred to in paragraph 2 shall be the lower of the following percentages of the commitment's nominal value after the deduction of specific credit risk adjustments and amounts deducted in accordance with Article 36(1), point (m):
 - (a) the percentage referred to in paragraph 2 that is applicable to the item on which the commitment is made;
 - (b) the percentage referred to in paragraph 2 that is applicable to the type of commitment.

4. **Contractual** arrangements offered by an institution, but not yet accepted by the client, that would become commitments if accepted by the client, **shall be** treated as commitments **and** the percentage applicable **■** shall be **the one** provided for in accordance with paragraph 2.
For contractual arrangements that meet the conditions specified in Article 5, point (9), second subparagraph, the applicable percentage shall be 0 %.
5. Where an institution is using the Financial Collateral Comprehensive Method referred to in Article 223, the exposure value of securities or commodities sold, posted or lent under a repurchase transaction or under a securities or commodities lending or borrowing transaction, and of margin lending transactions shall be increased by the volatility adjustment appropriate to such securities or commodities in accordance with Articles 223 and 224.
6. The exposure value of a derivative instrument listed in Annex II shall be determined in accordance with Chapter 6, taking into account the effects of contracts of novation and other netting agreements as specified in that Chapter. The exposure value of repurchase transactions, securities or commodities lending or borrowing transactions, long settlement transactions and margin lending transactions may be determined in accordance with either Chapter 4 or Chapter 6.

7. Where the exposure is covered by a funded credit protection, the exposure value may be amended in accordance with Chapter 4.
8. EBA shall develop draft regulatory technical standards to specify:
 - (a) the criteria that institutions shall use to assign off-balance sheet items, with the exception of items already included in Annex I, to the buckets 1 to 5 referred to in Annex I;
 - (b) the factors that may constrain the institutions' ability to cancel the unconditionally cancellable commitments referred to in Annex I;
 - (c) the process for notifying EBA about the institutions' classification of other off-balance sheet items carrying similar risks as those referred to in Annex I.

EBA shall submit those draft regulatory technical standards to the Commission by ... [OP please insert the date = 1 year after the entry into force of this Regulation].

Power is delegated to the Commission to supplement this Regulation by adopting the regulatory technical standards referred to in the first subparagraph in accordance with Articles 10 to 14 of Regulation (EU) No 1093/2010.';

ANNEX
'ANNEX I

Classification of Off-Balance Sheet Items

Bucket	Items
1	<p>— <i>Credit derivatives and general guarantees of indebtedness, including standby letters of credit serving as financial guarantees for loans and securities, and acceptances, including endorsements with the character of acceptances, as well as any other direct credit substitutes;</i></p> <p>— <i>Sale and repurchase agreements and asset sales with recourse where the credit risk remains with the institution;</i></p> <p>— <i>Securities lent by the institution or securities posted by the institution as collateral, including instances where these arise out of repo-style transactions;</i></p> <p>— <i>Forward asset purchases, forward deposits and partly paid shares and securities, which represent commitments with certain drawdown;</i></p> <p>— <i>Off-balance sheet items constituting a credit substitute where not explicitly included in any other category.</i></p> <p>— <i>Other off-balance sheet items carrying similar risk and as communicated to EBA.</i></p>
2	<p>— <i>Note issuance facilities (NIFs) and revolving underwriting facilities (RUFs) regardless of the maturity of the underlying facility;</i></p> <p>— <i>Performance bonds, bid bonds, warranties and standby letters of credit related to particular transactions and similar transaction-related contingent items, excluding trade finance off-balance sheet items referred to in bucket 4;</i></p> <p>— <i>Other off-balance sheet items carrying similar risk, as communicated to EBA.</i></p>
3	<p>— <i>Commitments, regardless of the maturity of the underlying facility, unless they fall under another category;</i></p> <p>— <i>Other off-balance sheet items carrying similar risk, as communicated to EBA.</i></p>
4	<p>— <i>Trade finance off-balance sheet items:</i></p> <ul style="list-style-type: none"> - <i>warranties, including tender and performance bonds and associated advance payment and retention guarantees, and guarantees not having the character of credit substitutes;</i> - <i>irrevocable standby letters of credit not having the character of credit substitutes;</i> - <i>Short-term, self-liquidating trade letters of credit arising from the movement of goods, in particular documentary credits collateralised by the underlying shipment, in case of an issuing institution or a confirming institution;</i> <p>— <i>Other off-balance sheet items carrying similar risk, as communicated to EBA</i></p>
5	<p>— <i>Unconditionally cancellable commitments;</i></p> <p>— <i>The undrawn amount of retail credit lines for which the terms permit the institution to cancel them to the full extent allowable under consumer protection and related legislation;</i></p> <p>— <i>Undrawn credit facilities for tender and performance guarantees which may be cancelled unconditionally at any time without prior notice, or that do effectively provide for automatic cancellation due to deterioration in a</i></p>

<p><i>borrower's creditworthiness;</i> <i>— Other off-balance sheet items carrying similar risk, as communicated to EBA.</i></p>
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