Response to Consultation on "Draft guidelines amending Guidelines on the application of the definition of default under Article 178 of Regulation (EU) No 575/2013"

Respondents:

Filippo Annunziata, Full Professor of Financial Markets Law, Bocconi University Milan, Italy
Gennaro De Novellis, Researcher of Finance, SDA Bocconi School of Management
Giampaolo Gabbi, Professor of Risk Management Practice, SDA Bocconi School of Management, Milan, Italy
Paola Schwizer, Full Professor of Financial Markets and Institutions, University of Parma, and Affiliate Professor of Banking and Insurance. SDA Bocconi School of Management, Milan, Italy

This submission conveys the independent views of a group of academics conducting research in the areas of bank regulation, risk management, financial intermediation, and factoring. The views expressed are personal and do not necessarily represent those of their institutions. Our remarks on the draft Guidelines are grounded in a long-standing research programme on the factoring industry, most recently expanded through a study assessing its value creation, competitiveness, and risk profile.

<u>Question 7. Do you agree with the revised treatment of technical past-due situations in relation to non-recourse factoring arrangements? And if you do not agree, what are the reasons? Do you have any comments on the clarifications of paragraphs 31 and 32 in the current GL DoD?</u>

With regard to the proposal, we believe that the revision of paragraph 23(d), i.e. the extension of the "exceptional treatment" from 30 to 90 days for non-recourse factoring transactions, as introduced in the new paragraph 23, represents a measure that, although limited in scope, brings a welcomed element of greater proportionality in the past-due regime. From an economic standpoint, this amendment is expected to reduce the frequency of default classifications triggered by merely temporary delays, particularly in B2B relationships where payment practices are structurally longer. The expected resulting decrease in the number of positions exceeding the past-due threshold would, other conditions being equal, lead to a lower increase in risk-weighted assets and, consequently, to a reduction in regulatory capital absorption, as demonstrated by evidence from the Italian case.

We also appreciate that the proposed revised EBA Guidelines address other aspects of the framework related to the new definition of default. The evidence we collected for the purpose of academic research shows some areas for improvement in the current regulatory treatment of factoring. In this respect, we believe that the regulation should better take into account the distinctive features of this instrument and its specific risk profile.

As discussed in our research "Value, Competitiveness and Risk of Factoring: The Role of Regulation", carried out at SDA Bocconi School of Management in 2025 (forthcoming), factoring should not be assimilated to traditional bank lending, as its risk profile is inherently different and typically lower. Unlike bank credit, which is primarily based on the borrower's overall creditworthiness and often secured by collateral, factoring is an asset-based transaction where the financing is directly linked to the underlying commercial receivables. The risk is therefore shifted and distributed across a diversified portfolio of debtors rather than concentrated on the solvency of a single borrower.

Moreover, factoring integrates both financing and credit management services. The factor continuously monitors the quality of receivables, performs systematic assessments of debtors, and in many cases assumes the risk of non-payment (non-recourse factoring). This dual financial and servicing dimension significantly reduces the probability of credit deterioration and loss. In addition, factoring exposures are generally selfliquidating, as they are repaid through the settlement of trade receivables, ensuring a more predictable and automatic repayment stream.

Empirical evidence confirms this lower risk profile: industry data show that non-performing exposure ratios in factoring are consistently lower and more stable than in bank lending, suggesting lower effective default rates as a result of ongoing monitoring, debtor diversification, and credit protection mechanisms.

Finally, in some countries, among which Italy, factoring is largely provided by specialized intermediaries, which are, in some cases, subject to prudential requirements calibrated to reflect their lower operational complexity and more limited risk profile. This specialization enhances operational expertise, promotes effective risk management, and avoids the liquidity risks typical of banking activities. The uniform application of rules designed for credit institutions to such entities creates a regulatory disproportionality that is not only an operational obstacle but also reveals a conceptual weakness of the European system: the inability to calibrate regulation in a truly proportionate and risk-sensitive manner.

For these reasons, it is essential that the regulatory framework recognise the specific and inherently mitigated risk nature of factoring, rather than treating it as equivalent to traditional bank credit. This would ensure proportionality, prevent undue market distortions, and fully leverage the role of factoring in supporting corporate liquidity, growth, and resilience.

In this context, we believe that the amendments concerning paragraphs 31 and 32, and the consequent inclusion of points (e) and (f) in paragraph 23, may create an apparent inconsistency between the principle of protecting the non-notified debtor who has made payment through the two new technical events and the principle set out in paragraph 31, whereby a notified debtor who mistakenly pays the assignor could be classified as in default if the payment occurs around the 90-day past-due threshold. To enhance consistency in the interpretation of technical past-due situations, it may be appropriate to consider deleting paragraph 31 from the Guidelines.

Overall, the reform seems less conclusive than expected and could, in practice, introduce new rigidities in the management of credit risk.

With regard to non-recourse factoring, the new definition of credit obligation introduced under CRR3 (art. 5(b)(4)) has not been reflected in the rules for determining when the counting of days past-due should begin (para. 28). Under CRR3, a credit obligation is defined as any obligation arising from a credit contract, including principal, accrued interest, and fees, owed by an obligor. This definition clearly establishes a direct link between the credit contract and the financial institution. In the case of factoring, however, the contract exists only between the financial institution and its client (the assignor of the receivables), not with the debtor of the receivable, who has no contractual relationship with the financial institution. The factoring agreement, concluded between the factor and the assignor, is in any case independent from the underlying supply contract between the assignor and the debtor, which originally gave rise to the trade receivables being assigned. Additionally, it is the credit agreement between the supplier and the factor that transfers to the financial institution the right to collect payment from the debtor. At that stage, the parties define the effective contractual duration of the transaction, which may differ from the commercial terms originally agreed between supplier and buyer.

This distinction is particularly important where receivables are purchased already overdue (as often occurs with public-sector debtors). In such cases, the duration of the financial operation cannot logically be linked to the commercial due date of the invoice but must instead reflect the terms agreed between the supplier and the factor. In practice, this effective duration is either contractually specified or embedded in the pricing, and it is already used as a reference in other forms of factoring. Applying the effective contractual duration to non-recourse factoring would, therefore, ensure greater consistency and proportionality.

From a management perspective, contractual maturity is the only meaningful reference for planning accounting, credit management, and risk control processes in factoring. In recourse factoring, the factor relies on the effective contractual date with the assignor as the reference for initiating recovery actions. In accounting, it aligns revenue recognition with the agreed duration of the operation, avoiding distortions that would arise if invoice dates were used instead. In credit management, it underpins correct pricing, timely and effective collection activities, and reliable early warning signals, whereas reliance on invoice dates would generate misleading alerts and inefficiencies. Finally, in risk management, effective maturity determines liquidity planning and interest rate risk monitoring. Using invoice due dates would underestimate funding needs and distort repricing buckets, thereby increasing exposure to risk.

An integrated management of accounting, reporting and risk frameworks is only possible when using the effective contractual maturity of the operation as the reference date. By contrast, requiring the counting of days past-due from the original invoice maturity creates a clear misalignment between regulatory classification and the actual operations of factoring companies, and appears inconsistent with sound credit and risk management practices.

Question 8

Do you agree with the other changes to the guidelines to reflect updates from Regulation (EU) 2024/1623?

Notwithstanding the proposed amendments, and based on the comments provided under Question 7, we believe that certain critical issues remain within the regulatory framework, which could hinder the future development of the factoring industry. In particular, we appreciate that the current provisions concerning the treatment of exposures to central governments, local authorities, and public sector entities (paragraphs 25 and 26 of EBA/GL/2016/07) provide a degree of flexibility for factoring in cases involving the transfer of receivables against public administrations.

However, the intended flexibility in reflecting the actual risk profiles of these counterparties may not be fully realised unless accompanied by a consistent and coordinated application of other complementary measures, such as those set out in paragraph 18 of the Guidelines, which acknowledge that legal impediments and restrictions may justify a suspension of repayments and of the enforceability of an invoice, without necessarily triggering a default by the debtor. In practice, this flexibility could be weakened by instances of national gold-plating, notwithstanding the important role of factoring in mitigating the inefficiencies of public entities and in supporting both their value chain and the liquidity needs of their suppliers. It would therefore be important to ensure that the specific features of certain products are appropriately recognised, with due regard to any relevant sector-specific provisions, such as those governing payment obligations by public administrations that are currently in force in some Member States, including Italy.

Empirical evidence from the Italian market shows that delays beyond 180 days are frequently the result of administrative or procedural bottlenecks rather than genuine credit deterioration. These “technical” delays inflate the stock of non-performing exposures.

Our research analysed the gross and net NPL ratios for the Italian banking sector and the factoring industry from 2015 to 2024. In the banking sector, a steady and pronounced decline in gross NPLs can be observed, from 16.5% in 2015 to 2.8% from 2022 onwards, with a parallel reduction in the net ratio (from 9.8% to around 1.4–1.6%). Factoring started from lower levels (7.5% gross and 4.3% net in 2015) and followed a downward trend until reaching a minimum in 2023, before recording an increase in 2024 (4.5% gross, 3.3% net). This rise does not indicate a substantial deterioration in credit quality but is mainly attributable to the reclassification of past-due exposures towards public administrations. Although these receivables have a high likelihood of collection, they are classified as non-performing due to payment delays and the prevailing classification rules.

This phenomenon highlights how, in factoring, regulatory dynamics can significantly affect credit quality indicators, generating fluctuations that do not always correspond to an actual increase in underlying economic risk.

Considering the different components of NPE, we noted that bad loans declined from 1.18% in 2015 to about 0.5% in 2024, reflecting the sector's ability to keep definitive insolvencies at low levels. Unlikely-to-pay exposures fell even more sharply, from 1.59% in 2015 to below 0.3% in 2024, signaling an overall improvement in credit quality and effective management of intermediate-risk positions.

A different trend emerges for past-due non-performing exposures. For most of the period, their share remained stable between 1% and 1.75%, but in 2024 it rose significantly to 2.44%, without a corresponding increase in bad loans or unlikely-to-pay items. This suggests that the rise stems from classification effects rather than an actual deterioration in solvency.

Given that past-due items are determined by the time-based threshold set for non-performance, and that delays in factoring often reflect technical or procedural causes rather than genuine credit risk, the 2024 increase likely overstates the sector's true economic risk.

Focusing on exposures to public administrations, the ageing profile shows a structural shift in payment times, with direct implications for their regulatory classification. Between 2019 and 2024, the share of positions with delays exceeding one year rose sharply from 41.47% to 77.91% of total public-sector exposures, while those between 180 days and one year fell from 9.22% to 5.73%. Shorter delays also declined. This shift towards the longer tail of the distribution means that an increasing share of the portfolio now exceeds the 180-day regulatory threshold and is automatically classified as non-performing, even though the actual probability of economic loss remains very low in most cases.

This pattern helps explain the 2024 increase in the past-due non-performing component of the NPE breakdown: it does not reflect a sudden deterioration in public-sector credit quality, but rather an accumulation of exposures beyond the 180-day limit, largely driven by procedural factors and chronic delays in payment processes.

As confirmed by transition-matrix analysis, a significant portion of these exposures later return to performing status or are collected without moving into more severe default categories, underscoring the misalignment between regulatory classification and actual risk. Indeed, the past-due non-performing segment remains the most dynamic component, but a large share of receivables classified as "past-due" return to performing status within the year, mainly through collections or technical adjustments, without migrating to more severe default categories.

Migrations to bad loans are marginal, generally below 1%, while movements to unlikely-to-pay remain limited. The temporary nature of many of these positions confirms that their classification often stems from the mere breach of past-due time thresholds rather than from any genuine deterioration in creditworthiness.

As a result, the current rule leads to:

- Artificially high NPE ratios, especially in factoring portfolios concentrated on public sector receivables.
- Unnecessary increases in risk-weighted assets (RWAs) and capital absorption, with no corresponding reduction in effective credit risk.
- Distortions in competitiveness, as factoring is disproportionately penalised compared to other forms of financing not subject to the same rigid classification.

- Reduced credit supply to SMEs, since capital tied up in overestimated defaults reduces the sector's lending capacity.

The effect of the current rule is a significant overstatement of risk: our research shows that the rigid 180-day threshold inflated RWA by approximately €2 billion in 2024, absorbing an additional €146 million in CET1 capital, and reducing potential new lending capacity by approximately €1.8 billion.

To address this issue, it may be appropriate to draw attention to the application of paragraph 18 of the Guidelines by National Competent Authorities. These authorities should be encouraged to implement the relevant measures in a manner consistent with their domestic legal frameworks, particularly, in the case of public administration, by taking due account of specific national provisions and circumstances that may hinder the timely settlement of obligations related to trade payables. Such an approach would help ensure proportionality, prevent misleading default classifications, and promote greater alignment between the regulatory treatment and the actual risk profile of factoring. In the case of Italy, for instance, the following factors represent examples of the above-mentioned provisions that might suspend the ability of the public body to pay or enforceability of the invoice, and may explain procedural delays:

- Misalignments between expenditure forecasts and actual budgetary availability (commitments–funding–payments). This situation concerns public-sector entities, which for instance in Italy are required under Legislative Decree No. 267/2000 to ensure that every expenditure is properly budgeted and supported by an allocated appropriation. Non-payment may occur when the necessary funds are not made available, have expired, have been diverted to other purposes, or when a public grant has been lost. Such cases fall under events related to legal impediments to payment mentioned in paragraph 18. The event should be documented through correspondence with the public body, and the lack of coverage can be identified when the relevant budget line does not provide sufficient appropriations for the approved expenditure. The situation is resolved once the funds are re-entered in the body's budget.
- Services provided beyond regional spending caps. In Italy, since 2009, regional spending caps have been legally enforceable against suppliers, and this provision applies primarily to entities in the healthcare sector. Consequently, claims by creditors for services rendered beyond these limits are typically disputed, except for certain categories of expenditure such as emergency care. According to the EBA Guidelines, these situations fall under paragraph 18 (events related to legal impediments to payment), paragraph 29 (events linked to dilution risk), and paragraph 19 (disputes regarding the existence or amount of the credit obligation). The event is documented through correspondence with the public body, and disputes are generally resolved through judicial proceedings.
- Non-payment due to missing or incomplete supporting documentation. The situation should be documented through correspondence with either the assigned debtor or the assignor. The counting of past-due days for the relevant invoices is suspended until the dispute is resolved, and the invoice should be considered not yet due during this period. If the dispute is resolved in favour of the debtor, any reduction in the commercial receivable amount should be reflected in the calculation of *past-due* days. In all cases, the counting of arrears should take due account of the payment terms specified in the contractual agreements. The resolution of the dispute should also be documented. If the case is brought before a court or handled through another formal procedure by a competent external body, the dispute is considered resolved once the decision becomes final or otherwise irrevocable.

According to what appears to be the prevailing jurisprudence in the matter in Italy, any claim against a public body becomes liquid and enforceable at the time the payment order is issued, or upon completion of the necessary administrative procedures. Additionally, given that the obligation to pay already arises under general civil law provisions, the same nature of the debtor, being a public body, lends that obligation a particular significance and weight compared with that of a private debtor.

Finally, we consider the EBA Guidelines and their revision a crucial instrument to ensure consistent implementation of Regulation (EU) 2024/1623 and to preserve a genuine level playing field across the Union.

Nonetheless, the regulatory framework remains complex and fragmented. Divergences persist both between Member States and between large banking groups supervised by the ECB and specialised non-bank intermediaries subject to national authorities. Applying identical rules to entities with profoundly different risk profiles and operational complexity creates disproportionate burdens and undermines the principle of proportionality that should underpin the EU framework.

In line with the EU's renewed commitment to regulatory simplification, it is essential that the forthcoming framework promotes clarity, proportionality and consistency across Member States. Simplification should be pursued as a means of strengthening competitiveness and enhancing the effectiveness of the Single Market, while fully preserving financial resilience and supervisory integrity.

We welcome the Commission's initiative to streamline the regulatory environment and reduce unnecessary administrative burdens. In this context, the EBA Guidelines should not become an additional layer of binding obligations but rather serve as common reference points while leaving flexibility for banks and intermediaries to adapt them to their business models and risk profiles.

Additionally, it is of particular importance to avoid national "gold plating" practices, which may lead to fragmentation, distortions of competition and uneven implementation of EU rules. With regard to the definition of default, while the EBA Guidelines aimed at harmonising the application of article 178 CRR, in Italy the National Competent Authority saw the need for further clarification through national soft-law instruments (Bank of Italy September 2022 interpretative note, apparently the only one of its kind in Europe), which introduces certain readings not reflected in other countries and may therefore lead to potentially divergent practices.

For instance, purely technical or physiological delays in payments by public administrations are automatically treated as a deterioration in credit quality, resulting in a default classification, an outcome that appears disproportionate and stems from the rigidity of the current regulatory framework.

Ensuring a genuine level playing field across jurisdictions is essential to maintaining fair and efficient conditions for all market participants. A structured review of national practices in the context of the Guidelines' update would therefore help to strengthen proportionality, convergence, and legal certainty, while reducing unnecessary complexity. In doing so, the EBA would fully exercise its mandate under Article 16 of Regulation (EU) No. 1093/2010, promoting consistent and effective supervisory practices without turning soft law into de facto hard law.

A proportionate and evidence-based approach remains key to ensuring that activities such as factoring and other specialised credit services continue to operate within the regulated financial perimeter, thereby avoiding unintended distortions. Simplification, therefore, should aim at fostering consistency, proportionality and competitiveness, thereby supporting both the soundness of the financial system and the development of a more integrated and resilient European market. In this perspective, a possible improvement would be to better reflect the new CRR3 definition of credit obligation in the rules on past-due counting, by considering the effective contractual maturity and acknowledging that, in non-recourse factoring, the credit relationship exists between the factor and the assignor, not with the debtor of the receivable (even though the latter represents the obligor).