# **EBA Consultation on Regulatory Technical Standards on the allocation of off-balance sheet items and UCC considerations**

**EAPB response**

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

Though the examples provided in figure 2 are non-exhaustive, it would be appreciated to include a more granular example for a forward starting loan where future drawings are conditional on credit events. E.g. an example where the future fixed drawing is conditional on the expectation at that time that the obligor can meet his payment obligations.

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

The allocation to bucket 1 or bucket 2 is based on the notion of CCF in the CRR is conditional upon the default of the underlying obligor. Based on this, as general guidance, the allocation depends on whether becoming exposed to the risk of credit losses in case of a default event is also conditional upon the occurrence of a non-credit related event that is described in the contractual terms. This suggests that credit related events are deemed not relevant. This approach ignores credit related conditions in the agreed terms and conditions which restrict drawings and hence limit the credit risk. For forward starting loans, where the agreed terms and conditions require that the client must draw certain amounts at certain fixed points in time, it is common that the terms and conditions specify that drawings shall only occur at those fixed points in time in case it can then be expected that the obligor is able to fulfil the payment obligations. Hence, the timing of drawing is not at the discretion of the obligor and the payment is conditional upon default not to have occurred and not expected to occur. In other words, in case the obligor defaults or is expected to default in due course the payment will not be made. The institution will therefore only be exposed to the default of the obligor after the drawing has taken place at the fixed drawing time. Ignoring this conditionality results in a CCF which is higher than the risk the institution is exposed to.

Next, do conditions precedent fall under the definition of non-credit risk related events?

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

It is proposed that unconditionally cancellable commitments should be allocated to bucket 3 based on the factors referred to in Article 2, cf. article 1(4). The Basel Committee justified the increase of the CCF for unconditionally cancellable commitments from 0 % to 10 % on the grounds that unconditionally cancellable commitments may in practice be restricted by consumer protection laws, risk management capabilities and reputational risks (see paragraph 2.7 in the SA-CR Basel consultation, d307).

Further, the factors specified in Article 2 are quite broad and without any defined or materiality thresholds. As drafted currently there will always be the case that the institutions’ ability to cancel the unconditionally cancellable commitments will be constrained because there is for example always a litigation risk. Next, it is not clear what the basis for decision would be. For instance, deficiencies in risk management procedures, including shortcomings in the credit risk monitoring framework and in the IT systems and processes. Factor b) should be amended to clarify that it could concern other business relations than the relevant commitment.

In light of the Basel standard, only unconditionally cancellable commitments subject to more specific factors and outside of defined materiality thresholds should be allocated to bucket 3 and otherwise be allocated to bucket 5. We ask the EBA to reconsider the proposed allocation and/or the factors for unconditionally cancellable commitments based on the comments above and in light of the justification given by the Basel Committee for the increase of the CCF to 10 %.

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

Article 3 does not specify what information shall be provided when notifying EBA about the institution’s classification of other off-balance sheet items carrying similar risk as those referred to in Annex I and in which format notification shall be given. Could you clarify the process further on what information is expected in the notification and in which format the notification shall be given?