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**EACB comments on  
Draft Regulatory Technical Standards  
on the allocation of off-balance sheet items and UCC considerations under  
Article 111(8) of CRR  
(EBA/CP/2024/08)**

**General comments**

The EACB welcomes the opportunity to comment on the EBA Draft RTS on the on the allocation of off-balance sheet items and Unconditional Cancellable Commitments (UCC). The right allocation of the off-balance sheet items to the appropriate buckets of conversion factors is crucial for a number of transactions of high relevance for customers across Europe, both for retail and SMEs/corporate clients.

**Answers to selected questions**

**Q1: Do you have any comment on the non-exhaustive list of examples provided?**

The rationale for assigning guarantees related to pending takeover bids to bucket 2 while allocating takeover bids to the lower bucket 3 is not clear. We believe this should be better justified.

**Q2: Which is the average period of time given to the client to accept the mortgage loan offer?**

NA

**Q3. What is the applicable percentage the institution currently apply to these commitments?**

With regard to para. 17 “It is the EBA understanding that the appropriate allocation for the amount that must be drawn would be bucket 1 considering that [...] contractual arrangements not yet accepted by the client fall under the scope of commitments and should receive the same treatment as if accepted.” we do not see the argument why this should automatically be bucket 1 (with a resulting CCF of 100%).

Contractual arrangements offered by an institution, but not yet accepted by the client, could be bucket 3 or 5 as well. 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 arrangements akin to letters of intent (e.g. “Promesse” in some Member States), the current applicable percentage would be 50% or 20% according to Annex 1 2 b) ii) or 3 b) i), depending on the original maturity. A promissory note serves to document the bank's basic willingness to grant a loan. It represents a binding, time-limited financing commitment by the bank, which is fulfilled by the subsequent conclusion of a loan

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agreement. The key details of a subsequent loan agreement are listed in the promissory note. The conclusion of the contract requires the customer to fulfil the conditions stated in the promissory note.

*Q4. What is the average acceptance rate by the client of a mortgage loan offered by the bank?*

NA

*Q5. Do you have any comment on the allocation criteria proposed under Article 1?*

The rationale for Art. 1 (1) and (2) is not clear, particularly in the articulation of the non-credit risk related events.

Banks become aware of the occurrence of a non-credit risk related event generally only upon presentation of a guarantee claim (other than an extend-or-pay claim).

However, in case the applicant disagrees with the beneficiary's statement of occurrence of the non-credit risk event as alleged by the beneficiary in its claim, the bank must assume the non-occurrence of the non-credit risk event in the absence of indications to the contrary.

In such situations, the dispute between the beneficiary and the applicant goes on the occurrence of the non-credit risk event and there is no credit-risk realisation. Consequently, in such cases there will be no change to bucket 1.

*Q6. Do you have any suggestion regarding allocation criteria for buckets 4 and 5?*

Undertakings (i.e. letters of intent) shall be allocated to bucket 4 if they are given to a beneficiary and constitute an undertaking to issue in its favour a "Trade finance off-balance sheet item" – as provided under bucket 4 – in case the applicant of the undertaking is awarded a bid.

*Q7. Do you have any comment on the factors that may constrain unconditionally cancellable commitments proposed under Article 2?*

Art. 2 (a) appears inappropriate/redundant as a credit institution with deficiencies in the risk management procedures, including shortcomings in the credit risk monitoring framework and in the IT systems and processes would already be facing questions and enhanced scrutiny by the competent authority, at least in the SREP.

Explicitly envisaging this as a factor that may constrain the institutions' ability to cancel UCCs would leave the scope of potential cases largely undefined. Introducing considerations of proportionality, and especially of materiality it is key to establish the relevance of such deficiencies if the EBA intends to maintain this factor under the RTS. Moreover, we would emphasise that such deficiencies would certainly lead to P2R/P2G or other supervisory measures that are more targeted to address and remedy identified shortcomings.

Art. 2 (b) to d) may be relevant but lay in the sphere of business policy decisions of the credit institutions. Consumer protection rules have to be taken into account in any case.

Similarly, the drafting proposed by the EBA to consider litigation risk is too vague to be adequately used in practice, as litigation risk per se cannot simply ruled out across the board. Rather than litigation risk, the EBA could consider the presence of several concrete cases of litigation.



**Q8. Do you have any comment on the notification process proposed under Article 3?**

To ensure improved readability and compliance, it would be helpful to clarify the specific references to Implementing Regulation (EU) 2021/451 Article 3.

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 are not recurring notifications. Consequently, Implementing Regulation (EU) 2021/451 does not appear fitting.

**Q9. For credit institutions:**

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*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?*

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*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)?*

NA

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