To:
European Central Bank
60640 Frankfurt am Main
Germany

Kraainem, 29th of January 2016

Ref.: Observations on draft Regulation (EU) 2015/[XX] of the ECB on the collection of granular credit and credit risk data (draft AnaCredit-regulation)

Dear Madam or Sir,

The EU Federation for Factoring and Commercial Finance (EUF) is the representative body for the factoring and commercial finance industry in the EU. It is composed of national and international industry associations that are active in the EU and represent 97.5% of the industry turnover. The EUF seeks to engage with Government and legislators to enhance the availability of finance to business, with a particular emphasis on the SME community. The EUF wishes to act as a platform between the factoring and commercial finance industry, and key legislative decision makers across Europe. Therefore, the EUF offers itself as a source of reference and expertise on the factoring and commercial finance industry in order to assist with the direction of existing and future finance legislation with a view to ensuring the continued provision of prudent, well structured and reasonably priced finance to businesses, SMEs in particular, across the EU.

Our member associations' members comprise both regulated and non-regulated factoring companies. Over three quarters of the factored volume conducted within the EU is generated by factoring companies that are either credit institutions/banks themselves or part of a consolidated banking group, which falls under the umbrella of regulatory oversight. As you know, factoring is a means of finance which is widely used especially by SMEs as it is a method of providing working capital finance to a supplier of goods and services. The factor will provide a range of services to its clients (the suppliers), including providing capital against the assignment or transfer of their receivables against the debtors and collecting on past due accounts. In the case of factoring without recourse, the factor also accepts the credit or default risk with regard to the debtor. Factoring has been considered a stable financing alternative by many companies, particularly by SMEs during the financial crisis.

The EUF welcomes ECB-President Draghi's clarification in his letter of December 16, 2015 to Ms. O'Reilly as European Ombudsman (cf. http://tinyurl.com/hogadx5) which states that the "*draft Regulation ... does not cover credit extended by ... factoring... companies*". However, the very same sentence makes it clear that the "*draft Regulation only focuses on credit granted by credit institutions to non-financial corporations and other legal entities*", thereby including credit institutions which have specialized in factoring among those who are subject to AnaCredit-reporting duties. Moreover, in his aforementioned letter, Mr. Draghi unfortunately ignores the indirect effect the new and extensive AnaCredit-reporting duties will have on factoring companies which are not credit institutions themselves, but part of a consolidated banking group, e.g. as an affiliate of a credit institution: Such factoring companies will be required to deliver certain information and statistical data relevant for AnaCredit-reportings on a group level. Also, the ECB has already stated that the scope of application of AnaCredit-reporting duties may very well be extended in a second step, thereby enlarging the group of institutions who are subject to AnaCredit-reporting duties; it is still unclear whether this extension

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would also include factoring companies. Due to this heterogeneous structure and regulation of factoring companies in Europe and the planned extension of the scope of application of AnaCredit over the next years, the EUF wishes to point out that factoring specific approaches and exemptions are not only necessary when considering future changes to the AnaCredit-reporting system, but they are already necessary now in order to facilitate the entry into force and practical implementation of AnaCredit by those institutions who are subject to reporting duties.

Therefore, the EUF wishes to observe and comment on the draft AnaCredit-regulation as follows:

1. Material increase in reporting duties and reports

The introduction of the AnaCredit- reporting thresholds of 25.000 Euro and even 100 Euro for non-performing instruments will entail a massive increase in reporting duties and reports, especially in those EU-member states where either no reporting duties or much higher reporting thresholds are currently in place.

Should the scope of application of AnaCredit be extended in second step (as planned) to include other institutions in the group of those subject to AnaCredit-reporting duties, then another (extensive) increase is to be expected. If this extension were to include all factoring companies, the EUF wishes to point out that factoring companies in the EU in 2014 acquired receivables against several million debtors. As an example: Only in Germany, where non-recourse factoring prevails, the factors in 2014 acquired receivables against roughly 7 million debtors. Even though this figure covers both recourse and non recourse factoring (and it is only in the case of the latter that the factoring company takes on the credit/default risk of the debtor), this number shows the potential increase in reports.

In this context, it is important to note that there are generally no contractual relations between the factor and the debtor; in some jurisdictions, it is not even necessary to inform the debtor of the assignment of receivables. Hence, some of the counterparty reference data (i.e. data on the debtor) required for AnaCredit-reportings (e.g. enterprise size, number of employees, balance sheet total, annual turnover) is not available to factoring companies as they lack any legal or contractual basis for obtaining this information from the debtor.

2. Inapplicability of certain terminology and data

The EUF understands that AnaCredit has been drafted mainly with the traditional lending or credit business of credit institutions in mind. However, the (contractual) relations in traditional lending differ widely from the factoring and commercial finance business, last but not least because factoring (in contrast to traditional lending) involves three parties which are de facto involved in the financing process: The factor (=purchaser of the receivable), the factoring client (=seller of the receivable) and the debtor of the receivable. This very basic difference entails that credit institutions who have specialized in factoring will not be able to report certain data as it is not applicable.

The terms “credit lines” and “loan commitments” can serve as an example to explain this inapplicability: These terms generally entail that the client of a bank may use or withdraw funds up to a pre-approved limit, without prior notice to the credit institution. With factoring, limits are also used, mainly in order to ensure risk diversification, but these so called “debtor limits” refer to the maximum sum of receivables against one debtor which the factor will purchase from the factoring client. Therefore, these limits do not grant the debtor of the purchased receivables the right to use or withdraw funds, they rather give the factoring client a clear idea of how many and which receivables he can sell to the factor at any given time during the factoring relation, thereby receiving liquidity from the factor in the form of the purchase price for the receivables.

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Other examples of terms that are foreign to factoring relations and hence do not apply, but which are contained in the AnaCredit-reporting requirements are e.g. “amortisation type”, “fiduciary instrument”, “extended credit” and “counterparty role”.
The EUF believes that it would be helpful for both the ECB and the credit institutions subject to AnaCredit-reporting requirements to have factoring specific exemptions or at least clarifications in this regard.

3. Avoiding double reporting duties
As the ECB has already noted in its preparatory work for AnaCredit, credit reporting requirements already exist in some EU member states. The EUF strongly advises the ECB to advocate and ensure that such double reporting duties are avoided as they are unnecessary administrative burdens - red tape needs to be minimized, especially within the SSM.

4. Access to data
Art. 12 of the draft AnaCredit-regulation allows “*legal entities about which credit data have been reported*” to gain “*access to such data*”. The EUF wishes to point out that this may lead to burdensome enquiries and discussions with debtors in certain factoring relations: In jurisdictions where no notification of the debtor is required for the assignment of a receivable to be valid, there have already been cases where debtors complained about being the subject of reporting requirements. To debtors, it is often incomprehensible why receivables resulting from goods and services should suddenly result in debts owed to a credit institution, thereby e.g. affecting the debtor’s financial standing and rating, also because the assignment of these receivables does not change the debt or the underlying contractual relation.
Moreover, a clear delineation of natural persons and legal entities with regard to data protection laws can be difficult, especially with small and micro enterprises as well as freelancers and startups. Therefore, the congruence of European data protection laws and the AnaCredit-reporting requirements should be clarified and hence better ensured.

To sum up, the EUF strongly advocates that the AnaCredit-reporting requirements need not be fulfilled by factoring companies, even if these are credit institutions which have specialised in factoring. Alternatively, the AnaCredit-reporting requirements should be complemented by clarifications and adapted to factoring specific circumstances in order to ensure that the institutions subject to reporting can actually fulfil the reporting requirements and also to avoid unnecessary red tape with no informational added value.

Please do not hesitate to contact us should you have any queries regarding the aforementioned viewpoints or require more information on the factoring industry in Europe.

With kind regards,

John Gielen
Chairman - EUF

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