

Consultation Paper

Draft guidelines

on disclosure of encumbered and unencumbered assets



Consultation Paper on draft guidelines on disclosure of encumbered and unencumbered assets

Table of contents

1.	Responding to this consultation	3
2.	Executive summary	4
3.	Background and rationale	6
4.	Draft EBA guidelines on disclosure of encumbered and unencumbered assets	10
	Title I – Scope of application and general principles	121
	Title II – Requirements for disclosure	12
	Title III – Final provisions and implementation	15
5.	Accompanying documents	16
5.1	Draft cost–benefit analysis/impact assessment	16
5.2	Overview of questions for consultation	19

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 section 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 20.03.2014. 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 (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 as implemented by the EBA in its implementing rules adopted by its Management Board. Further information on data protection can be found under the [Legal notice section](#) of the EBA website.

2. Executive summary

Article 443 of Regulation (EU) 575/2013 mandates the EBA to develop guidelines on unencumbered assets taking into account the European Systemic Risk Board (ESRB) Recommendation ESRB/2012/2 of 20 December 2012 ⁽¹⁾ on funding of credit institutions. Consequently, the EBA has developed the guidelines contained in this Consultation Paper. It should be noted that, once these guidelines are finalised, this will, in addition to fulfilling the requirement of the Capital Requirements Regulation (CRR), also fulfil Recommendation D on market transparency on asset encumbrance in the ESRB Recommendations. The EBA is required to issue these guidelines by 30 June 2014.

The mandate in Article 443 of Regulation (EU) No 575/2013 refers to unencumbered assets, whereas the ESRB Recommendation refers also to encumbered assets. The EBA has developed these guidelines and the accompanying templates to cover both encumbered and unencumbered assets in line with the ESRB Recommendation and Article 16 of Regulation (EU) No 1093/2010 (EBA Regulation).

These guidelines are the first step in this disclosure framework and are intended to enable the market participants to compare the institutions in a clear and consistent manner. The guidelines will be reviewed after one year and will form the basis of the binding technical standards on more extensive disclosure that the EBA will have to develop by 2016.

The EBA has developed the guidelines with the aim of providing transparent and harmonised information on asset encumbrance across Member States. Therefore, these guidelines provide three disclosure tables together with a box for narrative information to be filled in by the institutions about the importance of encumbrance in their funding model. The EBA believes that disclosure by institutions about encumbrance is of vital importance for market participants to better understand and analyse the liquidity and solvency profiles of institutions. The guidelines have been developed so that the level and evolution of assets encumbered to central banks and the amount of liquidity assistance given by central banks cannot be detected, as recommended by the ESRB.

These guidelines are intended to supplement existing relevant disclosure requirements in financial statements prepared in accordance with International Financial Reporting Standards (IFRS), in particular IFRS 7, on assets pledged as collateral for liabilities or contingent liabilities, transferred assets and collateral held. They will especially add value to existing requirements by allowing for more comprehensive and more harmonised disclosures, regarding both their presentation and their content, and for having disclosures specifically linked to the concept of encumbrance. They are intended to be implemented in the document in which institutions insert disclosures required by Part Eight of Regulation (EU) No 575/2013.

The guidelines are directed at institutions to which disclosure requirements in Part Eight of Regulation (EU) No 575/2013 apply. They comprise the three tables, all of which are based on the reporting templates of asset encumbrance, with some modifications to ensure that the level and evolution of

⁽¹⁾ OJ C 119, 25.4.2013, p. 1.

assets encumbered to central banks and the amount of liquidity assistance given by central banks cannot be detected. The following information will be required:

- the encumbered and unencumbered assets in carrying amounts by product type (Template A);
- collateral received by an institution, by product type (Template B);
- sources of asset encumbrance (Template C);
- narrative information on the importance of asset encumbrance for an institution (Template D).

These templates are designed to show the amounts of encumbered and unencumbered assets of an institution. They differentiate assets that are used to support existing funding or collateral needs from those assets that are available for potential funding needs.

Therefore, templates should provide clear guidance on the information needed, which will be supplemented with narrative information on the importance of encumbrance in the funding model of the institution. The concerns that transparency regarding assets encumbered to central banks and emergency liquidity assistance given by central banks might have unwanted effects on financial stability have been taken into account when developing these guidelines.

3. Background and rationale

On 27 June 2013, the Capital Requirements Directive 2013/36/EU (CRD IV) and Capital Requirements Regulation (EU) No 575/2013 ('CRR'), which seek to apply the Basel III framework in the EU, were published in the European Union's Official Journal. The CRR introduced new supervisory reporting and disclosure requirements on asset encumbrance and provided a mandate to draft guidelines by 30 June 2014.

Prior to the publication of the CRR/CRD IV, the ESRB had published its Recommendation of 20 December 2012 on funding of credit institutions (ESRB/2012/2). It recommends that the EBA and national supervisory authorities monitor the level, evolution and types of asset encumbrance, and that the EBA issue guidelines on harmonised templates and definitions and also on transparency requirements for credit institutions on asset encumbrance.

The EBA has already developed regulatory technical standards on supervisory reporting, as required by Article 100 of Regulation (EU) No 575/2013, which will be implemented by competent authorities during 2014. The mandate for the EBA to develop guidelines on disclosure of unencumbered assets, taking into account the abovementioned ESRB Recommendation ESRB/2012/2 on funding of credit institutions and in particular Recommendation D on Market transparency on asset encumbrance, comes from Article 443 of Regulation (EU) No 575/2013.

This Consultation Paper proposes draft disclosure guidelines in the form of principles and templates that enable the disclosure of information on encumbered and unencumbered assets by asset type, in line with the breakdown suggested by the ESRB and in order to comply with disclosure requirements laid down in Article 443 of Regulation (EU) No 575/2013.

The EBA has developed these guidelines to cover both encumbered and unencumbered assets, as recommended by the ESRB. The EBA has developed three templates which will provide information on assets and collateral that has been received. In addition to these templates, institutions should also disclose narrative information on the importance of asset encumbrance in their business model.

The EBA developed its guidelines by considering:

- the existing disclosure requirements in Part Eight of Regulation (EU) No 575/2013;
- the existing disclosure requirements in IFRS 7 as well as in Council Directive 86/635;
- supervisory reporting requirements included in DRAFT TS IN EBA/2013/ITS/04;
- the work of the Financial Stability Board-sponsored Enhanced Disclosure Task Force (EDTF).

None of the existing disclosure requirements in the accounting and regulatory framework allows for providing a comprehensive picture of unencumbered assets and asset encumbrance as defined in these guidelines. This means the pledging or entering in any form of an asset to secure, collateralise or credit enhance any transaction from which it cannot be freely withdrawn. Setting disclosure guidelines is, therefore, necessary to achieve comprehensive and harmonised disclosure across the EU.

These guidelines would impose a level playing field and avoid collective action problems, as they would apply to all EU institutions and would achieve a higher level of standardisation because the IFRS requirements, by their intrinsic nature, are not prescriptive on the format of disclosures. The standardisation of a minimum amount of information, which can always be accompanied by additional explanations, is beneficial for comparability and for investors' analyses.

Current disclosure requirements and identified shortfalls

Part Eight of Regulation (EU) No 575/2013 does not require disclosure on liquidity and funding (although some institutions include some as part of their Pillar 3 report). The only disclosure requirements it contains are in Article 439, which are related to the policies for securing collateral and to the impact of a credit downgrade on the level of collateral to be posted by the institution.

IFRS 7, as adopted in the European Union in accordance with Regulation (EC) No 1606/2002 (IFRS), requires institutions to disclose the carrying amount of financial assets they have pledged as collateral for their liabilities or contingent liabilities (IFRS 7.14), the carrying amount or, depending on the transaction considered, fair value of transferred assets that have not been derecognised (which covers, for example, assets that have been posted as collateral or otherwise involved in reverse repos, securitisation or issuance of covered bonds operations, IFRS 7.42A–42H). IFRS 7 also requires the disclosure of the fair value of collateral held that the institution is permitted to sell or re-pledge in the absence of default of the borrower, and the amount that has been sold or re-pledged, as well as of qualitative information about the terms and conditions of collateral uses and pledges (IFRS 7.15).

Council Directive 86/635 also requires the disclosure of the total amount of the assets pledged as security for each liabilities item and for each off-balance-sheet item (Article 40). Nevertheless, it also requests the amounts of assets that are eligible for refinancing with the central bank(s) of the country or countries in which reporting banks are established, as well as a breakdown of other transferable securities into asset classes (Article 4 and Articles 13 to 19).

IFRS 7 disclosures are more comprehensive than regulatory disclosures regarding asset encumbrance. Nevertheless, IFRS 7 refers to the notion of transferred assets and not to encumbered assets. Although the definition of transferred assets⁽²⁾ and the required disclosures for non-derecognised transferred assets cover some situations of asset encumbrance (reverse repos, securities lending and securitisation transactions), they fail to provide a comprehensive view on the phenomenon of encumbrance. First, there is no information on unencumbered assets that will or will not be available for encumbrance in the future. Second and more importantly, IFRS requirements by their intrinsic nature are not prescriptive on the format of disclosures; this results in different practices among institutions.

⁽²⁾ Transferred assets, whether or not the transfer has resulted in their derecognition from the balance-sheet of the transferor, are assets for which the contractual rights to receive cash-flows have been transferred, even if the assets have not been derecognised, or assets the holder of which retains the contractual rights to the cash-flows but has the contractual obligation to pay them to one or more recipients (IFRS 7.42A).

Disclosure requirements in Council Directive 86/635 provide the amount of pledged assets and assets available to be pledged, with a required breakdown by asset types for assets available to be pledged. Nevertheless, they do not cover the whole spectrum of encumbrance: although collateral disclosure requirements are broad, for assets available to be pledged, they are limited to those available for central bank refinancing and those securities that are transferable.

Proposals to enhance disclosures regarding asset encumbrance have been made since the start of the financial crisis. The final report of the EDTF, under the aegis of the Financial Stability Board, calls for an enhancement of financial reporting in several areas, asset encumbrance being one of them. The members of the EDTF were all drawn from private stakeholders and the report was fully endorsed by the FSB, although its recommendations are not mandatory. The EDTF recommends summarising encumbered assets⁽³⁾ and unencumbered assets in a tabular format by balance-sheet category. This summary has to include collateral that can be re-hypothecated or otherwise redeployed. The EDTF also provides an example of tabular disclosures and recommends accompanying the quantitative disclosures with qualitative disclosures on the nature and characteristics of encumbered and unencumbered assets⁽⁴⁾.

Despite these proposals for enhancement, disclosure analyses, including by the European Securities and Markets Authority (ESMA)⁽⁵⁾, have shown the continuing need for improvement of disclosures on asset encumbrance. The level of detail and granularity on assets pledged as collateral or transferred varies with regard to the breakdown by types of assets and information on the reasons for the pledge or transfer. Only a limited number of financial institutions provided comprehensive quantitative information related to encumbered or unencumbered assets, beyond the required disclosures on pledged and transferred assets, detailed by asset type. Moreover, disclosures on the transfer of assets are required to be included in a single note, but disclosures on pledged and otherwise encumbered assets are often provided in multiple places throughout the financial statements or the risk management report. Therefore, investors are generally not given an easily accessible and comprehensive view on the assets that could be freely used to meet future liquidity needs of the financial institutions.

The EBA's proposed guidelines for disclosures on asset encumbrance

Against this background and considering the importance of the issue of information surrounding asset encumbrance, the guidelines have been developed in cooperation with ESMA in order to provide a comprehensive view on asset encumbrance and harmonise the presentation of relevant disclosures on this issue by building on, and completing, the relevant IFRS existing requirements.

⁽³⁾ These are defined as assets pledged as collateral or that are restricted to be used for securing funding, for instance mortgage loans pledged in favour of covered bond holders, securitised assets and collateral for repos and securities financing transactions.

⁽⁴⁾ See Figure 5 in https://www.financialstabilityboard.org/publications/r_121029.pdf.

⁽⁵⁾ ESMA Comparability of IFRS Financial Statements of Financial Institutions in Europe November 2013 http://www.esma.europa.eu/system/files/2013-1664_report_on_comparability_of_ifrs_financial_statements_of_financial_institutions_in_europe.pdf

Besides the IFRS requirements, the EBA chose to base the guidelines on the supervisory reporting on asset encumbrance, itself based on IFRS, to provide consistency in both the content and the presentation of disclosures, thanks to common definitions and formats.

The EBA has also looked at the EDTF proposal with great interest and in detail. It is an initiative stemming from the private sector with the objective of minimising the additional costs of implementation for institutions, as some of them have already moved towards implementing the EDTF recommendation, while providing information which is meaningful for the general public.

The table below compares the granularity of the disclosure of encumbered and unencumbered assets proposed by the EBA with the compliance criteria designed by the ESRB for its Recommendation D on bank funding as well as with the accounting requirements and with Figure 5 in the EDTF report. As can be observed, although they do not quite match, the categories proposed by the EBA are aligned with these other requirements and proposals to a great extent, and provide additional granularity compared with current requirements.

EDTF report	EBA proposal	ESRB Recommendation D
other investment securities	debt securities	government, central bank and supranational debt instruments
	equity instruments	other financial assets
loans	loans on demand	
	loans and advances other than loans on demand	
other financial assets	other assets	
cash and other liquid assets		cash
non-financial assets		non-financial assets

Compared with the current requirements, the EBA guidelines will provide a single framework consistent with an EDTF recommendation. In order to provide users with information on structural levels of encumbrance, median values are required to be disclosed.

Given the lack of consistent and harmonised presentation of disclosure on asset encumbrance and the need for an enhanced disclosure in the short term, these guidelines are the first step in the disclosure on asset encumbrance. More extensive disclosure guidelines will follow after one year. The guidelines will be transformed into a binding technical standard that the EBA is required to deliver by 2016. Until then, the EBA believes that these guidelines will enable the market to obtain relevant and transparent information on encumbered and unencumbered assets that is clear and easy to compare, thereby enhancing the information available to investors. Nevertheless, given the sensitivity of this information and recognising the need for central banks to retain the ability to undertake covert non-conventional liquidity support operations in order to ensure financial stability, the information should be disclosed based on median values rather than a 'point in time'. This will lessen the risk that sporadic spikes of secured funding are disclosed; such disclosure is likely to contribute to the pro-cyclicality of encumbrance.

4. Draft EBA guidelines on disclosure of encumbered and unencumbered assets

Between portions of the text of the draft guidelines that follows, further explanations on specific aspects of the proposed text are occasionally provided. These offer examples, provide the rationale behind a provision or set out specific questions for the consultation process. Explanatory text appears in a framed text box.

Status of these guidelines

This document contains guidelines issued pursuant to Article 16 of 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 ('the EBA Regulation'). In accordance with Article 16(3) of the EBA Regulation, competent authorities and financial institutions must make every effort to comply with the guidelines.

Guidelines set out the EBA's view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. The EBA therefore expects all competent authorities and financial institutions to which guidelines are addressed to comply with guidelines. Competent authorities to which guidelines apply should comply by incorporating them into their supervisory practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines are directed primarily at institutions.

Table of contents

- Title I – Scope of application and general principles
- Title II – Requirements for disclosure
- Title III – Final provisions and implementation

Title I – Scope of application and general principles

1. In accordance with the requirement on the EBA in Article 443 of Regulation (EU) No 575/2013 ⁽⁶⁾ to issue guidelines specifying the disclosure of unencumbered assets taking into account Recommendation ESRB/2012/2 of the European Systemic Risk Board of 20 December 2012 on funding credit institutions ⁽⁷⁾, in particular Recommendation D on market transparency on asset encumbrance, these guidelines specify the disclosure of unencumbered assets and additionally specify the disclosure of unencumbered assets, as required by the ESRB recommendation. These guidelines apply to institutions as defined in point (3) of Article 4(1) of Regulation (EU) No 575/2013 (CRR) that are subject to asset encumbrance reporting in accordance with Article 100 or that have to comply with disclosure requirements in Part Eight of the same regulation.

2. For the purposes of these guidelines, an asset should be treated as encumbered if it has been pledged or if it is subject to any form of arrangement to secure, collateralise or credit-enhance any on-balance-sheet or off-balance-sheet transaction from which it cannot be freely withdrawn (for instance, to be pledged for funding purposes). Assets pledged that are subject to any restrictions in withdrawal, such as assets that require prior approval before withdrawal or replacement by other assets, should be considered encumbered. The following types of contracts should be considered encumbered.
 - a. Secured financing transactions, including repurchase contracts and agreements, securities lending and other forms of secured lending.
 - b. Various collateral agreements, for instance collateral placed for the market value of derivatives transactions.
 - c. Financial guarantees that are collateralised.
 - d. Collateral placed at clearing systems, central counterparties (CCPs) and other infrastructure institutions as a condition for access to service. This includes default funds and initial margins.
 - e. Central bank facilities. Pre-positioned assets should be considered unencumbered only if the central bank allows withdrawal of assets placed without prior approval.
 - f. Underlying assets from securitisation structures, where the financial assets have not been derecognised from the institution's financial assets. The assets that are underlying retained securities do not count as encumbered, unless these securities are pledged or collateralised in any way to secure a transaction.
 - g. Assets in cover pools used for covered bond issuance. The assets that are underlying covered bonds count as encumbered, except in certain situations where the institution holds the corresponding covered bonds as referred to in Article 33 of the CRR.
 - h. Assets in insurance activities that back liabilities to policyholders.

⁽⁶⁾ 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 OJ, L 176, 27.6.2013, p. 1.

⁽⁷⁾ OJ, C 119, 25.4.2013, p. 1.

-
3. Assets which are being placed at facilities that are not used and can be freely withdrawn should not be considered encumbered.
 4. Institutions should not disclose the following information:
 - ▶ assets in insurance activities that back liabilities to policyholders;
 - ▶ the amount of emergency liquidity assistance (ELA) provided by central banks, which means that in public disclosures assets and matching liabilities encumbered to central banks via ELA shall be reported as unencumbered, such that the sum of encumbered assets corresponds to the institutions' total assets on balance sheet;
 - ▶ collateral swaps with central banks.
 5. Institutions should disclose information on standard or non-standard operations with central banks, apart from the information on ELA provided by central banks as laid down in point 4.
 6. The harmonised disclosure formats should enable market participants to compare institutions in a clear and consistent manner across Member States.
 7. Institutions can disclose more information than required by these guidelines if required by national competent authorities in accordance with Article 104(1) of Directive 2013/36 EU or on a voluntary basis if necessary to convey the risk profile comprehensively to market participants in accordance with Article 431 of Regulation (EU) No 575/2013.
 8. When applied on a consolidated basis, these guidelines follow the scope of consolidation in accordance with Title II, Chapter 2 of Regulation (EU) No 575/2013.

Title II – Requirements for disclosure

1. Institutions should disclose information on encumbered and unencumbered assets by products on a consolidated basis in accordance with the format specified in the annex to these guidelines and instructions specified in Annex XVII of the Commission Implementing Regulation (EU) No xxx/xxx ⁽⁸⁾ [DRAFT TS IN EBA/2013/ITS/02]. Institutions should comply with Article 433 of Regulation (EU) 575/2013 as regards the frequency of disclosure of such information, which should be disclosed at least on an annual basis.
2. Institutions should disclose the carrying amount of encumbered and unencumbered assets under the respective accounting framework by asset type in accordance with Template A of the annex to these guidelines. Encumbered assets in Template A are on-balance-sheet assets that have been either pledged or transferred without derecognition or are otherwise encumbered, as well as

⁽⁸⁾ OJ L [...], [xx.xx.XXXX, p...].

collateral received that meet the conditions to be recognised on the balance-sheet of the transferee in accordance with the applicable accounting framework.

Questions

1. Should the disclosure information on encumbered and unencumbered assets, in particular on debt securities, be more granular and include information on, for example, sovereigns and covered bonds? Please explain how sensitive the disclosure of this information is.
2. Should the disclosure information on encumbered and unencumbered assets also include information on the quality of these assets? What would be a suitable indicator of asset quality? Please explain how sensitive the disclosure of this information is.
3. Do you think that the disclosure required in Template A could lead to detection of the level and evolution of assets of an institution encumbered with a central bank, given that the information should be disclosed based on median values (*see paragraph 7 below*) and the lag for disclosure is no more than 6 months (*see paragraph 10 below*)?

3. Information on collateral received should be disclosed by asset type in accordance with Template B of the annex. Information on unencumbered assets should enable differentiation between assets that are available for encumbrance and not available for encumbrance. Encumbered and unencumbered collateral in Template B is collateral received that does not meet the conditions to be recognised on the balance-sheet of the transferee in accordance with the applicable accounting framework. It is therefore collateral received that is kept off-balance-sheet. Collateral received that is recognised on the balance-sheet shall be disclosed in Template A.
4. Institutions should not disclose information on collateral swaps with central banks in Template B. This includes all transactions where an institution has received collateral from a central bank.

Questions

4. Should the disclosure of information relating to the '*nominal amount of collateral received or own debt issued not available for encumbrance*' on unencumbered collateral be requested? Please explain the relevance of this information for market participants and the sensitivity of the disclosure of this information.
5. Do you agree with the proposed granularity of Template B given that collateral swaps with central banks will not be disclosed? Please explain how sensitive the disclosure of this information is.

-
5. Sources of encumbrance should be disclosed in accordance with Template C of the annex. Information should be disclosed in order to assess the importance of different sources of encumbrance for the institution. Sources with no associated funding, such as loan commitments or financial guarantees received, should be provided.

Question

6. Do you think that the information on the sources of encumbrance in Template C is too sensitive to be disclosed? Should this information be disclosed in Template D instead (as narrative information, as set out in paragraph 8 below)? Please explain the relevance of this information for market participants and the sensitivity of the disclosure of this information.

6. Information should be disclosed using the same currency and units as other disclosures in Part Eight of Regulation (EU) No 575/2013. If disclosures on asset encumbrance are provided in the notes to the financial statements or included in the same document as the financial statements, the currency and units should be the same as for the financial statements of the institutions. Institutions may provide additional disclosures using different currencies than the currency used for disclosures in Part Eight of Regulation (EU) No 575/2013 when relevant.
7. Information should be disclosed based on median values of at least quarterly data of the reporting year.

Explanatory box

It is proposed to use median values to help smooth out sporadic spikes of secured funding, which would reflect the asset encumbrance in a more appropriate manner. The alternative ‘point in time’ disclosure, on the other hand, would be less burdensome to implement, but it is likely to show exceptionally high or low asset encumbrance at a given time.

Question

7. Should the information be disclosed as a point in time (e.g. as of 31 December 2014) instead of median values? Please explain why.

8. Institutions should disclose narrative information relating to the impact of their business model on their level of encumbrance and the importance of encumbrance in their funding model. This information should include at least the following aspects:
- a. main sources and types of encumbrance, detailing, if applicable, encumbrance due to significant activities with derivatives or covered bonds issuance, as well as securitisation;

- b. evolution of encumbrance over time and especially since the last disclosure period;
- c. structure of encumbrance between entities within a group;
- d. information on over-collateralisation;
- e. general description of terms and conditions of assets pledged as collateral for securing liabilities, and of the pledges;
- f. other information that the institution considers relevant for the assessment of its asset encumbrance.

Question

8. Do you agree with the proposed list of disclosures under narrative information in Template D? Should the guidelines explicitly state that emergency liquidity assistance by central banks (ELA) should not be disclosed?

9. Disclosures should be provided in a single location. As far as possible, disclosure should be included in the same document as other disclosures required by Part Eight of Regulation (EU) No 575/2013. Where relevant, appropriate cross-references from this document to the location of disclosures in accordance with these guidelines should be provided, pursuant to Article 434 of Regulation (EU) No 575/2013.

10. In accordance with Article 433 of Regulation (EU) No 575/2013, annual disclosures specified in these guidelines should be published in conjunction with the date of publication of the financial statements, but no later than six months after the publication of the financial statements.

Question

9. Do you agree that the disclosures should be published no later than six months after the publication of the financial statements? Do you consider a time lag of no more than six months sufficient to ensure that the information disclosed will not adversely impact the financial stability of markets and institutions?

Title III – Final provisions and implementation

National competent authorities should implement these guidelines by incorporating them in their supervisory procedures within [six] months after publication of the final guidelines. Thereafter, national competent authorities should ensure that institutions comply with them effectively.

5. Accompanying documents

5.1 Draft cost–benefit analysis/impact assessment

Introduction

1. Article 16(1) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council) provides that when any guidelines developed by the EBA are submitted to the Board of Supervisors for adoption, they shall be accompanied by an analysis of ‘the potential related costs and benefits’. This analysis should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.
2. Analysis of the draft guidelines on the methodology proposed is for fulfilling the disclosure requirements presented in Article 443 of Regulation (EU) No 575/2013.

Scope and nature of the problem

Issues identified by the Commission and the ESRB regarding transparency requirements on asset encumbrance

3. The mandate for the EBA to draft guidelines on disclosure requirements covering asset encumbrance is an outcome of the triologue negotiations between the European Commission, the European Council and the European Parliament. For this reason, no specific reference is made to the concept of asset encumbrance in the impact assessment document accompanying the July 2011 proposal of the CRD IV/CRR, or to any of the elements justifying regulatory intervention.
4. In February 2013, the ESRB published a report on bank funding that, among other topics, gathers evidence on the materiality of asset encumbrance in Europe and describes some of the associated risks. The report backs a series of ESRB recommendations on the subject of bank funding: Recommendation D (‘Market transparency on asset encumbrance’), in particular, recommends that the EBA develop guidelines on transparency requirements for credit institutions on asset encumbrance. The ESRB explicitly asks that, in accordance with these guidelines, institutions should:
 - ▶ disclose information on the level and evolution of encumbered and unencumbered assets;
 - ▶ disclose this information half-yearly and supplement it with a breakdown by asset quality if this is deemed useful by the EBA after one year’s experience;
 - ▶ provide users with a narrative, when necessary, giving information that may be useful for understanding the importance of encumbrance in the institution’s funding model.
5. Current disclosure requirements on asset encumbrance in the accounting and regulatory frameworks are not comprehensive, especially regarding unencumbered assets available for encumbrance, common definitions and common presentation. This variety in granularity and

presentation of disclosures has resulted in difficulties for users in assessing and comparing the level of asset encumbrance in EU institutions.

Objectives of the guidelines

6. The guidelines specify the format of the templates that credit institutions should use and which information they should report. The requirements proposed in these guidelines aim to achieve the following:
 - (1) to provide a uniform disclosure framework and applicable definitions that are as uniform as possible, in order to allow meaningful and clear comparisons between institutions;
 - (2) to provide sufficient granularity in reporting so that users of the information have enough elements to assess the levels of encumbrance of the assets held by the institutions.

Technical options considered

7. The EBA has reviewed the existing disclosure requirements in Regulation (EU)575/2013 as well as in the accounting frameworks (IFRS 7 and Council Directive 86/635). It also considered recommendations issued by the EDTF in its October 2012 report. This was to ensure consistency between the guidelines and the disclosure requirements, and therefore ease their implementation by institutions.
8. In addition, the reporting templates and requirements proposed in these guidelines follow the recommendations of the ESRB and have been adapted from the asset encumbrance reporting templates proposed by the EBA ⁽⁹⁾, with a view to achieving an adequate level of harmonisation regarding content and presentation of disclosures. For this reason, very few technical options were available for discussion for these guidelines.
9. The disclosure templates developed by the EBA have been adapted to fit the requirements of the ESRB as follows:
 - ▶ **Assets of the reporting institution** – this template shows the split between encumbered and unencumbered assets by type of assets.
 - ▶ **Collateral received** – this template covers collateral received and own securities issued by an institution and is also split between encumbered and unencumbered assets. Unencumbered assets are split between those that are available for encumbrance (or potentially eligible for encumbrance) and those that are not available for encumbrance.
 - ▶ **Sources of encumbrance** – this template covers the main sources of encumbrance.

⁽⁹⁾ European Banking Authority, [Draft TS in EBA/2013/ITS/02 on Supervisory Reporting \(Asset Encumbrance\)](#), March 2013.

Benefits

10. The templates proposed in these guidelines will provide investors and market analysts with a richer set of information regarding the levels of encumbrance and non-encumbrance of the assets held by an institution. This additional information should enable them to make better judgements regarding the funding practices of a particular institution and to compare them more easily with its peers, thereby increasing market discipline.
11. The disclosure framework will have a gradual approach, which will enable institutions to adopt them gradually and also educate investors in order to help them make more informed decisions.

Costs

12. The main costs for institutions will be related to setting up processes in order to produce the required disclosure templates. The costs will be driven by the complexity of the balance-sheet of the institutions. However, because all the information needed for the disclosure should be already produced to fill the regulatory reporting templates on asset encumbrance and comply with existing IFRS 7 or, where relevant, Council Directive 86/635 disclosure requirements, the EBA expects the direct compliance costs to be minimal.
13. A mandatory disclosure regime may, however, increase pro-cyclicality, because information about increased asset encumbrance tends to raise the demand for collateral with a tight supply of high-quality collateral, at a time when banks need stable funding sources to maintain their lending to the domestic economy. In order to alleviate this risk, this Consultation Paper proposes that the information should be disclosed based on the median value of the quarterly data of the reporting year rather than a 'point in time'. Nevertheless, it should be noted that central banks must retain the ability to undertake covert non-conventional liquidity support operations; the covert nature of these operations is critical to financial stability.

5.2 Overview of questions for consultation

1. Should the disclosure information on encumbered and unencumbered assets, in particular on debt securities, be more granular and include information on, for example, sovereigns and covered bonds? Please explain how sensitive the disclosure of this information is.
2. Should the disclosure information on encumbered and unencumbered assets also include information on the quality of these assets? What would be a suitable indicator of asset quality? Please explain how sensitive the disclosure of this information is.
3. Do you think that the disclosure required in Template A could lead to detection of the level and evolution of assets of an institution encumbered with a central bank, given that the information should be disclosed based on median values (*see paragraph 7 of Title II*) and the lag for disclosure is 6 months (*see paragraph 10 of Title II*)?
4. Should the disclosure of information relating to the ‘*nominal amount of collateral received or own debt issued not available for encumbrance*’ on unencumbered collateral be requested? Please explain the relevance of this information for market participants and the sensitivity of the disclosure of this information.
5. Do you agree with the proposed granularity of Template B given that collateral swaps with central banks will not be disclosed? Please explain how sensitive the disclosure of this information is.
6. Do you think that the information on the sources of encumbrance in Template C is too sensitive to be disclosed? Should this information be disclosed in Template D instead (as narrative information)? Please explain the relevance of this information for market participants and the sensitivity of the disclosure of this information.
7. Should the information be disclosed as a point in time (e.g. as of 31 December 2014) instead of median values? Please explain why.
8. Do you agree with the proposed list of disclosures under narrative information in Template D? Should the guidelines explicitly state that emergency liquidity assistance by central banks (ELA) should not be disclosed?
9. Do you agree that the disclosures should be published no later than six months after the publication of the financial statements? Do you consider a time lag of no more than six months sufficient to ensure that the information disclosed will not adversely impact the financial stability of markets and institutions?