



Single Rulebook Q&A

Question ID	2020_5475
Status	Final Q&A
Legal act	Regulation (EU) No 575/2013 (CRR)
Topic	Supervisory reporting - Asset Encumbrance
Article	443
Paragraph	-
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Regulation (EU) No 680/2014 - ITS on supervisory reporting of institutions (as amended)
Article/Paragraph	1.7 of Annex XVII
Date of submission	03/09/2020
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Disclose name of institution / entity	Yes
Name of institution / submitter	National Bank of Poland
Country of incorporation / residence	Poland
Type of submitter	Competent authority
Subject matter	Definition of encumbered assets
Question	1. We have doubts whether assets that are held by the banks and obligatorily designated for the guaranteed deposit protection fund, according to the Act on Bank Guarantee Fund, Deposit Guarantee Scheme and Resolution, and deposited in an account kept separately for each bank, should be treated as

	<p>encumbered assets?</p> <p>2. We would like to clarify, whether assets held by banks in their current account in Central Bank (National Bank of Poland), or in affiliating bank in case of cooperative banks, or in cash as required minimum reserves, should be treated as encumbered assets.</p>
<p>Background on the question</p>	<p>According to Polish Law, an entity covered by the guarantee system is obliged to establish a guaranteed deposit protection fund to satisfy depositors' claims in case of fulfilment of the guarantee condition. The amount of the guaranteed deposits protection fund in a given year shall be determined, not later than by the end of the preceding calendar year, as the product of a multiplication of the total sum of funds collected in a bank in all accounts being the basis for computation of the amount of the required minimum reserve. Banks are obliged to: 1) invest assets designated for the guaranteed deposit protection fund in: a) treasury securities, b) bills and bonds issued by the National Bank of Poland - provided they can be traded, c) participation units of money market funds; 2) deposit the assets referred to in point 1 a) and b) in an account kept separately for each bank in: a) National Bank of Poland, b) National Depository for Securities Joint Stock Company, c) entity operating securities' accounts and cash accounts used to operate them, - and should this be impossible - invest these assets in an interest-bearing current account in the National Bank of Poland (Cooperative banks - members of affiliations - are obliged to deposit assets designated for guaranteed deposit protection fund of an association in a separate account in an affiliating bank). The assets covering the guaranteed deposit protection fund must not be pledged or be encumbered in any way and are not subject to court or administrative enforcement. The banks' required minimum reserves shall constitute a portion, expressed in złoty, of the złoty and foreign currency funds held in bank accounts; of the funds obtained from the issue of debt securities and of other repayable funds taken by banks, with certain exceptions stated in the act on Narodowy Bank Polski. The NBP Management Board may determine the amount of vault cash held, in złoty, at a bank, credit unions and the National Association of Cooperative Savings and Credit Unions that will be deemed to be the equivalent of the required minimum reserves held at NBP. According to the instructions in Annex XVII of the ITS an asset shall 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 transaction from which it cannot be freely withdrawn. As far as central bank facilities are concerned, Annex XVII of the ITS states: "Pre-positioned assets should not be considered encumbered, unless the central bank does not allow withdrawal of any assets placed without prior approval. As for unused financial guarantees, the unused part, i.e. above the minimum amount required by the central bank, should be allocated on a pro-rata basis among the assets placed at the central bank". In conformity with Annex XVII of the ITS, collateral placed at clearing systems, CCPs and other infrastructure institutions as a condition for access to service, are treated as</p>

	<p>encumbered assets. In our opinion, this example corresponds to assets that are held by the banks and are obligatory designated for a guaranteed deposit protection fund. Taking into consideration above mentioned examples from Annex XVII of the ITS, we still have doubts whether assets designated for guaranteed deposit protection fund and assets held by the bank as a required minimum reserves should be treated as encumbered assets, because these assets cannot be freely withdrawn, but on the other hand it is hard to connect these assets with a specific transaction.</p>
<p>EBA answer</p>	<p>According to Annex XVII to Regulation (EU) No 680/2014 (ITS on Supervisory Reporting) an asset shall 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 transaction from which it cannot be freely withdrawn. Assets pledged that are subject to any restrictions in withdrawal, such as for instance assets that require prior approval before withdrawal or replacement by other assets, should be considered encumbered. The definition is not based on an explicit legal definition, such as title transfer, but rather on economic principles, as the legal frameworks may differ in this respect across countries.</p> <p>Therefore, whenever regulatory or other legal restrictions imply that the assets are subject to any restrictions in withdrawal, or require prior approval before withdrawal or replacement, they should be considered encumbered. This applies to the assets that are held by the bank and obligatory designated for the guaranteed deposit protection fund as described in the question,</p> <p>With regard to the treatment of required minimum reserve assets, as long as they are not subject to restrictions in withdrawal and the institution can freely replace an asset by another, at any time of the maintenance period, with the only condition to maintain the required minimum reserves on average, the assets should not be considered encumbered.</p> <p>See also Q&A 2017 3619.</p>
<p>Link</p>	<p>https://www.eba.europa.eu/single-rule-book-qa/qna/view/publicId/2020_5475</p>