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| **BBA response to EBA draft guidelines on disclosure of encumbered and unencumbered assets** |

**Introduction**

The British Bankers’ Association (“BBA”) is the leading association for UK banking and financial services for the UK banking and financial services sector, speaking for over 220 banking members from 60 countries on the full range of the UK and international banking issues. All the major banking players in the UK are members of our association as are the large international EU banks, the US banks operating in the UK and financial entities from around the world. The integrated nature of banking means that our members are engaged in activities ranging widely across the financial spectrum encompassing services and products as diverse as primary and secondary securities trading, insurance, investment banking and wealth management, as well as deposit taking and other conventional forms of banking.

The BBA is pleased to respond to this consultation on the draft guidelines on disclosure of encumbered and unencumbered assets.

**General comments**

Alignment to current regulations

The Enhanced Disclosure Task Force (EDTF) has undertaken detailed work on looking to improve the risk disclosure of banks. We are supportive of this work, particularly with regard to its proposed additional guidance to disclosure, and approaches to best practice.

Firms are now also implementing the requirements of the EBA Implementing Technical Standards (ITS) on Asset Encumbrance Reporting under the Article 100 in the final CRR, which provides a granular reporting framework on encumbered and unencumbered assets as part of COREP reporting.

Based on the availability of the EDTF’s work, and the considerable resources that firms are spending to implement COREP, we strongly believe that the EBA should be aligning their disclosure rules to EDTF as much as possible while the basis for the preparation of the disclosure should be aligned with the amounts prepared for COREP reporting. Not only do they provide a strong basis from which to start, it will mean firms are not undertaking duplicative reporting, which in current regulatory climate should be regarded as a key objective.

Removal of central bank facilities

We believe it is a key issue that local regulators have discretion with regards to the restrictions on disclosures. This is covered in more detail in our answer to question 8.

Definition of encumbrance

It is very important that supervisors across the globe have a harmonised approach as to what the definition of encumbrance actually is. Although it is simple to define at a very high level, there are a number of grey areas in the more granular analysis that could lead to varying interpretations.

Please find responses to the CP questions in the attached annex. Please also find a further annex with some questions that require further clarification.

We hope these comments are useful and the BBA would be delighted to provide any future assistance we can.

Yours sincerely

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 **Annex 1**

**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.**

The EBA requirements should align with the EDTF recommendations, with those recommendations identified as minimum disclosure requirements. Banks will then have the ability to tailor the disclosure to fit it to their risk and asset profile. Such disclosures will result in information which is more useful for the reader rather than the prescriptive disclosures proposed by the CP. This should be taken as the general standard, with further requests for information being made to firms where necessary as individual circumstances require.

**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.**

We believe paragraphs 14 to 15 and paragraph 31 onwards in IFRS 7 Financial Instruments: Disclosures require comprehensive details on encumbered and unencumbered assets, and it is not necessary to go beyond these requirements. The EBA should align its rules as closely to IFRS 7 as is possible.

**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)?**

It would be far preferable to use period end data rather than median values. COREP uses period ends, and as recommended throughout this response, the EBA should be looking to align encumbrance reporting to the COREP framework as closely as possible. Thus, it is logical to use period end data to ensure consistency.

It should also be noted that median values are more onerous for firms to calculate. Not only will the process involve significant extra costs, but it will provide data that is actually less reliable. Median values are not as practical as period end, which gives a more accurate indication of what is an encumbered and unencumbered asset.

**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.**

The BBA has no view on this question.

**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.**

We are satisfied with the current format of Table B.

**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.**

The BBA has no view on this 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.**

We believe it would be better to use more time periods going back a number of years. Users of financial statements should be able to reconcile the disclosed information back to the financial statements to provide a clear and transparent picture. Median values would be difficult for users to understand as there is no link between published information and the median values.

Furthermore we believe that it is more operational to provide point-in-time disclosures and would therefore reduce the cost of implementation.

**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?**

Rather than introducing another template, it would be preferable to include the annual report as part of the funding disclosure and key risks. This will provide more detailed information the appropriate context.

It is also very important that local regulators have discretion with regards to the restrictions on disclosures. It could also lead to practical issues tool we understand that in the UK some of the emergency schemes that banks have access to have confidentiality clauses attached. It would therefore not be possible to disclose schemes without breaking these clauses, which would lead to a potentially difficult conflict. It demonstrates why it would be preferable to leave it to the discretion of local regulators.

We are very concerned by the requirement to remove all central bank facilities from the encumbrance disclosures as this could lead to inaccurate reporting. It would, for example, overstate contingent funding capacity and collateral availability, and in a period of market stress when central bank facilities may be used most extensively. In such situations, presenting assets as unencumbered could result in financial statements which could result in regulators acting on inaccurate information. As a result, the CP’s requirement has the potential to conflict with the UK Corporate Governance Code as issued by the Financial Reporting Council (FRC), which requires boards to present a fair, balanced and understandable assessment of their company’s position. In certain circumstances, directors would not be able to comply with both the FRC and the proposed CP requirements.

It also could conflict with the IAS 1 requirement for fair presentation in financial statements and the EC IAS Regulation from 2002 (Regulation (EC) No 1606/2002 of the European Parliament and of the Council on the application of international accounting standards) which requires the financial statements to present a true and fair view. We strongly believe that this conflict should be resolved before the CP is finalised and would be happy to participate in related industry discussions.

**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?**

The BBA believe a time lag of 6 months should be sufficient for disclosure purposes.

**Annex II**

* When calculating encumbrance, should firms assume that the collateral given out is first adjusted for the Balance sheet inventory and then the remaining adjusted against the collateral received?
* For the purposes of completing columns referring to “Assets issued by other entities of the group”, could the EBA confirm whether there is a working assumption that the “Prudential Scope of consolidation” is the PRA Regulatory consolidated circles and not the accounting consolidation group?
* Could the EBA clarify what is recorded in other assets in part A F32.01. All of the other balance sheet categories not reported elsewhere?
* What does EBA expect in terms of reporting of cash collateral, this creates a financial asset when cash collateral has been given, does this form part of the other assets section of the return, or is it excluded? If it is to be included, should it be unencumbered?
* If any collateral (collateral received) is applied for covering short positions, will the collateral received be treated as encumbered?
* Is this reporting required for consolidated legal entity results or is it linked to the regulatory consolidation under PRA rules (which can be different)?
* With regards to residual maturity, can institutions ignore any early termination options and look to disclosure to the residual maturity or the contract final maturity date?