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Consultation Paper

Consultation Paper on the draft guidelines on materiality, proprietary and confidentiality and on disclosure frequency under Articles 432(1), 432(2) and 433 of Regulation (EU) 575/2013

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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 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 13.09.2014. 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) N° 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

Part Eight of Regulation (EU) 575/2013 requires the European Banking Authority (EBA) to issue the following guidelines by 31 December 2014:

- How institutions have to apply materiality in relation to the disclosure requirements of Title II of this Part (Article 432(1)),
- How institutions have to apply proprietary and confidentiality in relation to the disclosure requirements of Titles II and III of this Part (Article 432(2)),
- Institutions assessing more frequent disclosures of Titles II and III of this Part (Article 433).

These guidelines have to be issued in accordance with Article 16 of Regulation (EU) No 1093/2010, and the EBA has decided to issue them in a single, comprehensive document. This approach avoids duplication if some elements are deemed relevant for all the three Guidelines to be issued.

Part Eight of Regulation (EU) 575/2013 allows institutions to omit one or more of the required disclosures ('disclosure waivers') if information provided by such disclosures is not regarded as material or would be regarded as proprietary or confidential. Some of the required disclosures, such as those on own funds or remuneration cannot be omitted due to concerns related to their materiality, proprietary nature or confidentiality.

These disclosure waivers balance the need to ensure appropriate transparency on activities and risks undertaken by institutions, and the need to avoid disclosure overload for users and damages to the institution related to the publication of immaterial, confidential or proprietary information.

In addition, Part Eight only sets the minimum requirement of having information disclosed on an annual basis, leaving institutions free to assess the need to disclose some or all information more frequently.

As regards the option of more frequent disclosures, it is consistent with the onus on institutions to convey their risk profile comprehensively to market participants, which entails the provision of the appropriate disclosures with the appropriate frequency.

The assessments of regulatory disclosures that the EBA has performed since 2009 have shown that the materiality, proprietary and confidentiality concepts were implemented differently by different institutions. In addition, few disclosures were provided on the implementation of these concepts and on information that has therefore not been disclosed. While this divergence in implementation is to some extent connected to the variety of institutions, it can, when combined with a lack of transparency, turn out to be sub-optimal and create uncertainty for stakeholders regarding the comprehensiveness of provided information. Thus, concerns have been raised in

various forums¹ about the use of the concept of materiality by institutions, pointing out that guidance and transparency on this concept were needed to ensure that it is properly implemented.

As regards more frequent disclosures of information, the EBA observed that most institutions disclose regulatory information on a quarterly basis (for instance capital, solvency and RWA), even without any specific requirements to do so. Due to this level of discretion, the information provided varies among institutions, with little transparency regarding the rationale for providing or not some specific items of information.

The guidelines therefore aim to contribute to the correct functioning of market discipline by addressing the weaknesses mentioned above, and by ensuring some degree of consistency in the assessments of materiality, of the proprietary or confidential nature of information and of the need to provide more frequent disclosures. They have been drafted considering existing national provisions in EU member states, literature on the issues outlined above (especially materiality), and institutions disclosures.

The guidelines provide common albeit flexible frameworks that cover:

- **The process that institutions should follow** in their assessments of the use of any disclosure waiver and of their need to disclose information in Part Eight of CRR more frequently than annually
- **The criteria that institutions should consider** in the assessments of the use of any disclosure waiver and of their need to disclose information in Part Eight of CRR more frequently than annually
- **The information that institutions should provide** when using the disclosure waivers or choosing to disclose more frequently

For instance, the guidelines specify that the decision not to disclose an item of information based on materiality, proprietary or confidentiality concerns should be made by senior management and that all institutions which shall comply with the obligations laid down in Part Eight CRR should assess the need to provide this information more frequently when meeting specific criteria.

Flexibility is necessary to accommodate for the variety of institutions to which the Guidelines will apply, but the transparency for the assessments performed and their outcome will act as a counterweight: for instance there is no common thresholds for materiality but users should be made aware of the types of information that have been assessed as immaterial and the indicators used in this assessment. Similarly, institutions will decide whether they need to disclose

¹ See for instance ESMA Consultation Paper *Consideration of Materiality in Financial Statements* (2011<
http://www.esma.europa.eu/system/files/2011_373_.pdf) and IASB Discussion Forum on Financial Reporting Disclosures - Feedback Statement < <http://www.ifrs.org/Alerts/PressRelease/Documents/2013/Feedback-Statement-Discussion-Forum-Financial-Reporting-Disclosure-May-2013.pdf>>

information more frequently, but the guidelines specify a list of information that institutions should pay particular attention to disclose more frequently.

These Guidelines will be finalized following the outcome of a three-month consultation period, by 31 December 2014 at the latest.

3. Background and rationale

Part Eight of Regulation (EU) 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms ('the CRR') specifies the disclosure requirements with which institutions must comply.

These disclosure requirements are the European transposition of the Pillar 3 disclosure requirements included in the Basel Framework². They aim to address the information asymmetry between preparers and users, by providing the latter with information on the solvency, risks and risk exposures of institutions. Access to information is indeed one of the conditions necessary to promote the transparency of financial institutions and contribute to the orderly functioning of financial markets.

Disclosure requirements should be a cornerstone for market discipline, enhancing the ability for stakeholders to assess risk in financial institutions which may lead them to change their behaviour, and consequently provide an opportunity for institutions with sound risk management policies and practices to be rewarded by lower capital costs.

To achieve an appropriate balance between the information needs of stakeholders and the potential drawbacks of disclosures for institutions, both in terms of costs and business impact, the CRR contains specific provisions allowing for a waiver of certain disclosure requirements. Namely, institutions may omit one or more items of information included in the disclosure requirements in cases where the information provided by such disclosures is not regarded as material or is regarded as proprietary or confidential.

In addition, institutions may decide how frequently to disclose information, subject to them disclosing the required information on at least an annual basis and complying with any requirement for more frequent disclosure set by the national competent authorities in accordance with Article 106 of Directive 2013/36/EU ('CRDIV').

These Guidelines, directed to institutions that shall comply with the disclosure requirements in Part Eight of Regulation, provide guidance on the application of the provisions in Articles 432(1), 432(2) and 433 of the CRR.

The disclosures waivers in the CRR: materiality, proprietary and confidentiality

The CRR defines in Article 432(1) and (2) the concepts of 'material', 'confidential' and 'proprietary' as follows:

² Including the 2009 amendments for market risks and securitization disclosures as well as the 2011 amendments on remuneration disclosures

- Information in disclosures shall be regarded as material if its omission or misstatement could change or influence the assessment or decision of a user relying on that information for the purpose of making economic decisions
- Information shall be regarded as proprietary to an institution if disclosing it publicly would undermine its competitive position. It may include information on products or systems which, if shared with competitors, would render an institution's investments therein less valuable.
- Information shall be regarded as confidential if there are obligations to customers or other counterparty relationships binding an institution to confidentiality

The CRR also specifies in Article 432(3) the disclosures to be provided in case an institution chooses not to disclose information for confidentiality or proprietary reasons:

- A statement that the specific items of information are not provided
- The reasons for non-disclosure
- More general information about the subject matter of the disclosure requirement, except where these are to be classified as proprietary or confidential.

In various Pillar 3 disclosures assessments since 2009, the EBA found that, despite the common definitions, institutions apply these concepts in different ways, with for instance different types of information covered by the waivers. These differences are not unexpected as the definitions necessarily imply judgment in their use, especially for materiality. Moreover, differences may reflect the specific nature of institutions and the risks they face.

It is also worth noting that despite the provisions of Article 432(3) institutions currently provide few details about how they use the waivers, making it difficult for users of information to know whether a missing piece of information is due to its immaterial, proprietary or confidential nature or for other reasons. Indeed, in some instances, supervisory authorities assessing disclosures had to engage with institutions or cross-check their disclosures with supervisory reporting to shed a light on the non-disclosure of specific pieces of information.

The current situation therefore creates uncertainty for stakeholders, which may not all be well-equipped to find out the reasons for non-disclosures. Indeed, the different approaches used by institutions regarding the implementation of the disclosure waivers have not always translated into consistent, comparable and user-friendly information from a stakeholder point of view. In some cases they may have led to the non-disclosure of information that would have conveyed to users a comprehensive risk profile of institutions.

Concerns regarding transparency in the application and soundness of the use of the waivers are especially acute in relation to the concept of ‘materiality’. Reports from industry³, standard-setters⁴ and ESMA⁵ have highlighted the consequences of various uses of this concept by institutions. These reports point out that guidance on materiality is necessary to ensure that disclosures remain fully relevant for stakeholders and at the same time tackle what preparers perceive as a to be disclosure overload. The ultimate goal of this implementation guidance would be to improve the quality and usefulness of disclosures without necessarily increasing the quantity.

The EBA believes that, when adequately implemented, ‘materiality’ refers to a sufficient level of detail for disclosures, including qualitative information. A sufficient level of detail means that fewer or no disclosures should be provided for immaterial elements (which can be aggregated with other elements) and more disclosures should be provided for material elements, including disclosures that are not explicitly required by specific provisions included in Part Eight CRR, consistently with Article 431(3) CRR.

Materiality therefore allows institutions to bridge the gap between two approaches to disclosures, i.e. disclosures as a checklist with which compliance should be sought or disclosures as relevant information to stakeholders, and to reconcile the interests of users and preparers regarding disclosure overload. There should be more emphasis on the most relevant disclosures, via the removal of irrelevant disclosures, although these guidelines do not prohibit the disclosure of immaterial information.

In addition to the CRR, the materiality concept is defined in various frameworks (for example, in the International Standards on Auditing, in the International Financial Reporting Standards), which serve different objectives and so may be implemented differently, despite presenting areas of crossover. However, materiality in these guidelines is defined and applied solely in relation to the Pillar 3 disclosure requirements. In particular, the definitions of materiality in the CRR and in IAS 1 present similarities, but Pillar 3 reports objectives are different from those of annual reports, leading to differentiated implementation of the concept of materiality in these reports. Therefore, it could be that material information for the annual report may be immaterial for the Pillar 3 report and conversely.

³ For instance CFA Institute *Financial Reporting Disclosures* (2013) <<http://www.cfapubs.org/doi/pdf/10.2469/ccb.v2013.n12.1>>

⁴ For instance EFRAG *Towards a Disclosure Framework for the Notes* (2012) <<http://www.efrag.org/Front/n2-972/Discussion-Paper---Towards-a-Disclosure-Framework-for-the-Notes.aspx>>, ANC/FRC *Thinking about disclosures in a broader context* (2012) <<https://www.frc.org.uk/getattachment/99bc28b2-c49c-4554-b129-9a6164ba78dd/Thinking-about-disclosures-in-a-broader-contex.aspx>> and IASB Discussion Forum on Financial Reporting Disclosures - Feedback Statement <<http://www.ifrs.org/Alerts/PressRelease/Documents/2013/Feedback-Statement-Discussion-Forum-Financial-Reporting-Disclosure-May-2013.pdf>>

⁵ For instance ESMA Consultation Paper *Consideration of Materiality in Financial Statements* (2011) <http://www.esma.europa.eu/system/files/2011_373_.pdf>, its feedback statement (2012) <http://www.esma.europa.eu/system/files/2012_525.pdf> and the summary of its roundtable <<http://www.esma.europa.eu/system/files/2013-218.pdf>>

The EBA is aware that other concepts, including ‘significant’ or ‘relevant’ may be used as synonym for ‘material’ as defined in Article 432(1) of Regulation 575/2013, and therefore these Guidelines equally apply to equivalent concepts.

Interaction between the different disclosures waivers

The materiality waiver and the waiver for proprietary or confidential information have to be applied independently. A confidential or proprietary piece of information is not required to be disclosed, even if it is a material piece of information.

Disclosures on a more frequent basis than annually

Article 433 CRR defines the frequency requirements applicable to disclosures as follows:

- Institutions shall publish the disclosures required at least on an annual basis;
- Institutions shall assess the need to publish some or all disclosures more frequently than annually in the light of the relevant characteristics of their business.

Beyond this, each competent authority can, in accordance with Article 106 CRD IV, impose more frequent disclosure for part or all the disclosure requirements in Part Eight of the CRR⁶ within their own jurisdiction. As a result, practices may vary across jurisdictions. In situations where the decision to disclose regulatory information is left to institutions, Article 433 CRR specifies elements to be considered when assessing the need to publish some or all disclosures in Part Eight more frequently than annually:

- The relevant characteristics of their business (scale of operations, range of activities, presence in different countries, involvement in different financial sectors, and participation in international financial markets and payment, settlement and clearing systems);
- The assessment shall pay particular attention to the possible need for more frequent disclosure of items of information on own-funds, of Pillar 1 capital requirements, disclosure of information on risk exposure and other items prone to rapid change.

The EBA found in its recent Pillar 3 disclosures assessment⁷ that most institutions disclose regulatory information on a quarterly basis, even if not required to do so. As the decision to provide disclosures more frequently is at the discretion of institutions in the absence of a unified regime, the nature of information disclosed depends heavily on the institutions’ own policies and culture, although a core set of regulatory disclosures, for instance about solvency, capital and RWA, can be identified across all institutions.

⁶ See Article 106 of Directive 2013/36 (EU) of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms

⁷ See Follow-up review of banks’ transparency in their 2012 Pillar 3 reports
<http://www.eba.europa.eu/documents/10180/16145/Follow-up+report+on+Pillar+3+disclosures.pdf>

This current situation presents some drawbacks where there is demand from stakeholders for more frequent disclosures of at least some specific pieces of regulatory information, as evidenced for instance by the responses to the EBA 2012 questionnaire on the identification of users/investors needs on credit institutions Pillar 3 disclosures⁸. In particular, institutions do not always provide the same information and the rationale for more frequent disclosures often remains unknown; in most cases there is no transparency regarding why some pieces of information are disclosed and others not.

Therefore, the current regime needs to be enhanced to contribute to the good functioning of market discipline. Indeed, frequent disclosures are seen as a tool to remedy some of the confidence issues currently faced by institutions by providing users with more frequent information.

The draft guidelines

Divergences in the implementation of disclosure waivers and in practices for disclosing information more frequently than annually, as well as a lack of transparency about the way the CRR provisions on disclosure waivers and the frequency of disclosures are implemented, may undermine market discipline by preventing stakeholders from accessing comprehensive information on institutions' risk profiles.

To address this risk, Articles 432 and 433 of the CRR mandated the EBA with issuing the following guidelines in accordance with Article 16 of Regulation (EU) No 1093/2010 by 31 December 2014:

- How institutions have to apply the concepts of materiality, in relation to the disclosures requirements of Part Eight, Title II of CRR;
- How institutions have to apply proprietary and confidentiality in relation to the disclosure requirements of Part Eight, Titles II and III of CRR; and
- Institutions assessing more frequent disclosures of information in Part Eight, Titles II and III of CRR.

It has been decided to merge the legal bases for these guidelines, and integrate them into one single document. These guidelines are the first step towards the issuance of regulatory products to enhance the consistency and comparability of disclosures.

The guidelines on the application of the concepts of 'materiality', 'proprietary' and 'confidentiality' aim to provide a framework for the consistent and transparent use of these concepts. The framework aims to strike a balance between the provision of appropriate and

⁸ See Responses to the questionnaire on the identification of users/investors needs on credit institutions Pillar 3 disclosures

< <http://www.eba.europa.eu/-/responses-to-the-questionnaire-on-the-identification-of-users-investors-needs-on-credit-institutions-pillar-3-disclosures>>

comprehensive information on institutions to stakeholders and the need to take into account their relevance for users and any possible negative impacts on institutions.

The guidelines on the assessment of the need for more frequent disclosures aim to bring consistency to the practice of disclosing regulatory information on a more than annual frequency, and to ensure stakeholders can always access at a core set of up-to-date information that has been disclosed following a common and appropriate frequency. The Guidelines nevertheless do not impose more frequent, additional disclosures: the decision to provide – or not – all or part of disclosures listed in Part Eight CRR and in these Guidelines more frequently than annually will always have to be made by institutions, after their assessment conducted following the provisions in these Guidelines. They also do not alter the publication regime for financial statements and annual/consolidated reports, as this regime is not governed by the provisions in Part Eight CRR.

As the assessments performed by institutions regarding the implementation of the disclosure waivers or their need to disclose more frequently will inherently be entity-specific and vary according to the specific features of each institution, these guidelines also specify disclosures to be provided to enhance their understanding by market participants and other users and reduce the expectation gap between preparers and users.

The guidelines have been drafted with regard to the mappings of existing practices and requirements as set out below:

- **Mapping across regulatory frameworks:** to ensure consistency between the content of these guidelines and the provisions already in place in European jurisdictions as per Article 106 CRD IV or that were in place under the equivalent Article 149 in Directive 2006/48, so that the guidelines are consistent with current or previous national practices;
- **Mapping across institutions' disclosures:** to ensure the guidelines address the main shortcomings, leverage off the best practices observed in institutions' disclosures, and do not result in less relevant or less meaningful disclosures compared to what institutions already provide on a voluntary basis;
- **Mapping with work from other forums:** the issue of the need for improvement in the implementation of the concept of materiality has triggered some work and thought within the industry, the accounting standard-setting authorities, the IASB and ESMA. This work has been reviewed to ensure that the guidelines appropriately draw upon and are consistent with them, although they may be implemented differently. As regards the frequency of disclosures, the guidelines have taken into consideration the findings of last year's EBA Transparency report on disclosures of regulatory information in intermediate (quarterly and semi-annual) publications⁹.

⁹ See Follow-up review of banks' transparency in their 2012 Pillar 3 reports
<http://www.eba.europa.eu/documents/10180/16145/Follow-up+report+on+Pillar+3+disclosures.pdf>

Regarding in particular the assessment of the need for more frequent disclosures, the mappings above have led to the decision to define institutions that should especially perform this assessment. These are institutions which shall comply with the obligations laid down in Part Eight CRR meeting one of the following criteria: being one of the three largest institutions in a jurisdiction, having €30 billion consolidated total assets, having the four-year average of their total assets amounting to 20% of the four-year average GDP of their home member state, or having consolidated exposures as per Article 429 of Regulation 575/2013 in excess of € 200 billion. These criteria are consistent with those in EBA Decision DC/090¹⁰ and in Article 3(2) of the draft RTS on the methodology for the identification of global systematically important institutions.

Being included on the list referred to in Article 3.5 of EBA Decision DC/090 or in the list referred to in Article 3.3 of the draft RTS on the methodology for the identification of global systematically important institutions therefore implies that institutions should consider providing disclosures from Part Eight CRR more frequently, i.e. semi-annually or quarterly.

Being subject to the requirements in Part Eight CRR is a prerequisite to be covered by the provisions in the guidelines. The scope of application of semi-annual and quarterly disclosures is the same as for annual disclosures and the guidelines do not extend the scope of application of the disclosure requirements in the CRR. They intend to assist institutions already subject to Part Eight CRR in their assessment of the need for more frequent disclosure, and not to identify which institutions should fall under the scope of Part Eight CRR.

The guidelines list particular information that institutions in the scope of Part Eight CRR should pay particular attention to disclose more frequently, identified according to user needs. Information on capital structure, capital adequacy and ratios, leverage ratio and parameters of IRB models have been considered as requiring more frequent disclosure. The specific information to be disclosed and the frequency of disclosure differ according to the type of institutions considered:

Sample	Types and frequencies of disclosures
Institutions subject to the disclosures requirements in the CRR with a leverage ratio exposure above €200 bn	<p>Quarterly: information on capital structure, capital adequacy (RWA and capital requirements), capital ratios, leverage ratio</p> <p>At least semi-annually: information on IRB exposures by internal grade and model parameters</p> <p>Semi-annually: ITS on own funds disclosures and ITS on Leverage ratio disclosures</p>
Institutions subject to the disclosures requirements in the CRR being either one of the 3 largest institutions in their home jurisdiction, or having €30 bn total consolidated assets or, or having a 4 year average total assets amounting to 20% four year average GDP of the home jurisdiction	<p>Semi-annually: information on capital structure, capital adequacy (RWA and capital requirements), capital ratios, leverage ratio, IRB exposures by internal grade and model parameters</p>

¹⁰ Decision of the European Banking Authority on reporting by competent authorities to the EBA <
<http://www.eba.europa.eu/documents/10180/16082/EBA+DC+090+%28Decision+on+Reporting+by+Competent+Authorities+to+the+EBA%29.pdf/9beaf5be-2624-4e36-a75b-b77aa3164f3f>>

The EBA could adapt the provisions of these Guidelines on information to be provided within each category of this list according to developments regarding disclosure requirements at international level, especially initiatives by the Basel Committee.

4. Consultation Paper on the Draft Guidelines on materiality, proprietary and confidentiality and on disclosures frequency under Articles 432(1), 432(2) and 433 of Regulation (EU) 575/2013

Contents

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 whom guidelines are addressed to comply with guidelines. Competent authorities to whom 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.

Reporting Requirements

According to Article 16(3) of the EBA Regulation, competent authorities must notify the EBA as to whether they comply or intend to comply with these guidelines, or otherwise with reasons for non-compliance, by **dd.mm.yyyy**. In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form provided at Section 5 to compliance@eba.europa.eu with the reference 'EBA/GL/**2014/xx**'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities.

Notifications will be published on the EBA website, in line with Article 16(3).

Title I - Subject matter, scope and definitions

1. Article 432(1) of Regulation (EU) 575/2013 provides that institutions may omit one or more of the disclosures required in Title II of Part Eight of that Regulation if the information provided by such disclosures is not regarded as material, except for the disclosures laid down in its Articles 435(2) (c) (disclosures on management board diversity policy), 437 (disclosure on own funds) and 450 (disclosures on remuneration policy) of Regulation (EU) No 575/2013.
2. Article 432(2) of Regulation (EU) 575/2013 provides that institutions may also omit one or more items of information included in the disclosures listed in Titles II and III of Part Eight, except for disclosures laid down in Articles 437 (disclosures on own funds) and 450 (disclosures on remuneration policy) of that Regulation if those items include information which is regarded as proprietary or confidential. Article 432(3) of Regulation (EU) 575/2013 provides that in case of omission of items in accordance with Article 432(2) of that Regulation, institutions shall state that fact, the reason for non-disclosure and shall publish more general information about the subject matter of the disclosure requirement, except where these are to be classified as proprietary or confidential.
3. Article 433 of Regulation (EU) 575/2013 provides that institutions shall assess the need to publish some or all disclosures required in Part Eight of that Regulation more frequently than annually in the light of the relevant characteristics of their business such as scale of operations, range of activities, presence in different countries, involvement in different financial sectors, and participation in international financial markets and payment, settlement and clearing systems. That assessment should pay particular attention to the possible need for more frequent disclosure of items of information related to own funds, capital requirements, risk exposure and other items prone to rapid change.
4. These guidelines set out the process and the criteria for institutions which shall comply with the obligations laid down in Part Eight CRR to apply the principles of materiality, proprietary and confidentiality in relation to their disclosure obligations and their right to omit disclosure in accordance with Article 432 of Regulation (EU) No 575/2013 (“waivers” or “disclosure waivers”). They also provide guidance on the institutions assessing more frequent disclosures.
5. These Guidelines are directed to institutions which shall comply with the obligations laid down in Part Eight of Regulation (EU) No 575/2013 (“institutions”) and their competent authorities. Competent authorities should ensure that institutions comply with these Guidelines in their assessment of materiality, proprietary, confidentiality and frequency of disclosure.

Title II- Processes and internal arrangements

6. The criteria, methods and processes for omitting disclosure of information items on the basis of non-material or of confidential or proprietary information (“waiver policy”) and for assessing the appropriate frequency of disclosure (“frequency policy”) should form a part of the formal policies on disclosure referred to in Article 431 (3) of Regulation (EU) No 575/2013.

7. The waiver and the frequency policy should ensure that the omission of information and the assessment of frequency do not compromise the fulfilment of the obligation that institutions have pursuant to Article 431 (3) of Regulation (EU) No 575/2013, to disclose publicly all information necessary in order to comprehensively convey their risk profile to the market participants.
8. The waiver and the frequency policies should at least:
 - a. be approved by the institution's management body;
 - b. identify the organisational unit or units, the senior management or committees thereof and staff responsible for designing, implementing and reviewing the policies;
 - c. ensure that the input of all the relevant units and functions, indicatively the risk management functions, the compliance unit and any other relevant function is taken into account when designing, implementing and reviewing these policies;
 - d. provide that the institution produces, before the application of any waiver, and updates at least annually, a full list of all its qualitative and quantitative information items which shall be disclosed in accordance with Titles II and III of Part Eight of Regulation (EU) No 575/2013 , and of the appropriate level of detail for every item;
 - e. define the appropriate level, depth, quality and documentation of the reasoning required for every decision on disclosure waiver or on appropriate frequency of disclosure;
 - f. provide that the senior management level or committees thereof is responsible for making a final decision on whether an item of information should be omitted ("waiver") or the frequency should be considered as appropriate, after taking into consideration appropriately justified proposals made by the relevant organizational unit or units and staff tasked with implementing the policies;
 - g. provide that that the senior management or the relevant committee thereof regularly reports to the management body regarding the implementation of the waiver and frequency policies;
 - h. provide that the internal audit or other comparable control unit reviews on a regular basis the implementation of these policies and that this task is included in its work programme;
 - i. determine the appropriate level of transparency for each disclosure waiver or appropriate frequency in accordance with Titles III to VII of these Guidelines.
9. Institutions should fully document and maintain internally appropriate evidence of their implementation of the process described in paragraph 8 and of their assessments according to the provisions in Title III, Title IV or Title V of these Guidelines to ensure proper traceability and transparency in the implementation of waiver and frequency policies, (for instance studies showing the potential impact of the disclosures of information considered as proprietary).

10. In the context of the disclosure required in Part Eight of Regulation (EU) 575/2013, institutions should provide a summary description of their waiver and frequency policies in accordance with Article 434 of Regulation (EU) No 575/2013.

Q1) Do you agree that the use of the disclosure waivers and the assessment of the need for more frequent disclosures should be framed – for the purpose of Article 431 CRR – within a dedicated process? If not, please state why.

Q2) Do you agree with the features of this process? If not, which one(s) would you exclude/include?

Title III – Considerations for assessing materiality of disclosures

11. Institutions may omit one or more of the disclosures listed in Title II of Regulation (EU) No 575/2013 if the information provided by such disclosures is not regarded as material as per the provisions of these Guidelines. Conversely, assessing an item of information as material as per the provisions of this Title may lead institutions to provide disclosure exceeding the applicable disclosure requirements.

12. In assessing materiality of an item of information, institutions should consider at least the following:

- a. Materiality should be assessed regularly at least once a year;
- b. Materiality should be assessed for both qualitative and quantitative disclosure requirements;
- c. Materiality should be assessed at the level of each individual disclosure requirement and, where relevant, on an aggregate basis. In particular the institution should assess if the cumulative effect of omitting specific disclosure requirements that are regarded individually not material would result in omission of information that could influence the economic decisions of users;
- d. Materiality should be assessed taking into consideration the circumstances and the broader context at the time of disclosure;
- e. Materiality should be a user-centric concept and be assessed according to the assumed users' needs based on the assumed relevance of information for users: a disclosure requirement may not be material for the institution but may be material for users. Therefore, the extent of disclosed information should be tailored to users' needs and should consider the incidence of disclosure on their understanding of the institution and of its risk profile. Information related to items involving a high degree of subjectivity from institutions in determining their amount are likely to be material for users;
- f. Materiality should be assessed taking into account the specific nature and purpose of the requirements assessed. The criteria should not be applied in the same way for all disclosure

requirements. In particular special procedures/indicators different from those used to determine materiality for quantitative disclosures may be needed for qualitative disclosures;

- g. Materiality should be an institution-specific concept. It should depend on the specific characteristics, activities, risks and risk profile of an institution and should not be automatically assessed by reference to the size/scale of the institution, to its relevance on domestic market or to its market share;
- h. Materiality does not depend only on size. Materiality is linked to the quantitative importance in terms of amount and/or qualitative importance in terms of nature of a given piece of information such as exposures or risks, which can be material by nature or size. An assessment of materiality only based on quantitative approaches or materiality thresholds should not be generally deemed as appropriate for disclosures;
- i. Materiality should be a dynamic concept: materiality depends on the context of disclosures and may therefore be applied differently to different disclosures over time depending on the evolution of risks. In particular, institutions should consider the risks/business activities to which they are or might become exposed. Ad hoc re-assessments of materiality as risks evolve or circumstances change may result in variety in the types and extent of disclosures over time.

13. Additional considerations may be taken into account by institutions when they are considered as plausible and objectively reasonable.

14. Assessing materiality should be a matter of judgment by relevant risk functions, informed by relevant criteria and indicators. When implementing paragraph 12 to assess the materiality of an item of information, institutions should pay particular attention to the following criteria:

- a. institution's business model and long-term strategy;
- b. influence of the economic and political environment;
- c. size, expressed in share of regulatory, financial or profitability metrics or aggregates or via a nominal amount, of the item of information or element (risk, exposure) to which the information is related and for which materiality is assessed;
- d. influence of the element to which an item of information is related on the development of total risk exposures (expressed in particular in terms of amounts of exposures or amount of RWA) or the overall risk profile of the institution;
- e. relevance of the item of information to understand the current risks and solvency of the entity and their trend, considering that the omission should not mask a trend in the evolution of risks from previous period;
- f. amplitude of change of the element to which an item of information is related compared to previous year;

- g. relation of the information to recent developments in risks and disclosure needs, as well as to market practices regarding disclosures.

Q3) Should the guidelines be developed more on what is expected from institutions when an item of information is assessed as material?

Q4) Do you agree with the principles and indicators to be considered in the assessment of materiality? Which additional principles or indicators, if any, would you like to see considered?

Title IV – Considerations for assessing the proprietary or confidential nature of disclosure

15. In assessing the proprietary nature of an item of information, institutions should take into account the following:

- a. Cases where information is assessed as proprietary should be exceptional and related to information of such an importance that their disclosure might drastically impact the institution forthcoming results or fundamentally negatively affect the institution competitive position. In addition to information on products and systems that, if shared with competitors, would render the institution's investments in these less valuable, proprietary information may relate to competitively significant operational conditions or business circumstances;
- b. A general risk of a potential weakening of competitiveness due to disclosure should not be seen, alone, as sufficient for avoiding disclosure. Specific reasoning should be available and should be based on an analysis of the effect of disclosure of proprietary information: institutions should identify specifically to what extent the disclosure of information would weaken their competitiveness and document the impact of disclosure;
- c. The disclosure waiver related to proprietary information should not be used to avoid disclosing information which would disadvantage the institution in the market because the information reflects an unfavourable risk profile;
- d. Undermining of competitive position should be appreciated for instance in terms of size, extent of business and area of activity. Institutions should justify how the disclosure of such information would provide too much insight into their business structure.

16. In assessing the confidential nature of an item of information, institutions should take into account the following:

- a. Cases where information is assessed as confidential should be exceptional. In particular, the name of counterparties, especially in cases where the counterparties of an institution are concentrated among a low number of market players, is an example of confidential information allowed not to be disclosed;

- b. A general reference to confidentiality is not a sufficient reason for avoiding disclosure: institutions should identify specifically via legal analysis in what extent the disclosure of a specific information would affect the rights of their customers or counterparties or would constitute a breach of legally established confidentiality obligations.

Q5) Do you agree with the elements to be considered in the assessment of confidentiality or proprietary? Which additional element, if any, would you like to see considered?

Title V – Considerations regarding the need to assess disclosure of information more frequently than annually

17. Institutions should assess the need for them to disclose some or all information required by Titles II and III in Part Eight of Regulation 575/2013 more frequently than annually in light of the criteria specified by the said Article and in accordance with the process described in Title II of these Guidelines.

18. Institutions should especially assess their need to publish information more frequently than annually when one of the following indicators applies to them:

- a. The institution is one of the three largest institutions in its home Member State;
- b. The institution's consolidated assets are in excess of €30 billion;
- c. The institution's 4 year average of total assets is in excess of 20% of the 4 year average of its home Member State's GDP;
- d. The institution has consolidated exposures as per Article 429 of Regulation 575/2013 exceeding € 200 billion or the equivalent in foreign currency using the reference exchange rate published by the ECB applicable at the financial year-end.

Q6) Do you agree with the indicators in paragraphs 18 that should lead institutions to assess their need to disclose information more frequently? If not, which alternative indicators would you suggest?

Title VI – Disclosures to be provided by institutions when applying the disclosure waivers

19. When an institution decides not to disclose an item of information on the basis of this item not being material it should:

- a. state clearly the item of information which is not disclosed by reference to the specific provision of the Regulation (EU) No 575/2013;

- b. give reasoning for its non-disclosure on the basis of its own waiver policy drafted in accordance with Title II of these Guidelines. The reasoning should be in line with Title III of these Guidelines;
- c. provide more general or aggregate information, including if relevant quantitative information, on the non-disclosed separate items of information (in particular, if a breakdown of exposure is required and the institution chooses not to provide it due to materiality reasons, it should nevertheless provide the aggregate exposure amount).

20. In cases where information is assessed as proprietary or confidential in accordance with the process described in Title II, and having considered the relevant elements listed in Title IV, institutions should provide the following information:

- a. the type of information or the disclosure requirement that is considered as proprietary or confidential according to the final decision reached at the end of the process;
- b. the reasoning for non-disclosure, i.e. what justifies the information being classified as proprietary or confidential;
- c. more general information about the subject matter of the disclosure requirement. This general information should be disclosed using methods that allow suitable disclosure while at the same time respecting confidentiality or proprietary concerns (non-disclosure of the name of individual clients, appropriate level of aggregation).

21. Information and explanations disclosed after the use of the proprietary and confidentiality waiver should remain sufficient for users' proper understanding of developments of risks during the period under review. The use of waiver could lead to the application of aggregation and/or anonymizing techniques to allow for the disclosure of meaningful information despite confidentiality or proprietary concerns.

22. Institutions may provide information in this Title either directly in the different risk sections of the medium referred to in Article 434 of Regulation (EU) No 575/2013 or in a single location within this medium.

Q7) Do you agree that transparency should be provided on the implementation of the process and on the use of the waivers when this use leads to non-disclosure of information required by Regulation (EU) No 575/2013? If not, why?

Q8) Do you agree that information listed in paragraph 19 should be provided in case disclosures are omitted due to immateriality reasons? If not, why? Do you agree the provision of this information allow for an optimal degree of transparency regarding the use of the materiality waiver? If not, which additional information should be provided?

Q9) What other techniques, if any, would you use to allow for the disclosure of meaningful information despite concerns about confidentiality or proprietary?

Title VII - Disclosures to be provided more frequently than annually

23. Institutions meeting one of the indicators specified in paragraph 18 should pay particular attention to the possible need to provide the following information more frequently than annually:

- a. information on own-funds and relevant ratios as required by Article 437 and Article 492 as applicable of Regulation (EU) 575/2013, especially the following information, as defined in the appropriate rows of Annexes IV and V of Commission Implementing Regulation (EU) No 1423/2013 of 20 December 2013:
 - o Total amount of Common Equity Tier 1 capital, as in rows 6 and 29;
 - o Total amount of Additional Tier 1, as in rows 36 and 44;
 - o Total amount of Tier 1 capital, as in row 45;
 - o Total amount of Tier 2 capital, as in rows 51 and 58;
 - o Total amount of capital, as in row 59;
 - o Total regulatory adjustments to each capital aggregate, as in rows 28, 43 and 57;
 - o Common Equity Tier 1 ratio, as in row 61;
 - o Tier 1 ratio, as in row 62;
 - o Total capital ratio, as in row 63.
- b. information on capital requirements as required by Article 438 of Regulation (EU) 575/2013, especially the amounts of risk-weighted assets and capital requirements by type of risks specified in Article 92 of the same Regulation;
- c. information on leverage ratio as required by Article 451 of Regulation (EU) 575/2013, especially the following information, as defined in the appropriate rows of Annex I and II of the Draft ITS on Disclosure for Leverage Ratio under Article 451(2) of Regulation (EU) 575/2013:
 - o amount of Tier 1 capital used as a numerator as in row 20, with the specification required in row EU-23;
 - o amount of total exposure used as a denominator as in row 21;
 - o resulting leverage ratio as in rows 22 and EU-22a if applicable.
- d. information on risk exposures, especially quantitative information on internal models as required by Article 452 d), e) and f) of Regulation (EU) 575/2013 separately for exposures for

which institutions use own estimates of LGDs or conversion factors for the calculation of risk-weighted exposure amounts and for exposures for which they do not use such estimates;

- e. information on other items prone to rapid changes and on those items covered by Part Eight of Regulation (EU) 575/2013 that have experienced material changes as per Article 432(1) and these Guidelines during the reporting period.

24. Institutions should provide additional interim information to those listed in paragraph 23 when the result of their assessment for the need to provide disclosures in Part Eight of Regulation (EU) 575/2013 more frequently than annually shows that this additional information is necessary to convey their comprehensive risk profile to market participants.

25. Interim information disclosed by institutions in accordance with paragraph 23 and paragraph 24 according to the frequency in paragraph 26 should be consistent and comparable over time.

26. The frequency of disclosure should depend on the criteria in paragraph 18 that institutions which shall comply with the obligations laid down in Part Eight of Regulation (EU) 575/2013 meet:

- a. Institutions meeting the indicator in point d) of paragraph 18 should pay particular attention to the possible need for disclosing:
 - o information listed in points a) to c) and e) of paragraph 23 on a quarterly basis;
 - o information listed in point d) of paragraph 23 at least on a semi-annual basis;
 - o the full set of information required by Commission Implementing Regulation (EU) 1423/2013 and the Draft ITS on Disclosure for Leverage Ratio under Article 451(2) of Regulation (EU) 575/2013 RTS on a semi-annual basis.
- b. Institutions meeting one of the indicators listed in points a) to c) of paragraph 18 should pay particular attention to the possible need for disclosing information listed in points a) to e) of paragraph 23 on a semi-annual basis.

27. Information listed in points a) and c) of paragraph 23 should be disclosed following the formats specified in Commission Implementing Regulation (EU) 1423/2013 and the Draft ITS on Disclosure for Leverage Ratio under Article 451(2) of Regulation (EU) 575/2013.

28. Information in paragraph 23 should be published in conjunction with the date of publication of the interim financial statements or information, as applicable, and provisions in Article 434 of Regulation (EU) No 575/2013 should apply mutatis mutandis to information in paragraph 23.

29. When institutions meeting at least one of the indicators listed in paragraph 18 choose not to provide more frequently than annually one or some of the disclosures listed in paragraph 23 they should state this fact at least in the annual release of the document containing the disclosures required by Part Eight of Regulation (EU) 575/2013 and inform on how they have made their decision.

Q10) Do you agree with the list of information that institutions should assess whether to disclose more frequently than annually? If not, what type of information would you include in or exclude from this list?

Q11) Do you agree with the suggested frequency of disclosure for the different institutions meeting the different indicators specified in paragraph 18? If not, which alternative frequency would you suggest?

Title VIII- Final Provisions and Implementation

30. These Guidelines are to be complied with from January 1st, 2015.

31. From January 1st, 2015 institutions should provide a statement informing about the implementation of these Guidelines in the medium containing the disclosures required by Part Eight of Regulation (EU) 575/2013.

Q12) Do you agree with the proposed implementation date? If not, which alternative date would you suggest?

5. Accompanying documents

5.1 Draft Impact Assessment

Introduction

Article 432(1)-(2) of Regulation (EU) No 575/2013 (CRR) requires the EBA to develop guidelines (GLs) on how institutions have to apply materiality in relation to the disclosure requirements of Title II and proprietary and confidentiality in relation to the disclosure requirements of Titles II and III. Article 433 of the CRR requires the EBA to develop guidelines on institutions assessing more frequent disclosures of Titles II and III.

As per Article 16(2) of the EBA regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council), any guidelines developed by the EBA – when submitted to the EU Commission for adoption - shall be accompanied by an Impact Assessment (IA) annex which analyses ‘the potential related costs and benefits’. Such annex shall provide the reader with an overview of the findings as regards the problem identification, the options identified to remove the problem and their potential impacts.

This annex presents the impact assessment with cost-benefit analysis of the provisions included in the GLs described in this Consultation Paper. Given the nature of the study, the IA is high level and mostly qualitative in nature.

Problem definition

The section identifies the problems that the GLs aim to address. The major problems that the GLs aim to address are:

- **Market failure in the form of the impairment of market discipline due to asymmetric information:** perfect information is a situation in which rational agents have all the relevant information before taking an action. Markets are said to be efficient when market participants have perfect information and perfect information is a necessary condition for markets to operate efficiently. Market discipline is in operation when the actions of the rationally behaved market participants encourage institutions to satisfy demands by market participants by adjusting risk management strategies and to send signals about their risk profile to other market participants.

In the context of an institution-stakeholder relationship, the problem of information asymmetry arises when institutions have access to information but the same information is not accessible by the stakeholders. The problem of asymmetric information is particularly apparent in the fields of solvency, risks and risk exposure of institutions,

especially when institutions use internal models. To mitigate this issue, the regulatory framework details information to be disclosed by institutions.

The current regulatory framework nevertheless also allows for institutions to choose not to disclose information that they deem not material, proprietary or confidential (disclosure waivers). The application of waivers also generates the problem of asymmetric information because the reason behind the application may not be available and may not be transparent to stakeholders.

Markets fail when asymmetric information occurs. In the current example, market failure is caused by the failure of market discipline.

- **Variations in interpretation and implementation across EU Member States and institutions:** the CRR provides institutions with definitions of materiality, proprietary and confidentiality regarding disclosures. However, these definitions leave great room for interpretation when deciding whether or not to disclose particular information. Varying practices among institutions has led some stakeholders to require guidance from authorities, especially regarding the concept of materiality.¹¹

The differences in practices across EU Member States may create an uneven playing field in the EU banking sector. For example, two institutions with the same risk profile located in two different jurisdictions can be treated differently by market participants if the use of disclosure waivers is not consistent between jurisdictions.

- **Lack of transparency and uncertainty for stakeholders:** institutions have great flexibility in the implementation of waivers. This flexibility and sometimes the lack of transparency as regards application may create uncertainty for stakeholders.

The same market imperfections are also valid for disclosure frequency. Institutions have more knowledge than market participants on the need to disclose information more frequently than annually. The situation may create an asymmetry of information and impair market discipline. The source of the impairment may also be caused by i) varying practices across institutions and ii) different provisions introduced by National Competent Authorities (NCAs) in their jurisdictions (although prior to 1 January 2014 most NCAs did not require disclosure more frequently than annually).¹² Different institutional practices¹³ combined with a general lack of transparency on how institutions decide (or not) to provide CRR disclosures more frequently than annually exacerbates the problem of asymmetric information and that of market discipline.

¹¹ See for instance IASB Discussion Forum on Financial Reporting Disclosures - Feedback Statement <<http://www.ifrs.org/Alerts/PressRelease/Documents/2013/Feedback-Statement-Discussion-Forum-Financial-Reporting-Disclosure-May-2013.pdf>> and ESMA Consultation Paper *Consideration of Materiality in Financial Statements* (2011 <http://www.esma.europa.eu/system/files/2011_373.pdf>, its feedback statement (2012) <http://www.esma.europa.eu/system/files/2012_525.pdf> and the summary of its roundtable <<http://www.esma.europa.eu/system/files/2013-218.pdf>>

¹² Follow-up review of banks' transparency in their 2012 Pillar 3 reports <http://www.eba.europa.eu/documents/10180/16145/Follow-up+report+on+Pillar+3+disclosures.pdf> reports <http://www.eba.europa.eu/documents/10180/16145/Follow-up+report+on+Pillar+3+disclosures.pdf>

Table 1 presents a summary of the identified problems and the major drivers behind them.

Table 1 Identified problems and drivers

Specific Problems	Drivers	Comment
Market failure in the form of the impairment of market discipline	Asymmetric information	Institutions have access to set of information to which stakeholders may not have. This is true with respect to the assessment of i) materiality, ii) proprietary and confidentiality, and iii) information disclosure frequency
Variations in the interpretation and implementation of materiality, proprietary and confidentiality, and in the frequency of disclosures	CRR defines the concepts in very broad terms	Lack of more specific criteria gives institutions large room for interpretation and implementation
Lack of transparency and uncertainty	Limited requirements to enforce/ensure transparency for the use of the disclosure waivers and/or the choice of the frequency of disclosures	

The specific problems described above may damage stakeholder confidence in the banking sector, which may then lead to more generic and wider issues such as the ineffective functioning of the EU banking sector and consequently that of the internal market.

Baseline scenario

The EBA carried out a mapping exercise that identified current practice in terms of guidance beyond what the regulatory framework provides for the materiality, proprietary and confidentiality of information for disclosure. The exercise covered 15 EU and EEA jurisdictions. The mapping exercise summarised is presented in Table 2 forms the basis of the baseline scenario.

Table 2 Regulatory framework with relevant provision on materiality, proprietary and confidentiality, and frequency of disclosure

Member State	Materiality	Proprietary	Confidentiality	Frequency
AT	(✓)	(✓)	(✓)	X
BG	X	X	X	X
DE	✓	✓	✓	X
EL	X	X	X	✓
ES	X	X	X	:
FR	X	X	X	X
IS	X	X	X	X
IT	X	X	X	✓
LU	X	X	X	X
NO	✓	✓	✓	✓
PL	X	:	:	X
PT	✓	X	X	✓
SI	X	X	X	✓
SK	X	✓	✓	✓
UK	X	X	X	X

“:” refers to ‘no available information’.

(✓) refers to situations where guidance existed in the past but have been superseded by the CRR

Table 2 indicates that most countries have not implemented specific elements on materiality, and/or proprietary and/or confidentiality of information. Note that even though specific provisions for regulatory disclosures do not exist in the jurisdictions, NCAs may have introduced more general practices on these issues in their accounting or auditing standards.

Most countries have not set a higher disclosure frequency, and for those that have, divergences can be observed in (i) the frequencies that have been set, and (ii) the information that is to be provided more frequently.

Objectives of the guidelines

Current GLs have the following objectives:

- **Setting a harmonised yet flexible framework in terms of procedures and rationale for institutions to follow:**

- when they assess information to be material, proprietary or confidential before the disclosure;
- when deciding the level of disclosure frequency, e.g. when the disclosure of information should be on a more frequent basis than annually.

The GLs specify the process that institutions should follow and the elements they should consider when using the disclosure waivers and when they decide (or not) to provide more frequent disclosures. The objective is to reduce the scope for discretionary power to create a common level playing field in the EU banking sector.

- **Increasing transparency on the use of the disclosure waivers and on the provisions for frequency of disclosure:**

The GLs specify disclosure requirements for the use of waivers, e.g. indicators used for the assessment of materiality, and the minimum information that should be considered for disclosure more frequently than annually, should specific indicators be met.

Overall, the GLs are expected to encourage consistent practices and comparable disclosures across EU Member States. In theory, harmonisation should increase stakeholder confidence and allow markets to work more efficiently.

Technical options

Technical options present the alternative approaches that have been considered in the drafting stage of the GLs and reflect the sections of the document. In line with the problem definition, the following alternative approaches in the development of the GLs were considered:

- a. **Options for implementation: materiality, proprietary and confidentiality and disclosure frequency**
 - **Option 1.1:** not introducing specifications for i) the process to be followed for the use of disclosure waivers and ii) the decision on disclosure frequency
 - **Option 1.2:** introducing specifications for i) the process to be followed for the use of the disclosure waivers and ii) the decision on disclosure frequency
- b. **Options for assessment indicators: materiality, proprietary and confidentiality**
 - **Option 2.1:** introducing quantitative parameters/thresholds for institutions to use when assessing materiality, proprietary and confidentiality of an item of information
 - **Option 2.2:** introducing qualitative indicators for institutions to use when assessing materiality, proprietary and confidentiality of an item information

- **Option 2.3:** introducing both qualitative and quantitative indicators and elements to consider for institutions to use when assessing materiality, proprietary and confidentiality of an item of information
- c. **Options for the assessment indicators: frequency of disclosure**
- **Option 3.1a:** creating new criteria to help institutions assess the need for information disclosure (related to Part Eight of CRR) more frequently than annually
 - **Option 3.1b:** re-using the already existing criteria that are applied to identify institutions for supervisory activities
 - **Option 3.2a:** only institutions that fall under the scope of Reporting Phase II disclose information on a quarterly basis
 - **Option 3.2b:** only institutions that meet the criteria to be included in the GSII denominator sample disclose information on a quarterly basis and institutions meeting the criteria to be included in Reporting Phase II disclose on semi-annual basis

The different technical options have been assessed to select the options that achieve an optimal balance between flexibility and simple, harmonised rules for institutions to follow.

Assessment of the technical options and the preferred set of options

a. **Assessment of the options for the implementation: materiality, proprietary and confidentiality and frequency of disclosure**

The options discuss introducing specifications when the institutions assess how (i.e. the procedures through which) it is decided (not) to disclose specific information more frequently or based on concerns regarding materiality, proprietary or confidentiality.

The EBA believes that specifying qualitative criteria and procedures (Option 1.2) achieves the objective of setting a framework in which institutions follow similar procedures and different practices can be comparable.

Option 1.2 may marginally increase the costs for the industry, as institutions should already have a disclosure policy in place to be complemented it by a specific policy on the assessment of disclosure waivers. Nevertheless, an incremental change is expected to be manageable by institutions, especially considering the resulting strengthening of the market.

b. **Assessment of the options on assessment indicators: materiality, proprietary and confidentiality**

Option 2.1 suggests quantitative measures and thresholds when institutions decide if they should treat a specific item of information as material, proprietary or confidential. The option suggests that when an institution decides not to disclose particular information, the non-disclosure has to

be justified by quantitative criteria and that this justification should be available to stakeholders. For instance, the guidelines could state that institutions need not separately disclose an amount of exposure when it is lower than 3% of their total consolidated exposures.

Nevertheless, this approach has its drawbacks, especially as the variety of institutions and their risk profiles that make it difficult to (i) apply uniform thresholds defined in these GLs to all institutions (which all use their own internal approaches in measuring risks), and (ii) to apply quantitative thresholds to decide about the materiality, and confidential or proprietary nature of all types of information. Therefore, relying on quantitative thresholds only is not an effective and precise benchmark for identifying the materiality, proprietary or confidentiality of information for disclosure.

A similar argument can be presented for Option 2.2 that suggests using only qualitative assessment for materiality of information. It is not realistic to rely solely on quantitative indicators because the objective of achieve comparability and consistency in assessment and implementation cannot be reached. This option would give institutions and NCAs room for interpretation. Besides, qualitative approaches alone may fail to accurately assess the materiality of quantitative information.

Option 2.3 merges the previous options and finds an effective balance between quantitative benchmarks and qualitative assessment to reflect the differences between the characteristics and business models of institutions. Institutions will be able to resort to their own quantitative indicators, but they should always consider the possibility of an item of information being material not only by its size but also by its nature. Option 2.3 is therefore the preferred option.

Costs for the industry and NCAs depend on the indicators implemented by institutions. Under the mandate of the current GLs, institutions will be allowed to continue to use their own assessment tools provided that they comply with the provisions of these GLs. Therefore, the additional costs associated with conducting the assessment according to the specifications in these GLs are not expected to be high.

c. Assessment of the options on the assessment indicators: frequency of disclosure

The objective of the policy option is to achieve a level playing field and transparency in the disclosure practices of institutions that have a relatively large impact on the EU banking sector while leaving out the smallest institutions, i.e. the net overall benefit from the intervention is positive.

The exercise requires the definition of a set of indicators to specify the disclosures listed in Article 433 CRR. Option 3.1a suggests the development of indicators specific to these GLs, while Option 3.1b suggests the utilisation of already existing indicators in different other frameworks.

Option 3.1a would allow for indicators to be tailored to the specificities of disclosures. Nevertheless, Option 3.1b would allow consistency between those institutions disclosing more often and those that were deemed of sufficient interest by supervisors to be included in specific

samples. Option 3.1b would also be less costly for institutions and NCAs, as they would not have to monitor an additional set of indicators under the scope of the current GLs. Option 3.1b is therefore the preferred option.

Two options are considered for the existing indicators that should be retained for identifying institutions for which publishing more frequently is advised. Given the importance of institutions covered under Reporting Phase II and the sample for the computation of GSII denominators it is sensible to set criteria that allow for having these institutions disclose more frequently. Nevertheless the disclosure frequency may have to be adapted to the specificities of these two types of institutions.

The EBA observed in its interactions with users a desire appetite to having some Pillar 3 information disclosed more frequently (e.g. quarterly). Option 3.2a would require all institutions that fall under the scope of the Reporting Phase II sample to disclose information on quarterly basis. This would allow for more frequent disclosures by a reasonable sample of significant institutions in the whole EU and in the Euro area.

Option 3.2b would see the frequency of disclosure vary according to the type of institutions considered: institutions included in the sample for Reporting Phase II would disclose on a semi-annual basis, while institutions included in the sample used to compute the GSII denominators would provide disclosures on a quarterly basis. It would ensure that all the major institutions disclose more frequently, while having the highest frequency falling only upon the most significant ones.

The remainder of the section presents the quantitative elements in Option 3.2a and Option 3.2b.

The two options provide for quarterly disclosure by institutions that are subject to disclosure requirements in the CRR and meet criteria consistent with those to be included within the Reporting Phase II sample. Option 3.2 limits quarterly disclosures to those institutions that meet criteria consistent with those to be included within the sample used to compute the GSII denominators.

The analysis team looked at the difference between the two options in terms of coverage by quarterly disclosures of total banking assets by jurisdiction.

The analysis team identified and mapped two proxy samples for these options. These samples (the Reporting Phase II and the GSII denominators sample) are considered as proxies since, especially for the former, they include institutions that shall not comply with the obligations laid down in Part Eight of Regulation (EU) No 575/2013, and so will not have to comply with the GLs. Nevertheless, considering the GLs apply criteria that lead to the inclusion of institutions within these samples, they represent the best estimation of the possible maximum coverage of the GLs in terms of institutions.

It turned out that all institutions currently included in the GSII denominators sample are also included in the Reporting Phase II sample at the date of the submission of the current draft. 192

institutions in 29 EEA countries were in the Reporting Phase II sample, of which 33 (or 17%) in 10 EEA countries also appear in the GSII denominators sample (Figure 1).

Figure 1 Number of banks covered in each Member States

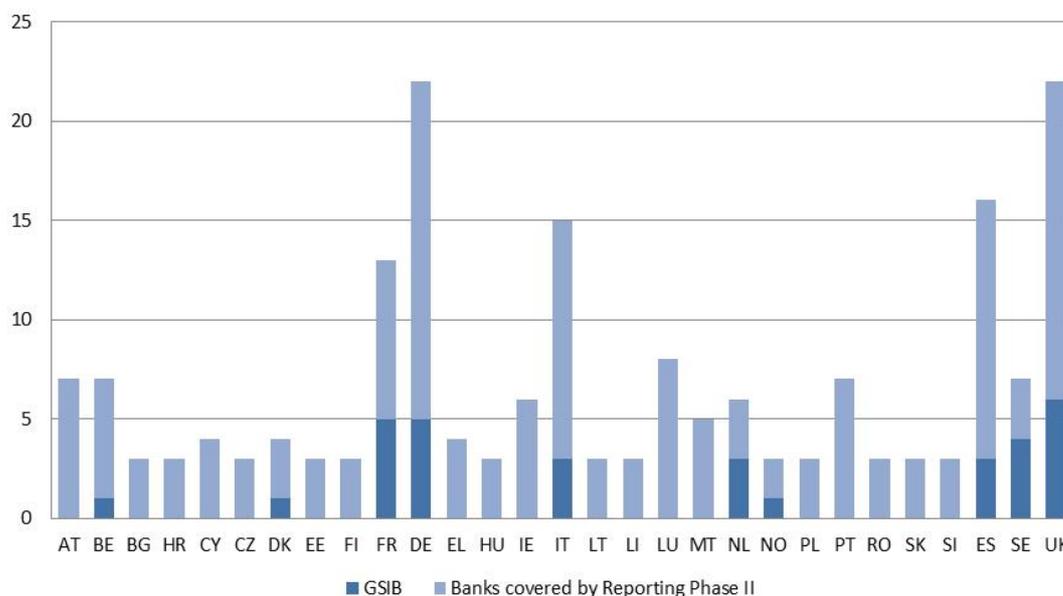


Figure 2 indicates the total number of institutions in EEA states together with the size of banking assets from those institutions that would be covered under each option.

Data have been extracted from different sources (supervisory reporting and institutions’ reports for individual data, Consolidated Bank Data for jurisdiction data) and despite appropriate adjustments, minor inconsistencies in the results can arise due to data availability issues, differences in reference dates and differences in scopes and rules of consolidation between the different data sets, especially as regards insurance subsidiaries and Special Purpose Entities.

Figure 2 The value of assets covered by the samples considered for the technical options

Member State	Total number of institutions jurisdiction (June 2013)	Value of total assets (€ billion, June 2013)	Value of total assets under Reporting Phase II (€ billion, December 2013)	Share of value of assets under Rep. Phase II in total assets (%)	Value of total assets under GSII denominator sample (€ billion, December 2013)	Share of value of assets under GSII denominator sample in total assets (%)
AT	692	1,125	670	59.5	0	0.0
BE*	17	1,025	862	84.0	209	20.3
BG†	30	43	16	36.6	0	0.0
CY*	39	77	41	53.1	0	0.0
CZ†	39	172	99	57.3	0	0.0
DE*	1,697	7,382	4,433	60.1	3,191	43.2
DK†	90	875	656	75.0	399	46.0
EE	16	20	14	67.4	0	0.0
EL	30	379	351	93.0	0	0.0
ES*	183	3,755	3,097	82.4	2,039	54.3
FI	108	529	419	79.1	0	0.0
FR*	17	6,739	6,759	100.2	5,843	87.0
HU†	162	107	51	48.0	0	0.0
HR†	33	59	34	58.3	0	0.0
IE*†	26	897	827	92.3	0	0.0
IT*	60	2,778	2,263	81.4	1,587	57.1
LT†	16	22	16	72.5	0	0.0
LU*†	141	757	283	37.4	0	0.0
LV†	29	28	13	45.0	0	0.0
MT*	27	54	15	27.3	0	0.0
NL	89	2,574	2,106	81.9	1,832	71.1
NO*†	:	:	376	0.0	286	0.0
PL*†	639	328	111	34.0	0	0.0
PT*	110	477	349	73.2	0	0.0
RO†	39	80	32	40.1	0	0.0
SE†	58	1,688	1,406	83.3	1,302	77.1
SI	19	48	21	45.0	0	0.0
SK*	28	56	31	56.0	0	0.0
UK†	177	9,851	8,579	87.1	6,381	65.0
Total	4,611	41,926	33,926	81.0	23,069	55.0

Source and notes:

NCA's and consolidated annual reports of the institutions for the value of total assets for institutions included in the Reporting Phase II and the GSII denominators samples. ECB June 2013 Consolidated Banking Data for the figures for the number of institutions and total assets by jurisdiction.

* Asset figures may refer to an earlier reporting date in 2013 or in 2012.

† Financial reporting is, for all or some institutions, in national or foreign currency hence the figures have been converted into Euros.

: data not available.

Under Option 3.2a, the number of institutions subject to the provision of quarterly disclosures is just over 4.2% of the total banks in the EEA¹⁴, while this number stands at 0.7% for Option 3.2b¹⁵.

Despite the low coverage of the EEA banking sector in terms of number of institutions, both options will allow for a significant coverage of this sector when considering banking assets. Option 3.2a would ensure that quarterly reporting covers approximately 81% of banking assets in the EU. With option 3.2b, the coverage ratio for more frequent disclosures (quarterly and semi-annual) remains unchanged, but the coverage for quarterly disclosures falls to 55%.

These figures may be driven upward by the remaining inconsistencies between the different sources of data and the inclusion in the samples of institutions not subject to disclosure requirements. They nevertheless allow the general trends implied by the two Options to be identified.

It is reasonable to argue that from a system-wide perspective, the additional cost of quarterly reporting for the institutions under Option 3.2a is greater than that under Option 3.2b. This is simply due to the fact that the former covers a greater sample of institutions, and that institutions included in the GSII denominator sample may already be equipped to cope with the quarterly disclosure of information that some of them already disclose in their reports or communications. On the other hand, Option 3.2a provides for wider coverage and could represent a bigger improvement in terms of the dissemination of information compared to the current situation where some institutions within the Reporting Phase II sample may not provide quarterly disclosures (which are not mandatory in the EU).

Achieving a balance between meeting users' needs for more frequent information and costs for institutions that could be entailed by more frequent disclosures advocates the choice of Option 3.2b. Under this Option, all institutions meeting the criteria set in the Guidelines are advised to disclose more frequently, and a higher frequency of disclosure will be advised for the most significant institutions, better able to bear the associated costs. Nevertheless the dissemination of information by less significant institutions will also be improved but its costs will be kept at a reasonable level thanks to an alignment between the disclosure frequency and the mandatory frequency of financial reporting in the EU.

Q13) Do you agree with our analysis of the impact of the proposals in this Consultation Paper? If not, can you provide any evidence or data that would explain why you disagree or that might further inform our analysis of the likely impacts of the proposals?

¹⁴ 192 (sample covered by the option) / 4611 (total number of EEA institutions).

¹⁵ 33 (sample covered by the option) / 4611 (total number of EEA institutions) ; overall, the same number of institutions – 4,2% – will nevertheless be affected by regulatory intervention as in Option 3.2a, as institutions subject to disclosure requirements and meeting criteria consistent with those to be included in the Reporting Phase II sample will have to provide semi-annual disclosures

5.2 Overview of questions for Consultation

Q1) Do you agree that the use of the disclosure waivers and the assessment of the need for more frequent disclosures should be framed – for the purpose of Article 431 CRR - within a dedicated process? If not, please state why

Q2) Do you agree with the features of this process? If not, which ones would you exclude/include?

Q3) Should the guidelines be developed more on what is expected from institutions when an item of information is assessed as material?

Q4) Do you agree with the principles and indicators to be considered in the assessment of materiality? Which additional principles or indicators, if any, would you like to see considered?

Q5) Do you agree with the elements to be considered in the assessment of confidentiality or proprietary? Which additional element, if any, would you like to see considered?

Q6) Do you agree with the indicators in paragraphs 18 that should lead institutions to assess their need to disclose information more frequently? If not, which alternative indicators would you suggest?

Q7) Do you agree that transparency should be provided on the implementation of the process and on the use of the waivers when this use leads to the non-disclosure of information required by Regulation (EU) 575/2013? If not, why?

Q8) Do you agree that information listed in paragraph 19 should be provided in case disclosures are omitted due to immateriality reasons? If not, why? Do you agree that the provision of this information allows for an optimal degree of transparency regarding the use of the materiality waiver? If not, what additional information should be provided?

Q9) What other techniques, if any, would you use to allow for the disclosure of meaningful information despite concerns about confidentiality or proprietary?

Q10) Do you agree with the list of information that institutions should assess whether to disclose them more frequently than annually? If not, what information would you include in or exclude from this list?

Q11) Do you agree with the suggested frequency of disclosure for the different institutions meeting the different indicators specified in paragraph 18? If not, which alternative frequency would you suggest?

Q12) Do you agree with the proposed implementation date? If not, which alternative date would you suggest?

Q13) Do you agree with our analysis of the impact of the proposals in this Consultation Paper? If not, can you provide any evidence or data that would explain why you disagree or that might further inform our analysis of the likely impacts of the proposals?