INTESA SANPAOLO
International Regulatory and Antitrust Affairs

INTESA SANPAOLO RESPONSE

EBA CONSULTATION ON DRAFT IMPLEMENTING TECHNICAL STANDARDS ON ASSET ENCUMBRANCE REPORTING

EBA/CP/2013/05

24 JUNE 2013

General Remarks

Intesa Sanpaolo is one of the largest European banking groups, active in Italy, Central and Eastern Europe and the Mediterranean area. As one of the main stakeholders in the EU, we welcome the opportunity to comment on the EBA Draft Implementing Technical Standards (ITS) on Asset Encumbrance Reporting. In particular, we share the objective to achieve a harmonized definition of asset encumbrance so as to achieve a consistent reporting framework within the EU.

The financial crisis has showed, especially in its most challenging phases, that the possibility of encumbering high quality assets is a necessary condition to access capital markets as well as Eurosystem refinancing facilities. Therefore, also in light of the considerable attention from investors and regulators on this topic, we recognise the importance of appropriately monitoring asset encumbrance levels. While welcoming the need for transparency and comparable data across EU banks, we warn against mandatory, one-size-fits-all regulatory approaches. In this respect, we highlight that the Italian covered bond (CB) regulatory framework already sets limits to asset encumbrance, whereby CB issuers must meet sound capitalization levels (total capital ratio no lower than 11% and Tier I ratio no lower than 7%). The Italian framework also prevents the transfer of assets in the event that the issuer’s capitalisation levels are poor (total capital ratio lower than 9% and/or Tier I ratio lower than 6%). In addition, it should be pointed out that the upcoming regulatory framework on bail-in, which will impact unsecured debt-holders, will also have consequences on encumbrance. Therefore, we caution against further regulatory requirements in this area.

Implementation of the new reporting requirements will require considerable efforts both in terms of administrative and IT costs. The amount of work and investments required should not be underestimated. By way of example, the data requested on central-bank-eligible unencumbered assets in the draft ITS are particularly complex as regards the definition of algorithms in order to identify potentially transferable loans to covered pools for ABS and CB. Indeed, in order to ascertain whether a given asset is central-bank eligible, a number of factors must be taken into account and double-checked. At present, this process is mostly made manually and as such, it is particularly time-consuming and not easily compatible with other IT priorities. It is therefore crucial that the deadline provided for the first reporting exercise allows for sufficient time (at least 18 months) so as to make this process as automatic as possible. This is also important in order to provide a reliable outcome. In this respect, EBA may envisage the introduction of a phase-in period for reporting on some of the requested data. At the same time, given the overall burden of the new reporting requirements, EBA may consider reducing the frequency of reporting.

Finally, as a general remark, we ask for simplification, wherever possible, of provisions and procedures on supervisory reporting. In this respect, as further pointed out below, some of the information requested may overlap with the data to be reported in the context of other reporting frameworks, such as that on liquidity within Basel III. We believe that EBA should aim at consistency and simplification of requirements. This would ensure efficiency, legal certainty, and would reduce the administrative burden on both supervisors and institutions.

Responses to the Questionnaire

Q1: Is the definition of asset encumbrance sufficiently clear?

We deem the proposed definition of asset encumbrance as sufficiently clear. The use of a principle-based definition, that puts an emphasis on the effects of the encumbrance on the asset affected rather than on the legal status or the contractual structure of the encumbrance itself, would have the advantage of virtually covering all relevant contracts and transactions that can be a source of asset encumbrance. Nevertheless, it is important that the chosen definition is consistent and applicable to the different EU legal frameworks. This would promote consistency in interpretation and legal certainty, thus ensuring a level playing field. It could also be relevant in the context of bankruptcy procedures, bail-in, and other measures provided in the recovery and resolution framework. Therefore, we invite EBA to carefully evaluate the pros and cons of the chosen approach.

Q2: Do you agree with the decision to follow the level of application as set out for prudential requirements? If not, what other level of application would be appropriate?

The decision to follow the level of application set out in the upcoming Capital Requirement Regulation (CRR) for prudential requirements is sensible.

Q3: Do you believe the chosen definition of asset encumbrance ratio is appropriate? If not, would you prefer a measure that is based solely on on-balance sheet activities (collateral received and re-used, for instance from derivatives transactions would not be included) or a liability?

We believe that the chosen definition for the asset-encumbrance ratio is appropriate. It is important that the ratio encompasses both on and off-balance sheet assets and liabilities so as to provide a comprehensive picture.

Q4: Do you agree with the thresholds of respectively 30 bn. € in total assets or material asset encumbrance as defined as 5% of on- and off-balance sheet assets encumbered? If not, why are the levels not appropriate and what would be an appropriate level? Should additional proportionality criteria be introduced for the smallest institutions?

We agree with the proposed thresholds and level of material asset encumbrance. These would ensure proportionality and would sufficiently capture institutions and activities which can be a source of encumbrance.

It is key to allow for reporting on asset encumbrance on a consolidated basis, on the basis of the waiver provided in article 6 of the CRR. We also note that the proposed threshold on the assets volume is in line with the provisions on the Single Supervisory Mechanism (SSM) Regulation and is thus sensible.

Q5: Under what circumstances might unencumbered assets of the types of loans on demand, equity instruments, debt securities and loans and advances other than loans on demand not be available for encumbrance?

It is difficult to provide a comprehensive picture of assets that may be not available for encumbrance. Generally, assets whose terms and conditions are too flexible in terms of amount/maturity are difficult if not virtually impossible to encumber. Loans on demand and overdraft facilities would fall in these categories, though in our experience, these are still among the most popular way to fund SMEs, at least in Italy. Furthermore, even when a maturity/amount does exist it is quite difficult to encumber the relevant asset when the maturity is short and the amount is small.

Q6: What additional sources of material asset encumbrance beyond the one listed in rows 20 to 110 and 130 to 150 in template AE-Source do you see?

We generally concur with the transactions and contracts identified as possible sources of material asset encumbrance in template AE. We suggest, however, integrating the generic definition of “collateralised deposits” with some examples. For instance, it is not clear whether funding borrowed from International Financial Institutions (IFIs), such as the European Investment Bank (EIB), that is generally secured by the loan in conjunction with which funding is obtained, would be included in the scope.

Q7: Do you believe the central bank repo eligibility criteria is an **appropriate** ***marketability criteria or should other criteria, such as risk weights, be used? If other criteria should be used, what could be the alternative?***

We regret that the consultation document does not specify under what market stress scenarios the definition of marketability criteria would apply. Obviously, as debated in the context of liquidity reporting, it is difficult to identify ex-ante marketable assets in stressed scenarios. Indeed, we highlight that all of the proposed criteria would have pros and cons and may thus pose limits in times of stress.

Much also depends on whether EBA’s intention is to define marketability at stressed conditions in the context of financial markets funding or rather of access to central-bank liquidity facilities. Evidently, depending on the case, the marketability criteria would differ. It is our understanding however, that in case of severe stress, marketability of assets for central bank financing purposes would be the most relevant scenario in order to test assets encumbrance. Hence, in the absence of further clarifications, we would agree in identifying central bank repo eligibility as an appropriate marketability criterion.

Q8: Do you believe the chosen scenarios are appropriately defined? What alternative definitions would you apply?

We generally support the defined scenarios for contingent encumbrance.

Q9: Does the instructions provide a clear description of the reporting framework? If not, which parts should be clarified?

In general, the instructions provide a clear description of the reporting framework and are accurate. However it could be useful to add examples as in the case of covered bonds (see table sets related to covered bonds in page 7), as an instance for the treatment of "Derivatives (liabilities)" – see in template AE point v. and Annex 2 – page 6, 2.1.1.

In addition, as regards central-bank funding and the calculation of related encumbered assets, the criteria defined to identify the specific collateral for each operation, as collateral is pooled together, refer to proportionality. However, they are different from those provided within the Basel III Framework, i.e. from the worst asset to the best – ref. "Instructions for Basel III Monitoring" par. 6.2.2. Please note that this might result in a further burden for reporting institutions, potentially providing different views on asset-pools composition. In addition, further clarifications should be provided for the treatment of collateral posted in other types of asset pools - for example those used in triparty platforms like GC pooling).

Finally, referring to Annex 2, par. 2.1.1 – 16, it could be useful to add instructions on how the encumbrance should be treated in the event of a repo transaction collateralized by a same ISIN, thus resulting (for the same amount) both as on "own-account assets" and as "collateral received from reverse repurchase agreements". In other words, it is unclear whether outright long position or whether the ones related to reverse repo transactions (even if there is no possibility to directly link repos and matched reverse repos deals) should be considered first. Therefore, it should be specified whether the encumbrance should be reported in Template AE-assets or in Template AE-collateral. Please note that "Instructions for Basel III Monitoring" par. 6.2.2 explicitly indicates that the second option should be applied.

Q10: Do you identify any overlaps with the existing reporting framework, which could be mitigated?

Much of the information requested might overlap with the LCR and NSFR reporting requirements. The new liquidity reports, in particular the reporting on Net Stable Funding Ratio (NSFR), requires details regarding the encumbrance level on asset classes, although using a different set of classifications. At the same time, the LCR framework already includes an extensive range of stress scenarios, albeit based on different methodologies (3 notches downgrade). As previously highlighted (please refer to the second and third paragraph of Q9 answer), the criteria defined to identify the specific collateral that secure central-bank funding are different from those provided within the Basel III framework.