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COVER NOTE

From: Secretary-General of the European Commission,
signed by Mr Jordi AYET PUIGARNAU, Director

date of receipt: 4 September 2017

To: Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of
the European Union

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Subject: COMMISSION DELEGATED REGULATION (EU) No .../.. of 4.9.2017
supplementing Regulation (EU) No 575/2013 of the European Parliament
and of the Council with regard to regulatory technical standards for
disclosure of encumbered and unencumbered assets

Delegations will find attached document C(2017) 5959 final.

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COMMISSION DELEGATED REGULATION (EU) No .../..

of 4.9.2017

supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards for disclosure of encumbered and unencumbered assets

(Text with EEA relevance)

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

Article 443 of Regulation (EU) No 575/2013 (the ‘Regulation’) empowers the Commission to adopt, following submission of draft standards by the European Banking Authority (EBA) and in accordance with Articles 10 to 14 of Regulation No (EU) 1093/2010, regulatory technical standards to specify the disclosure of the balance sheet value per exposure class broken down by asset quality and the total amount of the balance sheet value that is unencumbered.

In accordance with Article 10(1) of Regulation No (EU) 1093/2010 establishing the EBA, the Commission shall decide within three months of receipt of the draft standards whether to endorse the drafts submitted. The Commission may also endorse the draft standards in part only, or with amendments, where the Union's interests so require, having regard to the specific procedure laid down in those Articles.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

In accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has carried out a public consultation on the draft technical standards submitted to the Commission in accordance with Article 443 of the Regulation. A consultation paper was published on the EBA internet site on 25 April 2016 and the consultation closed on 25 July 2016. Moreover, the EBA invited the EBA’s Banking Stakeholder Group set up in accordance with Article 37 of Regulation No (EU) 1093/2010 to provide advice on them. The EBA has also submitted an explanation on how the outcome of these consultations has been taken into account in the development of the final draft technical standards submitted to the Commission.

Together with the draft technical standards, and in accordance with the third subparagraph of Article 10(1) of Regulation No (EU) 1093/2010, the EBA has submitted its Impact Assessment, including its analysis of the costs and benefits related to the draft technical standards submitted to the Commission. This analysis is available on pages 36-39 of the Final Draft Regulatory Technical Standards package.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The EBA was required pursuant to Article 443 of the Regulation to take into account the European Systemic Risk Board Recommendation ESRB/2012/2 of 20 December 2012 on the funding of credit institutions. In keeping with the Recommendation, the draft technical standards (‘TS’) and the accompanying templates were designed to cover both encumbered and unencumbered assets. The draft TS have been developed so as to provide transparent and harmonised information on asset encumbrance across Member States based on a harmonised definition of encumbrance and in order to enable market participants to compare the institutions in a clear and consistent manner. The TS include disclosure templates which are designed to show the amounts of encumbered and unencumbered assets of an institution per exposure class, including a breakdown thereof by an asset quality indicator, being extremely high quality liquid assets and high quality liquid assets. In doing so, they also differentiate assets that are used to support existing funding or collateral needs from those assets that are

available for potential funding needs. The templates are supplemented with narrative information on the importance of encumbrance in the funding model of the institution.

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012¹, and in particular the fourth subparagraph of Article 443 thereof,

Whereas:

- (1) Pursuant to the first subparagraph of Article 443 of Regulation (EU) No 575/2013, the European Banking Authority (EBA) issued guidelines on the disclosure of encumbered and unencumbered assets on 27 June 2014 (the "EBA Disclosure Guidelines"²). The second subparagraph of Article 443 of Regulation (EU) No 575/2013 provides that EBA is to develop draft regulatory technical standards to specify disclosure of the balance sheet value per exposure class broken down by asset quality and the total amount of the balance sheet value that is unencumbered, taking into account Recommendation ESRB/2012/2 of the European Systemic Risk Board of 20 December 2012 on funding of credit institutions ("Recommendation ESRB/2012/2")³ and conditional on EBA considering in its report that such additional disclosure offers reliable and meaningful information. The EBA report on asset encumbrance⁴ concluded that disclosure of encumbrance in the Union is vitally important as it allows market participants to better understand and analyse the liquidity and solvency profiles of institutions and compare those profiles across Member States in a clear and consistent manner. Based on those conclusions, the EBA developed draft regulatory technical standards in order to ensure a fully harmonised approach to asset encumbrance disclosure.

¹ OJ L 176, 27.6.2013, p.1.

² Guidelines on disclosure of encumbered and unencumbered assets (EBA/GL/2014/03).

³ OJ C 119, 25.4.2013, p.1.

⁴ EBA Report on asset encumbrance, September 2015.

- (2) The EBA Disclosure Guidelines cover both encumbered and unencumbered assets. This is because the first subparagraph of Article 443 of Regulation (EU) No 575/2013 requires that Recommendation ESRB/2012/2 and, in particular, Recommendation D - Market transparency on asset encumbrance ("Recommendation D") be taken into account. Point 1(a) of Recommendation D recommends disclosure of encumbered and unencumbered assets. The second subparagraph of Article 443 of Regulation (EU) No 575/2013 also provides that Recommendation ESRB/2012/2 is to be taken into account when developing the draft regulatory technical standards referred to in that subparagraph. Furthermore, encumbered assets need to be included in such standards to ensure that the disclosure offers reliable and meaningful information. Therefore, both encumbered and unencumbered assets should be disclosed.
- (3) The EBA was advised in Recommendation D to ensure, in developing the EBA Disclosure Guidelines, that the level and evolution of assets encumbered to central banks, as well as the amount of liquidity assistance given by central banks, cannot be detected. That advice has also been taken into consideration in this Regulation.
- (4) Encumbered assets or collateral received and other off-balance sheet items may be pledged to secure funding. Therefore, in order to allow market participants to better understand and analyse the liquidity and solvency profiles of institutions and access information about the availability of assets to secure funding, institutions should disclose the encumbrance of all on-balance sheet assets and the encumbrance of all off-balance sheet items separately. The disclosure should relate to all collateral received, arising from all on-balance sheet and off-balance sheet transactions regardless of their maturity, including all operations with central banks. While assets disclosed as encumbered assets include assets encumbered as a result of all operations with any counterparty (including central banks), it is not necessary to disclose the encumbrance resulting from operations with central banks separately from the encumbrance resulting from operations with other counterparties. This is without prejudice to the freedom for central banks to establish the modalities for the disclosure of emergency liquidity assistance.
- (5) In order to ensure consistency and promote comparability and transparency, the provisions relating to the disclosure templates on encumbrance should be based on the reporting requirements on encumbrance provided for in Commission Implementing Regulation (EU) No 680/2014⁵. However, to avoid unintended consequences (such as the ability to identify emergency central bank funding) some deviations are needed. In particular, and taking into account Recommendation D, the disclosure of information relating to the amount of encumbered and unencumbered assets should be based on median values rather than point-in-time values as required in Annex XVII to Implementing Regulation (EU) No 680/2014. Similarly, the level of granularity of the information to be disclosed for specific values and transactions should be less than that of the reporting requirements set out in Implementing Regulation (EU) No 680/2014. Furthermore, since asset encumbrance depends heavily on the risk profile and business model of the institution concerned, the quantitative data should be supplemented with narrative information.

⁵ Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (OJ L 191, 28.6.2014, p. 1).

- (6) The disclosure requirements for encumbered and unencumbered assets and, in particular, the disclosure requirements regarding transferred assets, pledged assets and off-balance sheet collateral received and posted, should apply in addition to any existing disclosure requirements under the applicable accounting framework.
- (7) In order to ensure the proportionate application of the disclosure requirements set out in Article 443 of Regulation (EU) No 575/2013 to smaller institutions which do not have material levels of asset encumbrance, information on the quality of encumbered and unencumbered assets should not be required from such smaller institutions. Information on the quality of encumbered and unencumbered assets ("asset quality indicators") is based on the asset quality properties attributed to assets of extremely high liquidity and credit quality and assets of high liquidity and credit quality, as defined in Commission Delegated Regulation (EU) 2015/61⁶. As investment firms that do not form part of a banking group are not covered by that Delegated Regulation and, given that, where investment firms form part of a banking group, the relevant information is disclosed on a consolidated basis, it is appropriate to also exempt investment firms from disclosing information on the quality of encumbered and unencumbered assets, to avoid incurring disproportionate costs.
- (8) Given the novelty of the requirement to provide information on the asset quality indicators, the application of the provisions on the disclosure of such indicators should be deferred by one year, to allow institutions to develop the necessary IT systems.
- (9) This Regulation is based on the draft regulatory technical standards submitted by the EBA to the Commission.
- (10) EBA has conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the opinion of the Banking Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council⁷,

HAS ADOPTED THIS REGULATION:

Article 1
Disclosure requirements for all institutions

1. Institutions shall disclose the amount of encumbered and unencumbered assets under the applicable accounting framework by asset type in columns C010, C040, C060, and C090 of Template A of Annex I, in accordance with the instructions in Annex II.
2. Institutions shall disclose information on collateral received by asset type in columns C010 and C040 of Template B of Annex I, in accordance with the instructions in Annex II.

⁶ Commission Delegated Regulation (EU) 2015/61 of 10 October 2014 to supplement Regulation (EU) No 575/2013 of the European Parliament and the Council with regard to liquidity coverage requirement for Credit Institutions (OJ L 11, 17.1.2015, p. 1).

⁷ 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 (OJ L 331, 15.12.2010, p. 12).

3. Institutions shall disclose the liabilities associated with encumbered assets and collateral received as set out in Template C of Annex I, in accordance with the instructions in Annex II.
4. Institutions shall disclose narrative information relating to the impact of their business model on their level of encumbrance and the importance of encumbrance in their business model as set out in Template D of Annex I, in accordance with the instructions in Annex II.

Article 2

Additional disclosure requirements for certain institutions

1. In addition to the information referred to in Article 1, institutions that meet the conditions set out in paragraph 2 shall disclose:
 - (a) the asset quality indicators by asset type in columns C030, C050, C080 and C100 as set out in Template A of Annex I, in accordance with the instructions in Annex II ;
 - (b) the asset quality indicators by types of collateral received and debt securities issued, including covered bonds and asset-backed securities (ABSs), in columns C030 and C060 as set out in Template B of Annex I, in accordance with the instructions in Annex II.
2. Paragraph 1 shall apply only to credit institutions that meet either of the following conditions:
 - (a) their total assets, calculated in accordance with paragraph 10 of point 1.6 of Annex XVII to Regulation (EU) No 680/2014, amount to more than EUR 30 billion;
 - (b) their asset encumbrance level, calculated in accordance with paragraph 9 of point 1.6 of Annex XVII to Regulation (EU) No 680/2014, is above 15 %.

Article 3

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 2 shall apply from [*instructions to the OJ: one year from the entry into force of this Regulation.*]

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, 4.9.2017

For the Commission
The President
Jean-Claude JUNCKER