



EBA/GL/2014/14

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Guidelines

on materiality, proprietary and confidentiality and on disclosure
frequency under Articles 432(1), 432(2) and 433 of Regulation (EU)
No 575/2013

Contents

1. Executive summary	3
2. Background and rationale	6
6. EBA guidelines on materiality, proprietary and confidentiality and on disclosures frequency under Articles 432(1), 432(2) and 433 of Regulation No (EU) 575/2013	14
Status of these guidelines	14
Reporting requirements	14
Title I - Subject matter, scope and definitions	15
Title II- Processes and internal arrangements	16
Title VII - Disclosures to be provided more frequently than annually	21
Title VIII- Final provisions and implementation	23
7. Accompanying documents	24
7.1 Cost- benefit analysis / impact assessment	24
7.2 Views of the Banking Stakeholder Group (BSG)	37
7.3 Feedback on the public consultation	38
Summary of key issues and the EBA's response	38
General comments	38
Comments on the process	38
Comments on the assessment of materiality	39
Comments on the assessment of the confidential or proprietary nature of disclosures	39
Frequency of disclosures	39
Implementation date	39
Summary of responses to the consultation and the EBA's analysis	40
8. Confirmation of compliance with guidelines and recommendations	67

1. Executive summary

Part Eight of Regulation (EU) No 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 three Guidelines.

Part Eight of Regulation (EU) No 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 if it 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 relating to their materiality, proprietary nature or confidentiality.

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

In addition, Part Eight only sets the minimum requirement to disclose information on an annual basis, and leaves 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 concepts of materiality, proprietary and confidentiality have been implemented differently by different institutions. In addition, few disclosures have been provided on the implementation of these concepts and on information that has therefore not been disclosed. While this divergence is to some extent connected to the variety of types of institutions and of the risks they face, it can, when combined with a lack of transparency, results in a sub-optimal outcome and can create uncertainty for stakeholders in terms the comprehensiveness of the

information provided. Thus, concerns have been raised in various forums¹ about the use of the concept of materiality by institutions and it has been pointed out that guidance and transparency on this concept are needed to ensure that it is properly implemented.

With regard to the more frequent disclosure of information, the EBA observed that most institutions disclose regulatory information on a quarterly basis (for instance capital, solvency and Risk Weighted Assets - 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 disclosures already provided by institutions.

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 the 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 the 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 a decision not to disclose an item of information based on materiality, proprietary or confidentiality concerns should be made by senior management or a designated committee thereof and that all institutions that are required to comply with the obligations specified in Part Eight of the CRR should consider specific criteria when assessing the need to provide this information more frequently.

Flexibility is necessary to accommodate 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 are no common thresholds for materiality (because both quantitative and qualitative aspects have to be considered) but users should be made aware of

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>>

the types of information that have been assessed as immaterial. Similarly, institutions will decide whether they need to disclose information more frequently, but the guidelines specify a list of information that institutions meeting specific criteria should pay particular attention to when making a decision to disclose information more frequently.

The guidelines essentially specify provisions from Regulation (EU) No 575/2013 that already existed under the previously applicable piece of legislation (Directive 2006/48/EC). This should contribute to the mitigation of compliance costs for institutions in terms of the provisions related to the material, confidential or proprietary nature of information. However, costs may arise due to the expectation of more frequent disclosures, although these costs would be mitigated by the consideration in the provisions of the guidelines of existing disclosures and information available in supervisory reporting. The EBA has sought to balance these costs with the added value of more frequent and harmonised information in terms of market discipline, by focusing the expectations in terms of more frequent disclosures on the significant EU institutions.

These Guidelines were subject to a three-month consultation period between June and September 2014. They will enter into force after their inclusion in the supervisory procedures applicable in each jurisdiction for which the national competent authority (NCA) intends to comply with the Guidelines.

2. Background and rationale

Part Eight of Regulation (EU) No 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 users with information on the solvency, risks and risk exposures of institutions. Access to information is one of the conditions necessary to promote the transparency of financial institutions and to contribute to the orderly functioning of financial markets.

Disclosure requirements should be a cornerstone of market discipline, enhancing the ability of stakeholders to assess risk in financial institutions which may lead them to change their behavior. Consequently market discipline provides an opportunity for institutions with sound risk management policies and practices to be rewarded with 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 the impact on business, the CRR contains specific provisions allowing certain disclosure requirements to be waived. In particular, 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, which are applicable to institutions that are required to comply with the disclosure requirements in Part Eight of Regulation (EU) No 575/2013, provide guidance on the application of the provisions in Articles 432(1), 432(2) and 433 of the CRR.

3. Disclosures waivers in the CRR: materiality, proprietary and confidentiality

In Article 432(1) and (2) the CRR defines 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 if an institution chooses not to disclose information for confidentiality or proprietary reasons:

- A statement that the specific items of information are not disclosed
- 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.

The EBA has found in various Pillar 3 disclosure assessments since 2009 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 the 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, the supervisory authorities assessing disclosures had to engage with institutions or cross-check their disclosures with supervisory reporting to shed light on the non-disclosure of specific pieces of information.

The current situation therefore creates uncertainty for stakeholders, who may not be well-equipped to discover the reasons behind non-disclosures. In fact, the different approaches used by institutions to implement 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 differing 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 implemented adequately, ‘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 of the CRR, consistently with Article 431(3) of the 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 and in the International Financial Reporting Standards), that 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 the objectives of Pillar 3 reports are different from those of annual reports, leading to the different 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 vice versa.

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 (EU) No 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. Even if it is material, there is no obligation to disclose confidential or proprietary information.

4. Disclosures on a more frequent basis than annually

Article 433 of the 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 of the CRD IV, impose more frequent disclosure for all or part of the disclosure requirements in Part Eight of the CRR⁶ within their own jurisdiction. As a result, practices may vary across jurisdictions. In situations where a decision to disclose regulatory information is left to institutions, Article 433 of the 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 has 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 the information disclosed depends heavily on the policies and culture of individual institutions, although a core set of quarterly/semi-annual 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 as to why some pieces of information are disclosed and others are not.

The current regime therefore 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.

5. 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 the risk profiles of institutions.

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 the CRR;
- How institutions have to apply proprietary and confidentiality in relation to the disclosure requirements of Part Eight, Titles II and III of the CRR; and
- Institutions assessing more frequent disclosures of information in Part Eight, Titles II and III of the 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 assessing the need for more frequent disclosures aim to bring consistency to the practice of disclosing regulatory information more frequently than annually, and to ensure stakeholders can always access to a core set of up-to-date information that has been disclosed at common and appropriate intervals. The guidelines nevertheless do not impose more frequent or additional disclosures: the decision on whether to provide all or part of the disclosures listed in Part Eight of the CRR and in these guidelines more frequently than annually will always have to be made by institutions, after an assessment conducted according to 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 of the CRR.

As the assessments performed by institutions concerning the implementation of disclosure waivers or their need to disclose more frequently will inherently be entity-specific and will vary depending on the specific features of each institution, these guidelines also specify disclosures to be provided to enhance the understanding by market participants and other users of how the disclosure waivers have been applied and the decision on the frequency of disclosures made and to reduce the expectation gap between preparers and users.

The guidelines have been drafted with regard to the mappings of existing practices and requirements as established 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 of the CRD IV or that were in place under the equivalent Article 149 in Directive 2006/48/EC, 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 need for improvement in the implementation of the concept of materiality has triggered some work by the industry, the accounting standard-setting authorities, the IASB and ESMA. This work has been reviewed to ensure that the guidelines appropriately draw on and are consistent with it, although they may be implemented differently. With regard to 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.

Regarding in particular the assessment of the need for more frequent disclosures, despite the fact that all institutions subject to Part Eight of the CRR are required to perform an assessment of their need to provide more frequent disclosures, the mappings above have led to a decision to define more specifically which institutions should especially perform this assessment.

These are institutions which are required to comply with the obligations laid down in Part Eight CRR and in addition meet one of the following criteria: being one of the three largest institutions in a jurisdiction, having EUR 30 billion consolidated total assets, having a four-year average of their total assets amounting to 20% of the four-year average of the GDP of their home Member State, or having consolidated exposures as per Article 429 of Regulation (EU) No 575/2013 in excess of EUR 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 institutions¹¹ (GSII).

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 means that those institutions, in particular, should consider providing disclosures from Part Eight of the CRR more frequently, i.e. semi-annually or quarterly, in accordance with the provisions of these guidelines.

Being subject to the requirements in Part Eight of the CRR is a prerequisite to being 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. The guidelines intend to assist institutions already subject to Part Eight of the CRR when assessing the need for more frequent disclosure, and not to identify which institutions should fall under the scope of Part Eight of the CRR.

The guidelines list information that institutions in the scope of Part Eight of the CRR should pay particular attention to when making a decision to disclose more frequently, although institutions retain freedom in terms of the type and level of details of information disclosed more frequently. This list deserving particular consideration has been drawn up based on 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 based on the type of institutions considered:

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>

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>>

¹¹ Draft RTS on the methodology for the identification of global systematically important institutions <<http://www.eba.europa.eu/documents/10180/717782/EBA-RTS-2014-07+%28Final+Draft+RTS+on+G-SII+identification%29.pdf/06f19fec-cce8-4f57-9398-6e742787dcd3>>

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>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>

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

6. EBA guidelines on materiality, proprietary and confidentiality and on disclosures frequency under Articles 432(1), 432(2) and 433 of Regulation No (EU) 575/2013

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 23.02.2015. 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/2014/14'. 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) No 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 Articles 435(2) (c) (disclosures on management board diversity policy), 437 (disclosures on own funds) and 450 (disclosures on remuneration policy) of Regulation (EU) No 575/2013.
2. Article 432(2) of Regulation (EU) No 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) No 575/2013 provides that if items are omitted 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) No 575/2013 specifies 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 establish the process and criteria for institutions that are required to comply with the obligations specified in Part Eight of the CRR relating to 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'). The guidelines also provide guidance on the institutions assessing more frequent disclosures.
5. These guidelines are addressed to institutions that are required to comply with the obligations specified in Part Eight of Regulation (EU) No 575/2013 ('institutions') and their competent authorities. The competent authorities should ensure that institutions comply with these guidelines in their assessment of materiality, proprietary, confidentiality and frequency of disclosure.
6. When adopting formal policies on the disclosure requirements referred to in Article 431 (3) of Regulation (EU) No 575/2013, for assessing the appropriateness of their disclosure, including their frequency, institutions should consider all the recommendations included in the Titles II

to V of these guidelines on materiality, proprietary and confidentiality and on disclosure frequency.

Title II- Processes and internal arrangements

7. The formal policies for assessing the appropriateness of disclosure, including their frequency, should include an adequate process covering the use of waivers for omitting disclosures in accordance with articles 432 (1) and 432 (2) of Regulation (EU) No 575/2013 as well as the assessment of the frequency of disclosures in accordance with Article 433 of the same Regulation.
8. The process may be included in an existing process, designed to take decisions related to disclosure topics, as long as it comprises at least the features described below (a to g). It should be proportionate to the size, scale of operations and range of activities of the institution and be consistent with the internal organisation of the institution. The process should as a minimum:
 - a) be approved by the institution's management body or a designated committee thereof;
 - b) identify the organisational unit or units, the senior management or committees thereof and staff responsible for designing, implementing and reviewing the policies on materiality, proprietary and confidentiality and on disclosure frequency;
 - 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 senior management or committees thereof are responsible for making a final decision on whether an item of information should be omitted ('waiver') or if the frequency should be considered as appropriate, after taking into consideration appropriately justified proposals made by the relevant organisational unit or units and staff tasked with implementing the policies on materiality, proprietary and confidentiality and on disclosure frequency;
 - e) define an adequate reporting process regarding the implementation of the policies on materiality, proprietary and confidentiality and on disclosure frequency;
 - f) determine the appropriate level of transparency for each disclosure waiver or appropriate frequency in accordance with Titles VI and 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 pursuant to the provisions in Titles III, IV or V of these guidelines to ensure proper traceability and transparency in the implementation of policies on materiality, proprietary and confidentiality

and on disclosure frequency, (for instance studies showing the potential impact of disclosures of information considered to be proprietary).

10. When institutions have chosen to provide disclosures regarding their formal policy to comply with the disclosure requirements specified in Part Eight of Regulation (EU) No 575/2013, they may usefully consider including a description of the process referred to in this Title in these disclosures as well as outlining the policies on materiality, proprietary and confidentiality and on disclosure frequency pursuant to the provisions in Titles II to V of these guidelines.

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 as a minimum consider the following:

- a) materiality should be assessed on a regular basis and 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 institutions should assess whether the cumulative effect of omitting specific disclosure requirements that are regarded individually as immaterial would result in the 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 for example the influence of the economic and political environment;
- e) materiality should be a user-centric concept and should be assessed based on the assumed users' needs and 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 the 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 on the part of institutions for 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 in the 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 the nature of a given piece of information such as exposures or risks, which can be material by nature or size. An assessment of materiality based only on quantitative approaches or materiality thresholds should not be generally deemed as appropriate for disclosures;
- i) materiality should be a dynamic concept: it 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 made by any relevant function adding value to the assessment of materiality of the disclosures in question, and 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) their business model, based on individual indicators, and long-term strategy;
- b) the size, expressed as a share of regulatory, financial or profitability metrics or aggregates or as a nominal amount, of the item of information or element (risk, exposure) to which the information is related and for which materiality is assessed;
- c) the 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;
- d) the relevance of the item of information in terms of understanding 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 a previous period;

- e) the amplitude of changes to the element to which an item of information is related in comparison to the previous year;
- f) the relation of the information to recent developments in risks and disclosure needs, as well as to market practices regarding disclosures.

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 should relate to information that is so important that disclosure would significantly affect an institution's competitive position. In addition to information on products and systems that, if shared with competitors, would render an 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, on its own, be seen as sufficient reason for avoiding disclosure. Specific reasoning should be available and should be based on an analysis of the incidence of disclosure of proprietary information.
- c) the disclosure waiver related to proprietary information should not be used to avoid disclosing information that would disadvantage an institution in the market because that information reflects an unfavourable risk profile;
- d) the 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 this information would provide too much insight into their business structures.

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. It may be the case, for instance, where an economic sector is so concentrated that disclosing exposures on that sector would result in divulging exposures to a counterparty
- b) a general reference to confidentiality is not a sufficient reason to avoid disclosure: institutions should identify specifically and analyse to what extent the disclosure of a specific item of information would affect the rights of their customers or counterparties or would constitute a breach of legally established confidentiality

obligations. The input of an institution's legal unit or of any legal expert should be considered while performing this analysis.

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

17. All institutions should assess the need to disclose some or all information required by Titles II and III in Part Eight of Regulation (EU) No 575/2013 more frequently than annually in light of the criteria specified in Article 433 of the same Regulation and in accordance with the process described in Title II of these guidelines.

18. Despite the fact that all institutions are required to assess the need to provide more frequent disclosures using any relevant assessment tool within the framework of the elements referred to in Article 433 of Regulation (EU) No 575/2013, 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 exceed EUR 30 billion;
- c) the institution's four-year average of total assets exceeds 20% of the four-year average of its home Member State's GDP;
- d) the institution has consolidated exposures as per Article 429 of Regulation 575/2013 exceeding EUR 200 billion or the equivalent in foreign currency using the reference exchange rate published by the European Central Bank applicable at the financial year-end.

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

19. When an institution decides not to disclose information or a set of requirements due to immateriality, it should clearly state this fact.

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 a proprietary and confidentiality waiver should be sufficient to allow users to fully understand the developments of risks during the period under review. The use of a waiver could lead to the application of aggregation and/or anonymising 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.

Title VII - Disclosures to be provided more frequently than annually

23. Even though it is up to each institution to decide on the type of information and level of detail to disclose to ensure the effective communication of knowledge about their business and risk profile, 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) No 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:
 - i. total amount of Common Equity Tier 1 capital, as in rows 6 and 29;
 - ii. total amount of Additional Tier 1, as in rows 36 and 44;
 - iii. total amount of Tier 1 capital, as in row 45;
 - iv. total amount of Tier 2 capital, as in rows 51 and 58;
 - v. total amount of capital, as in row 59;
 - vi. total regulatory adjustments to each capital aggregate, as in rows 28, 43 and 57;
 - vii. Common Equity Tier 1 ratio, as in row 61;
 - viii. Tier 1 ratio, as in row 62;
 - ix. total capital ratio, as in row 63.

- b) Information required by points (c) to (f) in Article 438 of Regulation (EU) No 575/2013:
- i. the amounts of risk-weighted assets and capital requirements by type of risks specified in Article 92 (3) of Regulation (EU) No 575/2013;
 - ii. the amounts of risk-weighted assets and capital requirements by type of risks specified in Article 92 (3) of Regulation (EU) No 575/2013 and by the exposure classes referred in Article 438 of the same Regulation
- c) information on the leverage ratio as required by Article 451 of Regulation (EU) No 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) No 575/2013:
- i. amount of Tier 1 capital used as a numerator as in row 20, with the specification required in row EU-23;
 - ii. amount of total exposure used as a denominator as in row 21;
 - iii. 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) No 575/2013, separately for exposures for which institutions use own estimates of Loss Given Default 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) No 575/2013 that have experienced highly significant changes 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) No 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 and pursuant to the frequency specified 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 are required to comply with the obligations specified in Part Eight of Regulation (EU) No 575/2013 meet:
- a) institutions meeting the indicator in point d) of paragraph 18 should pay particular attention to the possible need for disclosing:

- i. information listed in points a), b)i, c) and e) of paragraph 23 on a quarterly basis;
 - ii. information listed in point d) and b)ii of paragraph 23 on a semi-annual basis;
 - iii. the full set of information required by Commission Implementing Regulation (EU) No 1423/2013 and the draft ITS on disclosure of the leverage ratio under Article 451(2) of Regulation (EU) No 575/2013 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), b)ii and c) to e) of paragraph 23 on a semi-annual basis.

27. The information listed in points a) and c) of paragraph 23 should be disclosed following the formats specified in Commission Implementing Regulation (EU) No 1423/2013 and the draft ITS on disclosure of the leverage ratio under Article 451(2) of Regulation (EU) No 575/2013.

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

29. When institutions meeting at least one of the indicators listed in paragraph 18 choose not to provide one or more of the disclosures listed in paragraph 23 more frequently than annually they should state this fact at a minimum in the annual release of the document containing the disclosures as required by Part Eight of Regulation (EU) No 575/2013 and provide information on how they have arrived at their decision.

Title VIII- Final provisions and implementation

30. The national competent authorities should implement these guidelines by incorporating them in their supervisory procedures [within six months after publication of the final guidelines].

31. Thereafter, the national competent authorities should ensure that institutions fully comply with these guidelines for all transactions entered into after the adoption of these guidelines.

7. Accompanying documents

7.1 Cost- benefit analysis / impact assessment

Introduction

Article 432(1)-(2) of Regulation (EU) No 575/2013 (CRR) requires the EBA to develop guidelines 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.

Article 16(2) of the EBA Regulation (Regulation (EU) No 1093/2010 of the European Parliament and of the Council) provides that the EBA should carry out an analysis of ‘the potential related costs and benefits’ of any guidelines it develops. This analysis, presented as an annex, should provide an overview of the findings regarding the problem to be dealt with, the solutions proposed and the potential impact of these options.

This annex presents an impact assessment (IA) with cost-benefit analysis of the provisions included in the guidelines. 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 guidelines aim to address. The major problems that the guidelines 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 rational market participants encourage institutions to satisfy the demands of 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 cannot be accessed by stakeholders. The problem of asymmetric information is particularly apparent in the fields of solvency, risks and the risk exposure of institutions, especially when institutions use internal models. To mitigate this issue, the regulatory framework details the information to be disclosed by institutions.

Nevertheless the current regulatory framework also allows 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 are very much open for interpretation when deciding whether or not to disclose particular information. Varying practices amongst institutions has led some stakeholders to require guidance from authorities, especially regarding the concept of materiality.¹²

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 significant flexibility in the implementation of waivers. This flexibility and sometimes the lack of transparency in terms of the application of waivers may create uncertainty for stakeholders.

The same market imperfections are also valid for the frequency of disclosures. 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).¹³ Different institutional practices¹⁴ 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.

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

¹² 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>>

¹³ 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>

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 information to which stakeholders may not have access. This is the case for the assessments 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	The CRR defines the concepts in very broad terms	Lack of more specific criteria gives institutions significant room for interpretation and implementation
Lack of transparency and uncertainty	Limited requirements to enforce/ensure transparency with respect to 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.

The guidelines will seek to address the above-mentioned issues in a way that takes into account the specificities of the EU regulatory framework compared to the Basel framework, i.e. the EU regulatory provisions apply to all banks, not just the internationally active ones.

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 summary of the mapping exercise presented in Table 2 below 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	X	X
PT	✓	X	X	✓
SI	X	X	X	✓
SK	X	✓	✓	✓
UK	X	X	X	X

Table 2 indicates that most countries have not implemented specific elements on materiality, and/or proprietary and/or confidentiality of information. Even though specific provisions for regulatory disclosures do not exist in individual 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

The current guidelines have the following objectives:

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

- when institutions assess information to be material, proprietary or confidential before the disclosure; and

- when deciding the level of disclosure frequency, e.g. when the disclosure of information should be on a more frequent basis than annually.

The guidelines specify the process that institutions should follow and the elements that they should consider when using disclosure waivers and when they decide whether to provide more frequent disclosures. The objective is to reduce the scope for discretionary power to create a level playing field in the EU banking sector.

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

The guidelines specify disclosure requirements for the use of waivers, and the minimum information that should be considered for disclosure more frequently than annually, should specific indicators be met.

Overall, the guidelines are expected to encourage consistent practices and comparable disclosures across EU Member States. In theory, harmonisation should increase stakeholders' 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 guidelines and reflect the sections of the document. In line with the definition of the problem, the following alternative approaches in the development of the guidelines were considered:

- **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
- **Options for assessment indicators: materiality, proprietary and confidentiality**
 - **Option 2.1:** introducing quantitative parameters/thresholds for institutions to use when assessing the materiality, proprietary and confidentiality of an item of information
 - **Option 2.2:** introducing qualitative indicators for institutions to use when assessing the 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 the materiality, proprietary and confidentiality of an item of information

- **Options for 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 the 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 should disclose information on a quarterly basis
 - **Option 3.2b:** only institutions that meet the criteria to be included in the Global Systemically Important Institutions (G-SII) denominator sample should disclose information on a quarterly basis and institutions that meet 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

- **Assessment of the options for implementation: materiality, proprietary nature 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 whether 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 costs for the industry, as institutions should already have a disclosure policy in place to be complemented by a specific policy on the assessment of disclosure waivers. Nevertheless, it is expected that an incremental change will be manageable for institutions, especially considering the resulting strengthening of the market.

- **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 do not need to 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 guidelines to all institutions (which all use their own internal approaches to measure risks), and (ii) to apply quantitative thresholds to make a decision 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 which suggests using only qualitative measures to assess the materiality of information. It is not realistic to rely solely on qualitative indicators because the objective of achieving comparability and consistency in assessment and implementation cannot be reached. This option would give institutions and NCAs room for interpretation. In addition, qualitative approaches alone may fail to accurately assess the materiality of quantitative information.

Option 2.3 merges the previous options to find an effective balance between quantitative benchmarks and qualitative assessments 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 guidelines, institutions will be allowed to continue to use their own assessment tools provided that they comply with the provisions of these guidelines. Therefore, the additional costs associated with conducting the assessment based on the specifications in these guidelines are not expected to be high.

- **Assessment of the options on the assessment indicators: frequency of disclosure**

A harmonised regime to assess the need for more frequent disclosures, possibly leading to an increased frequency of disclosure for some institutions, will provide users with more updated information to assess financial institutions. This will reduce information asymmetry, strengthen market discipline, enhance the confidence of users in institutions and ultimately improve the functioning of financial markets.

Arguably, if increased transparency pays off for institutions, under the form of lower capital costs for more transparent institutions coming from greater confidence in their soundness, it also involves extra costs. In particular, producing more frequent disclosures – especially on a quarterly basis – will generate additional operational costs in terms of adapting or re-setting computer systems, as well as additional human resources costs, when qualified staff are also involved in dealing with supervisory reporting, that is also to be produced on a quarterly basis.

The production of quarterly regulatory information would also run the risk of modifying the balance in an institution's interim disclosures between regulatory and financial disclosures, in favour of the former.

The EBA is aware of these costs and the guidelines seek to mitigate them in a variety of ways, such as building on already existing provisions from the Level 1 text, taking into account existing practices from institutions as well as the needs of users in terms of interim regulatory information and adopting a comply or explain, market-driven approach that allows institutions not to provide information if they are able to explain why (including costs reasons compared to the estimated benefits for users). To the extent possible, the alignment of the guidelines with the discussions currently being held at the Basel Committee regarding Pillar 3 disclosures and their frequency¹⁵ ensures that the guidelines will not impose extra-burden on EU institutions compared to their non-EU peers.

In addition, the guidelines are intended to be applied in a proportionate way: their objective 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 whilst excluding the smallest institutions, i.e. the net overall benefit from the intervention will be positive.

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

Option 3.1a would allow indicators to be tailored to the specificities of disclosures. Nevertheless, agreeing on such specific indicators is itself challenging, and the indicators suggested during the consultation process (especially a threshold in terms of regulatory capital) could have missed the goal of ensuring more transparency from large EU institutions while excluding the smallest ones. For instance, they would have led to no information being disclosed by the major institutions of some countries. This would have been especially the case if the suggested indicators were combined with existing ones. 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 guidelines. Option 3.1b is therefore the preferred option.

There are two options for the existing indicators that should be retained to identify institutions for which publishing more frequently is advised. Given the importance of institutions covered under Reporting Phase II and the sample for the calculation of G-SII denominators it is sensible to set criteria that allow these institutions to disclose more frequently. Nevertheless the disclosure frequency may have to be adapted to the specificities of these two types of institutions.

In its interactions with users, the EBA observed a desire for some Pillar 3 information to be 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 a quarterly basis. This would allow for more frequent disclosures by a reasonable sample of significant institutions within the whole EU and in the euro area.

¹⁵ See Review of the Pillar 3 disclosure requirements - consultative document < <http://www.bis.org/publ/bcbs286.htm>>

Option 3.2b would see the frequency of disclosure vary depending on the type of institution 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 calculate the G-SII denominators would provide disclosures on a quarterly basis. It would ensure that all the major institutions disclose more frequently, but with the highest frequency of disclosure falling only upon the most significant institutions.

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 the 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 calculate the G-SII 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 G-SII denominators sample) are considered to be proxies since, especially for the former, they include institutions that are not required to comply with the obligations specified in Part Eight of Regulation (EU) No 575/2013, and so will not have to comply with the guidelines. Nevertheless, considering that the guidelines apply criteria that lead to the inclusion of institutions within these samples, they represent the best estimation of the possible maximum coverage of the guidelines in terms of institutions.

On the date these guidelines were submitted, all institutions currently included in the G-SII denominators sample are also included in the Reporting Phase II sample. 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

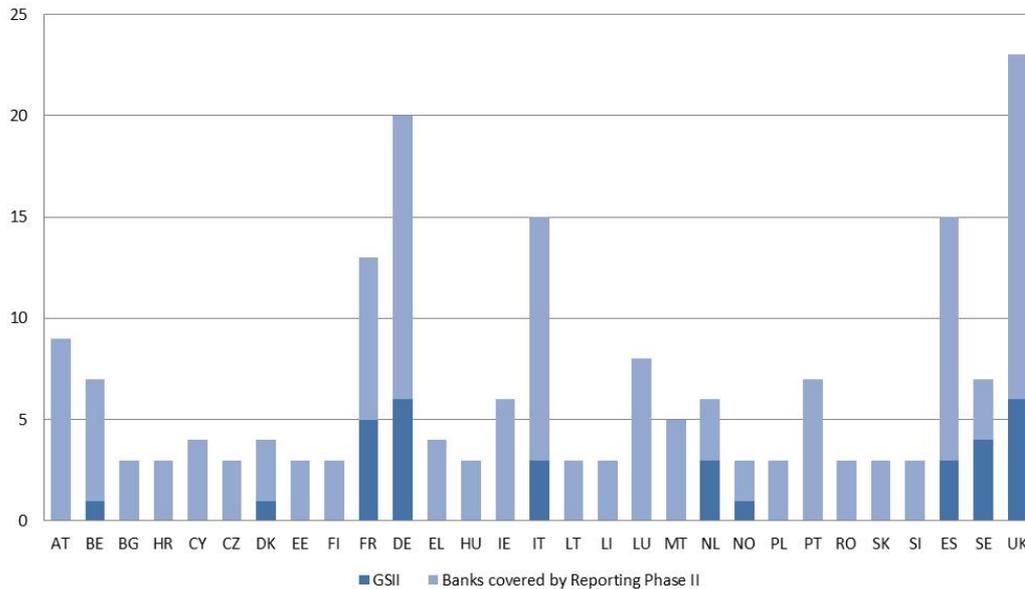


Figure 2 indicates the total number of institutions in EEA states together with the size of the banking assets from those institutions that would be covered under each option.

Data has 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 in jurisdiction (December 2013)	Value of total assets (EUR billion, December 2013)	Value of total assets under Reporting Phase II (EUR billion, December 2013)	Share of value of assets under Reporting Phase II in total assets (%)	Value of total assets under G-SII denominator sample (€ billion, December 2013)	Share of value of assets under G-SII denominator sample in total assets (%)
AT	678	1 090	688	63.1	0	0
BE	16	960	862	89.7	209	21.7
BG [‡]	30	44	16	35.5	0	0
CY	37	67	63	93.7	0	0
CZ [‡]	38	179	99	55.1	0	0
DE	1 682	6 735	4 361	64.7	3 191	47.4
DK [‡]	85	870	656	75.3	399	45.9
EE	15	21	14	64.6	0	0
EL	29	369	351	95.1	0	0
ES	207	3 488	3 051	87.5	2 039	58.5
FI	106	522	419	80.3	0	0
FR	18	6 343	6 759	106.6	5 843	92.1
HU [‡]	159	104	51	49.5	0	0
HR [‡]	32	57	34	59.8	0	0
IE	24	790	748	94.7	0	0
IT	63	2 631	2 264	86.0	1 587	60.3
LT [‡]	16	22	16	71.3	0	0.0
LU	146	719	283	39.5	0	0.0
LV [‡]	28	29	13	43.7	0	0.0
MT	27	50	15	29.4	0	0.0
NL	91	2 433	2 106	86.6	1 832	75.3
NO [‡]	:	:	376	:	286	:
PL [‡]	637	344	111	32.4	0	0.0
PT	109	46	349	75.6	0	0.0
RO [‡]	37	81	32	39.5	0	0.0
SE [‡]	59	1 664	1 406	84.5	1 302	78.3
SI	19	43	20	46.9	0	0.0
SK	25	57	32	57.3	0	0.0
UK [‡]	175	9 294	8 948	96.2	6 381	68.7
Total	4 588	39 468	34 124	86.5	23 069	58.5

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 G-SII denominators samples. ECB December 2013 Consolidated Banking Data for the figures for the number of institutions and total assets by jurisdiction.

‡ 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 EEA¹⁶, while this number stands at 0.7% for Option 3.2b¹⁷.

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 86.5% 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 58.5%.

These figures may be driven up by the remaining inconsistencies between the different sources of data and the inclusion of institutions not subject to disclosure requirements in the samples. Nevertheless they 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 costs of quarterly disclosures in terms of systems, human resources and unbalance in the extent of disclosures between regulatory and financial disclosures 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 the institutions included in the G-SII 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. In addition, the flexibility granted for the publication date of disclosures, in line with the current provisions from Article 433 of the CRR, and the broad alignment between the disclosure provisions of the guidelines and supervisory reporting will allow these institutions to re-use some of the content of their supervisory reporting (COREP) templates in their public disclosures.

On the other hand, Option 3.2a provides 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), but could still be able to use some of the content of their supervisory reporting to produce interim disclosures.

Under both options, costs for institutions would be lowered if the interim disclosures expectations were curtailed. Nevertheless, the guidelines should not be less demanding than the Level 1 text and should be meaningful to users. Therefore, the interim information on own funds, capital requirements and risk exposures listed in Article 433 of the CRR, should be included in the disclosures provisions of the guidelines. With regard to information on leverage and internal models, while not explicitly mentioned by the CRR, the interest of users also justifies including them in the scope of the guidelines.

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

¹⁷ 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

Achieving a balance between meeting users' needs for more frequent information and limiting the costs for institutions that could be entailed by more frequent disclosures means that Option 3.2b is more suitable. Under this Option, all institutions meeting the criteria specified in the guidelines are advised to disclose more frequently, and a higher frequency of disclosure will be advised for the most significant institutions, which are better able to bear the associated costs. Nevertheless the dissemination of information by less significant institutions will also be improved but 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.

Option 3.2b also safeguards proportionality between the interim financial and regulatory disclosures, as more interim regulatory disclosures will have to be provided on a semi-annual than on a quarterly basis by institutions within the G-SII denominator sample, whilst full financial statements should also be released semi-annually. Option 3.2a could have led to some institutions providing only interim regulatory disclosures, if they were not required to provide interim financial disclosures.

7.2 Views of the Banking Stakeholder Group (BSG)

The BSG did not comment on the draft guidelines.

7.3 Feedback on the public consultation

The EBA publicly consulted on the draft proposal contained in this paper.

The consultation period lasted for three months and ended on 13 September 2014. Eleven responses were received, of which nine were published on the EBA website.

This paper presents a summary of the key points and other comments arising from the consultation, the analysis and discussion triggered by these comments and the actions taken to address them if deemed necessary.

In many cases several industry bodies made similar comments or the same body repeated its comments in the response to different questions. In such cases, the comments, and EBA analysis are included in the section of this paper where EBA considers them most appropriate.

Changes to the draft guidelines have been incorporated as a result of the responses received during the public consultation.

Summary of key issues and the EBA's response

General comments

Respondents called for consistency between the EBA guidelines and the work already undertaken by standard-setters, market regulators, national competent authorities and the Basel Committee, especially regarding the frequency of disclosures and materiality. They also believed that the guidelines should not lead to different practices regarding the assessment of a piece of information as material, proprietary or confidential or of its frequency of disclosure between financial statements and regulatory ('Pillar 3') disclosures.

The work of other bodies and fora has been taken into account in the drafting of the guidelines, and the future amendment of these guidelines might be considered once some of this work, especially the work undertaken by the Basel Committee, is finalised. The mandate of the EBA does not provide for the guidelines to be aligned on existing provisions for financial statements, considering the different nature of Pillar 3 disclosures.

Comments on the process

Respondents called for the process to be streamlined and disagreed with having a separate process for assessing the material, confidential or proprietary nature of information and its frequency of disclosure, distinct from the policies to assess the appropriateness of disclosure already required by Article 431 of Regulation (EU) No 575/2013 ('the CRR').

The process was streamlined to facilitate its implementation by institutions. It was clarified that this process is intended to be embedded into the policies mentioned in Article 431, and not to duplicate them.

Comments on the assessment of materiality

Respondents generally appreciated the non-prescriptiveness of the principles put forward in the guidelines, which allow flexibility in their implementation, although some believed they may actually increase clutter in disclosures. Some respondents however believed that the materiality assessment in Pillar 3 should be aligned with the assessment of materiality in financial statements or for audit purposes and that the principles should take proportionality into account. Respondents expressed mixed agreement regarding disclosures on items of information not disclosed due to immateriality.

The non-prescriptive nature of the guidelines has been kept and in particular, they do not set harmonised materiality thresholds. An alignment with other approaches to assess materiality did not appear relevant, as these approaches may be based on different uses of materiality. The requirement to disclose the nature of information not disclosed due to materiality reasons was kept, but in an amended version to address the comments received.

Comments on the assessment of the confidential or proprietary nature of disclosures

Respondents generally called for a better balance between the interests of users and those of institutions, considering the exceptional use of disclosure waivers due to the confidential or proprietary nature of information. They suggested softening the wording and deleting the requirement for a legal analysis in relation to the non-disclosure of confidential information.

The prescriptiveness of the wording was somewhat reviewed to facilitate the implementation, but the specification on legal analysis was kept.

Frequency of disclosures

It was generally felt that the indicators used to assess the need for more frequent disclosures should not be quantitative indicators only but should also include some indicators of qualitative nature, and alternative criteria were suggested. Some respondents also questioned some of the disclosures listed in the guidelines.

The guidelines continue to refer to criteria used for financial reporting and the identification of G-SII, but it was made clear that institutions remain free to use additional criteria and responsible for the extent of their interim disclosures, which can either exceed or be set below the provisions of the guidelines (provided that appropriate justifications are made where necessary).

Implementation date

Respondents disagreed with the implementation date set at 1 January 2015.

The implementation date was postponed to the date of inclusion of the guidelines in the regulatory or legislative framework of each National Competent Authority.



Summary of responses to the consultation and the EBA's analysis

Comments	Summary of responses received	EBA analysis	Amendments to the proposals
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General comments			
<p>Mandate for the EBA to define different assessment processes and frequency of disclosures to the current financial disclosures</p>	<p>One respondent opposed what it perceives to be a divide introduced by the EBA guidelines between the accounting and Pillar 3 frameworks, resulting in both frameworks ultimately moving in different directions, especially regarding the frequency of disclosures, and eventually confusing preparers and users. The respondent argued that the EBA has not been given a legal mandate to make proposals leading to divergence between the regulatory and the accounting frameworks. It would prefer more interaction between the accounting and regulatory disclosure frameworks based on identical policies and processes to present an integrated view to users.</p>	<p>The legal mandate of the EBA is provided in Articles 432 and 433, which empowers the EBA to define how materiality as well as the confidential or proprietary nature of information should be implemented for regulatory disclosures. These Articles also empower the EBA to specify criteria that institutions should especially consider when deciding whether and when to disclose regulatory information more frequently than annually, as well as the type of information that they should especially consider disclosing when these criteria are met.</p> <p>The EBA is not required to align these guidelines with existing processes or frequency of disclosures for financial statements (regarding frequency of disclosures, the only alignment with financial statements required in the CRR relates to the publication date of annual disclosures).</p> <p>The EBA believes that the specificities of regulatory information make it necessary to have specific guidance on how to assess materiality, the proprietary nature and the confidentiality of regulatory information, in accordance with the mandate provided for in the CRR. Nevertheless, this guidance will have to be integrated within existing processes for regulatory disclosures as per Article 431 of the CRR, allowing interaction with the processes for financial information that are currently provided for in each institution’s disclosure policy.</p> <p>As for the type of information recommended to be disclosed more frequently, this has been established based on the results of the EBA review of interim</p>	<p>None.</p>

		disclosures and a survey of users. Moreover, institutions retain the freedom to determine the extent of their interim regulatory disclosures. In addition, the extent of recommended information is greater on a semi-annual basis, when institutions are actually required to publish financial statements as per Directive 2004/109/EC. This will allow for proper interaction between financial disclosures in financial statements and regulatory disclosures in Pillar 3 reports, and will present users with a comprehensive picture of the risks of institutions.	
Coordination with other bodies to ensure the consistent implementation of materiality	Whilst welcoming more practical concepts regarding materiality, confidentiality and proprietary, and agreeing with the need to use different assessment criteria for accounting and prudential purposes, one respondent asked the EBA to consider the work already done by ESMA and National Competent Authorities in these fields, especially regarding materiality. As both accounting and prudential regulations are expected to deliver information relevant to the decision-making process, this would ensure that the concepts specified in the accounting and prudential regulations do not deviate going forward.	The work of ESMA and the NCAs was considered during a preliminary mapping of other works to define the principles to be used for the assessment of materiality. This has resulted in assessment principles consistent with what ESMA, the NCAs and standard-setters bodies have already specified or considered with regard to the assessment of materiality for financial disclosures. Nevertheless, the guidelines could be updated at a later date if necessary to avoid any unnecessary divergences in the future.	None.
Alignment with on-going Basel work	Two respondents pointed out the risk of duplication between the EBA's work and the on-going work of the Basel Committee regarding the review of Pillar 3 disclosures and asked the EBA to take this work into account in its guidelines, in order to avoid the unnecessary duplication of efforts for institutions implementing revised regulations. An example of a contradiction could be that the guidelines propose more qualitative requirements relating to waivers and the frequency of disclosure with greater discretion than the Basel proposals. In particular, for the frequency of disclosures, some respondents argued that the EBA guidelines should not	The proposals from the Basel Consultative document issued in June 2014 relating to the review of Pillar 3 requirements have been taken into consideration as far as the objectives and the timing of the guidelines permitted. As a result, the content of the guidelines appears to be in line with the content of the Basel proposals, or even less demanding as far as frequency of disclosures is concerned. Indeed, the Basel proposal stresses in its Part 2 Guiding principles that disclosure should be meaningful to users (Principle 3) and that a balance should be found between the needs of stakeholders and constraints linked to the	None.

	<p>pre-empt the outcome of the Basel discussions.</p> <p>They believed that this consideration should even lead the EBA to revise its guidelines before their effective date if necessary, so that institutions will not be required to implement the guidelines for a short period of time before the enforcement of the Basel proposals in Europe.</p>	<p>disclosure of proprietary and confidential information (Principle 2). With the guidelines, institutions have already been provided with a framework to implement these principles although they have not become EU law yet.</p> <p>With regard to the frequency of disclosure, the quarterly and semi-annual information required by the Basel proposals and other Rule texts on Own funds and Leverage Ratio disclosures (summary information quarterly and all quantitative information semi-annually) is either consistent or more demanding than the provisions of the Guidelines.</p> <p>The EBA might consider revising the guidelines when the Basel proposals are introduced into EU law.</p>	
<p>Responses to questions in Consultation Paper EBA/CP/2014/09</p>			
<p>Question 1. 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 of the CRR - within a dedicated process? If not, please state why</p>	<p>All respondents supported the idea of having a process and suitable policies in place to frame the use of the disclosure waivers and to set the frequency of disclosures. They believed that formal standards as well as transparency and uniformity in the application of waivers and approaches to frequency will promote a level playing field and the disclosure of consistent and comparable information to stakeholders. They agree with maintaining records of their application to demonstrate the implementation of the processes.</p> <p>However, all respondents but one disagreed that this process should be a separate process from the more general ones already in place as per Article 431, as this Article does not provide for separate processes for disclosure waivers and the frequency of disclosures.</p> <p>A couple of respondents noted that, since institutions already have defined processes and documentation to</p>	<p>The process described in Title I of the guidelines aims at ensuring that the use of the disclosure waivers related to materiality, proprietary and confidential nature of information is appropriately framed and based on informed decisions made after involving the all relevant parties.</p> <p>The version of the guidelines used in the consultation stated in paragraph 6 that <i>'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.'</i></p> <p>The process described in Title I was therefore not intended to be a distinct process from the <i>'formal policy'</i></p>	<p>Clarification that the process mentioned in Title I of the guidelines is included in the policies referred to in Article 432(3) and can therefore be implemented by referring to existing policies.</p> <p>Clarification that the process is also covered by the principle of proportionality embedded in the CRR.</p>

	<p>assess the policies referred to in the guidelines, the guidelines should allow institutions the freedom to adapt the content of processes in a way that fits their needs, although the provisions of the guidelines could provide a frame for a constructive dialogue with supervisors.</p> <p>More generally, respondents also believed that Pillar 3 information should not be submitted to genuinely designed, separate quality standards replicating, diverging from or exceeding the well-established arrangements for financial disclosures. Instead the existing processes should also be applied to Pillar 3 as they achieve the desired outcome in terms of disclosures and frequency and framing their decisions thereabout.</p> <p>One respondent argued that the principle of proportionality should be emphasised more strongly, considering the burden that overly strict formal requirements could represent for small institutions. Proportionality would mean less procedural and documentation requirements for small and medium-sized institutions with less complex business activities, where (i) the annual disclosure of the information required by the CRR is sufficient to convey their risk profile comprehensively to market participants, (ii) institutions do not use or hardly ever use disclosure waivers, and (iii) institutions are not subject to more frequent disclosures.</p>	<p>to comply with the requirements of Part Eight of the CRR and the “<i>policies for assessing the appropriateness</i>” of their disclosures that institutions must have in place in accordance with Article 431(3).</p> <p>Nevertheless, the link between the policies in Article 431(3) and the process in Title I of the guidelines was strengthened and clarified, and it is now explicitly stated that the formal policies for assessing the appropriateness of disclosures could consider the provisions of the guidelines and include the process referred to in Title I of the guidelines.</p> <p>The requirement to have a separate process for regulatory disclosures in Part Eight of the CRR could be linked to Article 431(3), which mentions a ‘<i>formal policy</i>’ related to disclosure requirements of that Part only. Nevertheless, this provision may have been implemented diversely across institutions as despite the specificities of the CRR framework compared to the accounting framework, especially in terms of definitions and information required, it seems from the responses received that institutions may, in practice, apply the same policies for both their accounting and their regulatory disclosures.</p> <p>The guidelines have therefore been amended to allow for the inclusion of the process in Title I within existing processes, to the extent that the features of those existing processes are consistent with the provisions in the guidelines.</p> <p>Recital 46 of the CRR states that <i>‘The provisions of this Regulation respect the principle of proportionality, having regard in particular to the diversity in size and scale of operations and to the range of activities of institutions. [...]EBA should therefore ensure that all regulatory and</i></p>	
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		<p><i>implementing technical standards are drafted in such a way that they are consistent with and uphold the principle of proportionality.</i> Proportionality is generally implemented in the CRR by adapting the Basel rules for large, internationally active banks to smaller banks. Although Articles 432 and 433 do not directly refer to proportionality, as they are intended to apply to all EU banks subject to the requirements in Part Eight of the CRR, it was made clear that the process framing and governing the use of waivers and the frequency of disclosures should be proportionate to the size of the institution and consistent with its internal organisation.</p> <p>If the incidence of size and complexity on frequency seems clear (investors may be less interested in more frequent disclosures from less significant banks), it is less so for the use of the disclosure waivers, as smaller institutions with a lower risk profile and a reduced volume of activity might be expected to have fewer risks and disclose less information, in part due to an increased amount of information judged immaterial or of confidential/proprietary nature.</p> <p>Therefore, no specific provisions regarding how this proportional implementation should actually be put in practice for small institutions, as suggested by the respondent, have been inserted, preserving flexibility for institutions. It could indeed have required the definition of concepts such as ‘small institutions’ and ‘business model’, while the general concept of proportionality is out of the scope of the guidelines. The proportional implementation of the process required should not lead to the non-application of the different features listed in Title I of the guidelines or of other provisions of the guidelines.</p>	
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<p>Question 2. Do you agree with the features of this process? If not, which ones would you exclude/include?</p>	<p>Respondents pointed out that the process should be kept focused and simple so that it can be applied easily by all institutions, including the smallest. They believed its current version, especially regarding the use of disclosure waivers for materiality, confidentiality or proprietary reasons was too comprehensive and too detailed to be operationally applicable, despite being generally worded with sometimes abstract terms allowing flexibility in the implementation. They called for its streamlining.</p> <p>Some features were criticised, in particular:</p> <p>Paragraph 8d) Production and update of a list of disclosure requirements that are applicable before the use of any waiver was believed to be burdensome and a duplication of existing requirements.</p> <p>Paragraph 8e) Definition of the level of documentation relating to the reasoning for decisions regarding waivers and frequency was believed to be potentially burdensome and difficult to implement as institutions believed that it was not practical to define in advance, other than generally, the reasoning that waiver decisions might require. Respondents questioned whether, instead of improving the use of the waivers, the requirement could instead deter institutions from using them, causing reports to become increasingly obscured by superfluous material.</p> <p>Paragraph 8g) Regular reports to the management body about the implementation of the policies saw the frequency of reporting questioned. Respondents believed that reporting should be event-driven reporting rather than regular one (the management body approves the policies once and is only informed if</p>	<p>Provisions in Title I have been streamlined, made clearer and less prescriptive, to ease both understanding and implementation by institutions.</p> <p>Paragraph 8d) relates to an internal stage in the process of drafting the Pillar 3 report. Considering the cases where the waivers are used should be rare, and that the waivers only apply to disclosure requirements that are applicable to institutions making use of them, this point was deleted.</p> <p>Paragraph 8e) aimed at having all the relevant evidences provided to the senior management responsible for making decisions concerning waivers or the frequency of disclosures required by Part Eight of the CRR. It was eventually considered that this requirement overlapped with the requirement in paragraph 9 to fully document and maintain internally appropriate evidence for the implementation of the process. As a result, paragraph 8e) was deleted.</p> <p>Paragraph 8g) provided for regular reports on the implementation of the process related to disclosure waivers and frequency, based on the fact that, even if the implementation of the process fell to the relevant functions and senior management, the management body should be kept informed about this implementation (although the management body should not be in charge of approving each and every use of a disclosure waiver or frequency for interim disclosure). This is especially the case for the use of waivers, where more variability could be expected over time than for the frequency of disclosures. Updating the management body only if a policy is changed would not fulfill this information requirement. The need to report to the management body on the implementation of the policies was kept, but each institution now needs to define an adequate</p>	<p>Deletion of paragraphs 8d), 8e) and 8h).</p> <p>Amendment of paragraphs 8g) and 10, to provide institutions with more flexibility in their implementation.</p>
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	<p>it changes, and it is not informed about the implementation of the policies).</p> <p>Paragraph 8h) Regular review of the implementation of the policies by the control unit and internal audit was opposed by respondents due to the use of internal audit, since entrusting it with routine monitoring duties could be incompatible with the use of internal audit as a third line of defence. Routine monitoring could impede the ability of internal audit to identify areas of major risks or emerging threats and to avert major breaches, and should be performed by risk owners instead. The work programme for internal audit should remain dependent on its own risk analysis, although this would not prevent internal audit from reviewing an entire area of activities such as disclosures if need be. One respondent believed that there was no need to involve internal audit if the fulfilment of disclosure requirements is reviewed by external auditors on a regular basis, usually once a year.</p> <p>One respondent believed the expectations regarding disclosure of the process should be clarified and that it could be made clearer that disclosure should relate to the features of the process outlined by the guidelines.</p> <p>In addition, one respondent asked for clarification of the reference to Article 434 in paragraph 10 and another requested clarification on the references to ‘managing body’ to include its formally delegated committees.</p> <p>The assessment of all disclosure requirements for materiality, proprietary nature or confidentiality was considered by some respondents to be burdensome and impracticable in terms of the time required compared to the deadlines for the publication process, given the need for useful information to be produced in a timely</p>	<p>frequency. As disclosures of information required by Part Eight of the CRR is mandated to take place at least once a year, annual reporting could be considered as the by default reporting frequency, with supplementary reporting when necessary.</p> <p>Paragraph 8h) was deleted, as the CRR does not specify the exact level of internal control for the policies referred to in Article 431(3).</p> <p>Paragraph 10 was amended to clarify that disclosure of a description and of the main elements of the process pursuant to the provisions of paragraph 8 is not required but is a good practice that institutions that already provide disclosures about their disclosure policy as per Article 431(3) could consider implementing. The content of these disclosures cannot be specified in details in the guidelines, as it will depend on how the different features of the process outlined in paragraph 8 have been implemented. The amendment of paragraph 10 led to the deletion of the reference to Article 434.</p> <p>It was clarified that the reference to managing body, as well as to senior management, covered their delegated committees as well.</p> <p>It is unclear if the alternative proposed by respondents would lead to different results in terms of the use of waivers.</p>	
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	<p>manner. As an alternative to the process those respondents suggested assessing previous year's disclosures and considering how an institution's position has changed, and determining the current year's disclosures based on this analysis.</p>		
<p>Question 3. Should the guidelines be developed more on what is expected from institutions when an item of information is assessed as material?</p>	<p>All respondents but one noted that the guidelines should not be more detailed about what is expected from institutions regarding the disclosure of information for a material item, given that they are sufficiently detailed on how materiality should be assessed (the action necessary will follow on directly from the conclusions of the materiality assessments). A flexible approach would allow institutions to take their own specificities into account in their disclosures.</p> <p>Only one respondent argued that the guidelines should state that banks are expected to disclose material elements in accordance with regulations and possibly go beyond these requirements if the risk profile of the institutions and the needs of users warrant it.</p>	<p>The insertion proposed by the respondent simply repeats what Article 431 of the CRR already states. Article 432 of the CRR is also clear as regards the responsibility of institutions for material information: <i>'Paragraphs 1, 2 and 3 are without prejudice to the scope of liability for failure to disclose material information.'</i></p> <p>In addition, the reference to users' needs is one aspect to be taken into consideration when defining materiality.</p>	<p>No change.</p>
<p>Question 4. 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?</p>	<p>Respondents found the principles adequate for a materiality assessment as they are not too prescriptive and would not envisage additional principles.</p> <p>Two respondents also expressed their support but seemingly confused materiality in Pillar 3 for materiality in financial statements. One respondent indeed advocated that the criteria should also be applied to notes that do not relate directly to financial statements. The other respondent argued that guidance to help ensure consistent implementation of materiality was necessary but advocated that it should not to be too specific in order to avoid pre-empting the responsibility of the individual reporting entity to determine materiality thresholds.</p>	<p>No additional principles were added, but clarifications were provided to take into account the comments received.</p> <p>In accordance with the principles specified in paragraph 12, the assessment of materiality should be tailored to the situation of each institution, taking into account the broader context of disclosures and the need of users. To address the risk that this non-prescriptiveness, despite providing flexibility which was welcomed by respondents, might result in clutter, it was indicated that the consideration of an institution's business model can rely on specific indicators. Whilst further specifying the nature of such indicators (for example total assets, derivatives, leverage ratio, materiality thresholds for these elements, etc.) could have been a way to provide guidance to</p>	<p>Amendment of paragraph 14 to broaden the scope of functions that can be involved in the assessment of materiality and merge point 14b) with point 12d).</p>

	<p>However while welcoming the non-prescriptiveness of the requirements, one respondent noted that their high level nature may increase the clutter in disclosure, as they will increase the perceived risk of falling short of regulatory requirements.</p> <p>Two respondents raised the issue of proportionality as ignoring the size and complexity of the institutions by imposing the same disclosure requirements for all institutions places a big administrative burden on small and medium-sized institutions. The respondents referred to specific provisions in the Austrian Banking Act, which define relevance and apply certain disclosure requirements to relevant institutions only, and require a specific exemption for small- and medium-sized institutions from the disclosure in Article 435(2a) of the number of directorships held by members of the management body.</p> <p>A couple of respondents believed the guidelines were misaligned with the CRR, as they state that materiality is defined and applied solely in relation to the Pillar 3 disclosure requirements, while Article 434(2) of the CRR allows for equivalent disclosures made by institutions under accounting, listing or other requirements to qualify as Pillar 3 disclosures. They believe that assessing materiality under Pillar 3 should not be more onerous than provided for under current financial reporting standards, meaning that a generally consistent approach to materiality should be applied across financial accounting and regulatory disclosures.</p> <p>Requests for amendments or clarifications relate to:</p> <ul style="list-style-type: none"> i. Paragraph 12e) and 12g), where one respondent found the notion of 'user-centric concept' and 'institution-specific concept' 	<p>institutions, it could also have led institutions to use the specified indicators even though they may not have been relevant for their situation, resulting in a potentially flawed implementation of the principle of materiality. Therefore the guidelines have been left un-prescriptive, and allow each institution to be responsible for defining the most appropriate indicator, including thresholds, for its situation. The risk of clutter in disclosure is limited by the reduction in required disclosures when the materiality waiver is used.</p> <p>The assessment of the materiality of an item of information is included into a process that should be implemented in a proportionate way (see Question 1). It was not considered necessary to re-emphasise proportionality in this part of the guidelines.</p> <p>With regard to the possible misalignment with the CRR, Article 432 stipulates the type of information to be provided, and Article 434 specifies how this information should be provided. The assessment of materiality can lead to a different outcome between financial statements and regulatory information: a piece of information deemed material for financial purposes is not necessarily material for regulatory disclosure purposes. However once an item of regulatory information is deemed material, it may be provided in accordance with Article 434 in the financial statements or elsewhere, subject to appropriate cross-references. In this case, it would mean that this type of information is material both for Pillar 3 in accordance with the guidelines and for the financial statements in accordance with the institution's own materiality assessment for financial information.</p> <p>Considering that the definitions of materiality in Article 432 of the CRR and IAS 1 are similar and that the principles for materiality assessment specified in</p>	
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	<p>possibly contradictory and called for the Guidelines to be more explicit on the difference between the two.</p> <p>ii. Paragraph 14, where it was specified that the functions involved in the assessment of materiality should not be restricted to the risk functions, to align on the statement that the assessment of materiality should not be purely quantitative. One respondent argued that it was necessary to clarify the multi-disciplinary approach of the assessment, which should be conducted in collaboration between the Finance department, the Risk department and other relevant, specialist functions function adding value to the assessment of materiality of the disclosure requirement in question.</p> <p>iii. Paragraph 14b), where one respondent noted that the consideration of the political environment in the assessment of materiality could be interpreted as allowing fewer disclosures if that is appropriate in given political environment.</p> <p>One respondent suggested aligning the criteria with the guidance in International Standard on Auditing (ISA) 320, “Audit Materiality”, which he viewed as offering more consistency.</p>	<p>paragraph 12 have been selected to ensure consistency with those observed in accounting standards, the principles considered by the IASB when revising IAS 1 as part of the Disclosures Initiative, and those put forward by standard-setters or users in various reports related to materiality, the possibility of materiality mismatches between financial and Pillar 3 reports and onerous double assessment appears limited.</p> <p>Paragraphs 12e) and 12g) reflect the dual nature of materiality, as a concept implemented by institutions to ensure that their disclosures appropriately reflect their situation and that they also reflect what users of information need, taking this situation into account. Institutions should therefore use materiality to tailor existing disclosure requirements to their situation and to what users need. It does not seem appropriate to further define these terms, which are self-explanatory.</p> <p>Paragraph 14 was amended to specify that any relevant functions, not just risk management, can be involved in the assessment of materiality. All the relevant functions can include the risk and finance functions or the human resources department for example.</p> <p>In paragraph 14b) the reference to the economic and political environment was intended to mean that a given political or economic situation could lead an institution to consider a piece of information as material and therefore disclose that information as required by Part Eight of the CRR, or even disclose additional information, as necessary, to provide users with its comprehensive risk profile. In other words, this reference intended to stress that the political or economic environment can make an item of information material. The reference to the economic and political environment should not be read as authorising less disclosure of material information below the requirements of the CRR requires. Paragraph 14b was</p>	
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		<p>eventually merged with paragraph 12d).</p> <p>The alignment of materiality used for Pillar 3 purposes with materiality used for audit purposes will not necessarily lead to more consistency, as materiality for the audit of financial statements and materiality used for disclosures on capital requirements and solvency in general serve close but nevertheless different purposes.</p>	
<p>Question 5. 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?</p>	<p>Respondents agreed with the criteria put forward in the guidelines but a couple noted that the use of the proprietary and confidentiality waivers should be exceptional and expressed doubt that institutions routinely and abusively withhold information under a cloak of claimed confidentiality or proprietary nature.</p> <p>Considering this, respondents believed that the guidelines did not strike the right balance between the legitimate interests of Pillar 3 users in gaining a comprehensive view of an institution’s risk profile and the interests of the institution itself, and consequently, the interests of users and the markets. They suggested that this balance could be achieved by changing the wording to decrease the burden of proof on institutions, in order to make the requirements less onerous and more practicable to use. In particular respondents suggested:</p> <ul style="list-style-type: none"> i. Amending paragraph 15a) to drop the adjectives ‘<i>drastically</i>’ and ‘<i>fundamentally</i>’ from the phrasal groups ‘<i>drastically impact</i>’ and ‘<i>fundamentally negatively affect</i>’; ii. Deleting from paragraph 15b) the requirement to ‘<i>identify specifically to what extent disclosure would weaken their competitiveness and document the impact of disclosures</i>’, as 	<p>The exceptional nature of the use of the proprietary and confidentiality waivers proceeds from the Article 432(3), and the wording of the provisions of the guidelines was adjusted to ease their implementation, while at the same time ensuring that this adjusted wording supports an exceptional use of the waivers.</p> <p>In paragraph 15a), the nominal group ‘<i>drastically impacts the institutions forthcoming results</i>’ and the adverb ‘<i>negatively</i>’ were deleted. To balance this deletion, the adverb ‘<i>fundamentally</i>’ was changed into ‘<i>significantly</i>’. It seemed appropriate to keep a reference to a significant incidence on the institution’s competitive position, as removing ‘<i>fundamentally affect</i>’ could be understood to mean any information influencing the entity competitive position should be considered as proprietary.</p> <p>In paragraph 15b), it was decided that the specific identification of the incidence of disclosure in terms of weakening of the competitive position was redundant with the other provisions of paragraph 15b). The sentence in question was therefore deleted.</p> <p>In paragraph 16b), the requirement for a legal analysis was kept. Deleting this requirement could have limited the guidelines to a statement that a general reference to confidentiality is not a sufficient reason to avoid disclosure, bringing little added value compared to the text of the CRR itself. By raising the bar on the</p>	<p>Amendment of paragraphs 15a) and 16a) Deletion of the last sentence of paragraph 15b).</p>

	<p>such comprehensive analysis of the impact of disclosure of every item of proprietary information is not practical;</p> <p>iii. Deleting from paragraph 16b) the requirement for a legal analysis as it is impractical, onerous and unnecessary. Respondents argued that (i) assessing of the impact of the disclosure of information on confidentiality towards customers is a question of common sense considering the market, business and exposure in question rather than being a legal issue and (ii) that the possibility for supervisors and users to decide whether the use of the waiver is unreasonable via the disclosure of the fact the waiver is used is a better option than a legal analysis.</p> <p>One respondent noted that the mention of the name of counterparties as a possible information allowed not to be disclosed when the confidentiality waiver is used is ambiguous and asked to delete the example. As the use of the confidentiality waiver is subject to conditions, it could be understood that the name of counterparties should be disclosed when conditions in paragraph 16b of the guidelines are not met.</p> <p>Two respondents asked for complementary material to be added to the guidelines, covering the identification of information that is not disclosed based on proprietary or confidentiality concerns, and to allow supervisors to monitor the incidence of cases of non-disclosure and take action on a case by case basis where they identify an inappropriate designation.</p>	<p>identification of an item of information as confidential, it makes sure that this identification really occurs on an exceptional basis. Nevertheless, considering the costs and benefits of a legal analysis, it has now been made clear that it can be provided by the institutions' legal unit or experts.</p> <p>With regard to the reference to the name of the counterparty, it is noted that references to counterparties are made in the CRR to qualify information as confidential (Article 432(2)). However, the wording of the paragraph has been modified to avoid the misunderstanding pointed out by the respondent.</p> <p>The complementary material required by institutions is actually already available in Article 432(3) of the CRR.</p>	
<p>Question 6. Do you agree with the</p>	<p>Respondents noted that the indicators mentioned in paragraph 18 are relevant for determining whether an</p>	<p>When developing indicators to help institutions assess their need to disclose information required by Part Eight</p>	<p>Clarification in paragraph 17 that</p>

<p>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?</p>	<p>institution is systematically important or for supervisory reporting and could be a better fit for these purposes than for disclosure, where relevance for investor should be considered the most important criteria. They believed that the current criteria gave undue importance to the characteristic of size while neglecting other important relevant factors that should be included in the assessment on whether to provide more frequent disclosures. Amongst these factors the following were identified:</p> <ul style="list-style-type: none"> i. The existence of proven demand amongst users for a greater frequency of disclosure and related cost-benefit considerations, as a piece of information that does not attract scrutiny when disclosed annually will not become more relevant when disclosed more frequently; ii. The nature, severity and volatility of risks and their mitigation; iii. The extent of concentration and diversification of risks. <p>One respondent believed that criteria were flawed from a market discipline point of view, as they protect smaller banks whereas smaller institutions may be more important in specific markets that larger ones.</p> <p>One respondent pointed out that the criteria were inconsistent and it will therefore not be possible to implement all of them equally across Europe.</p> <p>Moreover, respondents suggested alternative criteria:</p> <ul style="list-style-type: none"> i. One respondent requested the replacement of criteria in paragraph 18 with criteria used 	<p>of the CRR more frequently, the EBA chose to retain existing criteria rather than to develop ad hoc criteria for the purpose of Article 433 of the CRR only.</p> <p>The reason for doing so was to ensure that, as a minimum, all institutions that are considered to be significant for supervisory or other purposes especially assess their need to disclose information more frequently and consider the interim disclosure of a common set of regulatory information. This is to ensure proportionality in the implementation of the guidelines, which should lead to the more frequent disclosure of information by the most important institutions in the EU without undue burden on the smallest institutions, for which markets may not be interested in more frequent disclosures.</p> <p>Moreover, it was made clear in paragraphs 17 and 18 that the guidelines do not intend to restrict the scope of application of Article 433 of the CRR. As this Article applies to all institutions required to disclose information specified in Part Eight of the CRR, all these institutions, including the smallest ones or those that do not meet the criteria specified in paragraph 18 of the guidelines, are still required to assess their need to disclose information more frequently in accordance with the specifications of Article 433 of the CRR and these guidelines, and to consider providing interim disclosures, possibly going beyond the specifications of the guidelines, if the needs of users so require.</p> <p>Article 433 of the CRR already lists the elements that all institutions have to take into consideration when assessing the need to publish some or all disclosures more frequently than annually. As these elements are not quantitative criteria, paragraph 18 was amended to make clear that each institution can, in its assessment, use additional criteria to those listed in paragraph 18 when</p>	<p>the assessment of the need to provide more frequent disclosures applies to all institutions and clarification in paragraph 18 that assessment criteria are not intended to be quantitative criteria only.</p>
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	<p>defined by the Single Supervisory Mechanism to define a systemically important institution as;</p> <p>ii. A threshold of EUR 10 billion regulatory capital should be implemented instead of the EUR 30 billion consolidated assets threshold to avoid an over reliance on total assets while for regulatory purposes total capital is a more appropriate indicator.</p> <p>One respondent questioned the indicator in paragraph 18d) (exposure higher than EUR 200 billion or the equivalent in foreign currency), as it failed to see the importance of holding a larger foreign currency position in the context of frequency of disclosures.</p> <p>One respondent believed that the criteria were set at too high levels and so cover too few institutions (lower cut-off for thresholds would cover more institutions) which sends the wrong signal, and would allow institutions to disclose less frequently, while the respondent believed the minimum frequency for Pillar 3 information should be the frequency used to publish audited or non-audited interim reports. Using this frequency would align with investors' expectations and user demands.</p>	<p>taking into account elements in Article 433. The criteria in paragraph 18 provide quantitative anchors to institutions when conducting their assessment but are not intended to be the only criteria to be considered in an institution's assessment of its need for more frequent disclosures. Despite the flexibility in the assessment criteria, and in the extent of disclosures to be provided as a result of this assessment, institutions meeting the criteria listed in paragraph 18 should consider disclosing the types of information listed in the Guidelines or explaining why they chose not to provide the information.</p> <p>The criteria listed in paragraph 18 are those used for the identification of institutions included in the scope of EBA Decision EBA/DC/090 on reporting by competent authorities to the EBA as well as for the identification of institutions to be included in the sample for the calculation of indicators for the purpose of identifying G-SII. These criteria present a high level of internal consistency, especially as all institutions included in the latter sample are also included in the former.</p> <p>The criteria used by the Single Supervisory Mechanism (SSM) to identify significant institutions only apply to institutions in the euro area, whilst the CRR and the EBA guidelines, apply to all institutions in the EU. Nevertheless, the criteria used by the SSM and the EBA are consistent.</p> <p>With regard to the suggested EUR 10 billion capital threshold, the suggestion was not specific enough in terms of the capital aggregate to consider and of the rationale having led to its selection. As a result the EBA was unsure about the appropriateness of this criterion in terms of disclosures and decided to retain the approach in the guidelines.</p>	
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<p>Question 7. 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) No 575/2013? If not, why?</p>	<p>Respondents seemed more opposed to disclosures on the process than disclosures on the waivers.</p> <p>They argued that disclosures on the internal processes are not especially useful for users, and that it should be sufficient to state that the processes implemented are aligned with the EBA’s guidelines. Adding detailed information on the process would only add clutter in disclosures. Respondents would prefer to identify individual instances of non-disclosure, and the reason for non-disclosure, including the negligible nature of an exposure.</p> <p>On the other hand, another respondent argued that while there should be clear information about the waiver policy, this information should not be as detailed as provided for in the guidelines, hinting that a short description of the process would be preferred to disclosure on the items of information to which the waivers have been applied.</p> <p>One respondent in particular agreed with the flexibility embedded in the guidelines regarding the location of disclosures.</p>	<p>meeting investor demands (see Questions 10 and 11).</p> <p>Disclosure on the process and disclosure of information about the specific items to which the waivers have applied serve the common objective of enhancing the transparency on the use of waivers. As such, the provisions of the guidelines regarding transparency have been upheld.</p> <p>Nevertheless, paragraph 10 was amended to clarify that disclosure of a description and of the main elements of the process pursuant to the provisions of paragraph 8 is not required but is a good practice that institutions already providing disclosures about their disclosure policy as per Article 431(3) could consider implementing.</p>	<p>Amendment to paragraph 10 to turn it into a good practice.</p>
<p>Question 8. 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</p>	<p>The usefulness of detailed disclosures on immaterial information was questioned, although respondents agreed that it should be clear when a piece of information is not provided due to materiality reasons. Information on the reason for non-disclosure would foster and provide evidence for the discipline of a process, but would be of little interest for markets as it would not provide external stakeholders with a better understanding of the risk profile of an institution and could contradict the IFRS, where institutions are not expected to prove immateriality in disclosures, to avoid</p>	<p>Paragraph 19 was amended to focus on the disclosure of the items to which the materiality waivers have been applied.</p> <p>Whenever an item of information, or a group of items of information, required by the CRR are not disclosed due to its immateriality, institutions should state this fact in their disclosures. For example, if an institution does not provide the information required by Article 449 on securitisation exposures included in the trading book, it should state that information required by Article 449 in</p>	<p>Amendments to paragraph 19.</p>

<p>degree of transparency regarding the use of the materiality waiver? If not, what additional information should be provided?</p>	<p>clutter.</p> <p>Two respondents opposed the expansion of the existing disclosure requirements for confidential and proprietary information to immaterial information. One respondent noted that as far as an institution has clearly informed of its waiver policy due to information assessed as not material, the information listed in paragraph 19 should be provided only when relevant from a stakeholder point of view, but the respondent does not detail how this relevance would be assessed.</p> <p>One respondent observed that when an exposure is not material it would be appropriate, when applicable, to provide a range or indication of the scale, for instance, less than 0,1% of total exposure.</p> <p>One respondent noted in general that the disclosure requirements should be more explicit and more accurate, as it is unclear what is expected regarding the reason for non-disclosure or the general or aggregate substituting information, especially for qualitative information.</p>	<p>relation to securitization exposures in the trading book is not disclosed due to the immateriality of such exposures. The same should be done if a specific item of information is not provided, for instance when an institution does not provide the amount of aggregate amount of assets awaiting securitisation.</p> <p>For quantitative disclosures, the required information often involves providing a breakdown of exposure values by exposure classes or types. If an institution assesses that the immateriality of the exposure amount makes it possible to use the waiver to avoid providing the breakdown by exposure classes, it should state that the required breakdown is not provided due to materiality and may nevertheless consider disclosing the total amount of exposures as a good practice.</p>	
<p>Question 9. What other techniques, if any, would you use to allow for the disclosure of meaningful information despite concerns about confidentiality or proprietary?</p>	<p>Three respondents commented that the answer to the question could depend on the information in question and that flexibility was required in terms of techniques to be implemented (aggregation and/or anonymising, information provided in a more discursive narrative rather than strictly numeric format, clarification of figures with narrative explanations).</p> <p>Another respondent noted that it would be helpful if banks revealed separately which information is left undisclosed for proprietary reasons and which information is left undisclosed for confidentiality reasons.</p>	<p>The EBA shares the view that the technique implemented is likely to depend on the type of information in question, and therefore the guidelines have been kept non-prescriptive on this aspect.</p> <p>The CRR does not provide for the separate disclosure of proprietary and confidential information.</p>	<p>No change.</p>

<p>Question 10. 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?</p>	<p>Generally speaking, respondents noted that the reference to specific CRR articles is a helpful starting-point to provide consistency, and that information contained in the guidelines was information that users were looking for, as markets find the reasonable frequent update of information on capital composition, capital requirements, RWA and leverage useful.</p> <p>However respondents stressed that it was necessary (i) to have a dynamic approach for interim disclosures, meaning that they should be designed to be updates from the previous financial year-end, not full-blown disclosure packages and (ii) to achieve proportionality between interim financial and interim regulatory disclosures for the same reporting period – quarterly regulatory disclosures should not be disproportionate to the existing quarterly financial information published.</p> <p>Respondents expressed concerns about the interaction between the expected set of information, especially the disclosure on own funds, capital requirements and items that have experienced material changes (paragraph 23), the expected interim disclosure frequency (paragraph 26) and the expected publication date of disclosures which, in accordance with the requirements in Article 433 of the CRR, should take place in conjunction with the publication date of interim financial information (paragraph 28). In particular, institutions would rely on their supervisory reporting data to fulfil interim disclosure requirements, and these data may not be available by the date of the release of interim financial disclosures, due to a mismatch between the remittance date for COREP and the date of publication of interim disclosures.</p> <p>Respondents argued this mismatch between the release</p>	<p>The list of information that institutions should especially assess the need to disclose on an interim basis is already provided for in Article 433 and as a general rule, all institutions subject to Part Eight of the CRR should provide all interim information necessary to enable users to fully understand their risks. The guidelines only specify the modalities of disclosure of this interim information.</p> <p>In particular, the guidelines provide a framework outlining the types of interim disclosures that could be expected from investors, based on interactions between the EBA and them, from institutions of a certain importance. Listing the type of information that institutions should pay particular attention to the possible need to provide more frequently than annually is especially important to ensure some consistency in the type of information disclosed by each institution when these institutions have assessed that they need to disclose interim regulatory information. Therefore the guidelines set minimum expectations for some institutions in terms of interim disclosures.</p> <p>However, it was clarified in paragraph 23 that the guidelines follow a market-driven approach: despite the recommendations of the guidelines on the information that institutions need especially to pay attention to provide, institutions remain responsible for deciding the type of information and level of detail to disclose in interim periods to ensure an effective knowledge about their business and risk profile. In addition, the guidelines follow a comply or explain approach, so that institutions can still decide to provide different sets of disclosures, if it meets the demand from markets, but should justify their decision for not providing some or all interim information listed in the guidelines. This explanation is without prejudice to the power of supervisors to require the more frequent disclosure of any information, if they deem it necessary to ensure the compliance with the guidelines or</p>	<p>Clarification in paragraph 23 that institutions retain responsibility as regards the frequency, the type and level of interim information that they disclose.</p>
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	<p>and the remittance dates could hamper the provision of interim regulatory information requested by the guidelines on own funds and capital requirements, as some information (for example, reconciliations) can only be generated after the publication of the relevant financial data. Not allowing sufficient time (four weeks was suggested) between the release of interim financial disclosures and the release of interim regulatory disclosures required by the guidelines would lead to operational difficulties, since many institutions currently prefer to publish financial updates and their quarterly/semi-annual regulatory disclosures on the same day and would therefore need to postpone the issuance of their interim releases or advance the remittance date of COREP to comply with the guidelines.</p> <p>Consequently, respondents required the guidelines to specify that <i>'in conjunction with'</i> should not necessarily mean <i>'on the same day as'</i>.</p> <p>Specific comments on information listed in paragraph 23 related to the following aspects:</p> <ul style="list-style-type: none"> i. Information on own funds, capital requirements, leverage ratios and risk exposures: respondents believed that information should be provided at summary level with an option to tailor the formats to harmonise them with the interim financial disclosures, although they did not clarify what was understood by summary level; ii. More frequent information on items that have experienced material changes: respondents asked for this requirement to focus on highly material changes only, as otherwise it could imply running the materiality assessment 	<p>with any other provision of the regulatory framework.</p> <p>This room for manoeuvre, in addition to the differentiated disclosure expectations for semi-annual and quarterly periods, should provide institutions with enough flexibility to ensure an appropriate balance between interim regulatory and interim financial information, if necessary. Nevertheless, Article 433 of the CRR does not explicitly link all the possible interim disclosures that it lists to situations of changes in risks or other parameters, so the guidelines follow the same approach.</p> <p>The timing of disclosures for interim information has been aligned with the provisions that are in force for annual disclosures as per Article 433. Article 433 does not specify the meaning of <i>'in conjunction with the date of publication of financial statement'</i>. As an interpretation of this notion for interim disclosures could also be used for annual disclosures, which are outside the scope of these guidelines, no further specification was provided. As a result, institutions retain flexibility as regards the publication date of their interim disclosures, provided that they take place in conjunction with the release of interim financial disclosures, and within the deadlines that may be set, as appropriate, by National Competent Authorities in accordance with Article 106 of Directive 2013/36/EU.</p> <p>This flexibility should, in most instances, mitigate the operational issues arising from the difference between the date of interim releases and the remittance date of COREP, for those regulatory disclosures that could be provided using COREP. The EBA notes that in practice the time-lag between interim releases and COREP remittance dates is typically limited to a couple of days, if any. For example, for Q2 disclosures, the COREP remittance date is August 11th while most banks disclose either between July</p>	
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	<p>process quarterly, something that appeared to them to be both unfeasible considering the timing constraint for quarterly disclosures and questionable due to the lack of significant changes in numbers on a quarterly basis.</p> <p>A couple of respondents also opposed some disclosure requirements:</p> <ul style="list-style-type: none"> i. Two respondents opposed the provision regarding the disclosure of the whole technical standards on own-funds and leverage ratio for institutions with an exposure value above EUR 200 billion, arguing that it would cause a disproportionate additional expense on the reporting institution in relation to any perceived additional benefit for investors; ii. Two respondents argued that the disclosure of quantitative information on internal models should remain on an annual basis as this requirement is quite detailed and it is questionable whether there is market demand for this piece of information on a quarterly or semi-annual basis. 	<p>30th and August 8th, or after the COREP remittance date. Similarly, for Q3 disclosures the COREP remittance date is November 11th while most banks disclose either between October 30th and November 7th, or after the COREP remittance date. The fact that the EBA drew up the list of expected disclosures based on information that it found in institutions' interim (quarterly and semi-annual) financial and regulatory releases should also mitigate these operational issues. Nevertheless, the EBA identified a possible issue regarding interim disclosures to be provided in accordance with Article 438 of the CRR (see Question 11).</p> <p>It is difficult to know what the respondents have in mind when they ask for the possibility to provide summary information. It is not certain whether this means dynamic information, i.e. information about the period change as opposed to information about the outstanding values at the end of a given interim period, and whether the guidelines can allow the summarisation of all information listed in them.</p> <p>Information required on own funds and leverage ratio are already required at a summary level for quarterly disclosures, consistently with the provisions from the Basel standards (Composition of capital disclosure requirements paragraph 6 and Leverage ratio framework and disclosure requirements paragraph 46). As for information on capital requirements, only points c) to f) in Article 438 of the CRR are listed in Article 433 of the CRR, but without specific mention that information can be provided on a summarized basis. Providing a summary of information, especially regarding risk exposures, could nevertheless be possible due to the flexibility left to institutions regarding the type of information and the level of details included in their interim disclosures.</p>	
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		<p>Regarding the format of disclosures, the guidelines refer to the format for interim disclosures on own funds and the leverage ratio, for which a format is already prescribed for annual disclosures. Not having a format for interim disclosures would be inconsistent and contrary to the consistency objective of the guidelines.</p> <p>Semi-annual disclosures of information related to own-funds and leverage ratio is consistent with the provisions in the Basel standards (Composition of capital disclosure requirements paragraph 5 and Leverage ratio framework and disclosure requirements paragraph 45), which require the disclosure of this information as frequently as financial statements, meaning semi-annually for the EU, in accordance with Directive 2004/109/EC.</p> <p>The disclosure of interim information on items that have changed is consistent with the position advocated by respondents that interim disclosures should provide updates. This information is also listed in Article 433 of the CRR, therefore this requirement cannot be deleted from the guidelines. However It was decided to restrict the disclosure to items that have experienced highly significant changes.</p> <p>The disclosure of interim information on model parameters is of interest for market participants. Nevertheless, outreach with market participants has shown that they prefer semi-annual disclosures. It was therefore decided to keep this requirement in the guidelines and to clarify that its provision is expected on a semi-annual basis. The EBA notes that a similar decision was made during the review of the Pillar 3 framework by Basel.</p>	
<p>Question 11. Do you agree with the</p>	<p>Respondents stressed that the criteria in paragraph 18 should not be the sole drivers of differentials in frequency, as an assessment of whether quarterly</p>	<p>The guidelines apply to all institutions that are subject to the requirements of Part Eight of the CRR. The reference to specific criteria is to ensure that significant institutions</p>	<p>Change to the expected frequency of the interim</p>

<p>suggested frequency of disclosure for the different institutions meeting the different indicators specified in paragraph 18? If not, which alternative frequency would you suggest?</p>	<p>disclosure is appropriate should take into account other principles and practicalities, including the explicit demands of users (interests of users as measured by the number of queries to investor relations departments, for instance) and the significance of movements observed from period to period instead of regulatory requirements. They noted that an item of information required by markets and experiencing significant variation from period to period should be disclosed more frequently, but merely increasing the detail or frequency of disclosures does not generate more interest from users.</p> <p>Respondents broadly agreed that differentiated content of interim disclosures could be provided based on the interim period considered (with half-year disclosures more comprehensive than the quarterly disclosures), in the same way that it is for financial statements, as they noted that the frequency should be appropriate to the level of granularity of data to be provided. For detailed disclosures that generate limited interest from stakeholders they viewed as sufficient to provide a statement that the risk position has not changed materially from the year-end position.</p> <p>Two respondents opposed the list of information expected quarterly, noting that information needed on a quarterly basis is already disclosed, that for some business models quarterly information could be meaningless, and that regulatory information should not be provided on a quarterly basis where financial statements are provided semi-annually or annually, except for extraordinary, material changes.</p> <p>One respondent suggested aligning the frequency of interim disclosures with the frequency of semi-annual</p>	<p>especially carry out this assessment and consider providing the minimum level of harmonised interim regulatory information specified in the guidelines as a result. However, the guidelines follow a market-driven approach: all institutions are still required to conduct the assessment using all the relevant criteria that they see fit, including qualitative and alternative quantitative indicators, and they remain responsible for the decision whether to provide interim regulatory disclosures and the extent of any disclosures. The criteria listed in paragraph 18 are not intended to be the only criteria to take into account when deciding the frequency of disclosures.</p> <p>The provision of a statement regarding the lack of significant change in a risk provision or the lack of interest from users for some information may qualify as a justification for the non-disclosure of information. However, in these cases institutions should consider disclosing how they have assessed the changes to be non-significant or how they measured the interest of users.</p> <p>The list of information expected to be disclosed on a quarterly basis was drawn up considering both regulatory information already disclosed in quarterly releases of institutions, and the need for users to receive quarterly disclosures of information listed in Part Eight of the CRR, which was determined via a survey. It cannot therefore be taken for granted that all information that is of interest of users is already being disclosed.</p> <p>Due to the time difference between the date of release of interim disclosures and the COREP remittance date (see Question 10) and the possible issue it could raise for the quarterly provision of information required in Article 438 of the CRR (breakdown of risk-weighted assets by type of risks and by exposure classes), those quarterly disclosures have been limited to a breakdown by type of risks, with</p>	<p>disclosure of information specified in Article 438 of the CRR.</p>
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	<p>financial reports or interim reports, whether audited or non-audited.</p> <p>However, another respondent questioned the ability of users to absorb frequent, detailed technical information on a quarterly basis, and believed that this information would be more useful for supervisors, who should rather access it via supervisory reporting. It believed that the EBA should not set the frequency of disclosures and, considering the insufficient number of answers to its previous outreach, should take the current disclosures by institutions to be a good indication of what the investors and analysts community requires.</p> <p>One respondent noted that, even if the guidelines only require institutions to assess the need for more frequent disclosures in accordance with Article 433 of the CRR, a higher frequency of disclosure is in fact expected from institutions meeting one of the criteria of paragraph 18. It notes that these expectations, coupled with frequencies which seem to be minimum requirements, might lead to even stricter requirements from NCAs, which would contradict the target of a common implementation of the disclosure regulations across Europe.</p>	<p>the breakdown by type of risks and exposures required for semi-annual disclosures.</p> <p>Bearing in mind the importance of information in the efficient functioning of financial markets and that there is a set of information that users would like to see disclosed on a quarterly basis, the guidelines aim to provide users with information that will allow them to assess the evolution of business and the risk situations of institutions while striking a balance between the needs of users and the cost of increased disclosures: information to be provided by significant institutions will be more detailed on a semi-annual than on a quarterly basis. The EBA notes that a similar approach is followed in the review of the Pillar 3 framework by the Basel Committee.</p> <p>The guidelines do not establish requirements regarding the frequency of disclosures beyond a comply or explain approach, i.e. institutions are simply required to perform an assessment of their need to provide more frequent disclosures, but the type and extent of disclosures provided as a result of this assessment remains under the responsibility of institutions, provided institutions explain why they do not disclose information covered by the guidelines. The guidelines do not infringe on the ability of National Competent Authorities to require disclosures to be made on a more frequent basis or based on a specific schedule, in accordance with Article 106 of Directive 2014/36/EU.</p>	
<p>Question 12. Do you agree with the proposed implementation date? If not, which alternative date would you suggest?</p>	<p>Respondents broadly disagreed with the proposed implementation date.</p> <p>Respondents stressed that time was needed for the implementation and that the proposed initial application date of 1 January 2015 was too early firstly because institutions cannot start the implementation process when competent authorities have not</p>	<p>To take into account the need for National Competent Authorities to incorporate the guidelines into their supervisory framework, the implementation date has been aligned with the date when this incorporation has taken place for each jurisdiction.</p>	<p>Modification of the implementation date.</p>

	<p>confirmed within a period of two months whether or not they intend to comply with the EBA guidelines, and secondly considering the lead time needed for a robust implementation. In addition, it would be beneficial to harmonise the guidelines with the implementation date of the Basel proposals.</p> <p>If the guidelines were to be implemented on 1 January 2015, three respondents asked for clarification regarding the need for compliance in relation to information from 2014 (i.e. whether the guidelines were applicable for reporting periods on or after 1 January 2015 or for reports that are issued on or after 1 January 2015). In the latter case, they requested a delay in the implementation, to provide institutions with sufficient time to comply with the new obligations, for example regarding the waiver and the frequency policies, or the new disclosure requirements.</p> <p>Two respondents noted that institutions do not have the resources to comply with the guidelines as soon as 1 January 2015, given all their other commitments such as FINREP, stress test, G-SII, hypothetical portfolio data collection exercises, separation and resolution.</p> <p>Three respondents suggested an implementation date of 31 December 2015, to cover disclosures related to year-end 2015 and the subsequent interim periods, meaning that the guidelines would apply to disclosures published at the beginning of 2016. They believed starting with annual disclosures was more in line with the disclosure cycle. However a couple of respondents favoured an alignment with the current implementation date for the Basel proposals at that time.</p> <p>One respondent suggested an implementation date on</p>		
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<p>Question 13. 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?</p>	<p>31 December 2014, earlier than the date consulted on.</p> <p>Respondents believed that the impact assessment underestimated the operational issues – including in terms of additional human resources – represented by quarterly disclosures compared to their limited added values in some cases, especially:</p> <ul style="list-style-type: none"> i. the operational investment required to generate additional disclosures within the accelerated timescales at the end interim periods. Disclosing information is dependent on having the right data in the right format/systems and at the right location. Respondents pointed out that changes would have to be made to information systems that normally are built to extract data on a twelve-month cycle but that would now need to produce data every three months, and that in parallel, data control processes would have to be developed to ensure the quality of the data published; ii. the lack of proportionality and the risk of imbalance between quarter-end regulatory disclosures and the existing quarterly financial accounting disclosures; iii. The excessively demanding nature of the Guidelines in relation to the user benefits that they yield, for example, the combination of the requirement to disclose material changes, the more stringent definition of material and the quarterly disclosure frequency would require, at short notice, a very significant operational re-engineering to generate an accelerated full suite of disclosures from the first quarter of 2015 so that quarter-on-quarter variance can 	<p>The additional operational costs of producing quarterly disclosures in relation to adapting or re-setting computer systems were added to the costs of the guidelines, as well as costs in terms of additional human resources.</p> <p>However, it should be stressed that these additional costs are actually mitigated by the fact that the guidelines build on already existing provisions from the CRR text, existing practices from institutions regarding interim regulatory disclosures and follow a comply or explain, market-driven approach which allows institutions not to provide information if they are able to explain why (including for costs reasons compared to the estimated benefits for users).</p> <p>The guidelines are not intended to affect the balance between interim regulatory disclosures and interim financial disclosures. They were drawn up considering interim regulatory information already provided by institutions, and were tailored to the needs of users. In addition the guidelines leave institutions free to determine the extent of their disclosures, provided that they explain why they do not provide disclosures listed in the guidelines. Therefore the issue of proportionality of financial versus regulatory information is within the remit of institutions when deciding the extent of disclosures, and is mitigated by the biggest requirements weighting on semi-annual periods, when full financial statements should be released.</p> <p>The guidelines were modified wherever possible to ease their implementation by institutions, and the postponement of the implementation date should address some of the operational concerns raised by respondents.</p>	<p>Additional costs identified by the industry have been incorporated in the impact assessment.</p>
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	<p>be assessed);</p> <p>iv. The impact of this possibly problematic acceleration on existing regulatory data processes and on interim financial disclosures in ways that have not been considered.</p> <p>Alignment with the Basel proposals was commonly identified as a way to reduce costs and inefficiencies, and one respondent noted in general that the impact assessment should consider the costs and benefits of issuing guidelines that go beyond the current or proposed BCBS requirements.</p> <p>One respondent stressed that requiring institutions to submit their disclosures in a single repository like U.S. bank holding companies would make research into banks easier.</p>	<p>Moreover, the flexibility kept on the date of interim regulatory disclosures will in most cases allow institutions to use COREP to meet interim disclosure expectations as information that is requested is generally in line with supervisory reporting and should be available by the reporting remittance date or before.</p> <p>Deviations from Basel may be justified to ensure proportionality, as the EU regulatory regime applies to all banks as opposed to the internationally active ones in Basel. Moreover, in terms of frequency of disclosures the proposals consulted on by the Basel Committee are more ambitious than what the guidelines provide for.</p> <p>The issue of a central repository of disclosures is beyond the scope of the guidelines. Some disclosures are already available in a central repository (see the disclosure of the G-SII indicators on the EBA website <http://www.eba.europa.eu/risk-analysis-and-data/global-systemically-important-institutions>).</p>	
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8. Confirmation of compliance with guidelines and recommendations

Date:

Member/EEA State:

Competent authority

Guidelines/recommendations:

Name:

Position:

Telephone number:

E-mail address:

I am authorised to confirm compliance with the guidelines/recommendations on behalf of my competent authority: Yes

The competent authority complies or intends to comply with the guidelines and recommendations: Yes No Partial compliance

My competent authority does not, and does not intend to, comply with the guidelines and recommendations for the following reasons¹⁸:

Details of the partial compliance and reasoning:

Please send this notification to compliance@eba.europa.eu¹⁹

¹⁸ In cases of partial compliance, please include the extent of compliance and of non-compliance and provide the reasons for non-compliance for the respective subject matter areas.

¹⁹ Please note that other methods of communication of this confirmation of compliance, such as communication to a different e-mail address from the above, or by e-mail that does not contain the required form, shall not be accepted as valid.