

Guidelines for assessing compliance with disclosure requirements

As at October 2010

General guidelines

1. Supervisors must object to the full waiver of disclosure under section 26a of the Banking Act for reasons of materiality.
2. If key information that is fundamentally required to be disclosed is not disclosed, or not disclosed completely, supervisors must object unless the institution provides plausible and understandable reasons for non-disclosure of this information. In order to make disclosures uniquely assignable, institutions, if in doubt, should indicate the immateriality of disclosure requirements by explicitly stating “nil report”.
3. Errors found in the disclosure report are to be rectified.

Reference to section 26a (2) of the Banking Act

4. Plausible and objectively understandable reasons must be given for non-disclosure if materiality and confidentiality are cited. The following reasons are insufficient.
 - Reference to the cross-offsetting option permitted pursuant to section 340f (3) and (4) of the German Commercial Code.
 - Reference to a hierarchy of rules, eg in connection with section 340f of the German Commercial Code.
 - Sole reference to exceptions from disclosure requirements under section 26a (2) of the German Banking Act; or
 - General reference to a potential weakening of competitiveness.

Publication

5. Supervisors must object to any failure to comply with section 320 (2) of the Solvency Regulation requiring confirmation of publication in the electronic version of the Federal Gazette and the associated notification of supervisors.
6. Information to be disclosed pursuant to Part 5 of the Solvency Regulation is to be published not later than four weeks after approval of the annual accounts.
7. The disclosure report must be available until the next disclosure report has been published.
8. If, in order to comply with disclosure requirements, an institution makes use of the option to refer to other disclosure media pursuant to section 320 (1) sentence 2 of the Solvency Regulation, these references must embrace and ensure clear access to the relevant information.
9. Electronic access to the information pursuant to Part 5 of the Solvency Regulation must not be impeded by requiring prior registration by name.
10. It must be ensured that an electronically available disclosure report can be printed out.

Specific guidelines

11. Key definitions of terms such as “past due” and “impaired” (section 327 (1) number 1 of the Solvency Regulation) have to be requested.
12. The description of risk management pursuant to section 322 of the Solvency Regulation may be waived only if reference is made to comparable disclosure elsewhere.
13. Supervisors must object to the complete non-disclosure of information about the terms and conditions of the main features of all own funds items pursuant to section 324 (1) of the Solvency Regulation. The relevant information has to be released particularly with respect to hybrid tier 1 capital instruments.
14. For regionally active institutions, a geographical breakdown of exposures into “Germany”, “EU” and “Other” will generally be sufficient to meet the disclosure requirements pursuant to section 327 (2) number 2 of the Solvency Regulation (geographical distribution of exposures).
15. Regarding the disclosure of exposures broken down by industry or counterparty type pursuant to section 327 (2) number 3 of the Solvency Regulation, a breakdown by industry is expected; it is not enough to classify counterparties as “individuals” and “corporates”.

16. Information on risk provisioning pursuant to section 327 (2) numbers 5 and 6 of the Solvency Regulation must be disclosed.

17. If equities in the banking book are disclosed pursuant to section 332 (2) of the Solvency Regulation only at balance-sheet values, plausible and objectively understandable reasons for the non-disclosure of their present value or listed market price must be presented.