EBA/CP/ 2024/ 13

06 June 2024

Consultation Paper

Draft Regulatory Technical Standards

- on establishing a risk taxonomy on operational risk that complies with international standards and a methodology to classify the loss events included in the loss data set based on that risk taxonomy on operational risk under Article 317(9) of Regulation (EU) 575/2013;
- on specifying the condition of 'unduly burdensome' for the calculation of the annual operational risk loss under Article 316(3) of Regulation (EU) 575/2013;
- on specifying how institutions shall determine the adjustments to their loss data set following the inclusion of losses from merged or acquired entities or activities under Article 321(2) of Regulation (EU) 575/2013.

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1. Responding to this consultation

The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 5.2.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence to support the views expressed/ rationale proposed; and
- describe any alternative regulatory choices the EBA should consider.

Submission of responses

To submit your comments, click on the 'send your comments' button on the consultation page by 06.09.2024. Please note that comments submitted after this deadline, or submitted via other means may not be processed.

Publication of responses

Please clearly indicate in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from us in accordance with the EBA's rules on public access to documents. We may consult you if we receive such a request. Any decision we make not to disclose the response is reviewable by the EBA's Board of Appeal and the European Ombudsman.

Data protection

The protection of individuals with regard to the processing of personal data by the EBA is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the EBA website.

2. Executive Summary

The CRR3 includes amendments to the operational risk area, where a revised framework is introduced and all previously existing approaches for the calculation of the regulatory capital are replaced by the business indicator component (BIC). The BIC is based on the Business indicator (BI), which measures an institution's volume of business.

While the loss component in the Basel framework is set to 1 in the context of the European implementation, attention is still given to how the operational risk losses are calculated and stored in the data sets. In particular, in order to calculate the annual operational risk loss, institutions with a BI above EUR 750 million need to build and maintain a loss data set that includes losses above a certain threshold, in the ten-year time window.

Subsequently, the EBA has received several mandates concerning the data collection and governance of the loss data set. This draft CP deals with three of these mandates:

1) A draft regulatory technical standard (RTS) on establishing a risk taxonomy on operational risk that complies with international standards and a methodology to classify the loss events included in the loss data set based on that risk taxonomy on operational risk under Art. 317(9) of Regulation (EU) 575/2013;

2) A draft regulatory technical standard (RTS) on specifying the condition of 'unduly burdensome' for the calculation of the annual operational risk loss under Art. 316(3) of Regulation (EU) 575/2013;

3) A draft regulatory technical standard (RTS) on specifying how institutions shall determine the adjustments to their loss data set following the inclusion of losses from merged or acquired entities or activities as referred to in Art. 321(1) of the CRR under Art. 321(2) of Regulation (EU) 575/2013.

Regards the first mandate, the draft RTS establish a risk taxonomy that includes Level 1 event types in line with those currently envisaged in the CRR2, Level 2 categories that specify in greater detail the corresponding event types, and a list of attributes that increase the flexibility of the framework and the level of information available to supervisors. By construction, Level 1 event types and Level 2 categories are mutually exclusive and collectively exhaustive, while only some of the attributes retain this feature.

As far as the second mandate is concerned, the CRR3 allows the competent authority to grant a derogation to an institution whose BI is between EUR 750 million – EUR 1 billion, when the institution proves that such calculation would be unduly burdensome. The draft RTS specify that the calculation of the annual operational risk loss should be deemed as unduly burdensome, for up to three years, when an institution has a BI higher that EUR 750 million following an operation of merger and acquisition. In addition, also for institutions whose BI temporarily passes EUR 750 million should be waived from the calculation of the annual operational risk loss. Finally, bridge institutions set up according to Art. 40 of the BRRD should be also waived from this requirement.

Finally, regarding the third mandate, the draft RTS require institutions that are subject to an operation of merger or acquisition, or that start an activity, to incorporate the loss data set of the acquired or merged entity, or activity, in the currency of the reporting institutions. Furthermore, the loss data set of the acquired or merged entity, or activity, should be incorporated reflecting the risk taxonomy used by the reporting institution. Finally, the draft RTS provide a formula to calculate, on a temporary basis, the annual operational risk loss when the institution is not able to promptly include the loss data set of the acquired or merged entity, or activity, into the loss data set of the reporting institution.

Next steps

Following the feedback received from the consultation, the EBA will revise the draft RTS proposed for consultation, where appropriate, and send them in their final form to the European Commission for adoption. The intention, depending on the feedback received, would be to finalise the three mandates by end-2024.

3. Background and rationale

3.1 Introduction

1. The banking package that implements the Basel III framework in the EU envisages several amendments to the Capital Requirements Regulation ('CRR'). This includes the introduction in the EU of a revised framework for own funds requirements for operational risk, consisting of replacing all existing approaches for the calculation of the regulatory capital with a single, non-model-based approach: the business indicator component (BIC).

2. Furthermore, the CRR requires institutions with a business indicator (BI) equal to or higher than EUR 750 million to identify and record losses to calculate the annual operational risk loss according to Article 316 of the CRR. Recorded losses contribute to build the loss data set according to Article 317 CRR. In order to build a comparable and consistent loss data set, institutions need to assign a loss event to a specific entry according to a risk taxonomy. Article 317(9) of the CRR grants the EBA a mandate concerning the establishment of the risk taxonomy to be used by all institutions when recording losses.

3. To avoid disproportionate efforts from institutions to calculate the annual operational risk loss, an institution whose BI is between EUR 750 million and 1 billion may ask its competent authority before an exemption from the calculation of this annual operational risk loss. When granting this exemption, the competent authority should assess whether the calculation of the annual operational risk loss would be unduly burdensome for the institution. Article 316(3) of the CRR grants the EBA a mandate to specify the condition of "unduly burdensome" for the calculation of the annual operational risk loss.

4. Institutions that perform mergers or acquisitions, or that include activities, should include losses stemming from merged or acquired entities or activities in their loss data set going back 10 years, as soon as the business indicator items related to those entities or activities are included in the institution's business indicator. Since the loss data set of the merging or acquiring entities or activities may need adjustments in order to be merged in a single loss data set, Article 321(2) of the CRR grants the EBA a mandate to provide guidance on how to adjust the loss data set of the merged or acquired entities or activities. Furthermore, the draft RTS under this mandate also provide an alternative calculation methodology when the adjustments to the loss data set cannot be performed promptly.

5. The next sub-sections provide further details on the development of the draft RTS under Articles 317(9), 316(3) and 321(2) of the CRR.

3.2 Draft regulatory technical standards for establishing a risk taxonomy on operational risk that complies with international standards and a methodology to classify the loss events included in the loss data set based on that risk taxonomy on operational risk under Article 317(9) of the CRR

6. According to Article 316(1) of the CRR, institutions with a business indicator equal to or exceeding EUR 750 million shall calculate their annual operational risk loss according to the formula:

$$OR\_loss = \sum_i net\_loss_i$$

where $net\_loss_i \geq$ 20,000 EUR (Article 319(1) of the CRR) or 100,000 EUR (Article 318(2) of the CRR).

7. Furthermore, in line with Article 317(7) of the CRR, institutions shall be able to map their historical internal loss data to event type at the request of the competent authority.

8. The EBA is mandated, under Article 317(9) of the CRR, to develop a risk taxonomy that complies with international standards and a methodology to classify the loss events included in the loss data set based on that risk taxonomy for operational risk. This risk taxonomy is central to ensuring data consistency within an institution, as well as comparability across the banking sector.

The structure of the risk taxonomy: Level 1 event types and Level 2 categories

9. While the Basel Committee on Banking Supervision (BCBS) has delivered a new methodology for the calculation of capital requirements for operational risk, it has not updated its risk taxonomy previously used in the Basel 2 framework, which is also used in the context of the CRR2 framework.

10. Against this background, the EBA made a deliberate choice to develop a risk taxonomy in continuity with the framework of the CRR2, with the aim of maintaining alignment with the current practice of most institutions. This taxonomy is built on Level 1 event types and Level 2 categories, which retain their quality of being mutually exclusive and collectively exhaustive (MECE).

11. In particular, Level 1 event types describe, in line with international standards set out in the Basel taxonomy[1], the operational risk losses and map them in seven event types that encompass all possible records, without envisaging a residual category. Each Level 1 event type

[1] https://www.bis.org/publ/bcbs128.pdf

is assigned with specific Level 2 categories that describe in greater detail the corresponding Level 1 event type.

12. More specifically, the Level 2 categorisation is built through a two-step procedure, which also included an analysis of the Basel Level 2 and Level 3 taxonomy, and the EBA response to the call for advice for the adoption of Basel 3[2]. In the first step, a review of Level 2 categories used by most industry participants was performed. The Level 2 categories that were mapped to only one event type were directly considered as Level 2 categories of the event type they are mapped to. Level 2 categories that were mapped to more than one event type were split in sub-categories that correspond to only one event type with a view to these categories being MECE. Finally, these latter sub-categories were also considered as Level 2 categories of the event type they are mapped to.

13. In the second step, the categories resulting from the first step were adjusted as follows:

- Taking into account historical data, most categories under the same event type were aggregated to ensure that the resulting categories were material enough in terms of either share of loss events or share of loss amounts. Some less-material categories were kept for their strategical relevance or when there was an expectation that future losses will exceed those observed in the past;
- The Level 2 categories used by the industry that were not mapped to any event type, were mapped to the most appropriate category to ensure that resulting categories are collectively exhaustive of all BCBS event types;
- Some Level 2 categories for which the mapping used by the industry was not considered consistent, were mapped to a different event type.

14. As result of these steps taken to develop the risk taxonomy, 7 Level 1 event types and 38 Level 2 categories were defined.

The structure of the risk taxonomy: Rationale for the approach adopted on attributes

15. In line with the industry best practices, these draft RTS complement the operational risk taxonomy with the use of the attributes, also called “flags”. The use of attributes has become lately an important dimension used in the industry to identify phenomena which cannot be easily captured through the event type dimension.

16. Indeed, the flag is an additional attribute that allows to specify, when relevant, a macro category that is independent from the level 1 event type classification. The main goal of attributes is to identify risk events with common risk characteristics or causes.

17. The attributes do not have to be mutually exclusive or collectively exhaustive, meaning that specific losses might be flagged several times while others might not be flagged at all: attributes are not supposed to cover all risk events, so specific flags were identified considering

[2] https://www.eba.europa.eu/finalised-basel-iii-standards-dec-2017-call-advice

which macro categories and sub-aggregation would be most useful from a supervisory perspective.

18. Among the attributes introduced in these draft RTS, some are dedicated to the business lines: to avoid the introduction of additional, not harmonised, definitions for the business areas, these draft RTS rely on the CRR definitions criteria for the Retail, Trading and Sales businesses, with all the other business lines aggregated under "Other Business Lines". The attributes dedicated to the business lines are MECE by construction.

Rationale for ESG attributes

19. Among the attributes introduced in these draft RTS, some are dedicated to ESG: each of the factors (environment, social and governance) has a dedicated attribute, as well as attributes on the risk attributed to greenwashing.

The scheme of the risk taxonomy

20. As consequence of the abovementioned criteria, the scheme of the revised risk taxonomy on operational risk would be as the following:

Level 1 event types	Level 2 categories	Large loss event	Ten largest loss events	Pending Losses	Legal risk - Misconduct	Legal risk - Other than conduct	Model risk	ICT risk	Credit risk boundary (those not included in RWA on credit risk)	Market risk boundary	Third party risk	Environmental risk - Physical risk	Environmental risk - Transition risk	Social risk	Governance risk	Greenwashing risk	Retail (including Banking and Retail brokerage)	Commercial banking	Trading&Sales	Other (Payments &Settlements, Asset management, Agency Services, Corporate items)
Internal Fraud	Bribery and Corruption				Yes															
Internal Fraud	Insider Trading not on institution's account				Yes															
Internal Fraud	Intentional mismarking				Yes															
Internal Fraud	Internal fraud committed against other stakeholders				Yes															
Internal Fraud	Internal fraud committed against the institution					Yes														
Internal Fraud	Malicious physical damage to employees, institution's physical asset and public assets																			
Internal Fraud	Intentional sanctions violation				Yes															
Internal Fraud	Intentional money laundering and terrorism financing				Yes															
External Fraud	Second party fraud																			
External Fraud	Cyber-attacks							Yes												
External Fraud	Data theft and manipulation																			
External Fraud	First party fraud																			
External Fraud	Third party fraud										Yes									
Employment Practices and Workplace Safety	Inadequate Employment practice																			
Employment Practices and Workplace Safety	Inadequate workplace safety																			
Clients, Products & Business Practices	Anti-trust / anti-competition				Yes															
Clients, Products & Business Practices	Client mistreatment / failure to fulfil duties to customer				Yes															
Clients, Products & Business Practices	Data privacy breach / confidentiality mismanagement																			
Clients, Products & Business Practices	Improper market practices, product and service design or licensing				Yes															
Clients, Products & Business Practices	Rights/obligation failures in preparation phase					Yes														
Clients, Products & Business Practices	Insider Trading on firm's account																			
Clients, Products & Business Practices	Model / methodology design error						Yes													
Clients, Products & Business Practices	Accidental money laundering and terrorism financing				Yes															
Clients, Products & Business Practices	Accidental sanctions violations				Yes															
Clients, Products & Business Practices	Sale service failure				Yes															
Damage to Physical Assets	NA																			
Business Disruption and System Failures	Hardware failure not related to management of transactions							Yes												
Business Disruption and System Failures	Inadequate business continuity planning / event management																			
Business Disruption and System Failures	Network failure not related to management of transactions							Yes												
Business Disruption and System Failures	Software failure not related to management of transactions							Yes												
Execution, Delivery & Process Management	Processing / execution failures																			
Execution, Delivery & Process Management	Client account mismanagement				Yes															
Execution, Delivery & Process Management	Rights/obligation failures in execution phase					Yes														
Execution, Delivery & Process Management	Data management																			
Execution, Delivery & Process Management	Improper distribution / marketing				Yes															
Execution, Delivery & Process Management	IT failures related to management of transactions							Yes												
Execution, Delivery & Process Management	Model implementation and use						Yes													
Execution, Delivery & Process Management	Third party management failures										Yes									
Execution, Delivery & Process Management	Regulatory and Tax authorities, including reporting				Yes															

"Yes" means that the total loss of that level 1 or 2 category should automatically receive the attribute

"Gray" means that no loss of that level 1 or 2 category can receive the attribute

"White" means that losses of that level 1 or 2 category may receive the attribute and institutions will report the exact share/number/amount of attributed losses

Rationale for the exclusion of causes

21. One of the additional dimensions considered for reviewing the Level 2 categorisation is the “cause” of the losses. However, the cause of the losses was not included in these draft RTS because the proposed revision of Level 1 event types and Level 2 categories, as well as the introduction of flags, already provides a significant level of details on each operational risk event which would also allow institutions and competent authorities to identify the main causes triggering the event itself.

Methodology for the classification of loss events included in the loss data set

22. In line with Article 317(9) of the CRR, the EBA is also mandated to develop a methodology to classify the loss events in the loss data set. There are several concepts typical for operational risk loss events, that are not defined in the CRR. These should be clarified in order to get a fully harmonised classification scheme and avoid that the misinterpretation of loss events affects the amount of the annual operational risk loss to be reported by institutions.

3.3 Draft regulatory technical standards for the specification the condition of ‘unduly burdensome’ for the calculation of the annual operational risk loss under Article 316(3) of the CRR

23. The first paragraph of Article 316(1) of the CRR requests institutions with a BI equal to or higher than € 750 million to calculate their annual operational risk loss. The second subparagraph of Article 316(1) of the CRR allows for a derogation from the first subparagraph: competent authorities may grant to institutions with a BI between € 750 million and € 1 billion a waiver from the calculation of the annual operational risk loss, provided that the institution has demonstrated that it would be “unduly burdensome” for it to apply the first subparagraph.

24. Article 317(2) of the CRR states that the institution’s loss data set needs to capture all operational risk events stemming from all the entities that are part of the scope of consolidation pursuant to Part One, Title II, Chapter 2 of the CRR. From the combined reading of Articles 316(1), first and second subparagraphs, and Article 317(2), the derogation envisaged in Article 316(1) second subparagraph applies to the whole institution, as opposed to only some parts (entities or activities) within it. If the institution has not received the waiver pursuant to Article 316(1) second subparagraph, the loss data set needs to encompass all the parts of the institution.

25. The CRR3 uses the term “institution” when it refers to either an institution on a solo basis, or a banking group. For the draft RTS, the term “institution” has the same meaning of the CRR3.

Situations where calculating the annual operational risk loss could be considered “unduly burdensome”

26. There might be cases where an institution is not able to promptly calculate the annual operational risk loss for some of the institution’s entities or activities. This might be due to mergers and acquisitions (M&As), a temporary breach of the €750 million threshold, or the set-up of a bridge institution according to Article 40 of Directive 2014/59/EU3 (BRRD).

27. Firstly, in the context of M&As, institutions may breach the € 750 million threshold for the BI due to this type of operations. In addition, institutions may face hurdles in incorporating loss data of the merged or acquired entities, or activities into the loss data set. In this case, the calculation of the annual operational risk loss may be unduly burdensome, and the institution may receive a waiver regarding this calculation for a maximum of three years. After three years, or earlier if the institution can promptly implement the inclusion of the loss data concerning merged or acquired entities, or activities in the loss data set, the waiver to calculate the annual operational risk loss should be withdrawn. In addition, if at least one institution of the group was calculating the operational risk loss before the merger or the acquisition, the institution may receive a waiver concerning the calculation of the operational risk loss for one year. If all the institutions in a group were calculating the operational risk loss before the merger or the acquisition, the waiver should not be granted.

28. Secondly, institutions may also temporarily breach the € 750 million threshold for the BI, for instance due to unexpected losses or profits, or a temporary increase in activity. In this case, it may be deemed as unduly burdensome to require the calculation of the operational risk loss when the institution breaches the abovementioned threshold for no more than four consecutive reporting dates, or eight non-consecutive reporting dates in the previous twenty consecutive reporting dates.

29. Finally, Article 40 of the BRRD allows for the creation of a bridge institution in case of resolution of an institution. For the bridge institution, it may be disproportionate to calculate the operational risk loss since it will have to deal with assets and liabilities of the institution under resolution.

3.4 Draft regulatory technical standards for the specification on how institutions shall determine the adjustments to their loss data set following the inclusion of losses from merged or acquired entities or activities under Article 321(2) of the CRR

30. Article 321(1) of the CRR states that institutions shall include in the loss data set losses observed during a ten-year period prior to an acquisition or merger stemming from merged or acquired entities or activities as soon as the business indicator items related to those entities or activities

[3] Directive - 2014/59 - EN - brrd - EUR-Lex (europa.eu)

are included in the institution's business indicator calculation. Article 321(2) mandates the EBA to develop a draft RTS to specify how institutions shall determine the adjustments to their loss data set following the inclusion of the losses from merged or acquired entities or activities.

31. The provisions of Article 321(1) of the CRR apply to all institutions that have to calculate the annual operational risk loss according to Article 316(1), first subparagraph of the CRR.

Clarifications on how to carry out adjustments to the loss data set in the context of M&A of entities and/or activities

32. When the currency of the acquired/merged entity or activity is different, Institutions may perform mergers and acquisitions, or include activities, for entities or activities in a currency which is different from the one of the reporting institutions. In this case, the loss data set of the merged or acquired entities or activities should be included in the institution's loss data set by converting the values into the currency of the reporting institution applying, for each of the ten-years window, the exchange rate used at the relevant year of the financial statement. Following operations of mergers or acquisitions or inclusion of activities, institutions may not be able to readily incorporate losses stemming from these operations in the loss data set. In order to avoid an underestimation of the institution's losses, institutions should calculate the annual loss coverage of reported losses of the entire institution using the BI as the proxy, by calculating the ratio of covered losses to the total losses.

33. Since the use of the proxy provides an estimation of the institution's losses, its use should be intended as temporary, and the institution is expected to adjust the loss data set following the inclusion of losses from merged or acquired entities or activities within one year from the completion of the operation.

34. In some cases, the acquiring institution may not be able to allocate the annual operational risk loss for part or all the acquired or merged institution or activities according to the risk taxonomy developed according to Article 317(9) of the CRR. This situation may arise due to the lack of data of sufficient quality, or incomplete loss data set. In this case, the institution should allocate losses according to the distribution of losses in the reporting institution. The institution is expected to allocate the annual operational risk loss for part or all the acquired or merged institution or activities within one year from the completion of the merger or acquisition, or of the inclusion of the activities.

4. Draft regulatory technical standards for establishing a risk taxonomy on operational risk that complies with international standards and a methodology to classify the loss events included in the loss data set based on that risk taxonomy on operational risk under Article 317(9) of the CRR

COMMISSION DELEGATED REGULATION (EU) …/…

of XXX

supplementing Regulation (EU) 2013/575 of the European Parliament and of the Council with regard to regulatory technical standards for establishing a risk taxonomy on operational risk and a methodology to classify the loss events included in the loss data set under Article 317(9) of that Regulation

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) 2013/575 of the European Parliament and of the Council of [XXX][4], and in particular Article 317(9), third subparagraph thereof,

Whereas:

(1) International standards on operational risk require loss events to be classified into seven event types. To comply with those standards, the operational risk taxonomy referred to in Article 317(9) of Regulation (EU) 575/2013 should be based on the same event types.

(2) To obtain a sufficiently granular classification system, the operational risk taxonomy should also include a second level of classification, based on the industry best practices. Accordingly, the operational risk taxonomy should organise loss data events in Level 1 event types, representing the macro-events to which a loss event should be assigned, and Level 2 categories, listing in more detail the features of the corresponding Level 1 event types. The design and description of Level 2 categories is developed according to international standards and industry best practices, and aim to foster harmonisation in the recording of loss events.

(3) In order to provide the complete picture of the losses of an institution, the construction of the operational risk taxonomy in Level 1 event types and Level 2 categories should be designed to make them mutually exclusive and collectively exhaustive, without envisaging any residual category.

(4) Though Level 1 event types and Level 2 categories are exhaustive with reference to operational risk losses, some loss events may be attributable to an additional description in addition to its assignment to the relevant Level 1 event type and Level 2 category. In order to enrich the recording of information available on loss events, institutions should be required to assign one or more attributes to these events. Given their nature, attributes should not be designed to make them mutually exclusive and collectively exhaustive, with the exception of some attributes (e.g. those on retail, trading and sales and other business lines).

[4] [Insert OJ]

(5) Only losses that are relevant for the calculation of the annual operational risk loss should be recorded in the loss data set, and institutions should not include in the loss data set losses that are recovered within five working days.

(6) In order to allow for an effective supervision of the operational risk, institutions should be required to assign loss events to Level 1 event types from the ten years preceding the date of entry into force of this Regulation.

(7) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.

(8) The European Banking Authority conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established under Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[5],

HAS ADOPTED THIS REGULATION:

Article 1

Classification of loss events

1. Institutions shall classify each loss event into a single Level 1 event type in accordance with Article 2 and into a single Level 2 category in accordance with Articles 3 to 8. Loss events classified as "Damage to Physical Assets" in accordance with Article 2 shall not be assigned to any Level 2 category.
2. Institutions shall assign to each loss event all the applicable attributes in accordance with Article 9.
3. Institutions shall not include in the loss data set losses that are fully recovered within five working days. Where the recovery is partial, institutions shall include in the gross loss referred to in Article 318, paragraph 1 of Regulation (EU) 575/2013 only the part of the loss that is not recovered within five working days.

Article 2

Level 1 classification

Institutions shall classify each loss event in one of the following Level 1 event types:

Level 1 event type classification	Description	Reference number
Internal Fraud		1

[5]Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

	Losses due to acts of a type intended to defraud, misappropriate property or circumvent regulations, the law or company policy, excluding diversity/discrimination events, which involves at least one internal party (i.e. a party with a direct relationship to the institution or for which the institution is jointly liable), including instances where the internal party is acting in collusion with external parties.	
External Fraud	Losses due to acts of a type intended to defraud, misappropriate property or circumvent the law, committed by an external party without the involvement of an internal party.	2
Employment Practices and Workplace Safety	Losses arising from acts inconsistent with employment, health or safety laws or agreements, from payment of personal injury claims, or from diversity / discrimination events towards employees.	3
Clients, Products & Business Practices	Losses arising from an unintentional or negligent failure to meet a professional obligation to specific clients (including fiduciary and suitability requirements), or from the nature or design of a product.	4
Damage to Physical Assets	Losses arising from loss or damage to physical assets, employees or affiliates of the institution or and public assets or non-affiliated people for which the institution is liable, due to natural disasters or other events, including accidents, wilful damage, war, civil disturbance, riots and terrorism.	5
Business Disruption and System Failures	Failure to provide and maintain appropriate business continuity management (BCM), and event management framework including inadequate business continuity plans and resulting losses arising from this disruption of business or system failures.	6
		7

Execution, Delivery & Process Management	Losses from failed transaction processing or process management and data management, from relations with trade counterparties, vendors and regulatory and tax authorities.	

Article 3

Level 2 classification for Level 1 event type Internal Fraud

Institutions shall classify each loss event classified as Internal Fraud in accordance with Article 2 into one of the following Level 2 categories:

Internal Fraud Level 2 classification	Description	Reference number
Bribery and Corruption	Bribery or corruption from an internal party of the institution.	1.1
Insider Trading not on institution's account	Trading not on the institution's account based on insider information.	1.2
Intentional mismarking	Intentional mismarking of positions.	1.3
Internal fraud committed against other stakeholders	Fraud committed by an internal party against the institution's external parties, including clients and third parties.	1.4
Internal fraud committed against the institution	Fraud committed by an internal party against the institution.	1.5
Malicious physical damage to employees, institution's physical assets and public assets	Malicious physical damage to internal parties and malicious destruction of physical assets of the institution or of public assets for which the institution is liable.	1.6

Intentional sanctions violation	Intentional failure to comply with the restrictions imposed by sanctions. It includes operational risk events due to intentional transactions involving sanctioned countries.	1.7
Intentional money laundering and terrorism financing	Intentional engaging in money laundering and terrorism financing.	1.8

Article 4

Level 2 classification for Level 1 event type External Fraud

Institutions shall classify each loss event classified as External Fraud in accordance with Article 2 into one of the following Level 2 categories:

External Fraud Level 2 classification	Description	Reference number
Second party fraud	Fraudulent acts not relating to cyber-attacks, data theft or data manipulation that have been committed by means of the identity of another colluding person.	2.1
Cyber-attacks	Institution's systems being intruded by any cyber-attack not resulting in data theft or data manipulation.	2.2
Data theft and manipulation	Data being stolen or maliciously manipulated by any means including cyber-attacks. This covers all types of data, e.g. client data, employee data, and the institution's proprietary data.	2.3
First party fraud	Fraudulent acts not relating to cyber-attacks, data theft or data manipulation that have been committed by a client of the institution on its own account.	2.4
Third party fraud		2.5

	Fraudulent acts not relating to cyber-attacks, data theft or data manipulation that have been committed by means of the identify of another ignorant person.	

Article 5

Level 2 classification for Level 1 event type Employment Practices and Workplace Safety

Institutions shall classify each loss event classified as Employment Practices and Workplace Safety in accordance with Article 2 into one of the following Level 2 categories:

Employment Practices and Workplace Safety Level 2 classification	Description	Reference number
Inadequate Employment practice	Losses arising from breach of employment legislation or regulatory requirements (e.g. actual or perceived mistreatment of employees which can be traced to a regulatory breach, like unfair dismissal, harassment); ineffective employment relations (including industrial action, like strikes, tribunals, and ineffective union/employee group relations management); diversity and discrimination towards employees.	3.1
Inadequate workplace safety	Losses arising from ineffective workplace safety and breach of employees' health and safety rules.	3.2

Article 6

Level 2 classification for Level 1 event type Clients, Products & Business Practices

Institutions shall classify each loss event classified as Clients, Products & Business Practices in accordance with Article 2 into one of the following Level 2 categories:

Clients, Products & Business Practices Level 2 classification	Description	Reference number
		4.1

Anti-trust / anti-competition	Violations of antitrust or competition laws where the organization fail to act in accordance with customers' best interest.	
Client mistreatment / failure to fulfil duties to customer	Inappropriate/indelicate behaviour towards customer and failure to respect and comply with duties to customers.	4.2
Data privacy breach / confidentiality mismanagement	Improper disclosure or misuse of confidential information.	4.3
Improper market practices, product and service design or licensing	Conducting business activities in breach of trading rules and standards, including all types of market abuse and manipulation. Flaws in design of products or services targeted at clients such that the design of a product/service does not meet client's needs. Operating without the necessary licence, certification or registration.	4.4
Rights/obligation failures in preparation phase	Failure to follow the appropriate procedure for handling legal processes. Failure to manage contractual and non-contractual rights/ obligations correctly. It includes all execution errors pertaining to legal procedures and processes, but it does not include breaches of the organisation's legal obligations, legal disputes and litigations.	4.5
Insider Trading on institution's account	Trading on institution's account based on insider information.	4.6
Model / methodology design error	Losses due to errors in the model itself, including the model design, incorrect formulae, methodology and underlying assumptions. If Artificial Intelligence (AI) or Machine Learning (ML) techniques are components of the model,	4.7

	then an error due to either of these technologies could fall under the scope of model risk.	
Accidental sanctions violations	Accidental failure to comply with the restrictions imposed by sanctions. It includes operational risk events due to mistaken transactions involving sanctioned countries.	4.8
Accidental money laundering and terrorism financing	Accidentally engaging in money laundering and terrorism financing. It includes failures in KYC process and AML processes, and lack of compliance with regulation about these topics.	4.9
Sale service failure	It includes both pre-sales service failure and post-sales service failure. Pre-sales failure is inadequate/improper services to clients ahead of sales, including mis-selling and failure to provide adequate advice. Post-sales failure refers to inadequate/improper services to clients after sales, including the failure to respond to client complaints regarding poor sales services within the timelines defined by the regulator.	4.10

Article 7
Level 2 classification for Level 1 event type Business Disruption and System Failures

Institutions shall classify each loss event classified as Business Disruption and System Failures in accordance with Article 2 into one of the following Level 2 categories:

Business Disruption and System Failures Level 2 classification	Description	Reference number
Hardware failure not related to management of transactions	IT failure caused by hardware and not related to management of transactions.	6.1
		6.2

Inadequate business continuity planning / event management	Inadequate business continuity planning / event management, i.e. risk events associated with BCM control framework failures.	
Network failure not related to management of transactions	IT failure caused by network and not related to management of transactions.	6.3
Software failure not related to management of transactions	IT failure caused by software and not related to management of transactions.	6.4

Article 8

Level 2 classification for Level 1 event type Execution, Delivery & Process Management

Institutions shall classify each loss event classified as Execution, Delivery & Process Management in accordance with Article 2 into one of the following Level 2 categories:

Execution, Delivery & Process Management Level 2 classification	Description	Reference number
Processing / execution failures	Failure to process, manage and execute transactions and/or other processes (such as change programmes) correctly and/or appropriately.	7.1
Client account mismanagement	Inadequate management of client portfolio/investments, including unapproved access given to accounts, incorrect client records (loss incurred), negligent loss or damage to client assets.	7.2
Rights / obligation failures in execution phase	Failure to manage contractual and non-contractual rights/obligations correctly.	7.3

Data management	Failing to appropriately manage and maintain data, including all types of data, for example, client data, employee data, and the organisation's proprietary data.	7.4
Improper distribution / marketing	Improper / inadequate means of distribution of products and services, and improper/inaccurate direct marketing practices.	7.5
IT failures related to management of transactions	Failure or outage of systems, including hardware, software and networks for the management of transactions.	7.6
Model implementation and use	Incorrectly implementing a model, even though the model may be correct. Using a model in an incorrect context, even though the model may be correct and correctly implemented.	7.7
Third party management failures	Failing to manage third party relationships and risks appropriately, for example, not taking reasonable steps to identify and mitigate additional operational risks resulting from the outsourcing of services or functions. The following are included: failure of developing and maintaining an adequate third party control framework (e.g. selection of providers, ongoing oversight, due diligence); third party violating applicable regulations or legal requirements when performing services for the institution; inadequate intra-group agreements/SLAs which do not meet the institution's or the regulator's requirements.	7.8
Regulatory and Tax authorities, including reporting	Failure to comply with any legal or regulatory obligations that are not captured through other level 2 risks. This includes failure to report in an accurate, complete and timely manner to external parties, including regulators and tax authorities.	7.9

Question 1:
Do you think that the granularity of and the distinction between the different Level 2 categories is clear enough? If not, please provide a rationale.

Article 9
Attributes

1. Institutions shall assign to each loss event all the applicable of the following attributes:

Attributes	Description
Large loss event	Loss amounts higher than 10% of the average annual loss calculated over the last 10 financial years and based on the threshold referred to in Article 319(1) of the CRR3
Ten largest loss events	Among the 10 largest loss events of a given reporting year
Pending losses	As defined in Article 318, paragraph 2, letter (d) of Regulation (EU) 575/2013.
Legal risk - Misconduct	As defined in Article 4, paragraph 52a, point (d) of Regulation (EU) 575/2013
Legal risk – Other than misconduct	As defined in Article 4, paragraph 52a, points (a) - to (c) and (e) - to (g) of Regulation (EU) 575/2013
Model risk	As defined in Article 4, paragraph 52b of Regulation (EU) 575/2013
ICT risk	As defined in Article 4, paragraph 52c of Regulation (EU) 575/2013

Credit risk (where not included in RWA on credit risk)	At least the following events, and the related losses, are classified as operational risk related to credit risk: a. frauds committed by a client of the institution on its own account, occurring in a credit product or credit process at the initial stage of the lifecycle of a credit relationship, including inducement to lending decisions based on counterfeit documents or miss-stated financial statements, such as non-existence or over-estimation of collaterals and counterfeit salary confirmation. b. frauds committed by means of another, ignorant person's identity, including loan applications through electronic identity fraud using clients' data or fictitious identities or fraudulent use of clients' credit cards.
Market risk	At least the following events, and the related losses, are classified as operational risk related to financial transactions and market risk: a. Events due to operational and data entry errors, including the following: i. Failures and errors during the introduction or execution of orders. ii. Loss of data or misunderstanding of the data flow from the front to the middle and back offices of the institution. iii. Errors in classification. iv. Incorrect specification of deals in the term-sheet, including errors related to the transaction amount, maturities and financial features. b. Events due to failures in internal controls, including the following: i. Failures in properly executing an order to unwind a market position in case of adverse price movements. ii. Unauthorised positions taken in excess of allocated limits, irrespective of the type of risk they relate to. c. Events due to inadequate data quality and unavailability of IT environment, including technical unavailability of access to the market resulting in an inability to close contracts.
Third party risk	

	Losses that may arise for an institution in relation to its use of services provided by third-party service providers or by subcontractors of the latter, including through outsourcing arrangements.
Environmental risk – physical risk	As defined in Article 4, paragraph 52f of Regulation (EU) 575/2013
Environmental risk – transition risk	As defined in Article 4, paragraph 52g of Regulation (EU) 575/2013
Social risk	As defined in Article 4, paragraph 52h of Regulation (EU) 575/2013
Governance risk	As defined in Article 4, paragraph 52i of Regulation (EU) 575/2013
Greenwashing risk	Losses from practices whereby sustainability-related statements, declarations, actions, or communications do not clearly and fairly reflect the underlying sustainability profile of an entity, a financial product, or financial services. This practice may be misleading to consumers, investors, or other market participants.
Retail (including banking and retail brokerage)	Operational events and losses linked to retail clients, including: a. Natural persons b. SME´s (small and medium-size enterprises). According to the EU Commission Recommendation of 6 May 2003, an enterprise is any entity engaged in an economic activity, irrespective of its legal form. This includes self-employed persons and family businesses engaged in craft or other activities, and partnerships or associations regularly engaged in an economic activity. The list of activities for this attribute includes: a. Retail and private banking: lending and deposits, transactional and saving accounts, ATMs services, banking services, financial leasing, guarantees and commitments, trusts and estates, investment advice,

	card services (debit and credit cards, merchant/commercial/corporate cards, private labels). b. Retail brokerage: reception, transmission and execution of client orders, placing of financial instruments without a firm commitment basis.
Trading and sales	Operational events and losses linked to activities such as flow business and sales, brokerage, market making, treasury, position taking, and proprietary positions managed by trading desks. "Trading desk" means a well-identified group of dealers set up by the institution to jointly manage a portfolio of trading book positions, or the non-trading book positions, in accordance with a well-defined and consistent business strategy and operating under the same risk management structure. The list of products for this attribute includes: a. Equities: equity portfolios and indices b. Fixed income and credit trading c. Foreign exchange d. Commodities and energy products e. Money market, funding, repos and securities lending f. Derivatives
Commercial banking	Operational events and losses linked to activities such as lending and deposits, guarantees, leasing and factoring, trade finance, project finance, real estate, etc.
Other business lines (including corporate finance, payment and settlement, asset management, agency services, corporate items)	This attribute collects the remaining operational events and losses linked to activities, other than those mentioned in the Retail, Trading & Sales and Commercial banking attributes, such as the following: a. Corporate Finance: mergers and acquisitions, underwriting, privatisations, securitisation, IPO & private placements, advisory services, municipal & government finance, merchant banking, etc. b. Payments and settlements for external clients: payments and collections, funds transfer, cash and securities clearing and settlement. Payment and settlement losses related to a bank´s own activities would be incorporated in the affected business line.

	c. Agency services for the account of clients: custody services (escrow, depository receipts, corporate actions, etc.), corporate trust and agency (issuer and paying agents). d. Asset management: discretionary and non-discretionary fund management, including portfolio management (pooled, segregated, retail, institutional, closed, open, private equity). e. Corporate items: for purely corporate level items, such as those affecting the Board of Directors, misreporting financial statements, or other events that can only be categorised at corporate centre.

2. By way of derogation from paragraph 1, the attributes “Legal risk – Misconduct”, “Legal risk - Other than misconduct”, “Model risk”, “ICT risk”, “Third party risk”, “Environmental risk”, “Social risk”, “Governance risk” and “Greenwashing risk” shall be mapped to Level 1 event types and Level 2 categories in accordance with the Annex to this regulation.

Question 2:
Do you perceive the attribute “greenwashing risk” as an operational risk or as a reputational risk event? Please elaborate.

Question 3:
To which Level 1 event types and/or Level 2 categories would you map greenwashing losses? Please provide a rationale.

Question 4:
Is “Environmental – transition risk” an operational risk event? If yes, to which Level 2 categories should it be mapped? Please provide a rationale.

Question 5:
Which of these attributes do you think would be the most difficult to identify? Please elaborate.

Question 6:
Do you agree with the inclusion of the attribute “Large loss event”? If not, please elaborate.

Question 7:
Do you think that the granularity the proposed list of attributes is clear enough? Would you suggest any additional relevant attribute? Please elaborate your rationale.

Article 10
First application

At first application, institutions shall assign loss events to the relevant Level 1 event types in accordance with Article 2 from the ten years preceding the date of entry into force of this Regulation.

Question 8:
Would it be disproportionate to also map the three years preceding the entry into force of these Draft RTS to Level 2 categories? If yes, what would be the main challenges?

Article 11
Entry into force

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

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

Done at Brussels,

For the Commission
The President
{}{}{}

ANNEX

Attributes	Mapping to Level 1 event types and Level 2 categories
Legal risk - Misconduct	1. Loss events classified into the following Level 1 event types and Level 2 categories shall always be assigned the attribute "Legal risk - Misconduct": 1.1, 1.2, 1.3, 1.4, 1.7, 1.8, 4.1, 4.2, 4.4, 4.8, 4.9, 4.10, 7.2, 7.5, 7.9 2. Loss events classified into Level 1 event types and Level 2 categories different than those in point (1) shall not be assigned the attribute "Legal risk - Misconduct".
Legal risk – Other than misconduct	3. Loss events classified into the following Level 1 event types and Level 2 categories shall always be assigned the attribute "Legal risk- Other than misconduct": 1.5, 4.5, 7.3 4. Loss events classified into the following Level 1 event types and Level 2 categories may be assigned the attribute "Legal risk- Other than misconduct": 1.6, 2.1, 2.2, 2.3, 2.4, 2.5, 3.1, 3.2, 4.3, 4.6, 4.7, 5, 6.1, 6.2, 6.3, 6.4, 7.1, 7.4, 7.6, 7.7, 7.8

	5. Loss events classified into Level 1 event types and Level 2 categories different than those in points (3) and (4) shall not be assigned the attribute “Legal risk – Other than misconduct”.
Model risk	6. Loss events classified into the following Level 1 event types and Level 2 categories shall always be assigned the attribute “Model risk”: 4.7, 7.7 7. Loss events classified into Level 1 event types and Level 2 categories different than those in point (6) shall not be assigned the attribute “Model risk”.
ICT risk	8. Loss events classified into the following Level 1 event types and Level 2 categories shall always be assigned the attribute “ICT risk”: 2.2, 6.1, 6.3, 6.4, 7.6 9. Loss events classified into Level 1 event types and Level 2 categories different than those in point (8) may be assigned the attribute “ICT risk”.
Third party risk	10. Loss events classified into the following Level 1 event types and Level 2 categories shall always be assigned the attribute “Third party risk”: 2.5, 7.8 11. Loss events classified into Level 1 event types and Level 2 categories different than those in point (10) may be assigned the attribute “Third party risk”.
Environmental risk	12. Loss events classified into the following Level 1 event types and Level 2 categories may be assigned the attribute “Environmental risk”: 5, 6.1, 6.2, 6.3, 6.4, 7.3, 7.6 13. Loss events classified into Level 1 event types and Level 2 categories different than those in point (12) shall not be assigned the attribute “Environmental risk”.

Social risk	14. Loss events classified into the following Level 1 event types and Level 2 categories may be assigned the attribute “Social risk”: 3.1, 3.2, 5 15. Loss events classified into Level 1 event types and Level 2 categories different than those in point (14) shall not be assigned the attribute “Social risk”.
Governance risk	16. Loss events classified into the following Level 1 event types and Level 2 categories may be assigned the attribute “Governance risk”: 1.1, 1.2, 1.4, 1.5, 1.7, 1.8, 4.4, 7.8 17. Loss events classified into Level 1 event types and Level 2 categories different than those in point (16) shall not be assigned the attribute “Governance risk”.
Greenwashing risk	18. Loss events classified into the following Level 1 event types and Level 2 categories may be assigned the attribute “Greenwashing risk”: 1.7, 1.8, 4.2, 4.4, 4.5, 4.8, 4.9, 4.10, 7.3, 7.5, 7.9 19. Loss events classified into Level 1 event types and Level 2 categories different than those in point (18) shall not be assigned the attribute “Greenwashing risk”.

5. Draft regulatory technical standards for the specification of the condition of ‘unduly burdensome’ for the purposes of Article 316(1) of the CRR under Article 316(3) of the CRR

COMMISSION DELEGATED REGULATION (EU) …/…

of XXX

supplementing Regulation (EU) 2013/575 of the European Parliament and of the Council with regard to regulatory technical standards specifying the condition of 'unduly burdensome' for the purposes of Article 316(1) of that Regulation

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to Regulation (EU) 2013/575 of the European Parliament and of the Council of [XXX][6], and in particular Article 316(3), third subparagraph thereof,
Whereas:

(1) The challenges to the calculation of the annual operational risk loss are mostly due to the short timing available for the implementation of the appropriate systems and procedures, and the effort to put in place is not unduly burdensome when the institution is given an appropriate time span.

(2) Mergers and acquisitions may lead an institution to the obligation to calculate the annual operational risk loss due to the increased size of the business indicator. Furthermore, the challenges stemming from the integration of the merged or acquired entities may result in an effort needed to calculate the operational risk losses which is unduly burdensome, thus an appropriate time span should be given to institutions before complying with the requirement to calculate the annual operational risk loss.

(3) Institutions may temporarily report a business indicator equal to or higher than EUR 750 million due to transitory circumstances, and it would be unduly burdensome for these institutions to calculate the annual operational risk loss when exceeding the threshold is only a temporary exception within a certain time frame.

[6] [Insert OJ]

(4) In specific circumstances, bridge institutions may be set up to manage the resolution of institutions. Given the specificity of the bridge institutions and their temporary nature, it would be unduly burdensome for these institutions to calculate the annual operational risk loss.

(5) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.

(6) The European Banking Authority conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established under Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[7],

HAS ADOPTED THIS REGULATION:

Article 1

Mergers and acquisitions

1. Where, due to a merger or acquisition, the business indicator of an institution equals or exceeds EUR 750 million, but does not exceed EUR 1 billion, the calculation of the operational risk loss shall be deemed as unduly burdensome for the purposes of Article 316, paragraph 1, second subparagraph of Regulation (EU) 575/2013 for up to three years following the finalisation of the merger or acquisition.
2. The period referred to in paragraph 1 shall be reduced to up to one year following the finalisation of the merger or acquisition if at least one, but not all, of the institutions involved in the merger or acquisition calculated the operational risk loss the year prior to the operation.
3. If all of the institutions involved in the merger or acquisition calculated the operational risk loss the year prior to the operation, the calculation of the operational risk loss of the institution resulting from the merger or acquisition shall not be deemed as unduly burdensome.

Question 9:
Is the length of the waivers (three years and one year) for institutions that, post merger or acquisition fall into the EUR 750 million – EUR 1 billion band for the business indicator, sufficient to set up the calculation of the operational risk loss following a merger or acquisition? If not, please provide a rationale.

[7] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

Article 2

Business indicator temporarily equal to or exceeding EUR 750 million and not exceeding EUR 1 billion

The calculation of the operational risk loss shall be deemed as unduly burdensome for the purposes of Article 316, paragraph 1, second subparagraph of Regulation (EU) 575/2013, for institutions whose business indicator is equal to or exceeding EUR 750 million, but not exceeding EUR 1 billion, for no more than four consecutive reporting dates, or for no more than eight reporting dates in the preceding twenty reporting dates.

Article 3

Bridge institution referred to in Article 40 of Directive 2014/59/EU

The calculation of the operational risk loss shall be deemed as unduly burdensome for the purposes of Article 316, paragraph 1, second subparagraph of Regulation (EU) 575/2013, for bridge institutions referred to in Article 40 of Directive 2014/59/EU.

Article 4

Entry into force

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

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

Done at Brussels,

For the Commission
The President
{…}

Question 10: Are there other cases where it should be considered to be unduly burdensome for institutions to calculate the annual operational risk loss?

6. Draft regulatory technical standards for the specification on how institutions shall determine the adjustments to their loss data set following the inclusion of losses from merged or acquired entities or activities as referred to in Article 321(1) of the CRR under Article 321(2) of the CRR

COMMISSION DELEGATED REGULATION (EU) …/…

of XXX

supplementing Regulation (EU) 2013/575 of the European Parliament and of the Council with regard to regulatory technical standards specifying how institutions shall determine the adjustments to their loss data set following the inclusion of losses from merged or acquired entities or activities

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,
Having regard to Regulation (EU) 2013/575 of the European Parliament and of the Council of [XXX][8], and in particular Article 321(2), third subparagraph thereof,
Whereas:

(1) Acquired or merged entities may record losses using a risk taxonomy which is different from the one of the reporting institution. In order to ensure the comparability and consistency of the data, the reporting institution should reclassify the losses of the acquired or merged entities using the risk taxonomy referred to in Article 317 of Regulation (EU) 575/2013.

(2) The losses of the acquired or merged entities may be in a currency which is different from the one of the reporting institution, therefore these losses should be incorporated in the losses of the reporting institution using, for each of the ten-years window, the exchange rate used at the end of the relevant year.

(3) Following a merger or an acquisition, institutions may not be able to integrate and adjust the loss data set of the merged or acquired entities in a timely manner. When this situation arises, institutions should calculate the annual operational risk loss using the reported losses for which data is available, adjusting the result for the coverage rate or the reported losses compared to the whole institution.

(4) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.

[8] [Insert OJ]

(5) The European Banking Authority conducted open public consultations on the draft regulatory technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the Banking Stakeholder Group established under Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council[9],

HAS ADOPTED THIS REGULATION:

Article 1

Adjustments to the loss data set related to calculation of losses and risk taxonomy

Losses stemming from merged or acquired entities or activities shall be recorded in the loss data set of the reporting institution with the necessary adjustments to ensure compliance with the requirements laid down in Articles 317 and 318 of Regulation (EU) 575/2013.

Question 11: Which of the provisions of Article 317(7), as developed by the draft RTS on the development of the risk taxonomy, and Article 318 of the CRR would be most difficult to implement after a merger or acquisition for the reporting entity? Please elaborate.

Article 2

Adjustments to the loss data set due to currency differences

Where the currency of the merged or acquired entities or activities is different from the currency of the acquiring institution, losses stemming from merged or acquired entities or activities shall be included in the loss data set applying, for each of the ten-year window, the exchange rate used at the end of the relevant year in the institution's financial statement.

Article 3

Calculation of the losses when the acquiring or merging institution is not able to promptly integrate the loss data set of the acquired or merged institution or activities

1. When the acquiring institution is not able to promptly integrate the loss data set for part or all of the merged or acquired entities or activities, the institution shall, for a maximum of one year, calculate the annual operational risk loss referred to in Article 316 of Regulation (EU) 575/2013 in accordance with the following formula:

$$Annual\ operational\ risk\ loss = \frac{Reported\ Losses}{Coverage\ of\ Reported\ Losses}$$

[9] Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

where:

reported losses = the annual operational risk loss of the entities or activities able to report the annual operational risk loss

coverage of reported losses =

$$\frac{Business\ Indicator\ of\ entities\ or\ activities\ able\ to\ report\ the\ annual\ operational\ risk\ losses}{Business\ Indicator\ of\ the\ institution}$$

business indicator of the institution: the business indicator resulting from the consolidation of the acquiring institution including the acquired or merged entities, or activities.

2. When the acquiring institution is not able to promptly allocate the annual operational risk loss for part or all the acquired or merged institution or activities according to the mapping of historical loss data referred to in Article 317, paragraph 7 of Regulation (EU) 575/2013, it shall allocate, for a maximum of one year, losses according to the distribution of losses in the reporting institution.

Question 12:
In your experience, would the provisions of this article apply to most mergers and acquisitions, or would data usually be promptly implemented in the loss data set of the reporting institution?

Article 4
Entry into force

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

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

Done at Brussels,

For the Commission
The President

{}{}{}

Question 13:
Are there other adjustments that should be considered in these draft RTS? If yes, please elaborate.

7. Accompanying documents

7.1 Draft cost-benefit analysis / impact assessment

The current session on impact assessments tries to assess the impact of implementing the EBA proposals that address the following mandates of the CRR3/CRD6:

- on establishing a risk taxonomy on operational risk that complies with international standards and a methodology to classify the loss events included in the loss data set based on that risk taxonomy on operational risk under Article 317(9) of Regulation (EU) 575/2013;
- on specifying how institutions shall determine the adjustments to their loss data set following the inclusion of losses from merged or acquired entities or activities under Article 321(2) of Regulation (EU) 575/2013.
- on specifying the condition of 'unduly burdensome' for the calculation of the annual operational risk loss under Article 316(3) of Regulation (EU) 575/2013;

While the last of the above-listed EBA deliverables can be assessed based on already submitted data, the first two can only be assessed on a high-level qualitative basis, based on expert views that comply with the strategic objectives of the EBA.

7.2 Draft cost-benefit analysis / impact assessment on the "Methodology to classify loss events" and on the "Adjustments to loss databases due to mergers and acquisitions"

A. Policy objectives

The strategic objective of the EBA technical standards, for the first deliverable above, is to provide sufficient provisions for building a methodology for the classification of losses in a consistent way, while the operational objective, i.e. the means for achieving the strategic objective, is to provide a taxonomy for the classification of losses.

The specific objective of the EBA technical standards, for the second deliverable above, is to provide sufficient provisions for providing clarifications to the institutions on how institutions shall determine the adjustments to their loss data due to mergers, acquisitions, and to activities under Article 321(2) of Regulation (EU) 575/2013.

In doing so, the EBA is confronted with some operational challenges:

(a) Requesting the necessary information by using, as much as possible, the existing information for the taxonomy to avoid burdening credit institutions;
(b) Harmonise, across the EU, the best practices; and,
(c) The proposals should not have a detrimental effect on the total economic cost resulting from the cost of regulatory capital and the operational cost of the preferred solutions.

B. Cost-benefit analysis for (a) operational risk taxonomy for the classification of loss events and (b) adjustments to loss databases due to mergers and acquisitions

Due to the nature of the mandate, there was no leeway for developing the different options as to draft the RTSs in question. Instead, the deliverables focused on providing the most detailed specifications as possible to facilitate institutions to follow a harmonised approach for the classification of losses and the application of the necessary adjustments of the loss database in cases of mergers and acquisitions.

To this end, the current impact assessment is limited to be conducted on qualitative grounds and based on expert views and past experiences. To this end, the cost is negligible, for both deliverables in question, and is limited to the implementation of the suggested proposals from the affected institutions. More specifically, the cost is limited to the implementation of the methodology for the second-level taxonomy of losses and for the retroactive aggregation / integration of loss databases for the past years.

7.3 Draft cost-benefit analysis / impact assessment on “Unduly burdensome”

The current section intends to provide an impact assessment to quantitively justify the conditions of defining the ‘unduly burdensome’ for the purposes of Article 316(1) of that Regulation. The analysis presented herein is based on data collected via the QIS templates that serve the purposes of the EBA mandatory exercise for the Basel III monitoring exercise. The data refer to the period December 2015 to December 2022 and includes a sample of 228 banks that participated in the Basel III monitoring exercise for at least one reference date over the specified period.

A. Problem identification

Article 316(1) of the CRR3 requires institutions with a business indicator equal to or exceeding EUR 750 million shall calculate their annual operational risk loss as the sum of all net losses over a given financial year, calculated in accordance with Article 318(1), that are equal to or exceed the loss data thresholds [EUR 20k and EUR 100k] set out in Article 319, paragraphs 1 or 2, respectively.

The same Article provides that, By way of derogation, competent authorities may grant a waiver from the requirement to calculate an annual operational risk loss to institutions with a business indicator that does not exceed EUR 1 billion, provided that the institution has demonstrated to the satisfaction of the competent authority that it would be unduly burdensome for the institution to apply the first subparagraph.

The EBA identified that the challenges to the calculation of the annual operational risk loss are mostly due to the short timing available for the implementation of the appropriate systems and procedures, and the effort to put in place is not unduly burdensome when the institution is given an appropriate time span.

Institutions may temporarily report a business indicator equal to or higher than EUR 750 million due to transitory circumstances, and it would be unduly burdensome for these institutions to calculate the annual operational risk loss when exceeding the threshold is only a temporary exception within a certain time frame.

B. Policy objectives

Regarding the third deliverable, i.e. the one on specifying the conditions of ‘unduly burdensome’ for the calculation of the annual operational risk loss under Article 316(3) of Regulation (EU) 575/2013, the main operational objective is to identify, using data from the EBA’s database of the mandatory Basel III exercise, the conditions that that would exceptionally waive the obligation of credit institution to calculation the past annual operational risk losses.

The current impact assessment focuses on identifying which would be the optimal period for an institution, belonging to the BI range of EUR 750 million and EUR 1 billion, to adjust to the anticipated changes and become able to keep track of the past losses.

To achieve this objective, the EBA based its analysis for the period 2015 – 2022 for a sample of 228 which participated in at least one of the reference dates within that period. The analysis will present results, not only static data, i.e. BI levels at point-in-time, but also dynamic data that refer to the transition of Bis amongst different BI buckets.

C. Examined options

Table 1 shows the allocation of banks into different BI buckets. The BI buckets were created to align with those inferred in the CRR3/CRD6 provisions, i.e. BI < EUR 750 million which corresponds to banks which are not required to report annual losses, BI > EUR 1 billion which corresponds to banks required to report past annual losses, and EUR 750 million < BI < EUR 1 billion, which include banks that under certain circumstances would be waived from reporting past annual losses.

The original sample comprises 228 that submitted data, at least once, for the Basel III monitoring exercise over the period 2015 – 2022 (see Table 1 and Table 2). 15 of 228 banks have not submitted any data for BI over the above period (see Table 2), while 213 have submitted BI data for at least once over the specified period. However, the banks consistently submitting data over the specified period drops to slightly above 100 banks. The sample of banks submitting BI data is stable over

2015-2017 at 138, while it gradually drops over 2018-2020. Due to the implementation of the EBA mandatory Basel III monitoring exercise from Dec-21 reference date, the sample of BI submitting banks remains above 167 over 2021-2022 (see Table 1).

Table 1: Allocation of banks into Business Indicator buckets, number of banks

BI buckets	2015	2016	2017	2018	2019	2020	2021	2022
BI < 750 mn	62	61	62	47	48	46	80	74
750 mn < BI < 1 bn	13	12	10	9	5	5	11	12
BI > 1 bn	63	65	66	69	61	56	78	81
Total reporting banks	138	138	138	125	114	107	169	167
Non reporting	90	90	90	103	114	121	59	61
Total	228	228	228	228	228	228	228	228

Due to the adequacy and reliability of data, the basis for our analysis is the 2021-2022 period, where, except from the point-in time analysis, an analysis of the transitions among the buckets will be examined.

Regarding the point-in time analysis, we observe that in 2021 there were 80 banks showing BIs less than EUR 750 million, 78 over EUR 1 billion and 11 banks belong in the range of EUR 750 million – EUR 1 billion, which the EBA was mandated to examine the criteria according to which banks would be allowed to not report past annual losses. For 2022, the picture remains roughly the same, with the banks belonging to the range of EUR 750 million – EUR 1 billion increasing by one.

It’s worth mentioning that almost all banks, even those that indicate BI less than EUR 750 million, report past annual losses, albeit the time series appear to be incomplete for some of the banks with BI less than EUR 750 million.

Another worth-mentioning fact is that out of the 213 banks that reported BI data over the period 2015-2022, 147 moved among the buckets at least once, while 66 remained consistently at the same bucket. It’s noteworthy that none of the banks remained consistently in the bucket that ranges from EUR 750 million to EUR 1 billion, which implies that there is no need to implement a provision for this subset of banks that would be of permanent nature (see Table 2).

Table 2: Number of banks that consistently been assigned to a BI bucket vs those which moved buckets over th examined period

BI buckets	Number of banks
(a) Banks consistently been assigned to the same BI bucket:	**66**
(a1) BI < 750 mn	23
(a2) 750 mn < BI < 1 bn	0
(a3) BI > 1 bn	43
(b) Banks consistently not reporting BI data over the examined period	**15**
(c) Banks that have moved among buckets at least once over the examined period	**147**
Total	**228**

Table 3 examines the transitions from one bucket to another from 2021 to 2022. Out of the 11 banks that belonged to the range-in-focus (henceforth 'RIF'), i.e. EUR 750 million to EUR 1 billion, in 2022 two moved to the lower bucket, two to the higher bucket while seven remained at the RIF. In addition, there was a bank that moved from the higher bucket to the RIF, while four other banks moved from the lower bucket to the RIF. Therefore, while the total number of banks belonging to the RIF, the composition of this subsample is much different. In a nutshell, 64% of the banks belonging in RIF remain at the same bucket when examining a short-term transition dynamics.

Table 3: Short-term (2021-2022) BI transition table

BI buckets	BI < 750 mn	750 mn < BI < 1 bn	BI > 1 bn	Non reporting	Total (2021)
BI < 750 mn	72	4	1	3	80
750 mn < BI < 1 bn	2	7	2	0	11
BI > 1 bn	0	1	77	0	78
Non reporting	0	0	1	58	59
Total (2022)	74	12	81	61	228

When examining the transition dynamics in medium-term (2019-2022), it seems that 40% of the examined banks remained at the RIF bucket, i.e. two of five banks that belonged to the RIF bucket in 2019 continue belonging to the same sample in 2022.

Table 4: Medium-term (2019-2022) BI transition table

BI buckets	BI < 750 mn	750 mn < BI < 1 bn	BI > 1 bn	Non reporting	Total (2019)
BI < 750 mn	29	3	1	15	48
750 mn < BI < 1 bn	1	2	0	2	5
BI > 1 bn	2	1	56	2	61
Non reporting	42	6	24	42	114
Total (2022)	74	12	81	61	228

Finally, when considering the longest transition period (2015-2022), 23% of the banks in the sample belonging to RIF bucket in 2015 remained at the same bucket in 2022.

Table 5: Longest-term (2015-2022) BI transition table

BI buckets	BI < 750 mn	750 mn < BI < 1 bn	BI > 1 bn	Non reporting	Total (2015)
BI < 750 mn	29	3	1	29	62
750 mn < BI < 1 bn	3	3	3	4	13
BI > 1 bn	1	0	52	10	63
Non reporting	41	6	25	18	90
Total (2022)	74	12	81	61	228

The medium-term and longest-term transition tables (see Table 4, and Table 5) show a high number of transition percentages from the RIF bucket to the bucket of banks not reporting BI figures (40%

and 31%, respectively), while in the short-term transition table (Table 3) the respective percentage is zero. This renders the short-term transition table more reliable in relation to the other two.

Moreover, there is a seemingly contradicting finding between item "(a2)" of Table 2 and the number of banks that remained at RIF bucket when comparing 2015 and 2022 (Table 5). The first examines whether the banks reported values, for every year between 2015 and 2022, that consistently belong to the RIF bucket, while the later compares only years 2015 and 2022. The fact that the latter shows that three banks remained at the same bucket means that these three banks moved out and then again in the RIF bucket over that period, but they did not remain in the RIF bucket over the entire period.

D. Cost-Benefit Analysis [for RTS on unduly burdensome]

As indicated by the EBA mandatory Basel III monitoring exercise data, most of the reporting banks, that exhibit BI less than EUR 750 million, already report past annual losses for the Exercise. Although, in some cases, the dataset in incomplete, i.e. less than the 10-year length, the most recent data show that all banks are in the position to calculate past data for the main two thresholds, i.e. 20k and 100k thresholds. The same applies for the banks that belong to the RIF bucket.

Thus, the overall additional cost of calculating annual past losses for banks that currently belong to the lower bucket or for those that will remain to the RIF bucket would be minimal, indicating that there is no need for waiving banks from this obligation on the basis of additional cost involved with this calculation.

However, on operational grounds, the EBA recognises the need for a temporary exclusion from the reporting requirements for banks that are either ***not able to temporarily calculate the annual past losses*** or ***they are expected to drop to the BI bucket that will permanently exclude them from the obligation of reporting past losses***.

To assess the period needed for such a waiver for banks belonging to the RIF bucket, the EBA examined the transitions to the bucket "BI less than EUR 750 million". The transition appears to be low, although not negligible (18% for the short-term – 31% for the longest term).

E. Preferred Option

Given the enhanced representativeness and adequacy of data referring to the 2021-2022 period, the 18% transition percentage (from RIF to the lowest bucket) is deemed as the most reliable. Considering this estimation, the EBA believes that one-year calendar period or four consecutive COREP reporting dates would be an adequate period for the waiver from reporting annual past losses.

7.4 Overview of questions for consultation

Question 1: Do you think that the granularity of and the distinction between the different Level 2 categories is clear enough? If not, please provide a rationale.

Question 2: Do you perceive the attribute "greenwashing risk" as an operational risk or as a reputational risk event? Please elaborate.

Question 3: To which Level 1 event types and/or Level 2 categories would you map greenwashing losses? Please provide a rationale.

Question 4: Is "Environmental – transition risk" an operational risk event? If yes, to which Level 2 categories should it be mapped? Please provide a rationale.

Question 5: Which of these attributes do you think would be the most difficult to identify? Please elaborate.

Question 6: Do you agree with the inclusion of the attribute "Large loss event"? If not, please elaborate.

Question 7: Do you think that the granularity the proposed list of attributes is clear enough? Would you suggest any additional relevant attribute? Please elaborate your rationale.

Question 8: Would it be disproportionate to also map the three years preceding the entry into force of these Draft RTS to Level 2 categories? If yes, what would be the main challenges?

Question 9: Is the length of the waivers (three years and one year) for institutions that, post merger or acquisition fall into the EUR 750 million – EUR 1 billion band for the business indicator, sufficient to set up the calculation of the operational risk loss following a merger or acquisition? If not, please provide a rationale.

Question 10: Are there other cases where it should be considered to be unduly burdensome for institutions to calculate the annual operational risk loss?

Question 11: Which of the provisions of Article 317(7), as developed by the draft RTS on the development of the risk taxonomy, and Article 318 of the CRR would be most difficult to implement after a merger or acquisition for the reporting entity? Please elaborate.

Question 12: In your experience, would the provisions of this article apply to most mergers and acquisitions, or would data usually be promptly implemented in the loss data set of the reporting institution?

Question 13: Are there other adjustments that should be considered in these draft RTS? If yes, please elaborate.