
Consultation Response

Consultation on Implementing Technical Standards on public disclosures by institutions of the information on operational risk (EBA/CP/2024/06)

April 2024

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the EBA's **Consultation on Implementing Technical Standards on public disclosures by institutions of the information on operational risk (EBA/CP/2024/06)**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA) a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia.

AFME is registered on the EU Transparency Register, registration number 65110063986-76.

We summarise below our over-arching comments in relation to the consultation, which is followed by answers to the individual questions raised.

Comments and observations:

Considerations linked to the reference date used for reporting quarterly BI calculation on EU OR2

The same comments as those made on the Corep equivalent C 16.02 apply.

Respondents raise difficulties and inconsistencies with the CRR in the proposed framework for the reporting of the full set of information on the Business Indicator as of 31/12/N at the Q4 remittance date. The draft RTS and ITS requires to calculate and to report information based on audited financial figures. However, it will be not feasible to use the 31/12/N data, as these audited financial figures are not available when producing and publishing the Q4 Corep.

Based on these considerations, respondents strongly ask to report data as of 31/12/N-1 for all remittances of the year (i.e., from Q1 to Q4). This would allow institutions and supervisors to have consistent audited figures over the same calendar year.

Frequency of disclosures

The EBA did not provide at this stage information on the frequency of disclosures. Institutions shall consequently deduce the frequencies of the Pillar 3 templates based on their understanding of the related CRR3 requirements (Article 433 CRR3 mainly). This could result in different and possible wrong interpretations among institutions.

In this sense, could the EBA clarify the frequencies expected for all Pillar 3 disclosures (i.e., not only for the new operational risk disclosures but also for all current, reviewed and new disclosures)?

Track changes Final draft ITS

The respondents noticed that when final versions of ITSs are published on the EBA's website the track changes versions of the templates (Excel) and instructions (Word) provided are the ones between the former ITSs and

Association for Financial Markets in Europe

London Office: Level 10, 20 Churchill Place, London E14 5HJ, United Kingdom T: +44 (0)20 3828 2700

Brussels Office: Rue de la Loi 82, 1040 Brussels, Belgium T: +32 (0)2 883 5540

Frankfurt Office: WorkRepublic, Zeil 127, 60313 Frankfurt am Main, Germany T:+ 49 (0)69 710 456 660

www.afme.eu

the amended ITs. No track changes versions of templates / instructions are provided between draft ITs consultation and final draft ITs.

In this sense, to ease the comparison between the consultation versions and the final amended versions, could the EBA:

1. Continue to provide the track changes versions of templates/disclosures between the current ITs in application and the amended ITs to be applied? (as is currently the case)
2. Also provide the track changes versions of templates and instructions between draft ITs submit to consultation and final draft ITs?

Question 1: *Are the amended/new templates EU ORA, EU OR1, EU OR2 and EU OR3 and the related instructions clear to the respondents? If no, please motivate your response.*

It would be necessary to have clearer and more detailed instructions to the application of thresholds of annual net loss in a given financial year, including in relation to how to disclose multiple years' events, how to approach events that are partially outside of the ten-year window, and if events reported needed to be grouped as required for templates C.17 of the COREP.

Question 2: *Do the respondents identify any discrepancies between these templates and related instructions and the calculation of the requirements set out in the underlying regulation?*

Template EU OR1 (Operational risk losses)

As a general point, the disclosure of entities operational risk losses is a sensitive topic that needs to be handled with care, in order to avoid misinterpretations by the market, analysts and investors.

In this regard, we think that it is important that the following points are taken into consideration:

1. Template EU OR1 requires institutions to disclose detailed information on operational risk losses over the last ten years, including exclusions, despite the fact that the RTS that have been mandated to EBA to harmonize what is considered an exclusion or how to include have not been published. These mandates are in particular the ones in:
 - a. Article 312 (Exclusion of losses), where EBA shall define the conditions for the competent authority to assess the exclusion of losses, including how the annual operational risk losses should be computed and the specifications on the information to be collected for the justification or any further information that is deemed necessary to perform the assessment.
 - b. Article 312 (Inclusion of losses from merger or acquired entities or activities), where EBA shall determine how institutions shall determine the adjustments to their loss data set following the inclusion of losses from merged or acquired entities or activities.

It is also important to note that the starting point for institutions as of January 1, 2025 will be different: not all institutions will have a loss data and for the ones that have it, the management and characteristics of the loss data set may be different as well as the criteria for the exclusion of losses. This will only be guaranteed once the competent authorities have reviewed the quality of loss data sets and ensured that the criteria used by institutions are homogeneous (Article 322).

This means that institutions are going to have to provide sensitive information on operational risk losses to the market from the last 10 years that is not harmonized and comparable, which can therefore

be misleading to the market and, for instance, negatively impact institutions that may have been more comprehensive in the collection of the losses.

We consider that the disclosure to the market of such a sensitive information can only be done once there is guarantee that all institutions are applying the same rules and that the information is comparable and harmonized. For this reason, we consider that this disclosure should be postponed until the RTS have been released and it is guaranteed that the disclosed information is effectively comparable.

2. Threshold to be applied for the disclosure of operational risk losses.

Article 319.2 CRR3 requires institutions to disclose their annual operational risk losses using a threshold of €100.000.

However, the template proposed by EBA goes beyond the CRR3 requirements by also asking institutions to disclose their annual operational risk losses from €20.000.

We consider that the template should be aligned with the CRR3 and therefore remove any request to disclose losses using a €20.000 threshold.

3. Instructions of template EU OR1.

The BCBS Standards for the disclosure of operational risk (DIS60)¹ specify, with regards to accompanying narrative in Template OR1 (Historical losses):

*Banks are expected to supplement the template with narrative commentary explaining the **rationale in aggregate**, for new loss exclusions since the previous disclosure.*

*Banks should disclose any other material information, **in aggregate**, that would help inform users as to its historical losses or its recoveries, with the exception of confidential and proprietary information, including information about legal reserves.*

We consider that it would be necessary that the same exclusion should be inserted in the instructions of template EUR O1.

We propose amending the instructions as follows:

5. In the accompanying narrative, institutions shall disclose the justifications **in aggregate** for the exceptional operational risk events that were excluded from the calculation of the annual operational risk losses, in accordance with Article 446 (2), point b) of Regulation (EU) 575/2013.
6. Institutions shall also disclose, in an aggregate manner, any material information that could help users understand the institutions' historical losses, recoveries and legal reserves, with the exception of confidential and proprietary information.

Template EU OR2

- Field EU2e. Memorandum item: Total losses, expenses, provisions and other financial impacts resulting from operational risk events

¹ https://www.bis.org/basel_framework/chapter/DIS/60.htm

EU 2e	<p>Memorandum item: Total losses, expenses, provisions and other financial impacts resulting from operational risk events</p> <p>Sum of losses, expenses, provisions and other financial impacts related to operational risk events accounted for in the institution P&L items as reported in row 0060 of template C.16.03 of Annex I of Implementing Regulation (EU) 2021/451, and not due to leases (except for the provisions or (-) reversal of provisions).</p>
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We do not understand what the purpose of this field is, since it is not required neither by BCBS DIS 60 nor by Article 446. In addition, there is already information on operational risk losses being provided in in EU OR1 so we think that including this field is going to confuse the market. We propose the removal of this field.

- We understand that comments that have been made for the Reporting Templates 16.01 and 16.02 should also apply to Templates EU OR2 and Templates EU OR3.

Template EU OR3

- ILM. The proposed EU OR3 template for the disclosure of own funds' requirements and exposure amounts includes a line that refers to the Internal Loss Multiplier (ILM) and sets it at 1. We do not think that this template should make this reference as the ILM is not part of the operational risk framework under the CRR3 and therefore, it is not and should not be a requirement under Article 446, which only requires institutions to disclose the BIC and the BI.

We therefore consider that the ILM line should be removed from the template EU OR3.

- We understand that comments that have been made for the Reporting Templates 16.01 and 16.02 should also apply to Templates EU OR2 and Templates EU OR3.

AFME Contacts

Mark Bearman
 Director, Capital & Risk Management
mark.bearman@afme.eu
 +44 (0)20 3828 2675