FÉDÉRATION
BANCAIRE
FRANÇAISE

*30.04.2024*

# FBF RESPONSE TO THE CONSULTATION ON DRAFT IMPLEMENTING TECHNICAL STANDARDS AMENDING COMMISSION IMPLEMENTING REGULATION (EU) 2021/451 ON SUPERVISORY REPORTING UNDER ARTICLE 430 (7) OF REGULATION (EU) NO 575/2013 CONCERNING OPERATIONAL RISK (EBA/CP/2024/07).

## I - General comments:

*The French Banking Federation (FBF) represents the interests of the banking industry in France. Its membership is composed of all credit institutions authorised as banks and doing business in France, i.e. 326 commercial, cooperative and mutual banks. FBF member banks have more than 34,000 permanent branches in France. They employ 349,100 people in France and around the world, and service 48 million customers.*

The French Banking Federation (FBF) welcomes the opportunity to comment on the draft implementing technical standards on supervisory reporting under Article 430 (7) of Regulation (EU) No 575/2013 concerning operational risk (EBA/CP/2024/07).

We see critical aspects mainly related to:

- <u>The reference dates used for reporting quarterly BI calculation on template C 16.02</u>

Institutions raise difficulties and inconsistencies 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 on the adjustments to the Business Indicator 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.

In this sense, we 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.

It should also be noted that the same comments apply to all templates C16, where appropriate.

- <u>The framework for the use of the Prudential Boundary Approach (PBA) on template C 16.02</u>

The mandate of Article 314.6 of the CRR requires that EBA develops the list of typical sub-items of the business indicator by “taking into account international regulatory standards and, where appropriate, the prudential boundary defined in Part three, Title I, Chapter 3”.

The draft RTS on the new framework for the business indicator for operational risk, also under consultation, does indeed provide the two required approaches to calculate the financial component in the proposed accounting approach (AA) and prudential boundary approach (PBA). However, we have several issues with the requirements envisaged by EBA.

First and foremost, the AA has been made the default approach while the PBA can only be used by way of derogation after meeting some conditions. This requirement goes beyond that of the CRR which does not favor one approach over another but, rather, requires that the PBA be available where and as appropriate. An institution should therefore be able to choose the PBA on a permanent basis if it considers such approach as appropriate.

Second, in the approach proposed in the RTS on the new framework for the business indicator for operational risk, the application of the PBA is conditional on several criteria including the presence of certain operations or accounting choices that result in an "unwarranted increase" of the FC when using the AA. As an unwarranted increase in the TC's P&L can be volatile by definition, the application of the PBA should, therefore, not be based on an unwarranted P&L increase in the TC nor any limitation.

Finally, the notification process seems very cumbersome, especially as all the requirements (points (a) to (h) of Article 13.2) should be reviewed annually. All these requirements should only be required for the initial notification of the intention to use the PBA and the annual review should be limited to the independent review on the fulfilment of the conditions to use the PBA (point (h) of Article 13.2).

Use of clean price approach and TB/BB reclassification – template C 16.02

Regarding the determination of the ILDC component and the Financial Component, it appears that institutions using the so called "clean price" to produce the Finrep reporting might be penalized compared to institutions using the "dirty price" approach.

Institutions using the clean price approach reclassify interest income & expenses and dividend incomes from gains and losses from instruments held for trading or instruments designated at fair value through profit or loss to interest incomes & expenses and dividend income within F02.00. These reclassifications are made for Finrep reporting purpose only and do not constitute an accounting choice or method.

However, in a situation where the P&L of the trading book of an institution would be negative, this reclassification would result to i) deepen the loss of the P&L of the trading book and ii) increase the amounts of dividend incomes (as for example dividend revenues stemming from equity instruments measured at FV would be reclassified in dividend income).

That will mean that an institution using clean price approach for Finrep would be penalized compared to an institution using the dirty price approach as, considering the same P&L profile, in case of negative P&L of the trading book, one institution using clean price would see its FC (based on absolute value) increased by the amounts related to dividend revenues or net interest and its ILDC increased by the same amount, where another one using dirty price would not suffer from this effect.

We consider that institutions using clean price approach should not be penalized by the application of the clean or dirty price approach and ask EBA to allow institutions to neutralize the negative impact of the reclassification made for Finrep purposes (with the same reclassification mechanism that the one used for AA to PBA approach but allowing reclassification of dividend revenue and interest incomes/expenses from ILDC to FC).

Additional general comments on 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 the amended ITSs.
No track changes versions of templates / instructions are provided between draft ITSs consultation and final draft ITSs.
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 ITSs in application and the amended ITSs to be applied? (as is currently the case)
2. Also provide the track changes versions of templates and instructions between draft ITSs submit to consultation and final draft ITSs?

General comments on decorrelation between the deadline for the submission of comments to the EBA consultations relating to operational risk.

We would like to highlight the decorrelation between the deadline for the submission of comments to the EBA consultations relating to operational risk: the two consultations on supervisory reporting and Pillar 3 disclosures, for which the deadline for comments is 30 April, and the consultation on Business Indicator calculation elements, for which the deadline for comments is 21 May. Following the consultation period, the two draft ITS will be finalised and be submitted to the European Commission by end-June 2024, while the draft TS on BI indicators will be finalised and be submitted to the European Commission by end 2024. The responses to the consultation on BI calculation elements will potentially have an impact on the information to be collected for supervisory reporting and Pillar 3 disclosure purposes, and therefore, on the implementation of all the requirements relating to operational risk.

**II –Answers to the questions related to the consultation.**

| *Question 1: Are the instructions and templates clear to the respondents?* |
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Template C16.03 Operational Risk Breakdown.

The breakdown of the total losses, expenses, provisions and other financial impacts resulting from operational risk events will be difficult to report because their breakdown is based on cost accounting and cannot be read directly in Finrep.

It has to be underlined that operational risk losses are not segregated nor in accounting or in Finrep while they are monitored in a dedicated workflow as per regulatory requirements.
This means in particular that for a given loss of an operational event the list of the impacted accounting aggregates and the corresponding sub-amounts are not known.

Template C.17.01 and C.17.02 on operational losses

Our understanding is that losses will no longer be grouped as it is currently being done. Can you please elucidate the rationale behind this change (as a grouped approach do not hinder institutions to provide the impacts of operational events for the respective year)?

Derogation for some subsidiary to calculate ILDC on individual basis.

According to 314 2.a. of the CRR institutions can request permission until 31 December 2027 to calculate a separate interest, lease and dividend component for specific subsidiary institutions and sum the outcome of this calculation with the ILDC calculated on a consolidated basis. Once granted, the permission shall be reassessed by the consolidating supervisor every two years. In addition, CRR 3 stipulates that by 31 December 2031, EBA shall report to the Commission on the use and appropriateness of this derogation.
We understand that the permission granted is until December 31, 2027, and that we can apply to renew the derogation every two years until the date of December 31, 2031. Could you please confirm our point of view?

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

Use of clean price approach and TB/BB reclassification – template C 16.02

Regarding the determination of the ILDC component and the Financial Component, it appears that institutions using the so called "clean price" to produce the Finrep reporting might be penalized compared to institutions using the "dirty price" approach.
As a reminder the clean and dirty price approaches are detailed in Instructions for Finrep reporting (Annex 5) as detailed bellow:

*"Interest income and interest expense from financial instruments measured at fair value through profit or loss and from hedging derivatives classified in the category 'hedge accounting' shall be reported either separately from other gains and losses under items interest income' and 'interest expense' ('clean price') or as part of gains or losses from these categories of instruments ('dirty price') (...)*

*'Interest income. Financial assets held for trading' and 'Interest expenses. Financial liabilities held for trading' shall include, where the clean price is used, the amounts related to those derivatives classified in the category 'held for trading' which are hedging instruments from an economic but not accounting point of view to present correct interest income and expenses from the financial instruments that are hedged (...)*

*Dividend income on equity instruments measured at fair value through profit or loss shall be reported either as 'dividend income' separately from other gains and losses from those classes of instruments where the clean price is used, or as part of gains or losses from those classes of instruments where the dirty price is used".*

Institutions using the clean price approach reclassify interest income & expenses and dividend incomes from gains and losses from instruments held for trading or instruments designated at fair value through profit or loss to interest incomes & expenses and dividend income within F02.00. This does not constitute an accounting choice or method. These reclassifications are made for Finrep reporting purpose only.

However, in a situation where the P&L of the trading book of an institution would be negative, this reclassification would result to: i) deepen the loss of the P&L of the trading book and ii) increase the amounts of dividend incomes (as for example dividend revenues stemming from equity instruments measured at FV would be reclassified in dividend income).

That will mean that an institution using clean price approach for Finrep would be penalized compared to an institution using the dirty price approach as, considering the same P&L profile, in case of negative P&L of the trading book, one institution using clean price would see its FC

(based on absolute value) increased by the amounts related to dividend revenues or net interest and its ILDC increased by the same amount, where another one using dirty price would not suffer from this effect.

We consider that institutions using clean price approach should not be penalized by the application of the clean or dirty price approach and ask EBA to allow institutions to neutralize the negative impact of the reclassification made for Finrep purposes (with the same reclassification mechanism that the one used for AA to PBA approach but allowing reclassification of dividend revenue and interest incomes/expenses from ILDC to FC).

*Question 3: Do the respondents agree that the amended ITS fits the purpose of the underlying regulation?*

- The framework for the use of the Prudential Boundary Approach (PBA) on template C 16.02

According to Article 314.4 of the CRR, the trading book component (TC) of the financial component (FC) should be "defined as appropriate either in accordance with accounting standards or, in accordance with Part three, Title I, Chapter 3" (i.e., the prudential boundary criteria). This requirement is also explicit in the mandate of Article 314.6 which requires that EBA develops the list of typical sub-items of the business indicator by "taking into account international regulatory standards and, where appropriate, the prudential boundary defined in Part three, Title I, Chapter 3".

The draft RTS on the new framework for the business indicator for operational risk, also under consultation, does indeed provide the two required approaches to calculate the financial component in the proposed accounting approach (AA) and prudential boundary approach (PBA). There are, however, several issues with the requirements envisaged by EBA.

First and foremost, the AA has been made the default approach while the PBA can only be used by way of derogation after meeting some conditions. This requirement goes beyond that of the CRR which does not favor one approach over another but, rather, requires that the PBA be available where and as appropriate. An institution should therefore be able to choose the PBA on a permanent basis if it considers such approach as appropriate. It should be noted that the CRR already imposes very strict requirements for the management of the trading book including for the inclusion of positions (Articles 102, 103 and 104), and equally strict rules to reclassify a trading book position (Article 104a) which contributes to the robustness of the PBA approach. However, to avoid continuous changes from one approach to another, it appears reasonable that when an institution has made the decision to apply the PBA, it would only be permitted to revert to the (and the other way round) if such change if triggered by material evolutions of its activity, environment or risk management (for example a change of business model) and after approval from the competent authority. This would provide the consistency required for having a sound framework for the PBA and would ensure that no regulatory arbitrage is possible which, as previously mentioned, is already prevented by trading book framework of the CRR.

Second, in the approach proposed in the RTS on the new framework for the business indicator for operational risk the application of the PBA is conditional on several criteria including the presence of certain operations or accounting choices that result in an "unwarranted increase" of the FC when using the AA. Once again, this would limit the usage of PBA while CRR does not favor one approach over another nor intent to limit the usage of PBA. Furthermore, an unwarranted increase in the TC's P&L can be volatile by definition as it can be impacted by several market factors. An institution can therefore experience an unwarranted increase in a given reporting period and not experience any in a following reporting period while having

similar operations and accounting choices. The application of the PBA should, therefore, not be based on an unwarranted P&L increase in the TC nor any limitation.

Finally, the notification process seems very cumbersome, especially as all the requirements (points (a) to (h) of Article 13.2) should be reviewed annually. All these requirements should only be required for the initial notification of the intention to use the PBA and the annual review should be limited to the independent review on the fulfilment of the conditions to use the PBA (point (h) of Article 13.2).

*Question 4 - Cost of compliance with the reporting requirements: Is or are there any element(s) of this proposal for new and amended reporting requirements that you expect to trigger a particularly high, or in your view disproportionate, effort or cost of compliance? If yes, please:*
- *specify which element(s) of the proposal trigger(s) that particularly high cost of compliance,*
- *explain the nature/source of the cost (i.e. explain what makes it costly to comply with this particular element of the proposal) and specify whether the cost arises as part of the implementation, or as part of the on-going compliance with the reporting requirements,*
- *offer suggestions on alternative ways to achieve the same/a similar result with lower cost of compliance for you.*

We have no comments.

*Question 5 - Do you agree that proposed instructions and templates reflect in this draft CP cover all the clarifications needed from existing Q&As on operational risk reporting and those Q&As should be archived (as explained in Section 3.3)? If not, please refer to the Q&A number when explaining.*

We suggest confirming in the ITS the Q&A 2018-4085 requesting that audited data for 31 December N-1 should be taken into consideration.