

EBA/CP /2024/05

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20 February 2024

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## Consultation Paper

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### Draft Regulatory Technical Standards

on the components of the Business indicator under Article 314(6)(a) of the CRR and the elements to be excluded from the Business Indicator under Article 314(6)(b) of the CRR

### Draft Implementing Technical Standards

on the mapping of the Business Indicator components with corresponding supervisory reporting references under Article 314(7) of the CRR

### Draft Regulatory Technical Standards

on the adjustments to the Business Indicator under Article 315(3)(a), (b) and (c) of the CRR

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# 1. Responding to this consultation

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The EBA invites comments on all proposals put forward in this paper and in particular on the specific questions summarised in 7.2.

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 21.05.2024. 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

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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.

The EBA has received several mandates concerning the items that make up the BI and how certain operations, such as mergers and acquisitions or disposals, should be considered when calculating the BI:

- A draft regulatory technical standard (RTS) for the EBA mandate in letters (a) and (b) of Article 314(6) to further specify the components of the BI by developing a list of items and the elements to be excluded from the BI, respectively;
- A draft implementing technical standard (ITS) for the EBA mandate in Article 314(7) to provide the mapping of the items of the BI to the corresponding reporting cells in Commission Implementing Regulation (EU) 2021/451 (FINREP);
- A draft regulatory technical standard for the EBA mandate in Article 315(3) of the CRR3 to specify “how institutions shall determine the adjustments to the business indicator” (point (a) referencing mergers, acquisitions and disposals), “the conditions according to which competent authorities may grant the permission” and “the timing of the adjustments” (points (b) and (c) referencing disposals only).

As far as the first two mandates are concerned, a list of typical items has been developed for each component of the BI, which were then mapped to their corresponding reporting cells in FINREP. This list of items is mainly based on the work carried out for the EBA Policy Advice on the Basel III Reform: Operational Risk (Annex 3, Table 13)<sup>1</sup>. Some changes reflect subsequent amendments in accounting standards, such as for the Interest, leases and dividends component (ILDC), where the definition of a lease in IFRS 16 has been taken into account in determining the items to be included or where the derivatives with positive fair value originating flows like interest income or expenses are included. With regards to the Services component (SC), a breakdown of expenses, losses, provisions and other financial impacts due to operational risk events has been provided in order to obtain adequate and comprehensive information on where the impacts of operational risk events are accounted for in an institution's P&L. Concerning the Financial component (FC), clarifications have been brought to how the two available approaches work for the calculation of the trading book and banking book components, together with clarifications on their use and conditions for reversal from one to the other. Finally, in terms of elements to be excluded from the BI calculation, clarifications were brought: while some of these are easily identifiable in the financial statement, other elements would benefit from additional specification, such as income and expenses from insurance or reinsurance business in the cases where an institution sells or distributes insurance products or services to its clients.

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<sup>1</sup> [eba.europa.eu/sites/default/files/Policy Advice on Basel III reforms - Operational Risk.pdf](https://eba.europa.eu/sites/default/files/Policy%20Advice%20on%20Basel%20III%20reforms%20-%20Operational%20Risk.pdf)

As far as the third mandate is concerned, when an institution concludes a merger or an acquisition, the BI of the previous three years of the merged or acquired institution should be considered and incorporated retroactively in the consolidated BI of the acquiring institution. These draft RTS require institutions to use actual three-year historical data or, when their use would not be possible, to use the more conservative of a listed, limited number of alternative methodologies. In the context of disposals, the draft RTS specifies the conditions under which permission to exclude BI items related to disposed entities or activities may be granted. Particular attention is given to the presence of guarantee commitments according to which the disposing entity may be requested to cover losses or liabilities that have taken place in advance of the disposal but revealed afterwards. Finally, the draft CP explores the possibility of introducing a materiality threshold, below which no adjustment is required. This is because in cases where institutions perform several mergers and acquisitions and/or disposals each year, multiple adjustments of the BI and the estimation of proxy data when historical data are not available are needed.

## Next steps

Following the feedback received from the consultation, the EBA will revise the draft amending RTS/ITS proposed for consultation, where appropriate, and send them in their final form to the European Commission for adoption.

## 3. Background and rationale

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### 3.1 Background

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. In the context of the BIC, the capital requirements for operational risk are based on a Business indicator (BI), a financial statement-based proxy for operational risk consistent with the BCBS standards OPE 25.1(1). The BI is thus based on three components: interest, leases and dividends component (ILDC), service component (SC) and financial component (FC).
3. The next sub-sections provide further details on the development of the draft RTS under Article 314(6)(a) and (b) of the CRR, the draft ITS under Article 314(7) of the CRR and the draft RTS under Article 315(3) of the CRR.

### 3.2 Draft regulatory technical standards on the components of the Business indicator under Article 314(6)(a) of the CRR and the elements to be excluded from the Business Indicator under Article 314(6)(b) of the CRR

4. Article 314(6)(a) of the CRR3 mandates the EBA to draft regulatory technical standards (RTS) specifying the components of the BI, and their use, by developing a list of typical sub-items, (hereafter "items") considering international regulatory standards and, where appropriate, the prudential boundary defined in Part three, Title I, Chapter 3 of the CRR3.
5. To ensure clarity and consistency in the application of operational risk capital requirements across the European Union, a list of typical items has been developed for each component of the BI. This list is mainly based on the work carried out by the EBA in response to European Commission's Call for Advice and published in the "EBA Policy Advice on the Basel III Reform: Operational Risk" (Annex 3, Table 13)<sup>2</sup>. Limited further changes reflect subsequent amendments in accounting standards, as well as feedback received via various interactions with the industry.

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<sup>2</sup> [eba.europa.eu/sites/default/files/Policy Advice on Basel III reforms - Operational Risk.pdf](https://eba.europa.eu/sites/default/files/Policy%20Advice%20on%20Basel%20III%20reforms%20-%20Operational%20Risk.pdf)

### 3.2.1 The Interest, leases and dividends component (ILDC)

6. The ILDC is made up of three components (i.e. the interest and leases component - IC, the asset component – AC and the dividends component - DC) and is calculated according to the following formula:

$$ILDC = \min(IC, 0.0225 * AC) + DC$$

7. The list of items included in IC has been updated to reflect the changes in the International Financial Reporting Standards 9 (IFRS9) on Financial Instruments and in IFRS16 on Leases<sup>3</sup>. In particular, pursuant to Article 314(2)(4), which requires institutions to include lease income and lease expenses in the IC, including depreciation and impairment, the definition of a lease in IFRS 16 has been considered in determining the items to be included in the IC. According to this approach, all income and expenses from investment properties that have generated rents in each relevant period for the calculation of the BI, including rental income from investment properties, are included within the IC. Similar changes have been considered for the AC.
8. Also, in the context of the ILDC, the typical items of the AC include all assets in the balance sheet originating interest income and/or interest expenses in each relevant period for the calculation of the BI. Besides cash balance at central banks and other demand deposits, loans and advances, debt securities and tangible and intangible assets subject to lease, also derivatives with positive fair value originating flows like interest income or expenses are included in the AC. Depending on the type of assets, the gross carrying amount, the carrying amount or the fair value is considered as the relevant “value”.

### 3.2.2 The Services component (SC)

9. This component is calculated based on four amounts: other operating income (OI), other operating expenses (OE), fee and commission income (FI) and fee and commission expenses (FE) and the following formula applies:

$$SC = \max(OI, OE) + \max(FI, FE)$$

10. Article 314(3)(5) of the CRR requires institutions to include the institution’s expenses and losses from operational risk events in OE. The impacts of operational risk events may be reflected in an institution’s financial statement through different accounting breakdowns, which in turn may result in expenses, losses and financial impacts other than those related to operational risk events. As a result, the correspondence with the various items in an institution’s profit and loss (P&L) statement is not straightforward.

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<sup>3</sup> The IFRS 16 on Leases makes a distinction between lessee and lessor that was not applied in the former IAS on Leases. For the lessee there is no dual accounting model, so there is no differentiation between the operating and finance leases. In all cases, the lessee has to record the asset (right of use) on the balance sheet. In the case of the lessor, IFRS 16 maintains the distinction between a finance lease and an operating lease. Only in the case where the lease is considered to be an operating lease, the asset is retained on the balance sheet. As such, only for operating leases the asset has to be informed in the AC (for financial lease the institution will replace the asset by a loan and advance).

11. Therefore, to obtain adequate and comprehensive information on where the impacts of operational risk events are accounted in an institution's P&L, a breakdown of expenses, losses, provisions and other financial impacts due to operational risk events has been provided. Moreover, it is maintained that the other operating expenses, in accordance with Article 314(3)(5) and Article 314(5)(b), respectively, are fed with all the impacts of operational risk events, whatever labelled or accounted, affecting an institution's financial statement and are not net of any related payments received from insurance or reinsurance policies purchased. Finally, they should include those exceptional losses that, following the permission given by the competent authority pursuant to Article 320(1) of that Regulation, can be excluded from the calculation of the institution's annual operational risk loss.

### **3.2.3 The Financial component (FC)**

12. The financial component (FC) is the sum of the trading book component (TC) and the banking book component (BC), where each of these components is computed as the annual average of the absolute values over the previous three financial years of the net profit or loss (P&L):

$$FC = TC + BC$$

13. In its policy advice on the European implementation of the Basel III framework for operational risk, the EBA adopted an accounting-based approach (Accounting approach, AA) to define all the components, including the TC and the BC, in full alignment with the Basel framework stance on the BI being "a financial statement-based proxy" for operational risk (OPE 25.1(1)). According to the AA, the net gains and losses from the accounting trading portfolio are assigned to the TC and the net gains and losses from the accounting non-trading (i.e. banking) portfolios are assigned to the BC.

14. However, under this approach, certain types of operations and of accounting choices, including the economic hedging of fair value through profit loss positions or the bifurcation of derivatives embedded in host hybrid or structured financial instruments, may originate an "unwarranted increase" of the FC. This "unwarranted increase" would be caused by the presence of types of operations that are strictly related to each other and are of opposite sign, but which are accounted in different components of the FC (i.e. the TC and the BC) when calculated in accordance with the international regulatory standards. Since the FC formula envisages the sum of the absolute values of the P&L of the TC and the BC, the amounts of these operations cannot be netted when computing the FC.

15. Considering the above, Article 314(4), fourth subparagraph clarifies that the institution's trading book shall 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). Moreover, according to Article 314(6), point (a) EBA is mandated to develop the list of items of the BI by "taking into account international regulatory standards and, where appropriate, the prudential boundary defined in Part three, Title I, Chapter 3". Were the prudential boundary criteria be used to calculate the FC in the above-mentioned cases in paragraph 14, the "unwarranted increase" would be avoided since, under this framework, those operations would be moved under the same book (i.e.



the prudential trading book or the prudential non-trading book), thus allowing the netting of their amounts within the FC.

16. Moreover, there might be other situations beyond those already mentioned that could cause an “unwarranted increase” of the FC, however it is neither possible to identify ex-ante all of them, nor to ex-ante set values or percentages for the “unwarranted increase”, since this strictly depends on the types of operation and/or the accounting choice adopted by an institution (e.g. for hedging) in its ordinary business rather than on specific products or instruments.

17. Based on this background, the draft RTS provide that, instead of using the AA, an institution may adopt – where certain conditions apply – the Prudential boundary approach, PBA, for calculating the FC, thus adjusting the items of the TC and of the BC according to the rules envisaged in the prudential boundary framework of the CRR as referenced in the mandate granted to the EBA.

18. To ensure a uniform application of the prudential boundary framework to the different risks institutions are exposed to, when using the PBA institutions should implement it consistently with the strategies, policies, procedures, systems and controls adopted in accordance with Part three, Title I, Chapter 3.

19. Moreover, it is worth highlighting that the “trading book” concept cannot simply be applied to the own funds requirements for operational risk. This is because, unlike the capital requirements for market risk or other risks which are based on the stocks of the regulatory trading and non-trading books portfolio at specific dates (e.g. 31/12, 30/6), the own funds requirements for operational risk are computed starting from the flows of the P&L for the components of the BI. These flows of P&L are clearly identifiable for the trading and non-trading components of the FC only when an accounting-based method is used since this means using common accounting standards (e.g. IFRS) and institutions’ regulatory reporting (e.g. in FINREP).

20. In absence of such an accounting hook, retrieving the P&L of all the positions held in the prudential trading book and non-trading book, starting from the daily basis until the three years envisaged for the calculation of the FC, requires for the institutions to have dedicated organizational measures, which are not necessarily fully compatible with those stocks-based methods implemented for the calculation of the own funds requirements for market risk or other risks. Therefore, institutions that intend to use the PBA should be required to have in place policies, procedures, systems and controls to carry out such calculation in a proper manner.

21. In order to provide a sound framework for the use of the PBA, several features are included in the draft RTS:

- a) Consistency: In order to avoid regulatory arbitrage, once the PBA is chosen, it should be used for all entities in the scope of consolidation and for all the three years envisaged for the calculation of the FC;
- b) Transparency: It is important to accompany the use of the PBA with an ex-ante notification process, through which the institutions inform the competent authorities of their choice and document the fulfilment of the criteria for the use of the PBA;

- c) Reversal to AA: Where any of the conditions for the use of the PBA are no longer fulfilled, e.g. when the operations originating the “unwarranted increase” of the FC are dismissed, the institutions should revert to the AA and should not use again the PBA in the 3 years following the reversal. A notification prior to the reversal including proper information and documentation should be provided to the competent authorities.

### **3.2.4 Items excluded from the BI in line with Article 314(6)(b) of the CRR**

22. Article 314(6)(b) of the CRR requests the EBA to draft RTS to further specify the elements that institutions do not have to use in the calculation of the BI, thus detailing those listed in Article 314(5) of the CRR.
23. While some of these elements are easily identifiable in the financial statement, other elements would benefit from additional specification. Indeed, income and expenses from insurance or reinsurance business to be excluded from the calculation of the BI, as referred to in Article 314(5)(a) of the CRR, are those where an institution acts as an insurance provider, therefore taking on the insurance risk. Where instead an institution sells or distributes insurance products or services to its clients, the income and expenses are to be included within the BI, since these products or services are conceptually not different, under an operational risk perspective, from financial products or services.
24. Moreover, certain financial impacts related to lease assets or resulting from operational risk events, or the outsourcing fees paid for the supply of financial services might be accounted under some items (administrative expenses, including staff expenses, depreciation of tangible assets, amortisation of intangible assets, impairment or reversal of impairment) that, according to Article 314(5) of the CRR, should not contribute to the BI. In such cases those financial impacts shall not be excluded from the calculation of the BI.
25. Associated questions for public consultation on three components of the BI and on the specification of the items to be excluded from the BI are included in Section 4 and summarised in Section 7.2 of the present CP.

## **3.3 Draft implementing technical standards on the mapping to supervisory reporting under Article 314(7) of the CRR**

26. Article 314(7) mandates the EBA to draft implementing technical standards (ITS) to specify the items of the BI by mapping those items with the corresponding reporting cells in the Commission Implementing Regulation (EU) 2021/451 (FINREP).
27. In the above-mentioned advice to the EC for the adoption of the CRR, the EBA already proposed a detailed mapping of the BI items to the FINREP items (see Annex 3, Table 13). This proposal was motivated, on one hand, by the need to ensure a harmonised interpretation and adoption of the BI around the EU, and, on the other hand, to limit its implementation/ administrative/ operational costs for the EU institutions.

28. The choice of FINREP was motivated by the fact that FINREP templates are developed to account for both IFRS and for national accounting frameworks (NGAAP). In the present draft ITS, some limited changes are suggested to make them fully aligned with the institutions’ practice to report the several BI items according to the FINREP standards.

29. Consistently, the mapping envisaged in the EBA advice, as amended to consider recent changes in IFRS, has been the reference used to address the mandate granted to the EBA in Article 314(7) of the CRR.

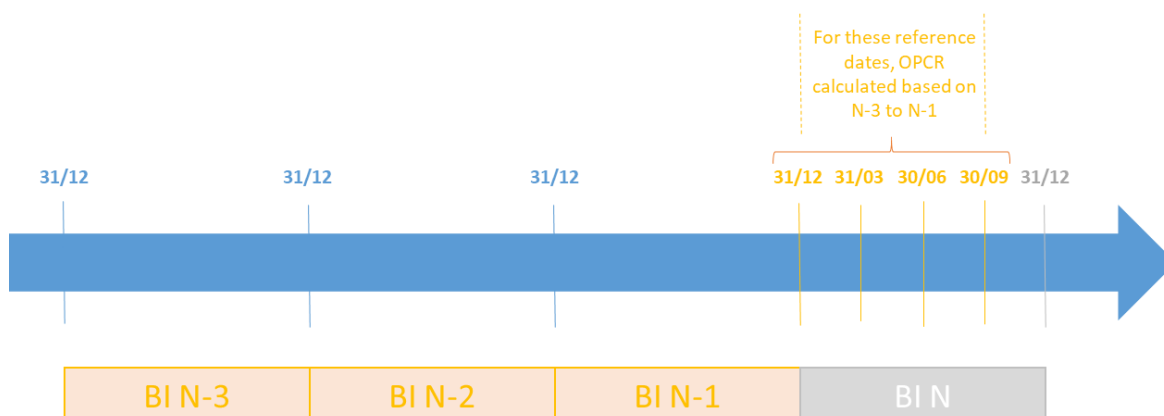
30. Therefore, these draft ITS provide the references of the BI items to the FINREP items. Such references can be exact or, for certain BI items, approximate in reason of the adjustments to be done to the FINREP ones to reflect the qualifications envisaged by the CRR for the calculation of those BI items.

31. An associated question for public consultation on the mapping of the BI items to the FINREP cells is included in Section 5 and summarised in Section 7.2 of the present CP.

### 3.4 Draft regulatory technical standards on the adjustments to the Business Indicator under Article 315(3)(a), (b) and (c) of the CRR

32. Article 314 of the CRR provides that each component of the BI is calculated as “the annual average over the last three financial years”, meaning that the operational risk capital requirements are the same from the 31/12 of year N-1 to the 30/09 of year N and shall be calculated based on N-1 to N-3 audited financial statements of the institution as illustrated in Figure 1 below:

Figure 1: Timeline for calculation of operational risk capital requirements



33. The operational risk capital requirements aim to capture and cover the risks related to the operational failure or deficiencies arising from the conduct of activities (unexpected losses over a one-year horizon in principle). The use of averages in the context of the calculation aims to avoid excessive volatility of the capital charge for operational risk. However, it is acknowledged that, from a risk perspective, the merger, acquisition or disposal of entities or activities may affect the operational risk profile of the institutions and may not be sufficiently reflected under the standard methodology. Moreover, the changes in operational risk exposures may require different

approaches, not necessarily on a symmetric basis, for mergers and acquisitions as compared to disposals.

34. On the basis of the considerations above and in accordance with the Basel framework, Article 315 of the CRR requires institutions to include items related to merged or acquired activities and entities in their BI and allows institutions, subject to permission by the competent authority, to exclude the items related to disposed activities and entities.

35. For the application of these provisions, the EBA was mandated in Article 315(3) of the CRR to specify “*how institutions shall determine the adjustments to the business indicator*” (point (a) referencing mergers, acquisitions and disposals), “*the conditions according to which competent authorities may grant the permission*” and “*the timing of the adjustments*” (points (b) and (c) referencing disposals only).

36. Given the above-mentioned points, it is important to ensure through the provisions of this RTS that the methods to determine the adjustment in case of mergers or acquisition and the conditions under which an entity or an activity can be excluded are tailored to the institution’s effective risk profile while ensuring both sufficient harmonisation across the EU and realistic operational implementation. To achieve those objectives, the following aspects were especially considered by the EBA when drafting the RTS:

- a. Calculation of the business indicator adjustment: The determination of the adjustment value should consider that historical information related to purchased entities or activities may not be available or accurate. While the principle shall be to use the audited financial information over the last three years, the RTS should provide for an alternative simplified measure that should nonetheless be conservative enough. Thus, to ensure sufficient harmonization, three alternative calculation approaches have been defined, the most conservative of which in terms of operational risk regulatory capital has to be used by the institution. This alternative approach should only apply for mergers and acquisitions given that, for disposals, the institution has the information to precisely determine the items to be excluded.
- b. Conditions for granting permission to exclude disposed entities and activities: In the context of disposals of entities or activities and while the activities are transferred, specific arrangements may have been entered into in order for the disposing entity to provide any compensation for losses or future liabilities which could arise from events that took place prior to the transaction and not known at the time of the transaction. The disposing entity may also face additional operational risks related to possible reorganization aspects of the operation (e.g. reduction of resources dedicated to operational risk management, business restructuring). There are therefore situations in which it may not be considered reasonable for an institution to exclude items of a disposed entity from its BI and operational risk capital requirements.

### 3.4.1 Calculation of the adjustment

#### a. In the context of acquisitions and mergers

37. Article 315(1) of the CRR states that “Institutions shall include business indicator items of merged or acquired entities or activities in their business and shall cover the previous three financial years” which implies therefore in principle, for any acquisition or merger, to establish revised “pro forma” financial statements as if the entity was part of the group or institution concerned for the three previous exercises, as shown in the example in Table 1 below:

Table 1: Illustration of calculation

	Y-3			Y-2			Y-1			Bank A	New Bank A
	Bank A	Target E/B	New Bank A	Bank A	Target E/B	New Bank A	Bank A	Target E/B	New Bank A		
<b>ILDC</b>										<b>15</b>	<b>22</b>
IC	10	5	15	15	8	23	16	8	24	14	21
AC	400	200	600	600	300	900	800	400	1 200	600	900
DC	1	1	2	1	1	2	1	1	2	1	2
<b>SC</b>										<b>9</b>	<b>13</b>
OI	3	2	5	2	1	3	3	2	5	3	4
OE	2	1	3	4	2	6	3	2	5	3	5
FI	5	3	8	6	3	9	6	3	9	6	9
FE	2	1	3	2	1	3	3	2	5	2	4
<b>FC</b>										<b>2</b>	<b>3</b>
TC	2	1	3	-	-	-	1	1	2	1	2
BC	-	-	-	-	-	-	3	2	5	1	2
<b>BI</b>										<b>25</b>	<b>38</b>
<b>BIC</b>										<b>4</b>	<b>6</b>
BIC bucket 1										1	1
BIC bucket 2										24	29
BIC bucket 3										-	8
<b>RWAs</b>										<b>47</b>	<b>73</b>

38. Institutions would then have to “rebuild” historical financial data for the three previous years for each acquisition as shown in Table 2:

Table 2: Illustration of a rebuild of historical financial data

Acquisition in May 2024	30.06.2024	31.12.2024	31.12.2025	31.12.2026
indicator T-1	2023 pro forma accounts	2024 (financial statements including the acquisition are available, no adjustments needed)	2025 (financial statements including the acquisition are available, no adjustments needed)	2026 (financial statements including the acquisition are available, no adjustments needed)
indicator T-2	2022 pro forma accounts	2023 pro forma accounts	2024 (financial statements including the acquisition are available, no adjustments needed)	2025 (financial statements including the acquisition are available, no adjustments needed)
indicator T-3	2021 pro forma accounts	2022 pro forma accounts	2023 pro forma accounts	2024 (financial statements including the acquisition are available, no adjustments needed)

39. However, as shown by past decisions adopted by competent authorities in application of former Articles 315 and 317 of the CRR, the historical data related to the acquired entity may not be available or may not be accurate. In these cases, various approaches were used and approved in the absence of sufficiently reliable data (i.e. in the absence of audited financial statements covering the perimeter of the operation for the full three years or difficulties to establish pro forma or in case of accuracy issues). In all cases though the objective was to ensure that the approach followed was conservative.

40. Given the above approaches and options, while also considering the possible difficulties for retrieving the historical data for certain operations, the following approach is implemented:

- Main principle: use of the three-year historical data (audited financial statements or, for acquisition of activities, pro forma financial statement used for the analysis and valuation of the operations, i.e. financial information presented to the institution highest governance body that authorizes definitively the operation);
- Alternative to main principle: in cases where the three years historical data is not available or in case where the historical data available is not accurate (e.g. the acquired entity has transferred part of its activities prior to the transaction), institution are required to use, among the following approaches, the approach that result in the highest own funds requirements:
  - a) The use of the last financial information available and accurate in relation to that entity or activity, including the annualised ongoing financial exercise, for the last three financial years (see illustration in Table 3);
  - b) The use of financial forecasts in relation to that entity or activity based on information used for the final valuation (see illustration in Table 4);
  - c) As a provisional proxy of the BI, the institution business indicator component multiplied by the M&A factor calculated on the basis of the last financial information available and accurate in relation to that entity or activity, including the annualised ongoing financial exercise (see illustration in Table 5):

$$M\&A\ factor = \frac{Instituion\ total\ operating\ income\ (net) + M\&A\ total\ operating\ income\ (net)}{Instituion\ total\ operating\ income\ (net)},$$

where the Total operating income, net, has the same meaning as in Commission Implementing Regulation (EU) 2021/451, i.e. it is pointed out by the FINREP item: F 02.00 r 355, c 010.

41. The tables 3, 4 and 5 below illustrate the calculation under the three alternative approaches in paragraph 11:

*illustration of expected calculation under point a of paragraph 40 (inclusion of M&A on the basis of the last available/accurate financial information related to acquired or merged entity)*

Acquisition in **May 2024**, information related to 2023, 2022, 2021 not available for acquired entity.

	<b>30.06.2024</b>	<b>31.12.2024</b>	<b>31.12.2025</b>
indicator T-1	Acquiring institution 2023 audited + Inclusion of acquired entity BI items based on 2024 annualized (instead of 2023)	2024 (financial statements including the acquisition are available, no adjustments needed)	2025 (financial statements including the acquisition are available, no adjustments needed)
indicator T-2	Acquiring institution 2022 audited + Inclusion of acquired entity BI items based on 2024 annualized (instead of 2022)	Acquiring institution 2023 audited + Inclusion of acquired entity BI items based on 2024 audited (instead of 2023)	2024 (financial statements including the acquisition are available, no adjustments needed)
indicator T-3	Acquiring institution 2021 audited + Inclusion of acquired entity BI items based on 2024 annualized (instead of 2021)	Acquiring institution 2022 audited + Inclusion of acquired entity BI items based on 2024 audited (instead of 2022)	Acquiring institution 2023 audited + Inclusion of acquired entity BI items based on 2024 audited (instead of 2023)

*Table 4: illustration of expected calculation under point b of paragraph 40 (use of forecasts)*

Acquisition in **May 2024**, information related to 2023, 2022, 2021 not available for acquired entity.

	<b>30.06.2024</b>	<b>31.12.2024</b>	<b>31.12.2025</b>
indicator T-1	Acquiring institution 2023 audited + Inclusion of acquired entity BI items based on average forecast 2024-2025-2026 (instead of 2023)	2024 (financial statements including the acquisition are available, no adjustments needed)	2025 (financial statements including the acquisition are available, no adjustments needed)
indicator T-2	Acquiring institution 2022 audited + Inclusion of acquired entity BI items based on average forecast 2024-2025-2026 (instead of 2022)	Acquiring institution 2023 audited + Inclusion of acquired entity BI items based on average 2024 realised and forecast 2025-2026 (instead of 2023)	2024 (financial statements including the acquisition are available, no adjustments needed)
indicator T-3	Acquiring institution 2021 audited + Inclusion of acquired entity BI items based on average forecast 2024-2025-2026 (instead of 2021)	Acquiring institution 2022 audited + Inclusion of acquired entity BI items based on average 2024 realised and forecast 2025-2026 (instead of 2022)	Acquiring institution 2023 audited + Inclusion of acquired entity BI items based on average 2024 and 2025 realised and forecast 2026 (instead of 2023)

Table 5: illustration of expected calculation under point c of paragraph 40 (use of M&A scaling factor)<sup>4</sup>

For the purposes of this illustration, if the Total operating income (net) of the acquiring institution is 100 (31/12/2023) and that of the acquired entity was 20 (31/12/2023), the M&A factor would be 1,2.

Acquisition in May 2024	30.06.2024	31.12.2024	31.12.2025	31.12.2026
indicator T-1	2023 Institution business indicator multiplied by 1,2	2024 (financial statements including the acquisition are available, no adjustments needed)	2025 (financial statements including the acquisition are available, no adjustments needed)	2026 (financial statements including the acquisition are available, no adjustments needed)
indicator T-2	2022 Institution business indicator multiplied by 1,2	2023 Institution business indicator multiplied by 1,2	2024 (financial statements including the acquisition are available, no adjustments needed)	2025 (financial statements including the acquisition are available, no adjustments needed)
indicator T-3	2021 Institution business indicator multiplied by 1,2	2022 Institution business indicator multiplied by 1,2	2023 Institution business indicator multiplied by 1,2	2024 (financial statements including the acquisition are available, no adjustments needed)

### b. In the context of disposals

42. For disposed activities or entities, the information over the past three years is available. The principle should therefore be to reflect the disposal in the BI covering the three years period that is relevant (no impact on the full period if the entity or the activity was initiated, created, or purchased during the three-year period). The items related to disposed entity have however to be adjusted if the historical financial statements are not accurate due to restructuring operations conducted prior to the disposal and resulting in maintaining part of the activity within the disposing institution.

#### 3.4.2 Conditions under which permission to exclude BI items related to disposed entities or activities may be granted

43. Based on the competent authorities' decisions adopted for the application of article 315(3) and 317 (4) of the current CRR, it appears that the review was mainly focused on the calculation of adjustments and the materiality of the adjustment but in the assessment, it is observed that additional information on the actual level of operational risk losses and in relation to possible future liabilities were also considered and analyzed.

44. Based on developments made in introduction and considering also those competent authorities' decisions and for assessing the opportunity to grant the permission to exclude disposed entity or activity from the BI, the competent authority should especially consider:

- **Operational losses:** how that entity or activity contributed to the institution operational risk losses over past;

<sup>4</sup> For the purposes of this illustration, if the Total operating income (net) of the acquiring institution is 100 (31/12/2023) and that of the acquired entity was 20 (31/12/2023), the M&A factor would be 1.2.



- **Guarantee commitment and future liabilities:** whether the transaction agreements or any side agreements provide that the disposing institution or disposing group is committed to provide any compensation for losses or future liabilities which could arise from events that took place prior to the transaction and not known at the time of the transaction;
- **Operational risk exposures:** whether the disposal results in significant additional exposure to operational risk or change in operational risk management structure that would undermine its capacity to identify, measure and mitigate the operational risk (e.g. change in IT systems, transfer of resources, and other reorganization aspects post transactions).

45. Finally, in order to permit an appropriate scrutiny of the operations by the competent authorities, the institutions should submit, together with the application, the following documentation or information:

- a) The description of the operation, its rationale, and its implementation dates;
- b) The quantitative impact analysis of the operation on operational risk capital requirements in accordance with the methodology established under Article 2 of this Regulation and any supporting evidence, including audited financial statements, pro forma financial statements established by an independent auditor;
- c) The detail of operational risk losses related to the entity or activity disposed of over the last ten years, where available;
- d) The terms and conditions of the disposal including any side agreements as well as a legal analysis regarding the liabilities that may be incurred from events that took place prior to the transaction;
- e) The confirmation that the operation has been approved by the management body and the date of approval;
- f) The analysis of the impact of the operation on the operational risk management structure of the institution;
- g) Any additional document or information that the institution considers useful to establish that the entity or activities disposed of are no longer deemed relevant to the institution's risk profile.

### 3.4.3 Timing for adjustments

46. To ensure timely consideration of the institution risk profile change, the BI should be updated at the first reference date after the acquisition or merger being effective. For the disposal of an entity or activity and subject to authorization to be granted, the BI should be adjusted at the first reference date after the authorization is received or at the first reference date after the disposal is effective (if the authorization is provided before the completion of the operation).

### 3.4.4 Materiality

47. In line with the CRR, the adjustments to the BI due to mergers and acquisitions are systematic and should happen after each operation. Which is why no materiality threshold is included in the draft legal text. Nonetheless, for some institutions, multiple mergers, acquisitions, and disposals take

place throughout the year, which requires multiple adjustments to the BI based either on financial information over the last three years or on proxy data when a full three-year historical data series is not available. Considering that adjustments to the BI would be required for every acquisition, merger or disposal, it would be relevant to gather evidence via the consultation process on potential situations where BI adjustments as set out under articles 1 and 2 would not be feasible or deemed excessively cumbersome and assess potential consequences on the dynamics of the European financial markets.

48. A materiality threshold for all types of operations (acquisition, merger, disposal) below which no adjustment would be required might be considered. For the purposes of this Consultation paper, a Comment box is provided in the draft legal text as an alternative measure to having adjustments to the BI taking place at each operation. In this box, features needed for the definition of this threshold are explored, such as the need for a threshold, its level of application, the basis for calculation and its calibration.
49. While a data collection exercise carried out as part of a regular Basel QIS exercise is ongoing to gain a better understanding of the number of operations, the impacts on capital requirements and workload at stake, input is expected from members of the public on the opportunity to implement such a materiality feature. Associated questions for public consultation on the materiality thresholds (and on other aspects of the technical standards) are included in Section 6 and summarised in Section 7.2 of the present CP.
50. Finally, the potential inclusion of the threshold would also be accompanied by a notification to competent authorities.

#### 4. Draft regulatory technical standards on the components of the Business indicator under Article 314(6)(a) of the CRR and the elements to be excluded from the Business Indicator under Article 314(6)(b) of the CRR

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EBA/RTS/20XX/XX

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DD Month YYYY

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## COMMISSION DELEGATED REGULATION (EU) .../...

of **XXX**

supplementing [Regulation/Directive][serial number] of the European Parliament and of the Council with regard to regulatory technical standards [for/specifying]

(Text with EEA relevance)

### THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,  
Having regard to [full title of the basic act]<sup>5</sup>, and in particular [please indicate, as precisely as possible (with article, paragraph, subparagraph, individual points or indents, as applicable), a reference to the **legal basis**, i.e. the provision conferring powers on the Commission to adopt the measures in the enacting terms (also known as the “empowerment” or “the mandate”). The legal basis is the provision worded ‘The Commission shall adopt/is empowered to adopt delegated acts in accordance with Article [A] concerning...’ or similar] thereof,

Whereas:

- (1) The business indicator is a financial statement-based proxy for operational risk. Only the items representing recurrent banking business operations in an institution’s profit and loss statement, or balance sheet statement should be included within this indicator.
- (2) Since Article 314(2), fourth subparagraph of Regulation (EU) No 575/2013 requires institutions to include all income and expenses arising from financial and operating leases in the interest and leases component, including depreciation and impairment, the items related to leases included in the interest and leases component of the BI should be aligned with those in International Financial Reporting Standards (IFRS) 16. Accordingly, all income and expenses from investment properties that generate rents, including rental income from investment properties, should be included within the interest and leases component.
- (3) In order to ensure consistency with the international accounting standards, the asset component referred to in Article 314(2), fifth subparagraph of Regulation (EU) No 575/2013 should be calculated as the sum of the gross carrying amounts, the carrying amount or the fair value of certain balance sheet assets, depending on the type of assets.

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<sup>5</sup> OJ L [number], [dd.mm.yyyy], [p. ].

Given that the asset component contributes to the calculation of the interest, leases, and dividends component, it should include all the assets on the balance sheet that generate interest income and/or interest expenses.

- (4) Article 314(3), fifth subparagraph of Regulation (EU) No. 575/2013 requires institutions to include in the other operating expenses the institution's expenses and losses from operational risk events. Since operational risk events can take several forms in an institution's financial statement (e.g. expenses, losses, provisions, impairment, depreciation), the other operating expenses should be fed with all the impacts of operational risk events, whatever labelled or accounted, affecting an institution's financial statement. Such expenses should not be net of any related payments received from insurance or reinsurance policies purchased and should include those exceptional losses that, following the permission given by the competent authority pursuant to Article 320(1) of that Regulation, can be excluded from the calculation of the institution's annual operational risk loss.
- (5) In order to get a proper and exhaustive information on where the financial impacts of operational risk events are accounted for in an institution's financial statement, those financial impacts should be broken down by the main items of the profit and loss statement where these impacts are accounted for.
- (6) Certain types of operations or accounting choices, including the economic hedging of fair value through profit loss positions and the bifurcation of derivatives embedded in host hybrid or structured financial instruments, may originate an unwarranted increase of the financial component, whose formula envisages the sum of the absolute values of the profit and loss of the trading book component and of the banking book component. In such cases the unwarranted increase is due to the presence of type of operations that are strictly related to each other and are of opposite sign, however they are accounted in different components of the business indicator (i.e. the trading book component and the banking book component) when calculated in accordance with the international accounting standards, hence the amounts of these operations cannot be netted when computed within the financial component. In such cases, institutions should be allowed to adopt the prudential boundary approach, i.e. to calculate the financial component in accordance with Part three, Title I, Chapter 3 of Regulation (EU) No 575/2013. Under the prudential boundary approach these operations would be moved under the same book (i.e. the prudential trading book or the prudential non-trading book), hence their amounts would be neutralized within the financial component, consistently with their underlying economic rationale.
- (7) Institutions that intend to adopt the prudential boundary approach should be able to calculate the profit and loss of all the positions held in the prudential trading book and the prudential non-trading book, starting from the daily basis to the three years envisaged for the calculation of the financial component. This calculation is different from that carried out under the accounting approach and is neither based on harmonised accounting standards nor subject to periodic supervisory reports. As a consequence, only institutions having in place policies, procedures, systems and controls to carry out such calculation in a proper manner should be allowed to adopt the prudential boundary approach.
- (8) In order to prevent regulatory arbitrage through the selected use of the prudential boundary approach in some years of the calculation or in some entities of the same

group, the prudential boundary approach should be applied for all the three years envisaged in the calculation of the business indicator and to all the institutions included in the same prudential consolidation.

- (9) In order for the competent authorities to review the adoption of the prudential boundary approach, the institutions intending to adopt it should provide them with adequate documentation and information prior to its implementation.
- (10) Where any condition allowing for the adoption of the prudential boundary approach is no longer met, the institution should revert to the accounting approach. In order to prevent regulatory arbitrage, too frequent switches from one approach to the other should be discouraged.
- (11) As required by Article 314(6), point (b) of Regulation (EU) No 575/2013 and with a view to ensure clarity and consistency in the calculation of the business indicator, some of the elements to be excluded from that calculation listed in Article 314(5) of that Regulation should be further specified.
- (12) All income and expenses where an institution sells or distributes insurance or reinsurance products or services should not be excluded from the calculation of the business indicator, since these products or services are – from an operational risk perspective – conceptually not different from financial products or services, whose income and expenses stemming from their distribution are included within the business indicator, typically under fee and commission income or fee and commission expenses.
- (13) Certain financial impacts related to lease assets or resulting from operational risk events, or the outsourcing fees paid for the supply of financial services might, in specific cases, be accounted for under the following items, listed in Article 314(5) of Regulation (EU) No 575/2013: administrative expenses, including staff expenses, depreciation of tangible assets, amortisation of intangible assets, impairment or reversal of impairment. In such cases those financial impacts should not be excluded from the calculation of the business indicator.
- (14) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (15) The European Banking Authority has 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 in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>6</sup>,

HAS ADOPTED THIS REGULATION:

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<sup>6</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council ...[+full title] (OJ L [number], [date dd.mm.yyyy], [p. ].)

*Chapter 1*  
***INTEREST, LEASES AND DIVIDEND COMPONENT***

*Article 1*  
*Interest income*

The interest income shall be calculated as the sum of the following items:

- a) interest income from financial assets held for trading,
- b) interest income from non-trading financial assets mandatorily at fair value through profit or loss,
- c) interest income from financial assets designated at fair value through profit or loss,
- d) interest income from financial assets at fair value through other comprehensive income,
- e) interest income from financial assets at amortized cost,
- f) interest income from hedge accounting - interest rate risk derivatives,
- g) interest income on other assets,
- h) interest income on liabilities,
- i) income on operating leases, including rental income from investment property,
- j) income from changes in fair value in investment properties that generate rents and are measured using the fair value model,
- k) profits from leased assets, including gains from lease modifications.

*Article 2*  
*Interest expenses*

The interest expenses shall be calculated as the sum of the following items:

- a) interest expenses from financial liabilities held for trading,
- b) interest expenses from financial liabilities designated at fair value through profit or loss,
- c) interest expenses from financial liabilities measured at amortized cost,
- d) interest expenses from hedge accounting- interest rate risk derivatives,
- e) interest expenses on other liabilities,
- f) interest expenses on assets,
- g) leasing expenses, including direct operating expenses from investment property that generate rents,
- h) expenses from changes in fair value in investment properties that generate rents and are measured using the fair value model,
- i) losses from leased assets, including losses from lease modifications,
- j) depreciation and impairment or reversal of impairment of leased assets whose income or expenses are included in the calculation of the interest and leases component.

### *Article 3*

#### *Asset component*

The asset component shall be calculated as the sum of the following items:

- a) gross carrying amount of cash balance at central banks and other demand deposits,
- b) gross carrying amount of debt securities,
- c) gross carrying amount of loans and advances,
- d) fair value of derivatives classified as financial assets at the reference date for the calculation of the asset component, as long as such derivatives have earned/borne interest during the financial year that has been recognized as interest income or interest expenses; both trading and economic hedges and hedge accounting shall be included,
- e) carrying amount of tangible assets and intangible assets subject to lease.

### *Article 4*

#### *Dividend component*

The dividend component shall include dividend income from equity instruments and investments.

#### **Question for public consultation 1:**

**What are your views with regards to the proposal for the ILDC component? Please explain and provide arguments for your answer.**

## *Chapter 2*

### ***SERVICES COMPONENT***

#### *Article 5*

##### *Other operating income*

The other operating income shall be calculated as the sum of the following items:

- a) income from changes in fair value in tangible assets measured using the fair value model, except income from changes in fair value in investment properties that generate rents and are measured using the fair value model,
- b) income from other income,
- c) profit from non-current assets and disposal groups classified as held for sale not qualifying as discontinued operations.

#### *Article 6*

##### *Other operating expenses*

1. The other operating expenses shall be calculated as the sum of the following items:



- a) expenses from changes in fair value in tangible assets measured using the fair value model, except expenses from changes in fair value in investment properties that generate rents and are measured using the fair value model
  - b) expenses from other expenses, not due to operational risk events and not due to leases
  - c) losses from non-current assets and disposal groups classified as held for sale not qualifying as discontinued operations
  - d) losses, expenses, provisions and other financial impacts due to operational risk events accounted for in any items of the profit and loss statement and not due to leases (except for the provisions or (-) reversal of provisions), including those accounted for in the following items:
    - i. other operating expenses
    - ii. staff expenses
    - iii. other administrative expenses
    - iv. depreciation
    - v. provisions or (-) reversals of provisions
2. For the purposes of point (d), the losses, expenses, provisions and other financial impacts due to operational risk events shall not be net of any related payments received from insurance or reinsurance policies purchased and shall include those exceptional losses that, following the permission given by the competent authority pursuant to Article 320(1) of Regulation (EU) No 575/2013, can be excluded from the calculation of the institution's annual operational risk loss.

### *Article 7*

#### *Fee and commission income component*

The fee and commission income component shall be calculated as the sum of the following items:

- a) fee and commission income from securities
- b) fee and commission income from corporate finance
- c) fee and commission income from fee-based advice
- d) fee and commission income from clearing and settlement
- e) fee and commission income from asset management
- f) fee and commission income from custody
- g) fee and commission income from central administrative services for collective investment
- h) fee and commission income from fiduciary transactions
- i) fee and commission income from payment services
- j) fee and commission income from customer resources distributed but not managed
- k) fee and commission income from structured finance
- l) fee and commission income from loan servicing activities
- m) fee and commission income from financial guarantees given
- n) fee and commission income from loans granted
- o) fee and commission income from foreign exchange
- p) fee and commission income from commodities
- q) other fee and commission income

## *Article 8*

### *Fee and commission expenses component*

The fee and commission expenses component shall be calculated as the sum of the following items:

- a) fee and commission expenses from securities
- b) fee and commission expenses from clearing and settlement
- c) fee and commission expenses from asset management
- d) fee and commission expenses from custody
- e) fee and commission expenses from payment services
- f) fee and commission expenses from loan servicing activities
- g) fee and commission expenses from loans commitments received
- h) fee and commission expenses from financial guarantees received
- i) fee and commission expenses from externally provided distribution of products
- j) fee and commission expenses from foreign exchange
- k) other fee and commission expenses

#### **Question for public consultation 2:**

**What are your views with regards to the proposal for the Services component? Please explain and provide arguments for your answer.**

## *Chapter 3*

### *FINANCIAL COMPONENT*

## *Article 9*

### *Calculation of the financial component*

1. Institutions shall calculate the financial component in accordance with the applicable accounting framework and Articles 10 and 11 (“accounting approach”).
2. Where all the following conditions are met, institutions may, by way of derogation from paragraph 1, calculate the financial component in accordance with Article 12 on the basis of the prudential boundary defined in accordance with Part Three, Title 1, Chapter 3 of Regulation (EU) No 575/2013 (“prudential boundary approach”):
  - a) certain types of operations performed, or accounting choices adopted, including the economic hedging of fair value through profit loss positions or the bifurcation of derivatives embedded in host hybrid or in structured financial instruments, result in an unwarranted increase of the financial component when using the accounting approach;
  - b) the institution has in place policies, procedures, systems and controls to properly calculate the profits and losses of the prudential trading book and the prudential non-trading book;
  - c) all the other institutions included in the same prudential consolidation apply the prudential boundary approach.

## *Section 1*

### *Calculation of the financial component according to the accounting approach*

#### *Article 10*

##### *Trading book component*

The trading book component shall be calculated as the sum of the following items:

- a) Gains or (-) losses on financial assets and liabilities held for trading, net;
- b) Gains or (-) losses from hedge accounting, net, where hedge accounting is used for hedging financial assets and liabilities held for trading;
- c) Exchange differences [gain or (-) loss], net, where such differences are originated from financial assets and liabilities held for trading.

#### *Article 11*

##### *Banking book component*

The banking book component shall be calculated as the sum of the following items:

- a) Gains or (-) losses on derecognition of financial assets and liabilities not measured at fair value through profit or loss, net
- b) Gains or (-) losses on non-trading financial assets mandatorily at fair value through profit or loss
- c) Gains or (-) losses on financial assets and liabilities designated at fair value through profit or loss, net
- d) Gains or (-) losses from hedge accounting, net, where hedge accounting is used for hedging financial assets and liabilities other than held for trading
- e) Exchange differences [gain or (-) loss], net, where they are originated from financial assets and liabilities other than held for trading

## *Section 2*

### *Calculation of the financial component according to the prudential boundary approach*

#### *Article 12*

##### *Prudential boundary approach*

1. When calculating the financial component in accordance with the prudential boundary approach, institutions shall use the items in Articles 10 and 11 with appropriate adjustments in order to take into account the prudential boundary between the trading book and the non-trading book defined in Part Three, Title I, Chapter 3 of Regulation (EU) No 575/2013.
2. The prudential boundary approach shall, where adopted, be applied consistently with the institution's strategies, policies, procedures, systems and controls as set out in accordance with Part Three, Title 1, Chapter 3 of Regulation (EU) No 575/2013.

3. The prudential boundary approach shall, where adopted, be applied to all the three financial years envisaged for the calculation of the financial component.
4. Where the prudential boundary approach is applied, competent authorities shall review whether the conditions referred to in Article 9(2) are met.

### *Article 13*

#### *Notification process for the use of the prudential boundary approach*

1. Institutions shall notify to the competent authorities the intention to use the prudential boundary approach at least 90 days before its implementation.
2. The notification of the intention to use the prudential boundary approach referred to in paragraph 1 shall include the following information and documentation:
  - a) Confirmation that the use of the prudential boundary approach has been approved by the management body or by an internal committee designated by it and the date of approval.
  - b) The implementation date of the prudential boundary approach.
  - c) The description of the types of operations performed or accounting choices adopted which cause the unwarranted increase of the financial component and the institution's expectations on their development.
  - d) Portfolios of the trading book component and the banking book component affected by the unwarranted increase and value of these portfolios at the reference date of the notification, expressed as notional for derivatives, nominal for debt instruments, market value for stocks and collective investments undertaking;
  - e) The description of the adjustments to the items in Articles 10 and 11 determined by the use of the prudential boundary approach
  - f) The analysis of the impact of the use of the prudential boundary approach on the trading book component, the banking book component, the financial component, the business indicator and the capital requirements for operational risk, at the last reporting date in comparison with the Accounting approach;
  - g) The description of the policies, procedures, systems and controls referred to in Article 9(2) point (b)
  - h) Report of the independent review of the institution internal or external audit on fulfilment of the conditions referred to in Article 9(2).
3. The institution shall update at least annually the documentation referred to in paragraph 2 during the period of use of the prudential boundary approach, making it available to the competent authorities.

### *Article 14*

#### *Reversal to the accounting approach*

1. Where any condition set out in Article 9(2) is no longer met, institutions shall reverse to the accounting approach.

2. Once readopted, the accounting approach shall be applied to all the three financial years envisaged for the calculation of the financial component.
3. Institutions which have reverted to the accounting approach shall not use again the prudential boundary approach in the following 3 years.

#### *Article 15*

##### *Notification process for the reversal to the accounting approach*

1. Institutions shall notify to the competent authorities the reversal to the accounting approach at least 90 days before its implementation.
2. The notification of the reversal to the accounting approach indicated in paragraph 1 shall include the following information and documentation:
  - a) Confirmation that the reversal to the accounting approach has been approved by the management body or by an internal committee designated by it and the date of approval
  - b) The implementation date of the accounting approach;
  - c) Information on the conditions referred to in Article 9(2) which are no longer met;
  - d) The analysis of the impact of the reversal to the accounting approach on the trading book component, the banking book component, the financial component, the business indicator and the capital requirements for operational risk, at the last reporting date in comparison with the prudential boundary approach;
  - e) Report of the independent review of the institution internal or external audit on the points (c) and (d) above.

#### **Question for public consultation 3:**

**What are your views with regards to the proposal for the Financial component? To which extent are you carrying out operations or making accounting choices as referred to under paragraph 2, point a) of Article 9 of this draft RTS? Are you carrying out operations or making accounting choices, other than those specified under paragraph 2, point a) of Article 9 of this draft RTS, that could justify the use of the PBA? Please explain and provide arguments for your answer.**

#### *Chapter 4*

##### *Elements to be excluded from the business indicator*

#### *Article 16*

##### *Scope of the exclusions from the business indicator*

1. The exclusions referred to in Article 314(5) Regulation (EU) No 575/2013 shall be applied as follows:

- a) for the purposes of Article 314(5) point (a) of that Regulation, income and expenses resulting from the distribution of insurance or reinsurance products or services shall not be excluded from the calculation of the business indicator.
- b) for the purposes of Article 314(5) point (c) of that Regulation, the following items, where accounted for as administrative expenses, shall not be excluded from the calculation of the business indicator:
  - i) outsourcing fees paid for the supply of financial services,
  - ii) lease expenses
  - iii) administrative expenses, including staff expenses, resulting from operational risk events
- c) for the purposes of Article 314(5) point (f) and (i) of that Regulation, the following items, where related to lease assets or resulting from operational risk events, shall not be excluded from the calculation of the business indicator:
  - i) depreciation of tangible assets,
  - ii) amortisation of intangible assets,
  - iii) impairment or reversal of impairment.

**Question for public consultation 4:**

**What are your views with regards to the proposal for the specification of the items to be excluded from the BI? Please explain and provide arguments for your answer.**

*Chapter 5**Final provisions**Article 17**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*

*On behalf of the President  
[Position]*

## 5. Draft implementing technical standards on the mapping to supervisory reporting under Article 314(7) of the CRR

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EBA/ITS/20XX/XX

DD Month YYYY

## COMMISSION IMPLEMENTING REGULATION (EU) .../...

### laying down implementing technical standards for the application of [Regulation/Directive][serial number] of the European Parliament and of the Council with regard to

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,  
Having regard to *[full title of the basic act]*<sup>7</sup>, and in particular *[please indicate, as precisely as possible (with article, paragraph, subparagraph, individual points or indents, as applicable), a reference to the legal basis, i.e. the provision conferring powers on the Commission to adopt the measures in the enacting terms (also known as the “empowerment” or “the mandate”). The legal basis is the provision worded ‘the Commission is empowered to adopt, the Commission may/shall adopt...’ or similar]* thereof,

Whereas:

- (1) Given that the FINREP templates laid down in Annexes III and IV of Commission Implementing Regulation (EU) 2021/451 set out the financial information to be reported in accordance with IFRS and GAAP, items to be included in the calculation of the business indicator components should be mapped with the corresponding cells of those templates.
- (2) Given that Article 314 of Regulation (EU) No 575/2013 envisages specific qualifications for the calculation of some items of the business indicator, the abovementioned mapping should specify where such qualifications are needed and where, instead, the mapping with the corresponding cells of the FINREP templates is exact.
- (3) This Regulation is based on the draft regulatory technical standards submitted to the Commission by the European Banking Authority.
- (4) The European Banking Authority has conducted open public consultations on the draft implementing technical standards on which this Regulation is based, analysed the potential related costs and benefits and requested the advice of the [...] Stakeholder Group established in accordance with Article 37 of Regulation (EU) No 109x/2010 of the European Parliament and of the Council<sup>8</sup>,

<sup>7</sup> OJ L [number], [date dd.mm.yyyy], [p. ].

<sup>8</sup> Regulation (EU) No 109x/2010 of the European Parliament and of the Council *[+ full title]*, (OJ L [number], [date dd.mm.yyyy], [p. ]).



### Article 1

The following correspondence is established between the items included in the calculation of the business indicator, as listed in the regulatory technical standards mandated in accordance with Article 314(6) of Regulation (EU) No 575/2013 (hereinafter “RTS on BI items”) and the cells of the FINREP templates laid down in Annexes III and IV of Commission Implementing Regulation (EU) 2021/451:

BI items	Corresponding cells of the FINREP templates laid down in Annexes III and IV of Commission Implementing Regulation (EU) 2021/451
<i>Interest income (Article 1 of the RTS on BI items)</i>	
a) interest income from financial assets held for trading	F02.00_r0020_c0010
b) interest income from non-trading financial assets mandatorily at fair value through profit or loss	F02.00_r0025_c0010
c) interest income from financial assets designated at fair value through profit or loss	F02.00_r0030_c0010
d) interest income from financial assets at fair value through other comprehensive income	F02.00_r0041_c0010
e) interest income from financial assets at amortized cost	F02.00_r0051_c0010
f) interest income from hedge accounting -interest rate risk derivatives	F02.00_r0070_c0010
g) interest income on other assets	F02.00_r0080_c0010
h) interest income on liabilities	F02.00_r0085_c0010
i) income on operating leases, including rental income from investment property	F45.03_r0020_c0010 + F45.03_r0030_c0010
j) income from changes in fair value in investment properties that generate rents and are measured using the fair value model	F45.03_r0010_c0010 (only from leased assets)
k) profits from leased assets, including gains from lease modifications	F02.00_r0425_c0010 (only from leased assets) + F45.3_r0040_c0010 (only from leased assets)
<i>Interest expenses (Article 2 of the RTS on BI items)</i>	
a) interest expenses from financial liabilities held for trading	F02.00_r0100_c0010
b) interest expenses from financial liabilities designated at fair value through profit or loss	F02.00_r0110_c0010

c) interest expenses from financial liabilities measured at amortized cost	F02.00_r0120_c0010
d) interest expenses from hedge accounting- interest rate risk derivatives	F02.00_r0130_c0010
e) interest expenses on other liabilities	F02.00_r0140_c0010
f) interest expenses on assets	F02.00_r0145_c0010
g) leasing expenses, including direct operating expenses from investment property that generate rents	F45.03_r0020_c0020 + F45.03_r0030_c0020 + F16.08_r100_c0010
h) expenses from changes in fair value in investment properties that generate rents and are measured using the fair value model	F45.03_r0010_c0020 (only from leased assets)
i) losses from leased assets, including losses from lease modifications	F02.00_r425_c010 (only from leased assets) + F45.03_r0040_c0020 (only from leased assets)
j) depreciation and impairment or reversal of impairment of leased assets whose income or expenses are included in the calculation of the interest and leases component	F02.00_r0390_c0010 (only from leased assets) + F02.00_r0460_c0010 (only from leased assets) + F02.00_r0520_c0010 (only from leased assets)
<i>Asset component (Article 3 of the RTS on BI items)</i>	
a) gross carrying amount of cash balance at central banks and other demand deposits	F18.00_r0005_c0010
b) gross carrying amount of debt securities	F18.00_r0010_c0010 + F18.00_r0181_c0010 + F18.00_r0211_c0010 + F01.01_r0080_c0010 + F01.01_r0094_c0010
c) gross carrying amount of loans and advances	F18.00_r0070_c0010 + F18.00_r0191_c0010 + F18.00_r0221_c0010 + F01.01_r0090_c0010 + F01.01_r0095_c0010
d) fair value of all derivatives classified as financial assets at the reference date for the calculation of the asset component, as long as such derivatives have earned/borne interest during the financial year that has been recognized as interest income or interest expenses; both trading and	F01.01_r0060_c0010 (only those earning/ bearing interests) + F01.01_r0092_c0010(only those earning/ bearing interests) + F01.01_r0240_c0010 (only those earning/ bearing interests)

economic hedges and hedge accounting shall be included	
e) carrying amount of tangible assets and intangible assets subject to lease	F21.00_r0010_c0010 + F42.00_r0010_c0020 + F21.00_r0040_c0010 + F42.00_r0040_c0020 + F21.00_r0070_c0010 + F42.00_r0070_c0020
<i>Dividend component (Article 4 of the RTS on BI items)</i>	
dividend income from equity instruments and investments	F02.00_r0160_c0010
<i>Other operating income (Article 5 of the RTS on BI items)</i>	
a) income from changes in fair value in tangible assets measured using the fair value model, except income from changes in fair value in investment properties that generate rents and are measured using the fair value model	F45.03_r0010_c0010 (excluding leased assets)
b) income from other income	F045.03_r0040_c0010
c) profit from non-current assets and disposal groups classified as held for sale not qualifying as discontinued operations	F02.00_r0600_c0010
<i>Other operating expenses (Article 6 of the RTS on BI items)</i>	
a) expenses from changes in fair value in tangible assets measured using the fair value model, except expenses from changes in fair value in investment properties that generate rents and are measured using the fair value model	F45.03_r0010_c0020 (excluding leased assets)
b) expenses from other expenses, not due to operational risk events and not due to leases	F45.03_r0040_c0020 (not due to operational risk and not due to leases)
c) losses from non-current assets and disposal groups classified as held for sale not qualifying as discontinued operations	F02.00_r0600_c0010
d) losses, expenses, provisions and other financial impacts due to operational risk events accounted for in any items of the profit and loss statement and not due to leases (except for the provisions or (-) reversal of provisions),	Sum of points i. to v. below, plus the remaining losses, expenses, provisions and other financial impacts due to operational risk events and not due to leases (except for the provisions or (-) reversal of provisions)

	including those accounted for in the following items:	
i.	other operating expenses	F45.03_r0040_c0020 (due to operational risk events and not due to leases)
ii.	staff expenses	F02.00_r0370_c0010 (due to operational risk and not due to leases)
iii.	other administrative expenses	F02.00_r0380_c001 (due to operational risk and not due to leases or to outsourcing fees paid for the supply of financial services)
iv.	depreciation	F02.00_r0390_c0010 (due to operational risk and not due to leases)
v.	provisions or (-) reversals of provisions	F02.00_r0430_c0010 (due to operational risk)
<i>Fee and commission income (Article 7 of the RTS on BI items)</i>		
a)	fee and commission income from securities	F22.01_r0002_c0010
b)	fee and commission income from corporate finance	F22.01_r0051_c0010
c)	fee and commission income from fee- based advice	F22.01_r0055_c0010
d)	fee and commission income from clearing and settlement	F22.01_r0060_c0010
e)	fee and commission income from asset management	F22.01_r0070_c0010
f)	fee and commission income from custody	F22.01_r0080_c0010
g)	fee and commission income from central administrative services for collective investment	F22.01_r0110_c0010
h)	fee and commission income from fiduciary transactions	F22.01_r0120_c0010
i)	fee and commission income from payment services	F22.01_r0131_c0010
j)	fee and commission income from customer resources distributed but not managed	F22.01_r0140_c0010
k)	fee and commission income from structured finance	F22.01_r0180_c0010
l)	fee and commission income from loan servicing activities	F22.01_r0190_c0010
m)	fee and commission income from loan commitments given	F22.01_r0200_c0010
n)	fee and commission income from financial guarantees given	F22.01_r0210_c0010
o)	fee and commission income from loans granted	F22.01_r0211_c0010
p)	fee and commission income from foreign exchange	F22.01_r0213_c0010
q)	fee and commission income from commodities	F22.01_r0214_c0010

r) other fee and commission income	F22.01_r0220_c0010
<i>Fee and commission expenses (Article 8 of the RTS on BI items)</i>	
a) fee and commission expenses from securities	F22.01_r0235_c0010
b) fee and commission expenses from clearing and settlement	F22.01_r0240_c0010
c) fee and commission expenses from asset management	F22.01_r0245_c0010
d) fee and commission expenses from custody	F22.01_r0250_c0010
e) fee and commission expenses from payment services	F22.01_r0255_c0010
f) fee and commission expenses from loan servicing activities	F22.01_r0260_c0010
g) fee and commission expenses from loans commitments received	F22.01_r0270_c0010
h) fee and commission expenses from financial guarantees received	F22.01_r0280_c0010
i) fee and commission expenses from externally provided distribution of products	F22.01_r0281_c0010
j) fee and commission expenses from foreign exchange	F22.01_r0282_c0010
k) other fee and commission expenses	F22.01_r0290_c0010 + F0200_r0360_c0010 (only outsourcing fees paid for the supply of financial services)
<i>Trading book component (Article 10 of the RTS on BI items)</i>	
d) Gains or (-) losses on financial assets and liabilities held for trading, net	F02.00_r0280_c0010 + F02.00_r0285_c0010
e) Gains or (-) losses from hedge accounting, net, where hedge accounting is used for hedging financial assets and liabilities held for trading	F02.00_r0300_c0010 (only the trading book component)
f) Exchange differences [gain or (-) loss], net, where such differences are originated from financial assets and liabilities held for trading	F02.00_r0310_c0010 (only the trading book component)
<i>Banking book component (Article 11 of the RTS on BI items)</i>	
f) Gains or (-) losses on derecognition of financial assets and liabilities not measured at fair value through profit or loss, net	F02.00_r0220_c0010

g) Gains or (-) losses on non-trading financial assets mandatorily at fair value through profit or loss	F02.00_r0287_c0010 + F02.00_r0295_c0010
h) Gains or (-) losses on financial assets and liabilities designated at fair value through profit or loss, net	F02.00_r0290_c0010
i) Gains or (-) losses from hedge accounting, net, where hedge accounting is used for hedging financial assets and liabilities other than held for trading	F02.00_r0300_c0010 (only the non-trading book component)
j) Exchange differences [gain or (-) loss], net, where they are originated from financial assets and liabilities other than held for trading	F02.00_r0310_c0010 (only the non-trading book component)
<p><b>Question for public consultation 5:</b></p> <p><b>What are your views with regards to the proposed mapping of the BI items to the FINREP cells? Please explain and provide arguments for your answer.</b></p>	

*Article 2*

**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*

*On behalf of the President*

*[Position]*

## 6. Draft regulatory technical standards on the adjustment of the business indicator for the calculation of operational risk capital requirements

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EBA/RTS/20XX/XX

DD Month YYYY

**COMMISSION DELEGATED REGULATION (EU) .../...**

**of XXX**

**supplementing Regulation (EU) No 575/2013 of the European Parliament and of the Council with regard to regulatory technical standards specifying the adjustments to the business indicator in case of mergers, acquisitions or disposals.**

**(Text with EEA relevance)**

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU) No 575/2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012<sup>9</sup>, and in particular Article 315(3), third subparagraph, thereof,

Whereas:

- (1) The consideration of a three years period based on financial statements for the calculation of the business indicator may lead to a potential divergence between the capital requirements for operational risk and the effective risk profile of a given institution in case of acquisitions, mergers or disposals. The method to determine the business indicator's adjustment in case of mergers, acquisitions or disposals and the conditions under which a disposed entity or an activity can be excluded should ensure better alignment between the institution capital requirements and the institution's effective risk profile.
- (2) In principle, given that the business indicator is a financial statement-based proxy for operational risk, its adjustment following mergers or acquisitions should be based on the audited financial statement of the merged or acquired entities or activities. However, institutions may experience difficulties to retrieve historical series of accurate data related to the merged or acquired entities or activities over the three year period to be considered for reflecting the operation. Therefore, institutions should be provided with possible alternative calculation options that are conservative enough, in cases where the historical data relating to the acquired or merged entity or activities over is not available or accurate to cover the full period that is relevant to the calculation of its business indicator.

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<sup>9</sup> OJ L [number], [dd.mm.yyyy], [p. ].



- (3) In case where an adjustment is required under paragraph 1 of article 315 of Regulation (EU) No 575/2013 or allowed under paragraph 2 of article 315 of Regulation (EU) No 575/2013, the institution should take into account the adjustment at the first applicable reporting submission date under Regulation (EU) No 2021/451 after the date from which the operation takes effect.
- (4) The disposal of a business or of an entity may not always imply that the operational risk related to the disposed entity or activities is fully transferred to the acquiring entity. For instance, the terms and conditions of the disposal may provide for an indemnity arrangement in case of new liabilities or losses arising from operational risk events occurring prior to the transaction. Therefore, in case of disposal, the conditions under which a permission by the competent authorities may be granted should in particular aim to ensure that the entity or activity disposed is no longer deemed relevant to the institution's risk profile.
- (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 has 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 in accordance with Article 37 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council<sup>10</sup>.

HAS ADOPTED THIS REGULATION:

*Article 1*

**Calculation of the Business Indicator adjustment in case of mergers and acquisitions**

1. Institutions shall include items of merged or acquired entities or activities in their business indicator for the last three financial years based on the audited financial statements of those entities or the financial information used for the final valuation of those activities.
2. If the data referred to in paragraph 1 is not available or accurate, institutions shall adopt, among the below alternative approaches, the one that results in the highest own funds requirements for operational risk:
  - (a) The institution shall use the latest available and accurate financial information in relation to the merged or acquired entities or activities, properly annualised where needed;
  - (b) The institution shall use forward-looking business estimates in relation to the merged or acquired entities or activities based, where available, on the business plan considered by the institution's management body when approving the merger or acquisition;

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<sup>10</sup> Regulation (EU) No 1093/2010 of the European Parliament and of the Council ...[+full title] (OJ L [number], [date dd.mm.yyyy], [p. ].)

- (c) the institution shall multiply its business indicator component by the M&A factor calculated on the basis of the following formula, using the latest available and accurate financial information in relation to the merged or acquired entities or activities, properly annualised where needed:

$$M\&A\ factor = \frac{Institution's\ total\ operating\ income\ (net)\ +\ merged\ or\ acquired\ entities\ or\ activities'\ total\ operating\ income\ (net)}{Institution's\ total\ operating\ income\ (net)},$$

Where *total operating income (net)* has the same meaning as in Commission Implementing Regulation (EU) 2021/451 (FINREP F 02.00 r 355 c 010).

3. The institution shall use its audited financial statements for the calculation of the business indicator instead of the approach used under paragraph 2 as soon as the merged or acquired entity or activities are fully included in the institution financial statements.
4. Institutions shall notify their competent authority when including acquired or merged entities or activities items in accordance with paragraph 2. This notification shall provide evidence of the unavailability or inaccuracy of data referred to in paragraph 1 and present the own funds requirements for operational risk as calculated in accordance with paragraph 2, points (a), (b) and (c).
5. The revised operational risk capital requirements shall be reported at the first applicable reporting submission date under Regulation (EU) No 2021/451 after the date from which the merger or acquisition takes effect.

**Comment box for consultation purposes:**

While financial statements should exist for stand-alone entities, it is not necessarily the case for businesses/activities. It was therefore considered necessary to make a distinction between those cases with respect to financial information to be used for the adjustment. For acquisition related to activities, it was considered that the most accurate information would be the financial information used for the final valuation (i.e. used by the institution's management body when approving the acquisition), which is subject to intense scrutiny by all the parties to the transactions and which in principle shall always be documented.

**Question for public consultation 6:** What are your views with regards to consider the financial statements used for the final valuation as the only reference for the acquisition of activities under the baseline approach (i.e. full historical data)? Please explain and provide arguments for your answer.

In case where financial information expected is not available or accurate, which can be the case for instance when the acquired entity transfers some of its activities prior to the operation, and in order to ensure sufficient conservativeness, it is proposed to request institutions to compare three different alternative approaches and to apply the more conservative one. The rationale is that in the absence of historical reliable information, it shall be ensured that the adjustment is not underestimated while avoiding complexity by

using a very simplified calculation. It was also considered not possible, for minimum harmonization, to provide the possibility to use any other relevant alternative deemed relevant by the institution or the competent authority.

**Question for public consultation 7:** What are your views with regards to the proposed three alternative calculation approaches instead of a unique alternative approach to be defined? Please explain and provide arguments for your answer.

### *Article 2*

#### **Calculation of the Business Indicator adjustment in case of disposals**

1. Where the permission referred to in Article 4 has been granted, the institution may exclude the business indicator amounts related to the disposed entities or activities for the last three financial years, based on the audited financial statements of those entities or the financial information used for the final valuation of those activities.

#### **Comment box for consultation purposes:**

It is assumed that in case of disposal, the disposing institution has all the information needed to reflect the disposal and that therefore no alternative calculation method shall be provided.

**Question for public consultation 8:** What are your views with regards to not providing any alternative method but adjustment to the effective perimeter of the disposal? Please explain and provide arguments for your answer.

### *Article 3*

#### **Timing for business indicator adjustments in case of disposal**

1. Institutions may apply the exclusions referred to in Article 2 after the supervisory permission or the date from which the disposal takes effect, whichever is the later. The revised operational risk capital requirements shall be reported at the following applicable reporting submission date under Regulation (EU) No 2021/451.

### *Article 4*

#### **Conditions for authorizing the adjustment of the business indicator following a disposal and necessary documentation**

1. For the purpose of granting an institution the permission to exclude from the business indicator amounts related to disposed entities or activities, competent authorities shall consider in particular the following items:

- a) the contribution of those entities or activities to the institution operational risk losses over the past years;
  - b) any contractual arrangement whereby the institution or any other entity in its group undertakes to provide the purchaser with compensation or indemnification for future losses or liabilities arising from operational risk events occurred prior to the transaction;
  - c) the impact of the disposal on the institution's operational risk management structure that would undermine its capacity to identify, measure, and mitigate the operational risk, including changes in information technology systems, transfer of resources, and any other relevant restructuring aspects.
2. Institutions applying for the permission referred to in paragraph 1 shall submit the following documentation and information to their competent authority:
- a) The description of the operation, its rationale, and its implementation dates;
  - b) The quantitative impact analysis of the operation on operational risk capital requirements in accordance with the methodology established under Article 2 of this Regulation and any supporting evidence, including audited financial statements, pro forma financial statements established by an independent auditor;
  - c) The detail of operational risk losses related to the entity or activity disposed over the last ten years, where available;
  - d) The terms and conditions of the disposal including any side agreements as well as a legal analysis regarding the liabilities that may incur from events that took place prior to the transaction;
  - e) The confirmation that the operation has been approved by the management body and the date of approval;
  - f) The analysis of the impact of the operation on the operational risk management structure of the institution;
  - g) Any additional document or information that the institution considers useful to establish that the entity or activities disposed of are no longer deemed relevant to the institution's risk profile.

### *Article 5*

#### **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*.

#### **Comment box for consultation purposes:**

For some institutions, multiple mergers, acquisitions, and disposals take place throughout the year, which requires multiple adjustments to the business indicator based either on financial information over the last three years or on proxied data when a full three-year historical data series is not available. Considering that adjustments to the BI would be

required for every acquisition, merger or disposal, it would be relevant to gather evidence on potential situations where BI adjustments as set out under articles 1 and 2 would not be feasible or deemed excessively cumbersome and assess potential consequences on the dynamics of the European financial markets. A materiality threshold for all types of operations (acquisition, merger, disposal) below which no adjustment would be required might be considered.

Elements to be assessed when considering the introduction of a materiality threshold:

- i) The need for a threshold: a data collection exercise is being carried out as part of the Basel QIS, including information on the frequency of mergers, acquisitions, and disposals, as well as their size.

**Question for public consultation 9:** What are your views with regards to the inclusion of a threshold? Please explain and provide arguments for your answer as well, if applicable, further evidence on situations where BI adjustments as set out under articles 1 and 2 would not be feasible or deemed excessively cumbersome and identify potential consequences on the dynamics of the European financial markets.

- ii) Level of application: the materiality threshold would apply at the level where capital requirements for operational risk are calculated, i.e. at individual level.
- iii) Basis of calculation of the threshold: while the use of operational risk capital requirements is considered the most relevant basis for calculation, this would entail going through the full calculation of the adjustments to the business indicator for every operation.

**Question for public consultation 10:** What are your views with regards to the basis for the calculation of the threshold? Please explain and provide arguments for your answer.

- i) The calibration of the threshold: the calibration of the threshold will be carried out based on information from the data collection exercise on size of operations.

**Question for public consultation 11:** What are your views with regards to the level you consider would be appropriate for the threshold? Please explain and provide arguments for your answer.

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

Done at Brussels,

*For the Commission  
The President*

*[On behalf of the President]  
[Position]*

## 7. Accompanying documents

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### 7.1 Draft impact assessment

#### Introduction

Article 314(6)(a) of the CRR mandates the EBA to list the components of the BI while Article 314(6)(b) of the CRR mandates the EBA to specify the elements indicated in Article 314(5) to be excluded from the BI. The EBA shall draft Regulatory Technical Standards that will address both the abovementioned mandates.

Furthermore, Article 314(7) of the CRR requires the mapping of the items of the BI with the corresponding reporting cells in Commission Implementing Regulation (EU) 2021/451. The EBA shall also draft Implementing Technical Standards to address this mapping.

Finally, Article 315(3) of the CRR mandates the EBA to specify “*how institutions shall determine the adjustments to the business indicator*” (point (a) referencing mergers, acquisitions and disposals), “*the conditions according to which competent authorities may grant the permission*” and “*the timing of the adjustments*” (points (b) and (c) referencing disposals only). The EBA shall draft Regulatory Technical Standards that will address this mandate in all its points.

The EBA shall conduct a high-level qualitative impact assessment combining qualitative that will address the above-mentioned mandates referring to the calculation of the BI, inviting also the banking industry to reply to this consultative paper by providing additional evidence-based information.

Finally, participating banks in the mandatory Basel III monitoring exercise are invited to provide additional quantitative data to support the analysis outlined above, as well as evidence on the direction and magnitude of the impact, via the EU specific cells of the operational risk (‘OpRisk’ and “EU specific OpRisk”) worksheets included in the reporting package of the Basel III monitoring exercise<sup>11</sup> as provisioned in Annex I and Annex III of the consolidated EBA Decision on the mandatory exercise<sup>12</sup>.

#### Objectives of the technical standards in Articles 314(6) and 314(7) of the CRR

The strategic objective of the RTS and ITS is to provide sufficient provisions for building the business indicator in a consistent way, and thus providing an exhaustive list of elements that are part of the business indicator calculation and the way they contribute to the calculation of this indicator (Article 314(6)(a) of the CRR), as well as the specification of the elements that are excluded from its

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<sup>11</sup> For more information, please refer to the EBA website on the process and relevant material for submitting data via the mandatory Basel III monitoring exercise (<https://www.eba.europa.eu/risk-analysis-and-data/quantitative-impact-study/basel-iii-monitoring-exercise>)

<sup>12</sup> [EBA/DC/2021/373 \(consolidated version\)](#)

calculation (Article 314(6)(b) of the CRR). In doing so, the EBA is confronted with the following operational challenges:

- Requesting the necessary information by using, as much as possible, the existing information or calculation practices to avoid burdening credit institutions;
- Harmonise across the EU the best calculation practices;
- 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.

### Draft RTS on BI items under Article 314(6)(a) and (b) of the CRR

One of the main principles at the heart of the European implementation of the final Basel III framework has been the full alignment with the Basel policy stances. In the context of the operational risk framework and given that the BI is defined as a financial statement-based proxy, this leads to using an accounting approach for defining the components of the BI, while searching for an internal to the BI coherence in the identification of the items of these components.

In particular, the Asset Component (AC) is part of the formula used to calculate the interest, leases and dividend component (ILDC) of the BI and, according to Article 314(2) of the CRR, is comprised of the total gross outstanding loans, advances, interest bearing securities, including government bonds, and lease assets. The AC is used in the formula of the ILDC to set a cap on the contribution of the Interest and Leases Component (IC) to the Business Indicator.

Two relevant points on the AC are whether or not interest-bearing derivatives should be included among its list of items, and in the affirmative case, what metric should be used for their calculation (ie. fair value or notional).

To answer the first question, the rationale adopted in the RTS has been to avoid inconsistencies between the items that make up the IC and those that are part of the AC. In other words, all the types of assets which generate interests should be included into the AC, since the interests generated by these assets contribute to the IC. Conversely, types of assets which do not generate interests, such as cash on hand, should not be part of the AC.

From this perspective, it follows logically that if derivatives result in “assets” and generate interest, either income or expenses, they must be included in the AC.

As far as the second question is concerned, a full alignment with the Basel standards has been sought. Since the calibration of the ILDC in the BI, including of the 0.0025 coefficient applied to the AC and acting as a cap, has been built – among others - on the derivatives amounts reported by the banks participating to the Basel QIS and these derivatives have been most likely reported at their fair value, the fair value should also be considered as a metric for these types of assets when calculating the AC. When marking-to-market a derivative contract results in a positive fair value, such position is generally accounted as a balance sheet asset. Therefore, assets resulting from the



positive fair value of a derivative contract that produces interest, either income or expenses, should be included in the AC of the BI.

An additional, relevant, point considered in the RTS is the definition of the Financial Component. In line with the Basel standards, the RTS have followed an accounting approach (AA) in defining the items of the trading book components and the banking book component. However, some institutions carrying out specific types of operations or making specific choices in terms of accounting approaches have suggested alternative practices – where applicable - for the discrimination of the profit and loss of the two books, based on the prudential boundary framework as set out by the CRR, in Part three, Title I, Chapter 3. This is why both approaches to separate the profit and loss of the trading book component and the banking book component are provided for in the CRR and the EBA has been mandated to define the items of this component by taking into account the international regulatory standards and, where appropriate, the prudential boundary framework.

In line with the concept of appropriateness included in the legal text, the RTS have envisaged that the use of the prudential boundary framework (PBA in the RTS) is possible where some conditions are fulfilled, i.e. when the institution is actually carrying out operations/accounting choices eligible for the use of the PBA, has implemented organizational requirements able to properly calculate the profit and loss of the trading and banking book components and is able to extend the PBA to all the group, avoiding thus to cherry pick the use of this approach in only some subsidiaries. A specific question on the PBA has been included, so to get more information on those situations that are eligible for the use of this alternative approach to the AA.

The RTS also envisage, in Article 14, the reversal from the PBA to the AA. Although this possibility is not mentioned in the CRR, it is the obvious consequence when the conditions for the use of the PBA are no longer fulfilled. Moreover, it was deemed important in the RTS to discourage frequent switches from an approach to the other, so to limit the yearly selected use of the PBA or of the AA just for saving of operational risk regulatory capital.

Last, but not least, the EBA will conduct a data collection, during the consultation period, to figure out what would be the impact, at EU level, from the application of the Accounting Approach vs the Prudential Boundary Approach, and what is the percentage of participating banks that intend to apply each of the approaches.

To this end, the EBA invited credit institutions that intend to submit comments during the consultation to complement these comments with the completion of the QIS templates that were circulated on the 26<sup>th</sup> of January 2024 to the participating banks for completion.

#### Draft ITS on FINREP mapping under Article 314(7) of the CRR

The ITS on the mapping of BI items to specific FINREP cells implies only negligible impact and is only limited to a marginally additional operational burden for NCAs for the identification of the FINREP item that should be mapped. Since institutions are already required to complete FINREP templates, the EBA does not anticipate any additional operational burden for them. The only additional

operational burden will be borne by the EBA and the national competent authorities (NCAs). The EBA shall provide the mapping, and possibly prepopulate the COREP templates, while the NCAs shall double-check the correctness of the populated data and sign off the amounts for further use for analysis.

All in all, it would be disproportionate to conduct a fully-fledged IA analysis on the impact of the implementation of the ITS, provided that the impact, if any, will be close to zero for the institutions, whereas it will be negligible for the EBA and the NCAs.

### Objectives of the technical standards in Articles 315(3) of the CRR

It is acknowledged that, from a risk perspective, the merger, acquisition or disposal of entities or activities may affect the operational risk profile of the institutions and may not be sufficiently reflected under the standard methodology, i.e. the use of averages span over a year. Moreover, the changes in operational risk exposures may require different approaches, not necessarily on a symmetric basis, for mergers and acquisitions as compared to disposals.

Article 315 of the CRR, being in accordance with the respective Basel framework, requires institutions to include items related to merged or acquired activities and entities in their BI and allows institutions, subject to permission by the competent authority, to exclude the items related to disposed activities and entities.

Article 315(3) of the CRR mandates the EBA to specify “*how institutions shall determine the adjustments to the business indicator*” (point (a) referencing mergers, acquisitions and disposals), “*the conditions according to which competent authorities may grant the permission*” and “*the timing of the adjustments*” (points (b) and (c) referencing disposals only).

The EBA, is mindful of the objective that the adjustment methods addressed in the current RTS should make sure that the adjustments, in cases of mergers or acquisition and the conditions under which an entity or an activity can be excluded, are tailored to the institution’s effective risk profile. That said, the RTS aims at ensuring the sufficient harmonisation across the EU and realistic operational implementation. To achieve those objectives, the following aspects were especially considered by the EBA when drafting the RTS:

*Calculation of the business indicator adjustment*: The determination of the adjustment value should consider that historical information related to purchased entities or activities may not be available or accurate.

While the EBA’s baseline is the use of audited financial information over the last three years, the RTS should provide for an alternative simplified measure that copes with a potential absence of audited financial information and should be conservative enough prudential supervision terms.

To ensure sufficient harmonization, the EBA provides three alternative approaches, the most conservative of which in terms of operational risk capital requirements has to be used. This

alternative approach should only apply for mergers and acquisitions given that, for disposals, the institution has the information to determine, precisely, the items to be excluded.

*Conditions for granting permission to exclude disposed entities and activities:* In the context of disposals of entities or activities, and while the activities are transferred, specific arrangements may have been entered into, in view to allow the acquiring entity to receive indemnity in case of new liabilities or assets deterioration arising from events occurring prior to the transaction.

The disposing entity may therefore remain liable to some extent for events that occurred during the years preceding the transactions and reveal afterwards. The disposing entity may also face additional operational risks related to possible reorganization aspects of the operation (e.g. reduction of resources dedicated to operational risk management, business restructuring). There are therefore situations in which it may not be considered reasonable for an institution to exclude items of a disposed entity from its BI and operational risk capital requirements.

### Objectives of the technical standards

The strategic objective of the RTS is to provide ensuring the sufficient harmonisation across the EU, while the operational objective is the realistic operational implementation that would be based on available information.

### Preferred options

When assessing the proposals for the adjustments on BI due to mergers acquisitions and disposals of entities and activities, as well as of the conditions for granting permission to exclude disposed entities and activities, the EBA considered only the options that are not expected to have or imply a detrimental effect on the total operational cost of the preferred solutions, while at the same time these solutions represent the risk profile of the institutions.

While financial statements should exist for standalone entities, it is not necessarily the case for businesses/activities. It was therefore considered necessary to make a distinction between the treatment of entities vis-à-vis the treatment of activities, with respect to financial information to be used for the adjustment. Thus, for acquisition related to activities, it was considered that the most accurate information would be the financial information used for the final valuation (i.e. considered by the institution's management body when approving the acquisition), which is subject to intense scrutiny by all the parties to the transactions and which in principle shall always be documented.

However, to cope with cases where the expected financial information is not available or accurate, for instance when the acquired entity transfers some of its activities prior to the operation, EBA proposes to request institutions to compare three different alternative approaches and to apply the more conservative one to ensure sufficient conservativeness. The rationale is that in the absence of reliable historical information, the EBA deems important to ensure that the adjustment is not underestimated and represents the riskiness of the activity, while using very simplified calculations to avoid complexity for the involved institutions. The EBA does not consider efficient,

for minimum harmonization purposes, to provide the possibility to use any other relevant alternative deemed relevant by the institution or the competent authority.

In cases of disposals of activities, the EBA considers that the disposing institution has all the information needed to reflect them and therefore there is no need to provide an alternative calculation method.

The EBA will complement the above qualitative assessment of the methods applied for the adjustents on BI, and the conditions therein, by collecting the relevant data via the EBA QIS data collection launched on the 26th of January 2024. To this end, the EBA invites credit institutions, that intend to submit comments during the consultation, to complement these comments with the completion of the QIS templates (new lines were specifically added to gather information on the number of operations that would be at stake as well as their materiality).

## 7.2 Overview of questions for consultation

**Question 1: What are your views with regards to the proposal for the ILDC component? Please explain and provide arguments for your answer.**

**Question 2: What are your views with regards to the proposal for the Services component? Please explain and provide arguments for your answer.**

**Question 3: What are your views with regards to the proposal for the Financial component? To which extent are you carrying out operations or making accounting choices as referred to under paragraph 2, point a) of Article 9 of this draft RTS? Are you carrying out operations or making accounting choices, other than those specified under paragraph 2, point a) of Article 9 of this draft RTS, that could justify the use of the PBA? Please explain and provide arguments for your answer.**

**Question 4: What are your views with regards to the proposal for the specification of the items to be excluded from the BI? Please explain and provide arguments for your answer.**

**Question 5: What are your views with regards to the proposed mapping of the BI items to the FINREP cells? Please explain and provide arguments for your answer.**

**Question 6: What are your views with regards to consider the financial statements used for the final valuation as the only reference for the acquisition of activities under the baseline approach (i.e. full historical data)? Please explain and provide arguments for your answer.**

**Question 7: What are your views with regards to the proposed three alternative calculation approaches instead of a unique alternative approach to be defined? Please explain and provide arguments for your answer.**

**Question 8: What are your views with regards to not providing any alternative method but adjustment to the effective perimeter of the disposal? Please explain and provide arguments for your answer.**

**Question 9: What are your views with regards to the inclusion of a threshold? Please explain and provide arguments for your answer, as well, if applicable, further evidence on situations where BI adjustments as set out under articles 1 and 2 would not be feasible or deemed excessively cumbersome and identify potential consequences on the dynamics of the European financial markets.**

**Question 10: What are your views with regards to the basis for the calculation of the threshold? Please explain and provide arguments for your answer.**

**Question 11: What are your views with regards to the level you consider would be appropriate for the threshold? Please explain and provide arguments for your answer.**