

Comments

EBA/CP/2024/07 supervisory reporting concerning operational risk

German Lobby Register No R001459
EU Transparency Register No 52646912360-95

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Berlin, April 30, 2024

The **German Banking Industry Committee** is the joint committee operated by the central associations of the German banking industry. These associations are the Bundesverband der Deutschen Volksbanken und Raiffeisenbanken (BVR), for the cooperative banks, the Bundesverband deutscher Banken (BdB), for the private commercial banks, the Bundesverband Öffentlicher Banken Deutschlands (VÖB), for the public-sector banks, the Deutscher Sparkassen- und Giroverband (DSGV), for the savings banks finance group, and the Verband deutscher Pfandbriefbanken (vdp), for the Pfandbrief banks.

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General Remarks

We very much welcome the fact that the EBA has clearly defined and described the requirements for the implementation of the CRR III amendments. It makes a lot of sense to utilise data from other supervisory reporting areas. This can alleviate the burden. Nevertheless, additional work should be avoided in order to prevent unnecessarily increasing the workload due to complete innovations. This is one of the topics of the European Commission's (EC) approach in the Strategy on supervisory data in EU financial services of 21st December 2021. To reduce reporting hurdles, existing data from neighbouring supervisory institutions should be used (data sharing and uses). Additionally, the EC's proposal to amend Regulations (EU) No 1092/2010, (EU) No 1093/2010, (EU) No 1094/2010, (EU) No 1095/2010 and (EU) 2021/523 with regard to certain reporting obligations in the areas of financial services and investment support aims to streamline reporting obligations and reduce the administrative burden. The proposal seeks to facilitate the exchange of information between the supervisory authorities of the financial sector (the ESAs) and to avoid duplication of reporting obligations. This core idea can and should be applied to the selected fields of the C 16.02 and C 16.03 reporting forms. The calculation rules relating to FINREP data demonstrate that the supervisory authority can also obtain this data directly from the FINREP system, thus avoiding double reporting.

Furthermore, the different data requirements for various sizes of financial institutions in FINREP mean that the data point reporters introduced by the ECB, among others, do not fill the referenced FINREP fields. Therefore, these fields should remain empty in the OpRisk report. Changes in the requirements of FINREP should therefore be avoided in order to limit the cost of compliance.

Suggestion: Facilitations for the first reporting year(s)

The consultation paper does not make any statements about the first reporting dates using the new approach. The methodology of the new Business Indicator approach and the corresponding reporting template C 16.02 as well require the computation of the business indicator and the preparation of the detailed reporting template C 16.02 for each of the last three financial year-ends. To our understanding this means, that for the first reporting date 31st March 2025 the figures for the reporting dates YE 2024, YE 2023 and YE 2022 must be retrospectively processed. Even if FINREP reports are available for these reporting dates, the reporting data is not available in the granularity required for the preparation of the reporting form C 16.02. In all cases of deviations from the existing FINREP reporting (adjustments for M&A, need for more granularity) the retroactive data provision is very burdensome.

The provisions in Annex II, Chapter 4.1.3, on how to proceed in case of the non-availability of historical data, seem to be only partially applicable for the transition to the new approach. We consider it necessary to include facilitations for the period of phasing-in of the new reporting requirements, i.e. the first two years after the entry into force of CRR III:

1. A waiver of retroactive adjustments of the FINREP figures for YE 2023 and YE 2022 with regard to M&A transactions should be granted. It should be possible to refrain from collecting and preparing data for M&A transactions which took place in the longer past.
2. In accordance with Annex II, Chapter 4.1.3, Text 149, breakdowns that cannot be derived from FINREP reports may be determined on a best-effort basis, e.g. breakdowns in the trading or banking book may be estimated if not available.

Overview of questions for consultation

Question 1: Are the instructions and templates clear to the respondents?

No, they are not fully clear. The primary issues include the following:

Mapping of the BI components to the FINREP cells:

The proposal is primarily based on IFRS. The handling of nGAAP-FINREP remains unclear. Many of the cells of the various FINREP templates listed in the consultation for determining the business indicator are not documented or greyed out in the German FINREP implementation for institutions reporting under nGAAP (German Commercial Law, HGB), for example.

For example, in our view, the cells Interest income (F 02.00_r0010_c0010) and Interest expenses (F'02.00_r0090_c0010) are missing for HGB institutions.

Will there be an EBA adjustment here for nGAAP balance sheet providers or would this have to be defined by the national supervisory authority?

Administrative expenses/fee expenses:

Examples of "outsourcing fees for the supply of financial services" would be helpful here.

If 'financial services' refers to banking services, we understand that these are generally part of net fee and commission income and not part of administrative expenses (row F 02.00_r360_c100).

Loss amounts over several accounting periods:

We request clarification on template C 17.02 as to what should be recognised in future as the posting date for a loss if loss amounts extend over several posting periods."

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

The presentation on page 7, Figure 1 provides for quarterly reporting with C 16.03 by all institutions. As we understand it, the content of C 16.03 is a list of P&L expense data attributable to operational risks. In our opinion, however, the provision of such a statement is only necessary if an institution is obliged to collect data in accordance with Article 316 f. CRR III-E. However, this requirement applies only to institutions with a Business Indicator (BI) of EUR 750 million or higher. Accordingly, we assume that template C 16.03 is only relevant for institutions that are subject to the requirements of Article 316 f. CRR III-E. The depiction of Figure 1 should therefore be adjusted accordingly.

Asset component (Article 3 of the RTS on BI items) (p. 34)

The described "total assets" comprise gross carrying amount positions and carrying amount positions. However, total assets are defined as carrying amount. In order to deliver reliable data, all required positions which relate to template C 18.00 should include column 0130 "accumulated impairment".

The position asset component "a) Cash balances at central banks and other demand deposits" does not contain "cash on hands" (ref. F 01.01 Cash, cash balances at central banks and other demand deposits)

Established correspondence 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. (p. 33-38). Concerning these we propose to provide a clearer correspondence between the items included in the calculation of the business indicator and the according positions of the FINREP templates to narrow down the scope of interpretation and therefore achieve better harmonization level across all institutions.

Additionally, there is a need to check for double counting: i.e. Interest income Article1 (k) "profits from leased assets including gains from lease modifications" F 45.03_r0040_c0010 (only from leased assets) versus other operating income "(b) income from other income" F 45.03_r0040_c0010 (in total).

Re C 16.02 rows 0300, 0360, and 0390 in conjunction with point 29: We are startled that the consultation paper contains no further comments on the implementation of Article 314 (3) CRR III, which pertains to the net accounting of the service component for financial networks (same IPS). However, it specifies that income and expenses for entities within the same protection scheme (same IPS) should be reported on the aforementioned rows. We therefore request further clarification of the implementation rule regarding the net accounting of provision income and expenses for entities in the same protection scheme and a renewed consultation regarding this matter.

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

NA

Question 4 - Cost of compliance with the reporting requirements: Is or are there any element(s) of this proposal for new and amended reporting requirements that you expect to trigger a particularly high, or in your view disproportionate, effort or cost of compliance? If yes, please:

- specify which element(s) of the proposal trigger(s) that particularly high cost of compliance,
- explain the nature/source of the cost (i.e. explain what makes it costly to comply with this particular element of the proposal) and specify whether the cost arises as part of the implementation, or as part of the on-going compliance with the reporting requirements,
- offer suggestions on alternative ways to achieve the same/a similar result with lower cost of compliance for you.

Adjustments due to mergers & acquisitions

The draft consultation paper on supervisory reporting under Article 430 (7) CRR III concerning operational risks, in particular template C 16.02, refers largely to FINREP. However, in case of M&A transactions retrospective adjustments compared to the FINREP figures are required for past years, in which the holdings in the new companies have not yet existed. To determine how the adjustments should be made, a new RTS (EBA/CP/2024/05) to amend the CRR III and the ITS on supervisory reporting will be published. In general, the data of the new companies should be integrated into the FINREP figures based on the (audited) financial statements of the respective companies.

Adjusting FINREP figures in this way for past years is very burdensome, especially if there have already been business relationships with the respective companies before the M&A transaction took place. On the other hand, the impact of the adjustments on the business indicator is likely to be of minor impact in most of the M&A transactions and does not justify the efforts for the re-computation of FINREP figures. Against this background, we consider facilitations for M&A transactions with minor impact necessary.

We would appreciate a waiver of the adjustments for M&A transactions as long as those transactions are of minor significance. A reasonable measure of immateriality could be the M&A factor already introduced by the EBA. For example, up to an M&A factor of 1.1, M&A adjustments could be omitted. Another alternative, which would be a great relief for the institutions, but which would only have minor impact on the business indicator, would be the possibility to use the M&A factor method (according to Article 1 (2) (b) of the RTS (draft) for adjustments to the business indicator (EBA/CP/2024/05)) up to an M&A factor of 1.1 in general (as first resp. standardized approach). Up to an M&A factor of 1.1, a notification according to Article 1 para. 4 of the above - mentioned RTS should be omitted as well as the comparison of the three approaches acc. to Article 1 par. 2 of the RTS.

Furthermore, we do not consider the inclusion of straightforward acquisitions of equity investments not included in the consolidation scope to be appropriate. Such investments should not be treated as mergers and acquisitions (M&A); clarification is necessary. Inclusion in the consolidation scope could be used as a criterion to classify transactions as M&A.

Further excessive reporting burdens

In principle, we understand the supervisory authority's desire for the use of fixed FINREP items to significantly narrow the scope of interpretation. However, in some cases, 'thereof' values (for example, regarding loss data) must be reported within a FINREP item, which can only be gathered within the regulatory consolidation scope with considerable effort. We believe the identification of such items can only be carried out using complex, sometimes manual processes. We therefore suggest omitting such rows unless absolutely necessary. An example of this is rows 310 and 320 in template C'16.02 (OPR BIC).

Also, we propose to exclude the rows 0420 - 0440 and 0470 - 0510 from the template C 16.02 (OPR BIC). Currently, we are not able to get this information directly via our General Ledger. Such implementations are connected with high costs due to new releases. These detailed information are not relevant for calculating the BIC as they are part of the Trading and Banking book component. Therefore it is not necessary to collect all the details.

This also applies to the template C 16.03 (OPR BD) (consultation paper point 59 – we prefer option 1b: not to add a template with a breakdown of the total losses, expenses, provisions and other financial impacts). Determining the data in the notification form C 16.03. would only be possible with considerable effort. Currently, we are not able to get this information directly via our General Ledger. Such implementations are connected with high costs due to new releases. These detailed information are not relevant for calculating the BIC as they already are part of the item "other operating expenses", therefore it is not necessary to collect all the details.

Information on various FINREP accounts, which currently do not contain any information or labelling regarding operational risk (OpRisk) losses, is required. We do not see the additional benefit this survey provides, as the information should also come from the loss data reporting. Therefore, we advocate for the deletion of template C 16.03 without replacement.

Additionally, we propose to exclude the reference in the disclosure template to the deleted reporting templates.

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

Referring to the EBA/CP/2024/05 consultation paper, we would like to note, due to its potential relevance to the report, that financial statements for the BI N-1 financial year are generally not available by the 31st December deadline. Including them by this deadline, as outlined in EBA/CP/2024/05 para. 32, will be challenging or even impossible.