

EBA/Op/2026/04

22 April 2026

Opinion of the European Banking Authority on European Commission's amendments relating to the final draft Regulatory Technical Standards to specify operational risk requirements under Articles 314(6), 315(3), 316(3), 317(9), and 321(3) of Regulation (EU) 575/2013

Introduction and legal basis

1. On 16 June 2025, the European Banking Authority (EBA) submitted to the European Commission its final draft Regulatory Technical Standards (RTS) specifying, among others, the components of the business indicator under Article 314(9)(a) of Regulation (EU) 575/2013 (CRR)¹ and the elements to be excluded from the business indicator under Article

¹ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012 (OJ L 176 27.6.2013, p. 1)

- 314(9)(b) of the CRR and on the adjustments to the business indicator under Article 315(3)(a), (b) and (c) of the CRR².
2. On 4 August 2025, the European Banking Authority (EBA) submitted to the European Commission its final draft RTS establishing a risk taxonomy on operational risk that complies with international standards and a methodology to classify the loss events included in the loss data set based on that risk taxonomy on operational risk under Article 317(9) of the CRR; specifying the condition of 'unduly burdensome' for the calculation of the annual operational risk loss under Article 316(3) of the CRR; specifying how institutions shall determine the adjustments to their loss data set following the inclusion of losses from merged or acquired entities or activities under Article 321(2) of the CRR³.
 3. With its letter of 8 October 2025, the European Commission informed the EBA of its intention to treat the technical standards listed above as a single regulatory product, with the objective of simplifying the process of adoption and improving end-users' access to relevant regulation.
 4. With its letter of 2nd March 2026, the European Commission informed the EBA of its intention to endorse, with amendments, the draft technical standards submitted by the EBA and sent to the EBA a modified version of the standards with its envisaged changes.
 5. Recital (23) of Regulation (EU) No 1093/2010 (EBA Regulation) specifies that the draft regulatory technical standards 'should be subject to amendment only in very restricted and extraordinary circumstances, since the Authority [the EBA] is the actor in close contact with the market and knowing best the daily functioning of financial markets'. The recital specifies that 'draft regulatory technical standards would be subject to amendment if they were incompatible with Union law, did not respect the principle of proportionality or ran counter to the fundamental principles of the internal market for financial services as reflected in the acquis of Union financial services legislation'.
 6. The EBA's competence to deliver this opinion is based on Article 10(1), sixth subparagraph, of Regulation (EU) No 1093/2010, as the specification of operational risk requirements is an area where the EBA has been entrusted to develop draft regulatory technical standards.

² EBA/RTS/2025/02 and EBA/ITS/2025/06 (<https://www.eba.europa.eu/activities/single-rulebook/regulatory-activities/operational-risk/technical-standards-new-business-indicator-framework-operational-risk>)

³ EBA/RTS/2025/03 (<https://www.eba.europa.eu/publications-and-media/press-releases/eba-publishes-key-regulatory-products-operational-risk-losses-under-eu-banking-package>)

⁴ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC (OJ L 331, 15.12.2010, p. 12).

7. In accordance with Article 14(1) and 14(7) of the Rules of Procedure of the Board of Supervisors⁵, the Board of Supervisors has adopted this opinion which is addressed to the European Commission.

General comments / proposals

8. The EBA considers substantive the amendments envisaged by the European Commission and listed below in the subsection 'substantive changes'. In particular, the EBA notes that the European Commission's proposal of allowing the combined use of the Accounting Approach (AA) and the Prudential Boundary Approach (PBA) is of a substantive nature and not aligned with the intentions of the EBA on its use as regards the provisions embedded in Articles 314 of the CRR. Likewise, the proposal that Institutions shall notify only material changes to the scope of the PBA raises concerns for the effectiveness of the supervisory process.
9. The EBA considers that these amendments alter the draft technical standards submitted by the EBA in a significant manner from a technical perspective and therefore provides a formal opinion as set out in Article 10(1), sixth subparagraph, of the EBA Regulation. The EBA has assessed the proposed amendments in light of its ongoing interactions with institutions and competent authorities, and has taken the view that these amendments might alter the level playing field among Institutions and reduce the level of prudence of the calculation of capital requirements.
10. The EBA agrees with the changes summarised in the subsection 'Non-substantive changes' as they are of a drafting nature and improve the clarity of the text. The EBA considers that these amendments are editorial in nature, harmonise terminology, and streamline cross-references to the CRR, without altering the underlying policy framework.

Specific comments / proposals

Substantive changes

Substantive change 1: Possibility to use the prudential boundary approach in combination with the accounting approach

11. The European Commission's amendment proposal to Recitals 14 and 16, and Articles 9 and 12 of the draft regulatory technical standards submitted to the EBA allow institutions to use the prudential boundary approach (PBA) in combination with the accounting approach (AA). In addition, the concept of materiality is introduced for the offsetting between profit and losses of the hedge and the hedged items.

⁵ Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 22 January 2020 (EBA/DC/2020/307).

12. The PBA allows institutions to offset positions in the trading book with positions in the non-trading book if certain conditions are fulfilled and prevents an unwarranted increase in the value of the financial component when an institution hedges instruments across books. Conversely, the AA requires that the calculation of the financial component is performed by adding the banking book component (i.e. the annual average of the absolute values over the last three financial years of the net profit or loss on the institution's non-trading book) to the trading book component (i.e. the annual average of the absolute values over the last three financial years of the net profit or loss on the institution's trading book). It should be noted that the use of the PBA is not envisaged in the Basel 3 standard for the calculation of RWA for operational risk⁶.
13. The mandate in Art. 314(9)(a) of the CRR states that *"EBA shall develop draft regulatory technical standards to specify [...] the components of the business indicator, and their use, by developing lists of typical sub-items, taking into account international regulatory standards and, where appropriate, the prudential boundary defined in Part Three, Title I, Chapter 3. [...]"*. It is the EBA view that the use of the PBA is appropriate, as mentioned in the mandate, only when the use of the AA results in an unwarranted increase of the capital requirements; the unwarranted increase of the capital requirements takes place when the booking practices and types of operations performed by an Institution result, under the AA, in an operational risk picture that is not reflective of the actual operational risk of the Institution.
14. The EBA acknowledges the intention of the European Commission of making the use of the PBA accessible to more institutions. The EBA also notes that the conditions specified in Art. 13(2)(i) of the European Commission's amendment proposal are aimed at reducing the potential for regulatory arbitrage. Nevertheless, the EBA considers that the combined use of the PBA and the AA increases the complexity of the framework and the burden on supervisors and institutions, both in terms of assessment and reporting: institutions would have to adjust their IT systems to assess and report the appropriate figures stemming from the combined use of the PBA and of the AA, as well as their internal risk management procedures. Furthermore, the combined use of the PBA and of the AA is also not aligned with the techniques of the market risk framework, where Institutions cannot use different accounting practices for instruments with the same risk profile in the trading book. Institutions might end up with having three different procedures for their risk management: a boundary for operational risk purposes, a boundary for market risk purposes, and an accounting approach for operational risk purposes, with potential inconsistencies and complexity in the calculation of risk metrics and a negative impact on transparency and risk management. Finally, the calculation of the BI would be more cumbersome, with part of the financial component calculated with the PBA and the remaining part calculated with the AA. By allowing the use of the PBA only on fractions of the trading and non-trading book, Institutions could tailor the perimeter of their portfolios to minimise the operational

⁶ BCBS OPE10 and BCBS OPE25 (https://www.bis.org/basel_framework/standard/OPE)

risk own funds requirement, as opposed to effectively hedge and reduce their operational risk.

15. The combined approach of the PBA and the AA is undesirable also if used only at consolidated level for addressing situations where some entities of the group use the PBA and others use the AA. As stated in the feedback table of the final draft Regulatory Technical Standards, a partial use approach of the PBA and the AA at consolidated level is neither desirable nor opportune. Indeed, differently from market risk own funds requirements which is a point-in-time stock-based measure, the BI is calculated on the flow of profit and loss through three year-long periods of time directly on consolidated data. Selective choices of the PBA for some entities (or activities) and of the AA for others would open the calculation to cherry-picking and, from an institution perspective, would require complex new data aggregation at consolidated level based on non-homogeneous profit and loss data at the individual level. It is also unclear how an institution using the PBA and the AA in combination should use the relevant mandatory reporting templates.
16. The EBA therefore recommends maintaining the use of either the AA or the PBA for the full balance sheet of an Institution, either at consolidated or individual level, without allowing the use of the AA and the PBA in combination, as set out in Art. 12(3) of the EBA's draft regulatory technical standards.

Substantive change 2: Obligation to notify only material changes to the scope of the prudential boundary approach

17. The European Commission's amendment proposal to Article 12(3), second subparagraph of the draft regulatory technical standards submitted to the EBA mandates Institutions to notify to competent authorities only material changes to the scope of the PBA. Among the conditions for the calculation of the financial component for Institutions that use the PBA, Art. 9(b)(iv) of the European Commission's proposed regulatory technical standards requires that the adjustments to the financial component are restricted to the amount of profit and loss related to risks effectively covered by the hedge and materially offsetting the accounting profit and loss of the hedged items.
18. By introducing the obligation to notify only material changes to the scope of the PBA, there is the potential risk of unlevel playing field and increased complexity in the supervisory action: Institutions would perform their own assessment on the materiality of the changes to the scope of the PBA, which would differ from institution to institution; in turn, competent authorities would have to assess the valuation of materiality performed by banks. In combination with the possibility to use the PBA in combination with the AA, the introduction of the materiality concept for the change of the scope of the PBA might result in a framework that is not prudent and inclined to regulatory arbitrage, in addition to the increased complexity for both institutions and competent authorities.
19. If the combined use of the PBA and the AA is maintained, the EBA recommends removing, or as an alternative to better specify, the reference in Article 12(3), second subparagraph

of the draft regulatory technical standards, regarding the materiality of the changes to the scope of the PBA for the notification to the competent authority. The EBA also recommends removing the concept of materiality from Art. 9(b)(iv) of the Commission's proposed regulatory technical standards, as it is not necessary because only the portion of the hedge that effectively hedges the underlying risk would be recognised, regardless of its size. Finally, the EBA also recommends amending Art. 13(2)(i)(i) and (ii) in order to make clear that institutions shall provide a description of the types of operations and an analysis of the impact only for the balance sheet items subject to the AA and that could have been subject to the PBA, as opposed to the full balance sheet subject to the AA.

Non-substantive changes

Non-substantive change 1: adjustment to the business indicator in case of mergers and acquisitions – timing of the notification to the competent authority

20. European Commission's amendment proposal of Article 17(6) changes the timing of the notifications that Institutions provide to the competent authority when performing adjustment to the business indicator in case of mergers and acquisitions. In contrast, the EBA's draft regulatory technical standard required that the notification shall be made 90 days prior to the inclusion of the acquired or merged entities or activities, in the European Commission's amendment proposal is stated that Institutions shall make that notification without delay and at the latest at the time of the inclusion.
21. While the EBA's draft regulatory technical standards provide objective criteria on the timing for the notification of the inclusion of the acquired or merged entities or activities in the BI, it might also be unpractical for operations that take place in less than 90 days. It might also be disproportionate for complex operations that can't provide an accurate timing for the inclusion of the acquired or merged entities or activities in the BI.
22. In light of the above, the European Commission's proposed amendments seem proportionate and don't alter the substance of the provision, which is to make aware in a timely manner the competent authority of any inclusion in the BI of the acquired or merged entities or activities.

Non-substantive change 2: Procedure for granting permission to exclude from the business indicator those amounts that are related to disposed entities or activities – required data on past operational risk losses

23. European Commission's amendment proposal of Article 19(1) lists the items that the competent authority should analyse before granting the Institution permission to exclude from the business indicator those amounts that are related to disposed entities or activities. In point (a) of that Article, competent authority should assess the contribution to the institution's operational risk losses over the past at least five financial years by disposed

entities or activities. The EBA's draft regulatory technical standard required, under the same conditions, at least ten financial years of data.

24. The EBA's draft regulatory technical standards allow the competent authority to have a wider picture of the contribution of the disposed entities or activities to the BI. The ten-year window is also in line with the requirements for the calculation of the net loss and gross loss under Art. 318(1) of the CRR.
25. In light of the above, while the EBA's draft regulatory technical standard seem more prudent and in line with the requirements for the maintenance of the loss data set, the European Commission's proposed amendments should provide a similar level of prudence, while reducing the burden on Institutions.

Non-substantive change 3: Retroactive application of the loss data set

26. European Commission's amendment proposal of Article 33 on the retroactive application of the loss data set requires Institutions to assign loss events to the relevant Level 1 event types from 1st January 2016, and the option to assign loss events to the relevant Level 2 categories and attributes from 1st January 2025.
27. The EBA's draft regulatory technical standards required that Level 1 event types to be assigned from the 10 years preceding the entry into force of the Delegated Regulation, and allowed the optionality to assign Level 2 categories and attributes from one year preceding the entry into force of the Delegated Regulation.
28. The EBA welcomes the European Commission's amendment proposal as it provides clarity on the timing of the retrospective application of the loss data set, and avoids that partial years are included in the historical data.

Other non-substantive changes: drafting improvements

29. The EBA welcomes the drafting improvements in the Commission's regulatory technical standards, notably (i) the descriptions of items for the notification procedure for the use of the PBA in Article 13, and (ii) the descriptions of Level 2 categories and attributes, from Article 25 to Article 32.

Conclusions

Taking into account the analysis set out in this Opinion, the EBA does not agree with the substantive amendment introduced by the European Commission on the combined use of the AA and the PBA: the use of the PBA is not envisaged in the Basel standard in the first place, let alone the combined use of the PBA and the AA, and it has the potential to have a material impact for a limited number of institutions. The policy goals in terms of financial stability and competitiveness of European institutions are not fully clear, while its impact on the complexity and consistency of the framework appears to go against the desirable direction. The EBA considers that the exclusive use of either

approach for the full balance sheet is better suited to ensuring both supervisory effectiveness, including in terms of reporting, and a level playing field across institutions.

The EBA also does not agree with the substantive amendment introduced by the European Commission on the concept of materiality for the notification to the competent authority when the perimeter of the PBA changes, as this might increase the complexity of the application of the framework for both institutions and competent authorities.

With respect to the non-substantive amendments, the EBA acknowledges that the proposed drafting adjustments enhance clarity, streamline terminology, and improve the operational usability of the RTS.

In light of the above, the EBA invites the European Commission to reconsider the identified substantive amendments. Should the amendments not be changed, the EBA recommends to incorporate the targeted drafting improvements proposed in this Opinion. Such adjustments are necessary to reduce the potential for regulatory arbitrage, maintain supervisory coherence, and uphold the integrity of the operational risk framework under the CRR.

A revised version of Articles 9, 12 and 13 of the Commission's RTS reflecting the EBA's recommended adjustments is attached in Annex 1 to this Opinion.

This Opinion will be published on the EBA's website.

Done at Paris, 22 April 2026

[Signed]

François-Louis Michaud
Chair
For the Board of Supervisors

Annex I

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 operational risk requirements

(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 of the European Parliament and of the Council of 26 June 2013 of prudential requirements for credit institutions and amending Regulation (EU) No 648/2012¹, and in particular Article 314(9), third subparagraph, Article 315(3), third subparagraph, Article 316(3), third subparagraph, Article 317(9), third subparagraph, and Article 321(2), third subparagraph, thereof,

[...]

Article 9

Calculation of the financial component

When calculating the financial component referred to in Article 314(6) of Regulation (EU) No 575/2013, institutions shall use one of the following approaches:

- (a) the 'accounting approach' under which they calculate the financial component in accordance with Articles 10 and 11 of this Regulation on the basis of the applicable accounting framework;
- (b) the 'prudential boundary approach' under which they calculate the financial component in accordance with Article 12 of this Regulation on the basis of the prudential boundary set out in Part Three, Title 1, Chapter 3, of Regulation (EU) No 575/2013, provided that all of the following conditions are met:
 - (i) certain types of operations performed, or accounting choices adopted, including the economic hedging of fair value through profit and 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;
 - (ii) the institution has in place policies, procedures, systems and controls to:

- (1) identify the profit and loss of hedged instruments and related hedges, connecting those related hedges to the hedged risks;
- (2) properly calculate the profits and losses of the prudential trading book and the prudential non-trading book;
- (iii) the internal policies, procedures, systems and controls allow for documenting the hedging relationship and its changes over time based on risk management objectives and choices;
- (iv) the adjustments to the financial component are restricted to the amount of profit and loss related to risks effectively covered by the hedge and **materially** offsetting the accounting profit and loss of the hedged items.

[...]

Article 12

Prudential boundary approach

1. When using the prudential boundary approach for calculating the financial component, institutions shall adjust the items referred to in Articles 10 and 11 of this Regulation in accordance with Part Three, Title I, Chapter 3, of Regulation (EU) No 575/2013.
2. Institutions shall apply the prudential boundary approach consistently with their strategies, policies, procedures, systems and controls, as set out in Part Three, Title 1, Chapter 3, of Regulation (EU) No 575/2013.
3. Institutions may use the prudential boundary approach in combination with the accounting approach.

For the purposes of the first subparagraph, institutions may apply the prudential boundary approach to certain entities within the same group or certain types of operations. In that case, institutions shall demonstrate that the selection of the scope of the prudential boundary approach is not made to engage in regulatory arbitrage. Institutions shall apply the accounting approach to the remaining part of the balance sheet. Institutions shall notify competent authorities of any material change to the scope of the prudential boundary approach in accordance with Article 13. **Institutions shall define the materiality applicable to the changes to the scope of the prudential boundary approach in their internal documents and procedures and make them available to competent authorities.**

4. Institutions shall apply the prudential boundary approach to all three financial years envisaged for the calculation of the financial component.
5. Where institutions apply the prudential boundary approach, competent authorities shall verify whether the conditions referred to in Article 9, point (b), are met.

Article 13

Notification procedure for the use of the prudential boundary approach

1. Institutions shall notify their competent authority of their intention to use the prudential boundary approach at least 90 days before they start using that approach.
2. The notification of the intention to use the prudential boundary approach shall contain the

following:

- (a) 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 that approval;
- (b) the date as of which the prudential boundary approach will be used;
- (c) the description of the types of operations performed or accounting choices adopted which cause the unwarranted increase in the financial component and the institution's expectations concerning their development;
- (d) a description of the portfolios of the trading book component and the banking book component that are affected by the unwarranted increase;
- (e) the value of those portfolios referred to in point (d) at the reference date of the notification, expressed as:
 - (i) notional for derivatives;
 - (ii) nominal for debt instruments;
 - (iii) market value for stocks and collective investments undertaking;
- (f) when the notification is submitted by a consolidating entity, the contribution per subsidiary to the portfolios referred to in points (d) and (e);
- (g) a description of the adjustments to the items referred to in in Articles 10 and 11 due to the use of the prudential boundary approach;
- (h) an analysis of the impact, at the last reporting date in comparison with the accounting approach, of the use of the prudential boundary approach, on:
 - (i) the trading book component;
 - (ii) the banking book component;
 - (iii) the financial component;
 - (iv) the business indicator;
 - (v) the capital requirements for operational risk;
- (i) where institutions apply the prudential boundary approach in combination with the accounting approach in accordance with Article 12(3):
 - (i) a description of the types of operations for which the accounting approach is used **where such approach results in a different treatment from the one required under the prudential boundary approach in accordance with Part Three, Title 1, Chapter 3 of Regulation (EU) No 575/2013;**
 - (ii) an analysis of the impact, at the last reporting date in comparison to the prudential boundary approach, of the use of the accounting approach **for the operations referred to in the first sub-point** on:
 - (1) the trading book component;
 - (2) the banking book component;
 - (3) the financial component;
 - (4) the business indicator;

- (5) the capital requirements for operational risk;
 - (j) a description of the policies, procedures, systems and controls referred to in Article 9, point (b)(ii);
 - (k) a report of the independent review of the institution's independent risk control function, or of internal or external audit, on fulfilment of the conditions referred to in Article 9, point (b).
3. The 90-day period referred to in paragraph 1 shall start only when the information and documentation referred to in paragraph 2 is complete.
4. Institutions shall update the following documentation and provide that update to their competent authority:
- (a) at least annually the documentation referred in paragraph 2, points (c) to (i) and point (k);
 - (b) the documentation referred to in paragraph 2, points (j), but only where there were changes during the period of use of the prudential boundary approach.

For the purposes of point (a), institutions shall provide their competent authority with the documentation referred to in paragraph 2, points (h) and (i) at the reference date of the update of the calculation of the business indicator.

THE CHAIR

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EBA-2026-D-5522

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22 April 2026

Subject: Opinion of the European Banking Authority on European Commission's amendments relating to the final draft Regulatory Technical Standards to specify operational risk requirements under Articles 314(6), 315(3), 316(3), 317(9), and 321(3) of Regulation (EU) 575/2013

Dear Mr Berrigan,

I am hereby submitting to you an Opinion adopted by the EBA's Board of Supervisors on the European Commission's intended amendments to the draft RTS with regard to regulatory technical standards specifying operational risk requirements, in accordance with Article 14(7) of the EBA's Rules of Procedure.

In June and August 2025, the EBA submitted to the European Commission the final draft Regulatory Technical Standards (RTS) specifying operational risk requirements under the Capital Requirements Regulation (CRR). By letter of 2 March 2026, the Commission informed the EBA of its intention to endorse the draft RTS with amendments, triggering the six-week period under Article 10(1) of Regulation (EU) No 1093/2010 for the EBA to respond by formal Opinion.

The EBA's Opinion considers that two of the amendments envisaged could affect the consistency, transparency and supervisory effectiveness of capital requirements for operational risk and invites to reconsider them.

A first amendment would allow the combined use of the accounting approach (AA) and the prudential boundary approach (PBA) for the calculation of the financial component of the business indicator (BI). The EBA's Opinion considers that requiring institutions to apply only one approach would preserve the coherence of the framework: the combined use of both approaches is not envisaged in the Basel standard and may increase complexity, create inconsistencies across risk

frameworks and facilitate regulatory arbitrage, while benefiting only a limited number of institutions.

A second amendment proposes to limit notification obligations to competent authorities to material changes in the scope of the PBA when used in combination with the AA. The EBA's Opinion highlights that this could weaken supervisory effectiveness by introducing institution-specific materiality judgments, making supervisory reviews more complex.

Should the Commission nevertheless wish to proceed with these two amendments, Annex I to the EBA's Opinion sets out minor drafting suggestions.

The EBA supports the other amendments proposed which improve readability and legal certainty.

The EBA remains committed to working constructively with the Commission to support the timely adoption of a robust, legally sound and harmonised framework.

Yours sincerely,

François-Louis Michaud

- CC: Aurore Lalucq, Chair of the Committee on Economic and Monetary Affairs, European Parliament
Monika Nogaj, Head of ECON Secretariat, European Parliament
Makis Keravnos, ECOFIN Chair, Minister of Finance of the Republic of Cyprus, Presidency of the Council of the EU
Tuomas Saarenheimo, Chair of Economic and Finance Committee, Council of the European Union
Thérèse Blanchet, Secretary-General, Council of the European Union
Ugo Bassi, Director Dir D, Banking, Insurance and Financial Crime, DG FISMA
Almorò Rubin de Cervin, Head of Unit D1, Bank regulation and supervision, DG FISMA
- Encl: Opinion of the European Banking Authority on European Commission's amendments relating to the final draft Regulatory Technical Standards to specify operational risk requirements under Articles 314(6), 315(3), 316(3), 317(9), and 321(3) of Regulation (EU) 575/2013