

Chapter 1

Commission Delegated Regulation (EU) 2018/959

Article 22 Scope of operational risk loss

(1) Competent authorities shall confirm that an institution identifies, collects and treats the loss items generated by an operational risk event, as referred to in point (i) of Article 20(d), by verifying that the institution includes at least the following within the scope of operational risk loss for the purposes of both management of operational risk and calculation of the AMA own funds requirements:

(a) direct charges, including impairments and settlement charges, to the Profit and Loss account and write-downs due to the operational risk event;

(b) costs incurred as a consequence of the operational risk event, including the following:

(i) external expenses with a direct link to the operational risk event, including legal expenses and fees paid to advisors, attorneys or suppliers;

(ii) costs of repair or replacement to restore the position prevailing before the operational risk event, in the form of either precise figures, or, where these are not available, estimates.

(c) provisions or reserves accounted for in the Profit and Loss account against probable operational risk losses, including those from misconduct events;

(d) pending losses, in the form of losses stemming from an operational risk event, which are temporarily booked in transitory or suspense accounts and are not yet reflected in the Profit and Loss which are planned to be included within a time period commensurate to the size and age of the pending item;

(e) material uncollected revenues, related to contractual obligations with third parties, including the decision to compensate a client following the operational risk event, rather than by a reimbursement or direct payment, through a revenue adjustment waiving or reducing contractual fees for a specific future period of time;

(f) timing losses, where they span more than one financial accounting year and give rise to legal risk.

(2) For the purposes of paragraph 1, competent authorities may, to the extent appropriate, confirm that the institution identifies, collects and treats for the purposes of management of operational risk any additional items where they originate from a material operational risk event, including the following:

- (a) a near miss in the form of a nil loss caused by an operational risk event, including an IT disruption in the trading room just outside trading hours;
- (b) a gain caused by an operational risk event;
- (c) opportunity costs in the form of an increase in costs or a shortfall in revenues due to operational risk events that prevent undetermined future business from being conducted, including unbudgeted staff costs, forgone revenue, and project costs related to improving processes;
- (d) internal costs including overtime or bonuses.

(3) For the purposes of paragraph 1, competent authorities shall also confirm that the institution excludes the following items from the scope of operational risk loss:

- (a) costs of general maintenance contracts on property, plant or equipment;
- (b) internal or external expenditures to enhance the business after the occurrence of an operational risk event, including upgrades, improvements, risk assessment initiatives and enhancements;
- (c) insurance premiums.