

Chapter 1

Commission Delegated Regulation (EU) 2018/959

Article 23 Recorded loss amount of the operational risk items

(1) Competent authorities shall confirm that an institution records the loss amount generated by an operational risk event, as referred to in point (i) of Article 20(d), by verifying at least the following:

(a) that the whole amount of the incurred loss or expenses, including provisions, costs of settlement, amounts paid to make good the damage, penalties, interest in arrears and legal fees, is considered as recorded loss amount for the purposes of both management of operational risk and calculation of the AMA own funds requirements, unless otherwise specified;

(b) that, where the operational risk event relates to market risk, the institution includes the costs to unwind market positions in the recorded loss amount of the operational risk items; and that, where the position is intentionally kept open after the operational risk event is recognized, any portion of the loss due to adverse market conditions after the decision to keep the position open is not included in the recorded loss amount of the operational risk items;

(c) that, where tax payments relate to failures or inadequate processes of the institution, the institution includes in the recorded loss amount of the operational risk items the expenses incurred as a result of the operational risk event, including penalties, interest charges, late-payment charges, and legal fees, with the exclusion of the tax amount originally due;

(d) that, where there are timing losses and the operational risk event directly affects third parties, including customers, providers and employees of the institution, the institution includes in the recorded loss amount of the operational risk item also the correction of the financial statement.

(2) For the purposes of paragraph 1, where the operational risk event leads to a loss event, which is partly rapidly recovered, competent authorities shall consider appropriate the inclusion, on behalf of the institution, in the recorded loss amount of only that part of the loss which is not rapidly recovered in accordance with point (b) of Article 21.