CONSULTATION RESPONSE

Brussels, 4 March 2024

EFAMA response to the Consultation Paper on draft guidelines on aggregated costs and losses from major incidents.

General remarks

EFAMA, the voice of European investment management industry, has long recognised the importance of operational resilience in the financial market and supported the introduction of a framework that would foster cybersecurity across sectors. At the same time, since the beginning of these discussions, we have highlighted a need for an approach which would not pose challenges to firms' divergent organisational arrangements, nor impose barriers to growth and innovation by setting the bar too high, in particular for smaller entities or those that do not provide critical IT infrastructure. This approach emanates from the principle of proportionality being widely applied to the provisions of DORA[1] by virtue of its Art. 4.

With our response to this consultation paper on the Draft Guidelines[2], we would:

- Question the necessity for such complex reporting, and
- Highlight the administrative burden attached to providing the information on costs and losses broken down by incident.

Response to the ESAs' Questionnaire

Q1: Do you agree with paragraph 7 and 9 of the Guidelines on the assessment of gross and net costs and losses of major ICT-related incidents?

☐ Yes

☒ No

[1] Regulation (EU) 2022/2554 of the European Parliament and of the Council of 14 December 2022 on digital operational resilience for the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014, (EU) No 909/2014 and (EU) 2016/1011 (Text with EEA relevance) (DORA).
[2] ESAs, [Consultation Paper on Joint Guidelines on the estimation of aggregated annual costs and losses caused by major ICT-related incidents](#)(Draft Guidelines).

Q1b: Please provide your reasoning and alternative approach(es) you would suggest.

EFAMA is of the opinion that the amount of data expected by the ESAs is too extensive and goes beyond what we believe is necessary for the purposes of Art. 11(10) of DORA. The "*estimation of aggregated annual costs and losses*" seems to be somewhat different than the concrete numbers on costs that actually have been incurred, as expected by these Draft Guidelines. We also do not see a rationale for reporting net costs and losses, gross costs and losses, as well as recoveries, each aggregated on an annual basis, as well as broken down by incident. <u>We are of the opinion that one estimation of costs and losses should be sufficient for the purposes of this reporting</u>.

It should also be highlighted that in case of capital groups, costs and losses are usually calculated at a group level rather than individually for each entity. Therefore, the Draft Guidelines should allow for the estimates on costs and losses to be calculated at a group level, subject to the decision of the group.

Q2: Do you agree with paragraphs 5, 6 and 8 of the Guidelines on the specification of the one-year period, the incidents to include in the aggregation and the base of information for the estimation of the aggregated annual gross and net costs and losses of major ICT-related incidents?

☐ Yes

☒ No

Q2b: Please provide your reasoning and alternative approach(es) you would suggest.

We would like to refer to our answer to Question no. 1 and the discrepancy between Art. 11(10-11) of DORA and the provisions of these Draft Guidelines. As was already mentioned, DORA requires estimates of aggregated costs and losses, whereas paragraph 8 of the Draft Guidelines expects financial entities to refer to the amounts that are reflected in their financial statements such as the profit and loss account. This is too far-reaching and changes the character of the amounts that are to be reported. Moreover, it might be practically difficult for financial entities to refer to the values reflected in the financial statements if those values are not available at the time of the request from the competent authority. Therefore, we call for the Draft Guidelines to better reflect the provisions of DORA.

Q3: Do you agree with paragraph 10 and 11 and the annex of the Guidelines on the reporting of annual costs and losses of major ICT-related incidents?

☐ Yes

☒ No

Q3b: Please provide your reasoning and suggested changes.

<u>EFAMA disagrees with the statement that the requirement to report also costs and losses individually for each major ICT-related incident would not pose an inappropriate burden</u>. As the calculations for reporting, subject to this Draft Guidelines are to be based on amounts reflected in the financial statements, such as profit and loss account, they would already be aggregated. To break them down by incident, would require

separate calculations to be made. This is an additional obligation, which is not included in the ESAs mandate under Art. 11(11) of DORA, and therefore should be removed.

Q4: Do you have any further comment you would like to share?

We do not have specific comments.

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ABOUT EFAMA

EFAMA is the voice of the European investment management industry, which manages about 28.5 trillion of assets on behalf of its clients in Europe and around the world. We advocate for a regulatory environment that supports our industry's crucial role in steering capital towards investments for a sustainable future and providing long-term value for investors.

Besides fostering a Capital Markets Union, consumer empowerment and sustainable finance in Europe, we also support open and well-functioning global capital markets and engage with international standard setters and relevant third-country authorities. EFAMA is a primary source of industry statistical data and issues regular publications, including Market Insights and the EFAMA Fact Book.

More information is available at www.efama.org

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