
**EACH response to the European
Supervisory Authorities' discussion paper
on DORA**

June 2023

Introduction

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 19 members from 15 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

EACH appreciates the opportunity to provide feedback to the Joint European Supervisory Authority discussion paper¹ on DORA.

1. Joint advice on criticality criteria

Q1. Do you have any comments about the related issues listed above?

EACH would like to underline the following issues:

1. **Uncertainty remains for providers and users of ICT services**

- It is our opinion that including indicators with a low thresholds² would not be in line with the DORA's objective of addressing potential systemic and concentration risks posed by the reliance of the financial sectors' on a small number of ICT TPPs. Rather than including the most critical services provided by a smaller number of providers, low thresholds would instead leave within the initial scope a large number of ICT service providers. This creates uncertainties within the sector when it comes to preparing for the implementation of DORA, both from the point of view of service providers – which would not know whether they would be designated as critical until very late in the process – and from the point of view of the users, for whom it would be unclear whether a particular service would be considered critical³.

2. **Uncertainty remains regarding the “holistic/collective assessment” of the relevance thresholds (step 1) and step 2 indicators.**

- Referring to paragraph 22, the text states that *“The ICT TPPs that exceed a certain number of minimum relevance thresholds defined for the step 1 indicators could be subject to a further assessment (step 2).”* However, for the sake of clarity we suggest that:
 - The wording *“a certain number”* should be clearly defined;

¹ https://www.esma.europa.eu/sites/default/files/2023-05/ESAs_Discussion_Paper_CfA_DORA_criticality_criteria_and_OVS_fees.pdf

² For example criterion 2, to determine the systemic character or importance of the financial entities that rely on the relevant ICT third party service provider, is proposing the following thresholds: at least 1 G-SII or - at least 3 O-SIIs or at least 1 O-SII with an O-SII score above 3,000, and at least 1 financial entity (other than a credit institution) identified as 'systemic' by competent authorities.

³ Concrete example: We cannot make the necessary changes at short notice and need sufficient time in advance if there is a mismatch in services that we and our customers have identified as critical thus far and the outcome of the criticality assessment under DORA

- It should be clarified that the indicators are considered cumulatively and not as stand-alone indicators which on their own could be sufficient to result in a criticality designation.
- 3. **Unclarity regarding the meaning of “partial alternatives”**
 - The meaning of “partial alternatives” in the assessment of substitutability is unclear and should be better defined.
- 4. **Shorter life cycle duration**
 - The minimum turnover time (lifecycle duration) in the CTPP list, in case the minimum relevance thresholds are not met, should be shorter (proposed is 3 years).
- 5. **ICT services are not all the same**
 - We suggest ESAs to clarify the type of services provided that could be considered critical. We have indeed notice that some services, e.g. market data services, that could now fall in the scope of oversight, did not previously qualify as an outsourcing or ICT service.

Q3. What do you perceive as the key obstacles and practical challenges to implement the proposed set of indicators listed below?

EACH has identified the following three main practical challenges:

1. **Excessive focus on the size of entities using the ICT services**
 - The relevance indicators proposed do not reflect, in our opinion, the nature of the ICT services provided, and should be more closely related to operational continuity in case a disruption occurs.
2. **Designation of multiple entities within a group**
 - We consider that the current formulation of the criticality assessment implies that multiple entities within a group could be designated, leading to practical and operational consequences in terms of oversight.
3. **Absence a determination methodology**
 - The **absence of a determination methodology contributes to the uncertainty**. We would therefore recommend the ESAs to consider a consultation before finalising any determination methodology.

2. Joint advice on oversight fees

2.1. Scope of the estimated oversight expenditure

Q28. Do you have any comments on the scope of oversight expenditure?

We considers that **the information required to determine the scope of the oversight fees would imply an exceptional process and places undue burdens on entities**, in particular when it comes to providing audited revenues broken down to the level of specifics asked. Entities could provide figures based on raw data on sales to EU legal entities broken down by the product/services that they reasonably believe would be deemed critical, but it

would be impractical to show the specific and exact traceability of those indicative numbers to the final audited financials of the legal entity that made those sales.

The consequence would be that the ESAs would need to work on the assumption that auditors have performed the necessary reviews to confirm that the raw data from the sales systems has been properly translated into audited financial statements.