
**EACH Response – ESAs consultation on
Draft RTS on the elements which a financial
entity needs to determine and assess when
subcontracting ICT services supporting
critical or important functions**

March 2024

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 18 Members from 14 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 consultation paper on Draft RTS to specify the elements which a financial entity needs to determine and assess when subcontracting ICT services supporting critical or important functions as mandated by Article 30(5) of Regulation (EU) 2022/2554¹.

As an introductory comment, EACH would like to underline that the **timeline for the implementation of DORA** (which will apply from 17 January 2025) **appears to be extremely challenging**. EACH Members are calling for an **extension of such timeline** in order to ensure a smooth and **efficient implementation**. We would expect Authorities to provide comfort to the industry accordingly as well as some **prioritisation** of the aspects of DORA that should be implemented first.

Questions

Question 2 - Is article 3 appropriate and sufficiently clear?

EACH Members would like to kindly request **not to include in the definition of subcontracting those cases where ICT services supporting critical or important functions are provided from the parent company to a subsidiary or the reverse**. We consider that requesting a parent company to fulfil the requirements included in points (a) to (i) of paragraph 1 – as well as conduct the periodic review defined in paragraph 2 when subcontracting a subsidiary, or the reverse, would represent an unnecessary administrative burden for entities which are belonging to the same group.

Question 3 - Is article 4 appropriate and sufficiently clear?

A CCP may not be able assess whether relevant clauses of the contractual arrangements between the CCP and the ICT third-party service provider are replicated as appropriate in the subcontracting arrangements between the ICT third-party service provider and its subcontractor. Doing so would require that the agreements are provided to the CCP, which is usually not the case.

¹ https://www.esma.europa.eu/sites/default/files/2023-12/JC_2023_67_-_CP_on_draft_RTS_subcontracting.pdf

This provision should be moved to Article 4, where the **CCP and the ICT third-party service provider agree that specific rights and obligations** as agreed between them are in the same way applicable to any current or future ICT subcontractors that might be engaged and that the ICT third-party service provider is responsible to replicate the appropriate clauses in the subcontracting arrangements.

Question 4 - Is article 5 appropriate and sufficiently clear?

We consider that **monitoring subcontracting conditions through the review of contractual documentation between ICT third-party service providers and subcontractors is unrealistic**. An ICT third-party service provider will not disclose contractual agreements.

Question 5 - Are articles 6 and 7 appropriate and sufficiently clear?

Please see our comment to Q2.