

## Deloitte Banking Alert

October 2023

### ESAs: Technical Guidance for critical ICT third-party providers under DORA

To prepare for the enactment of two delegated acts under the **Digital Operational Resilience for the Financial Sector (DORA) Regulation**, the European Commission has requested technical guidance from the **European Supervisory Authorities (ESAs)**. The initial section of the report outlines the criteria that **are crucial for evaluating ICT third-party service providers** and specifies the relevant indicators, along with the minimum thresholds for these indicators. The subsequent section details the **expenses covered by oversight fees**, the **methods used to determine turnover**, and the **process for calculating these fees**. While the proposals have received general support from market participants, they are seeking additional clarity. The ESAs are readily **available to provide the European Commission** with any additional information required.

#### Focus on two key aspects:

The European Supervisory Authorities (**EBA, EIOPA, and ESMA**) have jointly responded to the European Commission's Call for Advice regarding two EC delegated acts under **the Digital Operational Resilience Act (DORA)**. Their response focuses on two key aspects:

- **Criticality Criteria:** The ESAs propose **11 quantitative and qualitative indicators to assess the importance of critical ICT third-party service providers (CTPPs)**. They also recommend minimum relevance thresholds for quantitative indicators as starting points. Details on the designation procedure and methodology will be developed within six months after the Commission's adoption of the delegated act.
- **Oversight Fees:** The ESAs suggest methods for determining fees imposed on CTPPs, covering expenditure types, calculation methodology, and fee collection. They also propose a financial contribution for voluntary opt-in requests. Further practical guidance on oversight expenditures and implementation aspects will be provided.

#### Criticality Criteria

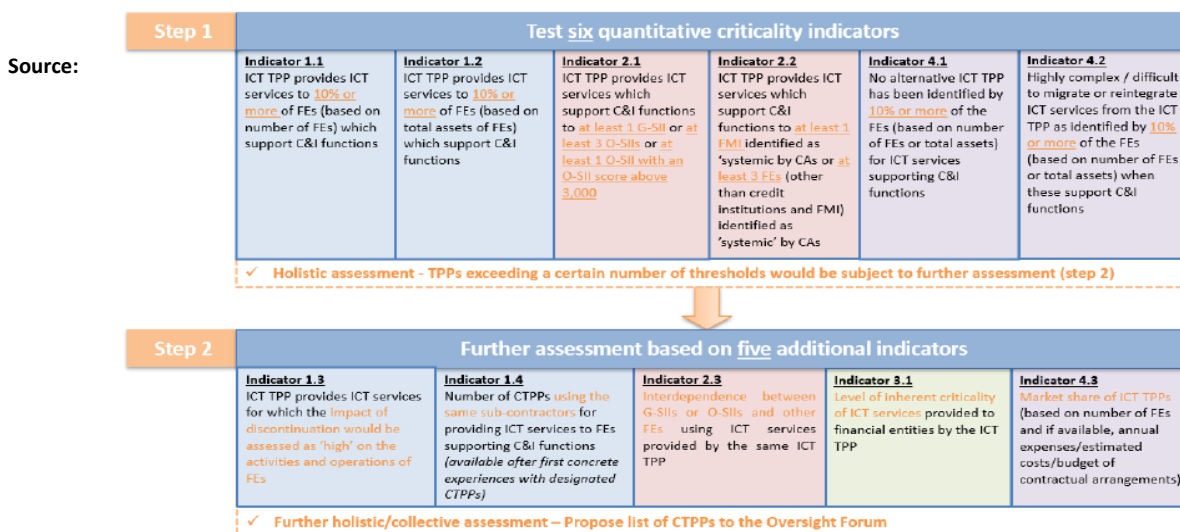
The **first step involves assessing CTPPs** against **quantitative indicators** and minimum relevance thresholds. These indicators consider the extent of reliance on CTPPs and their **potential systemic impact**.

In the **second step**, CTPPs identified in step one undergo further assessment based on **qualitative indicators**, allowing for a more granular evaluation. The outcome of these assessments leads to a proposed list of CTPPs for consideration by the Oversight Forum.

Group assessments and the consideration of material subcontractors are integral to the process. The proposed list of designated CTPPs aims for stability over time, with provisions for exit in certain cases. Market developments and experiences will be considered in a three-year review cycle. Data availability is crucial, with options to rely on industry input and expert judgment when data is insufficient. Alternative data sources may be used to ensure assessment continuity.

- **Criterion 1:** Impact on provision of financial service
- **Criterion 2:** Importance of financial entities
- **Criterion 3:** Critical or important functions
- **Criterion 4:** Degree of substitutability

### Indicative process for criticality assessment



<https://www.eba.europa.eu/esas-specify-criticality-criteria-and-oversight-fees-critical-ict-third-party-providers-under-dora>

**Step 1:** Assess ICT third-party service providers (TPPs) using six quantitative indicators and minimum relevance thresholds to gauge their criticality holistically. Data comes from financial entity registers and other sources.

**Step 2:** Further assess TPPs from Step 1 using five qualitative indicators. The outcome, determined collectively, leads to a proposed list of Critical ICT Third-Party Providers (CTPPs). Details on the application of these steps are pending a methodology, to be developed after the Commission's delegated act adoption, within the oversight framework implementation.

## Oversight Fees

This joint advice focuses on **oversight fees** for critical third-party service providers (CTPPs) under the **Digital Operational Resilience for the Financial Sector (DORA) Regulation**. The fees are essential for funding oversight activities conducted by the ESAs and Lead Overseers, as outlined in DORA's Article 43. These fees

aim to fully cover the necessary expenses related to oversight tasks but exclude costs for dedicated ICT systems. One challenge is the lack of information about future CTPPs, as their designation will occur after the related delegated act is published. To address this, the ESAs propose an **adaptable method for calculating oversight fees**, which should be proportionate to CTPPs' turnover. During the public consultation, feedback was sought on determining the scope of applicable turnover for fee calculation and on funding tasks related to opt-in voluntary requests for CTPP designation.

The ESAs also recommend reviewing the respective delegated acts every **three years** to ensure consistency with DORA's review clause in Article 58, promoting effective planning and stability in the oversight fee calculation, charge, and collection.

## Conclusion

**The European Supervisory Authorities** have provided valuable input to the European Commission in response to **DORA**. This response primarily centers around two crucial aspects: **the Criticality Criteria and Oversight Fees for Critical ICT Third-Party Service Providers (CTPPs)**.

Overall, this response reflects a concerted effort to safeguard the resilience and stability of digital operations within the European financial sector, particularly considering the growing reliance on third-party service providers. The **European Supervisory Authorities** remain committed to **assisting the European Commission as necessary**, ensuring **the successful implementation of DORA and the protection of financial entities and consumers alike**.

**For further questions regarding the aspects mentioned in this alert, please don't hesitate to contact us.**



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