



# Discussion on Criteria for Critical ICT Third-Party Service Providers and Oversight Fees Levied on Such Providers

Fields marked with \* are mandatory.

The European Supervisory Authorities (EBA, EIOPA and ESMA) published a Discussion Paper on their joint advice to the European Commission on its request for technical advice on two delegated acts specifying further criteria for critical ICT third-party service providers (CTPPs) and determining oversight fees levied on such providers, under Articles 31 and 43 of the Regulation on Digital Operational Resilience (“DORA”).

The European Commission sent its request to the European Supervisory Authorities (ESAs) on 21 December 2022 and the ESAs are expected to deliver their technical advice by 30 September 2023.

The purpose of the Discussion Paper is to consult market participants on the ESAs’ proposals towards the specific issues listed in the Call for Advice. The resulting input of this consultation will inform the ESAs’ advice.

The ESAs invite comments on all proposals put forward in the Discussion Paper and in particular to the questions presented throughout the paper and as presented in this survey.

Comments are most helpful if they:

- respond to the question stated;
- indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence (including relevant data where applicable) to support the views expressed;
- reflect a cross-sectoral (banking, insurance, markets and securities) approach, to the extent possible;
- and describe any alternatives the ESAs could consider.

It is important to note that although you may not be able to respond to each and every question, the ESAs would encourage partial responses.

**To submit your comments, please click on the blue “Submit” button in the last part of the present survey.** Please note that **comments submitted after 23 June or submitted via other means may not be processed.**

Please clearly express in the consultation form if you wish your comments to be disclosed or to be treated as confidential. A confidential response may be requested from the ESAs in accordance with the ESAs’ rules on public access to documents. We may consult you if we receive such a request.

Any decision we make not to disclose the response is reviewable by the ESAs' Boards of Appeal and the European Ombudsman.

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the ESA websites.

The views expressed in this Discussion Paper are preliminary and will not bind in any way the ESAs in the future development of the draft final response to the European Commission (Commission). They are aimed at eliciting discussion and gathering the stakeholders' opinion at an early stage of the process.

## General Information

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\* Name of the Reporting Stakeholder

Dutch Federation of Pension Funds

Legal Entity Identified (if available)

\* Type of Reporting Organisation

- ICT Third-Party Service Provider
- Financial Entity
- Industry Association/Federation
- Consumer Protection Association
- Competent Authority
- Other

\* Financial Sector

- Banking and payments
- Insurance
- Markets and securities
- Other

\* Jurisdiction of Establishment

The Netherlands

\* Geographical Scope of Business

- EU domestic
- EU cross-border
- Third-country
- Worldwide (EU + third-country)

Name of Point of Contact

\* Email Address of Point of Contact

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## Part I: Criticality Criteria

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### Indicative Process for Criticality Assessment

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

The Dutch Federation of Pension Funds finds itself compelled to respond to the ESA's consultation on criteria for critical ICT third-party service providers (CTPPs). We respond to this consultation, as we see a risk in applying the ESA's proposed minimum thresholds per type of financial entity to the pension sector. Considering the Dutch pension sector represents seventy percent of assets under management of EU 'institutions for occupational retirement provision' (IORPs), several pension fund service providers risk being classified as critical. We are convinced the spirit of the DORA does not intend to designate pension fund service providers as CTPPs.

We outline firstly that pension fund service providers are not ICT service providers. Secondly, that they are adequately supervised at the national level. A holistic assessment should lead to the conclusion that additional oversight is not justified.

1. Pension service providers are not ICT service providers

DORA pays special attention to pension funds. Recital 21 outlines that a proportionate approach should be maintained for pension funds, which "outsource a significant part of their core business, such as asset management, actuarial calculations, accounting and data management, to service providers." The large Dutch pension funds typically outsource their work to one pension fund service provider; or a few. Pension funds are typically very small organizations (in terms of FTE) that outsource comprehensive contracts regarding pension provision services.

Pension fund service providers use ICT services and hardware from third parties to fulfill their contracts with pension funds, but they do not provide ICT services to pension funds. They offer pension management services to the pension funds, which is much broader than just providing ICT services. We therefore do not recognize pension fund service providers to be ICT service providers, as defined in Article 3, definition 21.

2. Pension fund service providers are adequately supervised at the national level

Pension funds outsource a significant part of their core business. That is why, in practice, pension fund service providers are indirectly supervised, given that pension funds have to comply with DORA regulation. Furthermore, both pension funds and pension fund service providers have no or very limited cross-border affairs, due to diverging national social, labor and tax law between Member States. In principle, all Dutch pension service providers providing services solely in one Member State to financial entities that are only active in that Member State.

Some pension service providers have limited activities in other (non-EU) countries, such as investment offices which do not provide ICT services, but those activities are solely aimed at providing services in the home Member State. Pension funds have participants in other countries, but that does not mean they are active elsewhere, as these participants have accumulated pension in a labor contract in the home Member

State. A handful of very small Dutch pension funds - ExxonMobil, Alcon, Johnson & Johnson, Euroclear, Pension & Co IBP and Hewitt Associates – have a Belgium scheme. Even in these cases, it means the service provider is active in the same country where prudential supervision on the pension fund takes place: Belgium.

We believe that the motivations and justifications for setting up an Oversight Framework for CTPPs provided in DORA's level 1 recitals do not apply to pension fund service providers. There is no "insufficiency of national mechanisms in providing financial supervisors" as motivated in Recital 31. We see no "added value of taking action at Union level", as justified in Recital 76. Nor do we see a potential for cyber incidents "to evolve into a systemic crisis/ endangering the financial stability and integrity of the Union" – as described in Recital 78 - as there are very limited international activities.

Considering pension fund service providers provide services solely in one Member State to pension funds that are only active in that Member State, their activities are adequately supervised by national competent authorities. Applying Union Oversight Framework would therefore be superfluous. It would only add costs to pension fund members and lead to lower pensions. We therefore think CTPP designation should not apply. Additionally, the biggest Dutch pension fund service provider, APG Groep, is an intra-group service provider to the biggest Dutch pension fund, APB, so that in this case there is also high internal control to manage risks.

Q2: Do you think there are additional issues that should be included? If yes, please elaborate on which additional issues you see and why you do so.

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

Our major concern with the consultation is with the ESAs' application of minimum thresholds for various criteria based on market share per 'type of financial entity'. We assume they apply to each of the entities listed in the scope of Article 2 (a) to (t). One of them concerns 'institutions for occupational retirement provision' - IORPs.

The European occupational pension sector is diverse. It covers not only institutions subject to the IORP II Directive, but also those subject to Solvency II and those exempted from European legislation through clauses in their respective Member State's EU Accession Treaty. Still other pension institutions are considered as part of the same group as the employer providing pension. Large pension funds in Sweden, Denmark and Finland are therefore not considered 'IORPs'. That means the European IORP landscape is relatively small and consists mostly of Dutch pension funds.

The Dutch has the largest funded pension system in the EU and almost all funded pensions are provided by IORPs. That means 70 per cent of assets under management in the EU IORP sector are with Dutch IORPs. The specificities of the European pension sector mean that Dutch IORPs are big fish in a small pond – and they are in no way systemically important financial institutions.

The Netherlands has 170 pension funds, that outsource most of their activities to 10 pension service providers. In several criteria, the ESAs propose a minimum threshold of 10% of assets under management

(AuM) for a type of entity. That would translate to a 14% AuM market share in the Dutch pension fund market. Several Dutch pension fund service providers would hit the minimum thresholds for providing services to 10% of assets under management of all EU IORPs. We therefore signal the risk that on the basis of these minimum thresholds, pension fund service providers are characterized as CTPPs.

We believe a more holistic assessment of these entities will result in a different conclusion. The CTPP designation seems intended for some of the largest tech companies providing hardware and software to large numbers of large financial institutions. The impact of ICT related incidents at pension fund service providers is incomparably smaller than that of Big Tech. It would be unfortunate if the application of the proposed minimum thresholds in the pension sector would have unintended consequences in designating pension fund service providers as CTPPs.

Q4: For an already designated CTPP, what could be the minimum turnover time (lifecycle duration) in the CTPP list in case the minimum relevance thresholds specified below are not met for a consecutive number of years?

Q5: Do you consider the indicators identified are relevant and complete in the case of opt-in requests according to Article 31(11) of the DORA? Please explain if you think they are not relevant and complete in such cases.

## Criterion 1: Impact on Provision of Financial Services

Q6: Do you agree with the list of step 1 indicators proposed to cover criterion 1 referred to in Article 31(2) of the DORA? If not, please elaborate and, if applicable, propose alternative indicators that could be considered taking into account the relevant background information about proposed indicators.

We see limited impact of pension funds service providers on provision of financial services. Dutch pension fund service providers mainly provide services to Dutch pension funds, by which a ripple effect of an ICT-incident would be very limited.

Q7: Do you have any comments on the proposed minimum relevance thresholds?

we see a risk in applying the ESA's proposed minimum thresholds per type of financial entity to the pension sector. Considering the Dutch pension sector represents seventy percent of assets under management of EU 'institutions for occupational retirement provision' (IORPs), several pension fund service providers risk being classified as critical. We are convinced the spirit of the DORA does not intend to designate pension fund service providers as CTPPs.

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We believe a more holistic assessment of these entities will result in a different conclusion. The CTPP designation seems intended for some of the largest tech companies providing hardware and software to large numbers of large financial institutions. The impact of ICT related incidents at pension fund service providers is incomparably smaller than that of Big Tech. It would be unfortunate if the application of the proposed minimum thresholds in the pension sector would have unintended consequences in designating pension fund service providers as CTPPs.

Q8: With regard to indicators 1.2 and 1.3, please provide any equivalent metrics (in relation to the total value of their assets) you may consider appropriate to measure the pan-European footprint of the various financial entities subject to the DORA, that you would deem to be better adapted.

Q9: Do you agree with the list of step 2 indicators proposed to cover criterion 1 referred to in Article 31(2) of the DORA? If not, please elaborate and, if applicable, propose alternative indicators that could be considered taking into account the relevant background information about proposed indicators.

Q10: Do you have any comments in relation to the information provided in the “Notes” section under each of the indicators?

Q11: Which key data sources would you propose to use for the indicators under criterion 1? Please explain.

## Criterion 2: Importance of Financial Entities

Q12: Do you agree with the list of step 1 indicators proposed to cover criterion 2 referred to in Article 31(2) (b) of the DORA? If not, please elaborate and, if applicable, propose alternative indicators that could be considered taking into account the relevant background information about proposed indicators.

Pension funds do not have a systemic character, nor are they of systemic importance.

The lists of G-SIIs and O-SIIs refer to credit institutions, therefore excluding pension funds such as IORPs which should be noted when assessing the lower systemic nature of pension funds. Furthermore, as pension funds are long-time investors and not operating on a leveraged basis, their systemic character is lower than other types of financial institutions. The results of the last EIOPA 2022 stress test for IORPs which showed the resilience of the sector to adverse shocks demonstrated the lack of potential significant disruption to the financial system.

Q13: Do you have any comments on the proposed minimum relevance thresholds?

Q14: Do you agree with the list of step 2 indicators proposed to cover criterion 2 referred to in Article 31(2) (b) of the DORA? If not, please elaborate and, if applicable, propose alternative indicators that could be considered taking into account the relevant background information about proposed indicators.

Q15: Do you have any comments in relation to information provided in the “Notes” section under each of the indicators?

Q16: Which key data sources would you propose to use for the indicators under criterion 2? Please explain.

Q17: Do you have any views about indicator 2.3 “Interdependence between G-SIIs or O-SIIs and other financial entities using ICT services provided by the same ICT TPP” (including situations where the G-SIIs or O-SIIs provide financial infrastructure services to other financial entities) and in particular about concrete data that could be used to inform this indicator? Please elaborate.

Unlike credit institutions, links between pension funds such as IORPs and other types of financial entities are limited. Therefore, we believe that indicator 2.3 is of minor importance for the pensions funds sector.

### Criterion 3: Critical or Important Functions

Q18: Do you agree with the list of step 1 indicators proposed to cover criterion 3 referred to in Article 31(2) (c) of the DORA? If not, please elaborate and, if applicable, propose alternative indicators that could be considered taking into account the relevant background information about proposed indicators.

Q19: Do you have any comments on the proposed minimum relevance thresholds?

we see a risk in applying the ESA's proposed minimum thresholds per type of financial entity to the pension sector. Considering the Dutch pension sector represents seventy percent of assets under management of EU 'institutions for occupational retirement provision' (IORPs), several pension fund service providers risk being classified as critical. We are convinced the spirit of the DORA does not intend to designate pension fund service providers as CTPPs.

The Netherlands has 170 pension funds, that outsource most of their activities to 10 pension service providers. In several criteria, the ESAs propose a minimum threshold of 10% of assets under management (AuM) for a type of entity. That would translate to a 14% AuM market share in the Dutch pension fund market. Several Dutch pension fund service providers would hit the minimum thresholds for providing services to 10% of assets under management of all EU IORPs. We therefore signal the risk that on the basis of these minimum thresholds, pension fund service providers are characterized as CTPPs.

We believe a more holistic assessment of these entities will result in a different conclusion. The CTPP designation seems intended for some of the largest tech companies providing hardware and software to large numbers of large financial institutions. The impact of ICT related incidents at pension fund service providers is incomparably smaller than that of Big Tech. It would be unfortunate if the application of the proposed minimum thresholds in the pension sector would have unintended consequences in designating pension fund service providers as CTPPs.

Q20: Do you agree with the list of step 2 indicators proposed to cover criterion 3 referred to in Article 31(2) (c) of the DORA? If not, please elaborate and, if applicable, propose alternative indicators that could be considered taking into account the relevant background information about proposed indicators.

Q21: Do you have any comments in relation to information provided in the "Notes" section under each of the indicators?

Q22: Which key data sources would you propose to use for the indicators under criterion 3? Please explain.



## Criterion 4: Degree of Substitutability

Q23: Do you agree with the list of step 1 indicators proposed to cover criterion 4 referred to in Article 31(2) (d) of the DORA? If not, please elaborate and, if applicable, propose alternative indicators that could be considered taking into account the relevant background information about proposed indicators.

Pension funds have a high level of control over critical ICT service provision. DORA Recital 21 gives consideration to the special relation between pension funds and their service providers, which is well managed, regulated and supervised.

Q24: Do you have any comments on the proposed minimum relevance thresholds?

DORA pays special attention to pension funds. Recital 21 outlines that a proportionate approach should be maintained for pension funds, which “outsource a significant part of their core business, such as asset management, actuarial calculations, accounting and data management, to service providers.” The large Dutch pension funds typically outsource their work to one pension fund service provider; or a few. Pension funds are typically very small organizations (in terms of FTE) that outsource comprehensive contracts regarding pension provision services.

We see a risk in applying the ESA’s proposed minimum thresholds per type of financial entity to the pension sector. Considering the Dutch pension sector represents seventy percent of assets under management of EU ‘institutions for occupational retirement provision’ (IORPs), several pension fund service providers risk being classified as critical. We are convinced the spirit of the DORA does not intend to designate pension fund service providers as CTPPs.

Q25: Do you agree with the list of step 2 indicators proposed to cover criterion 4 referred to in Article 31(2) (d) of the DORA? If not, please elaborate and, if applicable, propose alternative indicators that could be considered taking into account the relevant background information about proposed indicators.

Q26: Do you have any comments in relation to information provided in the “Notes” section under each of the indicators?

Q27: Which key data sources would you propose to use for the indicators under criterion 4? Please explain.

## Part II: Oversight Fees

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### Scope of the Oversight Fees: Estimated Expenditure and Applicable Turnover

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

### Definition of the Applicable Turnover of the CTPPs

Q29: Do you have any comments/relevant input to the proposal determining the applicable turnover of the CTPPs based on their certified audited accounts of the year (n-2)? If you disagree, please provide a reasoning and propose an alternative solution, if available.

Q30: Do you have any comments/relevant input to the proposal determining the applicable turnover of the CTPPs based on the overall revenues generated by all the services provided by the CTPPs? If you disagree, please explain and describe which alternative basis you would suggest.

Q31: Do you consider designated CTPPs would be able to provide the ESAs with audited revenues generated by the provision of services to European clients only? If you do, please explain how such revenues would be isolated from other revenues, and if these revenues could be presented separately and certified by independent auditors.

Q32: Do you consider designated CTPPs would be able to provide the ESAs with audited revenues generated by the provision of services to clients of the financial sector subject to DORA? If you do, please explain how such revenues would be isolated from other revenues, and if these revenues could be presented separately and certified by independent auditors.

Q33: Do you have any comments/relevant input to the proposal determining the applicable turnover of the CTPPs without taking into account the criticality of functions of their clients supported by the provided ICT services? If you disagree, please explain and describe which alternative basis you would suggest.

Q34: Do you have any other related proposals/input on the applicable turnover to be used as a basis for the oversight fees?

### Methods of Calculation of the Oversight Fees

Q35: Do you have any comments/relevant input to the proposal regarding the methods of calculation of the oversight fees (i.e. percentage based on fully proportionate approach, calculated as “applicable turnover of one CTPP/applicable turnovers of all CTPPs”)? If you disagree, please propose an alternative approach, if available.

Q36: Do you have comments on the level of the minimum annual fees?

### Practical Issues Related to the Payment of the Fees

Q37: Do you agree with the one-instalment payment approach for the collection of the oversight fees from all CTPPs, to be cashed by the end of April each year? If you disagree, please explain and propose an alternative payment approach, if available.

Q38: Do you have comments on the method of calculation of the fees that will be paid by CTPPs designated during a given year?

Q39: Do you have comments on the reimbursement process of the CAs's oversight expenditures?

Q40: Do you have comments on the proposal to fund the oversight activities related to the first designated CTPPs?

### Treatment of the Opt-In Application

Q41: Do you agree with this amount of a fixed fee applicant providers will pay for their opt-in requests to be assessed by ESAs? If you disagree, please explain and elaborate on why a different amount should apply.

### Submission of Comments

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#### Contact

[Contact Form](#)