

# Response to the Discussion Paper regarding criteria for critical ICT third-party providers (CTPPs) and the oversight fees

To European Supervisory Authorities  
From Dutch Fund and Asset Management Association (DUFAS)

Date 23 June 2023  
Subject **Discussion Paper regarding criteria for critical ICT third-party providers (CTPPs) and the oversight fees**  
Contact details Manouk Fles, manager regulatory affairs, mf@dufas.nl

**The Dutch Fund and Asset Management Association (DUFAS) welcomes the opportunity to respond to the public consultation of the Joint European Supervisory Discussion paper on DORA regarding two delegated acts that are to be adopted by the European Commission regarding: (i) further criteria for critical ICT third-party service providers (CTPPs) and (ii) oversight fees levied on such providers. Given the tight deadline we prepared a high-level letter instead of a detailed response to the questions published by the ESAs on 26 May.**

## Executive Summary

In general, we are of the opinion that the (combined) indicators proposed by the ESAs in the discussion paper seem relevant and reasonable to use when designating parties as CTPPs. We believe that financial entities could benefit from a sufficient number of parties being designated as CTPPs. Despite financial entity's own legal obligations when it comes to selecting and monitoring an ICT TPP, it becomes easier to outsource to a supervised CTPP and to comply with the legal requirements when using an ICT TPP.

DUFAS is in favor of more guidance with regard to open norms, for example whether there is a 'substantial negative impact' in the event of the failure of an ICT TPP. More guidance could also be given in determining the level of 'complexity' of migrating or reintegrating ICT services in the event of the failure of an ICT TPP.

## Criteria for critical ICT third-party services providers

### Criterion 1: Impact on provision of financial services

Criterion 1 relates to the number of financial entities and the total value of assets of financial entities to which the ICT TPP provides services.

In principle, we agree with the method as described under criterion 1 in the discussion paper, albeit that this criterion must be seen in conjunction with other criteria from the discussion paper. Whether the 10% threshold as mentioned under indicator 1.1. and 1.2. is a correct threshold is not easy for the members of DUFAS to assess, as we do not have a complete overview of the ICT third party providers (ICT TPPs) used by financial entities in the EU.

In general, we are of the opinion that financial institutions benefit from a large number of ICT TPPs being supervised. In this way, an institution can determine more easily whether the use of an ICT TPP can comply with the legal requirements. Of course the number of parties must be of such size that supervision can be carried out properly and costs remain limited. We are therefore in favor of a staged approach. In a first phase

a higher threshold can be used to determine whether a party qualifies as CTPP. Based on the impact within the sector, the experiences and lessons learned, the method of supervision can be optimized. In a next phase, some smaller ICT TPPs could also be subject to supervision (i.e. a lower threshold can be used).

Indicator 1.3 is based on the share of financial entities for which a large-scale operational failure of the same ICT TPP would imply substantial negative impact. As already indicated by the ESAs in the discussion paper, this indicator is highly dependent on the subjective judgment of the financial entities. We would be in favor if some guidance could be given on what is meant by 'substantial negative impact'.

Indicator 1.4 relates to subcontractors. We fully agree that subcontractors are important to bring in scope. Although financial entities often know which parties are subcontractors of the ICT TPP (especially if they process personal data), it is not always known how significant a subcontractor is. This information cannot therefore be provided by financial entities, but must be provided by the identified CTPPs.

### **Criterion 3: Critical or important functions**

Criterion 3 concerns the reliance of financial entities on the ICT services provided by the relevant ICT TPP in relation to critical or important functions of financial entities. In the discussion paper the ESAs propose to create an indicative 'ICT services taxonomy' to allow the identification of the different types of ICT services provided to EU financial entities and assess the different levels of criticality these ICT services may entail, in particular when supporting critical or important functions. The members of DUFAS are in favour of such a taxonomy.

### **Criterion 4: Degree of substitutability**

Criterion 4 relates to the degree of substitutability of the ICT TPP, taking into account the availability of alternatives and the complexity of replacing a ICT TPP.

The objective of indicator 4.2. is to capture the level of difficulty of migrating or reintegrating ICT services provided by an ICT TPP. The idea is that the more difficult it is to migrate or reintegrate ICT services, the higher the ICT TPP's level of criticality for the EU financial sector. We are of the opinion that this indicator is highly dependent on the subjective judgment of the financial entities. We are therefore in favor of guidance to be able to determine on a more objective basis whether migration or reintegration of ICT services is considered complex.

With regard to the availability of alternatives, the situation could arise in which a large number of financial entities has designated the same TPP as a substitute for a specific CTPP. The question that then arises is whether this party (which is not yet a CTPP at that time) should nevertheless be designated as a CTPP.

### **Oversight fees levied on CTPPs**

We would like to bring it to the ESAs attention and stress that additional costs levied on the CTPPs would most probably have impact on the increase of fees paid by financial entities to their service providers. It is therefore very important for the financial entities that the calculations of cost are transparent and available to the market participants.

In addition, a staged approach of bringing ICT TPPs under supervision could ensure that supervision is optimized, so that the costs for both the CTPP directly and indirectly for the financial entities can remain limited without compromising the quality of supervision.

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**More information**

Would you like to respond, or should you have any questions? I would be pleased to hear from you. Please feel welcome to e-mail Manouk Fles, DUFAS manager regulatory affairs, at [mf@dufas.nl](mailto:mf@dufas.nl).

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**DUFAS: Dutch Fund and Asset Management Association**

Since 2003, DUFAS has been committed to a healthy asset management sector in the Netherlands. DUFAS has more than 50 members: from large asset managers who invest Dutch pension and insurance assets to smaller, specialist asset managers. DUFAS increases awareness of the social relevance of investing, helps to develop sector standards and represents the sector in the implementation of new laws and regulations. In addition, DUFAS is committed to a single European market with equal regulations.