
DORA - Draft RTS (Second Batch)

Draft Regulatory Technical Standards (RTS) on the harmonisation of conditions enabling the conduct of the oversight activities under Article 41

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Draft joint guidelines on the oversight cooperation and information exchange between the ESAs and the competent authorities

March 2024

AFME welcomes the opportunity to respond to the draft RTS on oversight conditions and the draft guidelines on supervisory cooperation. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors, and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

Our response to these consultations is from the perspective of our bank members, so we have not responded to each of the questions set out in the consultation papers, primarily directed at either third party providers or the authorities themselves, but would instead make the following overarching comments:

- 1. The oversight of critical third-party providers (CTPPs) foresees follow-up actions by financial entities (FEs). FEs should first have sight of how CTPPs have sought to redress identified risks before responding themselves.**

Article 42(3) of DORA notes that the competent authorities shall inform relevant financial entities of the risks identified as part of the oversight of critical third-party providers. Further clarification is sought on the process by which such information will be shared and the level of expectation from the authorities with regards to assessing the adequacy and coherence of the remediation measures implemented by financial entities, as per Article 7 of the draft RTS. We stress that the financial entity is best placed to determine if the risks identified by CTPP oversight will be addressed within their own risk management assessments. We also highlight that the Bank of England is currently consulting on the UK's Critical Third Party (CTP) regime, with proposed information sharing on remedial measures taken by the critical third parties, to ensure that the financial entity can take account of these actions before determining its own next steps.

- 2. Future supervisory convergence will be vital to ensuring that the oversight of financial entities and CTPPs remains aligned.**

AFME strongly welcomes the proposed information sharing between the Lead Overseer for CTPPs and the competent authorities of financial entities. It is however likely that the respective authorities may diverge over time in terms of the level of supervisory expectation or approach to enforcement. A key means of mitigating such divergence is the reliance by both sets of authorities on the same underlying datasets. We would therefore encourage the competent authorities to in future seek information related to CTPPs and where possible the wider supply chain from the Lead Overseer rather than issuing duplicative data requests to financial entities. We additionally flag that future international divergence appears probable, even with those jurisdictions who have likewise decided to extend the regulatory perimeter to critical third parties, such as the UK. Engagement with industry in coming years will be key

to ensuring authorities are sighted of such developments, and related unintended consequences.

3. Termination or suspension of third-party contractual arrangements should be a measure of last resort, only to be applied with clear timeframes and mindful of likely unintended consequences.

We support the proposed Guidelines 11 and 13 on the importance of early communication between authorities (competent authorities and the Lead Overseer) in the event of any decision to compel termination or suspension of certain third-party services. While Article 42(4) of DORA provides 60 days' notice for financial entities that a decision may be taken, we would stress the importance for any such notification to include reasonable timeframes by which the financial entity must comply to ensure there is reduced risk to the continuation of critical or important functions. In many cases there will be no suitable market alternative given lack of substitutability has been one of the designation criteria for the CTPP regime. This will inevitably leave the financial entity with a significant operational uplift.

We remain available to discuss further any points raised.

Contacts

AFME	Stefano Mazzocchi	+32(0) 2883 5546	stefano.mazzocchi@afme.eu
AFME	Coen Ter Wal	+44(0)020 3828 2727	coen.terwal@afme.eu
AFME	Marcus Corry	+44 (0)20 3828 2679	marcus.corry@afme.eu

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