

Comments

JC SC DOR-23-54 Discussion paper on the joint ESAs advice to the European Commission on two delegated acts specifying further criteria for critical ICT third-party service providers (CTPPs) and determining oversight fees levied on such providers

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Question 1 Do you have any comments about the related issues listed above?

In principle, the quantitative and the complementary qualitative criteria/ indicators described here are suitable as uniform standards for the classification of the "criticality" of ICT service providers by the ESAs. However, as we understand, the "holistic/collective assessment" in the Designation Process is the responsibility of the ESA's who make the final decision ("black box").

The metrics/data basis for the indicators should be as clear and consistent as possible.

Example regarding Indicator 1.1: Calculating this indicator separately according to the type of financial institution implies that the same ICT provider can be classified as critical and non-critical at the same time (e.g., critical in the banking sector and non-critical in the insurance sector). This does not seem practicable.

The criteria and in particular the (minimum) threshold values ("10%") should be validated using practical examples, if necessary, to make the significance more comprehensible.

As the required provision of data/information for the calculation of the indicators will result in additional and regular efforts by the institutions, certain data/information, be requested/collected by the national supervisory authorities to the extent they already have it. This would avoid additional reconciliation processes and sources of mistake.

The distinction between "relevant" quantitative and qualitative indicators of criticality and "minimum thresholds" needs to be clarified. Even if the methodology for determining criticality has not yet been worked out, a case-by-case distinction is needed as to when which approach applies and how this is to be applied in the context of the assessment in order to be able to evaluate the indicators appropriately. It should be made clearer how, in the further process, the criteria will be used to determine the critical ICT service providers.

Question 2 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.

The gathering and provision of information that are needed to calculate the indicators will cause additional and regular efforts on bank side. Thus, the design of the indicators must be as simple as possible.

The expected nature and total number of CTPPs, the details of the designation process, and the associated methodology are explicitly not yet considered in the discussion paper and are to be determined at a later stage in the context of the implementation of the oversight framework. However, the definition and description of the designation process for the CTPP, is directly related to the indicators listed in the discussion paper. Without an outlook or guidance on the methodology, the approaches provide too much leeway or could lead to an underestimation or overestimation of CTPPs that are truly relevant "later".

Question 3 What do you perceive as the key obstacles and practical challenges to implement the proposed set of indicators listed below?

Practical challenges arise in the assessment of the criteria in interaction. If only a single criterion is met, criticality is often not present.

Examples:

- If a systemically important large bank is affected by a provider failure, this has a greater impact than if 10 small regional banks are affected.
- An ICT TPP could have a large number of customers using low-impact services, such as for marketing or support activities. This could result in a large footprint, but would not have a large

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impact if operational failures occur. Thus, a large number of ICT TPPs could be relevant to Level 1 indicators, but in turn would be irrelevant to Level 2 indicators.

- In the description of the criteria, the inclusion of sub-service providers should also be made clearer. Currently, only one criterion (1.4) refers directly to sub-service providers in a subsequent step.

A key obstacle is the varying usage of relevant terms like ICT-provider, critical or important functions et cetera. Maintaining a functioning reporting-structure (Bottom-up) of indicators and assuring their correctness, if provided solely by CTPP's themselves or by their respective legal counterparties (financial institutions).

Question 4 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?

In line with cross-industry life cycles, the recommended period is 3 years. However, the same limit should also apply in reverse, i.e. if the threshold values are exceeded for the first time (and then 2 years in a row). Stability of the list of providers should apply in both directions. So not only a "roll off" but also a "roll on" phase.

In addition alternative exit scenarios from the CTPP list should be considered.

Question 5 Do you consider the indicators identified are relevant and complete in the case of opt-in requests according to Art. 31(11) of the DORA? Please explain if you think they are not relevant and complete in such cases.

The listed indicators in the discussion paper do not fully represent the criteria according to Art. 31 (2), therefore they are not sufficient and appropriate enough to support an opt-in request. In particular, the criteria Art. 31 (2) (b) and (d) play an argumentative role for inclusion as a CTPP, since in these two criteria the effects of a default are actively considered.

It should be possible to justify the request directly on the basis of the indicators mentioned in the DORA text Art. 31 (2), without relying on the indicators.

Question 6 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.

Criterion 1: impact on provision of financial services - the pure number of institutions alone is not relevant; additionally balance sheet totals, customer volume or similar business criteria in relation to the market as a whole might be more useful here, when considered in conjunction with criterion 2. However, an orientation based only on the total assets of the institutions would probably be too superficial, as there is no direct correlation between total assets and ICT service provision.

Regarding indicator 1.1, the calculation of this indicator separated by the type of the financial institututs implies that one and the same ICT provider can be classified as critical and non-critical simultaneously (for instance critical in the banking sector and non-critical in the insurance sector). This seems to be not practicable.

If the types of financial entities are meant according to Article 2 a) - t) from DORA, this should be clarified.

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As stated in the discussion paper for indicator 1.2, a consideration of "assets" is difficult to implement or the metric for an EU further uniform basis is difficult to grasp.

Indicator 1.3 does not contain a calculation formula for determining the impact. Reference is made to a blanket statement on the BIA. This means that each institute that procures services from the ICT service provider would have to provide a statement on how high the business impact is seen to be in the event of a failure. It should be clarified, how the aggregated result across all institutions should then be used as a reference value.

It is not exactly clear how subcontractors are included in the calculation in 1.1 -1.3.

Indicator 1.4 refers to the identification of critical sub-contractors. As stated in the commentary, this indicator can only be determined after the initial creation of the CTPP list. The consideration of such sub-contractors is only for CTPP's. At this time, it appears that sub-contractors that only serve TTP's to a relevant extent, but not CTPP's, continue to be ignored despite potential cluster risks.

Question 7 Do you have any comments on the proposed minimum relevance thresholds?

The threshold values of the indicators are set at a very flat 10%. Without reference values, no scenarios can be run. A statement as to whether a threshold value of 10% is appropriate or not cannot be made at this time.

Question 8 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.

No comments.

Question 9 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.

Step 2 has the objective of providing a qualitative assessment. The two indicators do not achieve this goal.

Question 10 Do you have any comments in relation to the information provided in the "Notes" section under each of the indicators?

Footnotes (9) and (10) should be listed directly in the text. They contain information for a more detailed evaluation, as well as several "OR conditions" for the fulfillment of the threshold value. A presentation as footnote is not purposeful if supplementary criteria for the fulfillment of the threshold value are listed here.

"Directly or indirectly: important to cover critical sub-contractors. In particular, if subcontractors belong to a group, the group will be assessed as a whole."

The extension of the criticality of an ICT TPP (ICT third-party service provider) / subcontractor to the entire group should be reconsidered. It is not clear from the paper whether this includes all companies in a group, certain types of companies in a group or only the companies in the oversight scope under this definition. In the case of a diversified group, this could mean significant risks and increased implementation efforts (compliance with the requirements).

Same answer to question 15, 21, 26 additionally.

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Question 11 Which key data sources would you propose to use for the indicators under criterion 1? Please explain.

National registers, if available (e.g. from banking supervisory authorities etc.)

Question 12 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.

Indicator 2.2 attempts to cover all systemically important "non-credit institutions. However, it is based on a "competent" assessment by authorities. No detailed information is provided on how the "supervisory expert judgment" is carried out. The attribute "systemically important" plays a major role here and is assessed and assigned independently of DORA. If this assessment is carried out at national level, it must be ensured that all EU member states apply the same assessment criteria.

Question 13 Do you have any comments on the proposed minimum relevance thresholds?

The threshold of indicator 2.2 is far too sweeping and small. The threshold takes effect if at least one systemically important non-credit institution is affected. This puts these institutions on the same level as G-SIIs.

Question 14 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.

The presentation and recording of interconnectedness will be a complex undertaking, as already stated. No detailed information is provided on how the "assessment of interconnectedness" is to be carried out.

Question 15 Do you have any comments in relation to information provided in the "Notes" section under each of the indicators?

No comments

Question 16 Which key data sources would you propose to use for the indicators under criterion 2? Please explain.

The referenced G-SII and O-SII lists are accurate. Uniform assessment criteria are still needed in the EU for the survey of systemically important "non-credit institutions".

Question 17 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.

The value / meaning of this indicator in regard of the designation process as well as its calculation is unclear. Please clarify, whether Article 394 of CRR in the light of intra-bank-business is meant.

Question 18 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.

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The thresholds for indicator 3.1 do not fit the criterion. The amount of assets has no influence on the criterion. Rather, it should be considered how many critical and essential business functions the service provider is involved in.

Question 19 Do you have any comments on the proposed minimum relevance thresholds?

The first threshold option for indicator 3.1 (assets / total assets-equivalent) could be biased as the total value of assets may not perfectly represent the importance of a financial institution, therefore it could happen that this threshold is artificially inflated.

The second option for indicator 3.1 (total number) appears to grasp relevant ICT TPP more precisely.

Question 20 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.

With reference to the comments in the discussion paper, no method for determining the indicator exists at the current time. A definition of "taxonomy of ICT services" would be helpful.

The aim of the indicator should be to determine which type of service (outsourcing / other third-party procurement) provided by the service provider supports critical or essential business functions. It is not possible to derive from the indicator what impact this finding should have.

Question 21 Do you have any comments in relation to information provided in the "Notes" section under each of the indicators?

No comments.

Question 22 Which key data sources would you propose to use for the indicators under criterion 3? Please explain.

For indicator 3.1 we suggest the following key data sources:

- Number of essential and critical business functions of the institute
- Number of service providers and type of ICT service that have an impact on the business functions.

Step 2 indicator: ICT service taxonomy-related register, if available. If not available, national banking authorities may, based on their TPP registers for financial institutions, rank TPP by EU-wide criteria for criticality.

Question 23 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.

Indicators 4.1 and 4.2 depend on the individual information provided by each institution on its service providers. Qualitative results cannot really be determined. The evaluation is based on quantitative assessments. An important role in the assessment is first played by the question: Are there alternative providers on the market (monopoly / oligopoly).

As a general rule, however, it can be stated that if the service provider has a monopoly or oligopoly, criterion (d) is always fulfilled and a "single point of failure" exists. Even if alternative service providers (oligopoly) are available on the market, migration is a major economic and technical challenge, so the existing service provider continues to be used.

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Question 24 Do you have any comments on the proposed minimum relevance thresholds?

Based on the assets, the criticality of the service provider cannot be calculated as a "single point of failure". When considering monopoly / oligopoly, a further distinction should be made as to whether the distinction is made at EU level or member state level.

The threshold value should be: There are no alternative providers OR there are X alternative providers, but the economic and technical effort for migration is too high.

Step 1 Indicator 4.1: Threshold option 1 may be biased since 10% of total value of assets may be dominated by only a few institutions. If only few institutions report that their ICT TPP are difficult to substitute, extrapolation from such indications may be flawed, as it would ultimately imply that the majority of financial institutions could assess the substitutability of an ICT TPP differently than the minority of institutions in question. Therefore, for indicator 4.1, threshold option 2 (total number) appears to be more practically relevant.

Question 25 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.

No comments.

Question 26 Do you have any comments in relation to information provided in the "Notes" section under each of the indicators?

No comments.

Question 27 Which key data sources would you propose to use for the indicators under criterion 4? Please explain.

Level of substitutability should also consider general qualitative analysis (e.g. Academic Research, White Papers, Vendor Documentation, Case Studies) on monopoly markets.

It is important to gather data from multiple source to ensure a comprehensive assessment. Combining quantitative values with qualitative analysis will provide a more accurate understanding of the landscape. A reliable source is necessary data could be derived from.

For 4.3 even subjective market share claims by the ICT TTP are to be used carefully, as those may be exaggerated.

PART II, OVERSIGHT FEES

Question 28 – 35, 37- 41

No comments.

Question 36 Do you have comments on the level of the minimum annual fees?

The minimum fee should not be indexed based on inflation. Rather, it should be indexed by the degree by which the applicable turnover of all CTPP's has changed annually. Using this approach, one would stick to sector specific developments, rather than to overall economy-wide developments.