



Consultation on Draft Implementing Technical Standards to establish the templates composing the register of information in relation to all contractual arrangements on the use of ICT services provided by ICT third-party service providers

Fields marked with * are mandatory.

Introduction

The European Supervisory Authorities (EBA, EIOPA and ESMA) published a Consultation Paper on draft Implementing Technical Standards (ITS) to establish the templates composing the register of information in relation to all contractual arrangements on the use of ICT services provided by ICT third-party service providers as mandated by Regulation (EU) 2022/2554, Article 28(9).

Market participants are invited to provide their feedback to the draft technical standards by responding to the questions presented in this consultation paper. The feedback received will be taken into account in the finalisation of the draft technical standards, which have a deadline for submission to the European Commission by 17 January 2024.

The ESAs invite comments on the draft ITS put forward in the Consultation 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 questions 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.

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 11 September 2023 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 Consultation 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

* Name of the Reporting Stakeholder

Dutch Federation of Pension Funds

Legal Entity Identifier (LEI) if available

52988368

* 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 and third-country)

* Name of Point of Contact

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* Email Address of Point of Contact

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Questions

Q1: Can you identify any significant operational obstacles to providing a Legal Entity Identifier (LEI) for third-party ICT service providers that are legal entities, excluding individuals acting in a business capacity?

As a general comment, it should be noted that a large part of the guidance provided in the different RTS and ITS consultation documents presented by the ESAs, effectively results in a translation of DORA Level I principle-based requirements into DORA Level II rule-based requirements. Furthermore, these rule-requirements are based in several instances on existing requirements for one specific category of financial institutions (e.g. banks), which means they are ill-fitting for pension funds.

In the introduction of these more stringent rule-based requirements, the proportionality principle introduced in article 4 DORA has been substantially limited. Size effectively seems to be the only remaining measure of proportionality, while the nature, scale and complexity of the services, activities and operations are no longer regarded.

As a result, many of the initial DORA requirements are translated into level II implementation requirements that are more stringent than necessary for pension funds (IORPs) and their service providers to realize an acceptable level of digital operational resilience.

Yes, a LEI number is only an obligation for some types of financial entities (amongst others when they trade Stocks, bonds or derivatives). ICT services providers do not have a LEI number. Our suggestion is to also make it possible to use the registration number of the chamber of commerce, this is already used by every entity in the Netherlands.

Q2: Do you agree with Article 4(1)b that reads ‘the Register of Information includes information on all the material subcontractors when an ICT service provided by a direct ICT third-party service provider that is supporting a critical or important function of the financial entities.’? If not, could you please explain why you disagree and possible solutions, if available?

We agree that the ICT service supply chain should only be mapped for material subcontractors providing services that support critical or important functions. This information will help financial entities in getting insight in the compliance of 'in control status' of sub-contractors when it comes to ICT service delivery. On the condition that contracting and subcontracting parties provide exhaustive and up-to-date information, it will improve financial entities' control measures.

We find that providing information on the ICT service supply chain on all contracts would lead to disproportionate and ineffective reporting requirements. We are therefore happy that supervisors have decided that on such contracts, information should be limited to rank 1.

Q3: Are there any significant operational issues to consider when implementing the Register of Information for the first time? Please elaborate.

We are wary of increased reporting requirements on financial entities. While we support the goal of the DORA and a register is currently already required by the Dutch NCA (the Dutch Central Bank, DNB) for financial entities, the proposed register by the ESAs is a far more extensive one. This will intensify the reporting requirements on financial entities. It would be helpful if the required information were in line with the guidelines for information registers that already exist at European level, such as those from ESMA and EIOPA.

Q4: Have you identified any significant operational obstacles for keeping information regarding contractual arrangements that have been terminated for five years in the Register of Information?

Q5: Is Article 6 sufficiently clear regarding the assignment of responsibilities for maintaining and updating the register of information at sub-consolidated and consolidated level?

Responsibility for information on supply chains cannot solely be with the financial entity. One of the goals of the ITS is to capture the ICT service supply chain with a focus on subcontractors of ICT services supporting a critical or important function, or material parts thereof. Article 7(c) of the regulation prescribes “that the information recorded in the register of information is accurate and consistent over time with the information maintained and updated in the registers of information at entity level by the entities forming a consolidated or, where relevant, sub-consolidated group. Financial entities shall promptly correct any errors or discrepancies between all affected registers of information maintained by the financial entities within the scope of sub-consolidation and consolidation”.

This makes the financial entity responsible for the accuracy of the register. However, financial entities rely on the information that direct ICT third-party service providers provide on their subcontractors. A financial entity could therefore have incorrect information in their register on rank 2 and rank 3 subcontractors. Or it would have to research the subcontractors used by their direct third-party service providers. In the latter case, that information might not be available.

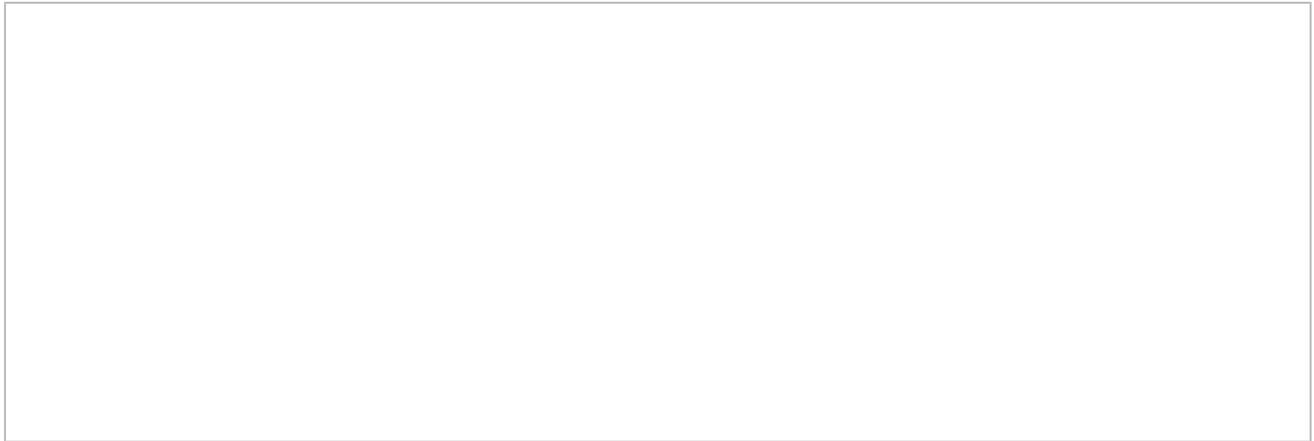
It could be made clear in the ITS, for example in its recitals, that financial entities can contractually delegate the responsibility for maintaining and updating the register to the direct ICT third-party service provider for information on rank 2 and further down the ICT service supply chain.

Q6: Do you see significant operational issues to consider when each financial entity shall maintain and update the register of information at sub-consolidated and consolidated level in addition to the register of information at entity level?

Q7: Do you agree with the inclusion of columns RT.02.01.0041 (Annual expense or estimated cost of the contractual arrangement for the past year) and RT.02.01.0042 (Budget of the contractual arrangement for the upcoming year) in the template RT.02.01 on general information on the contractual arrangements? If not, could you please provide a clear rationale and suggest any alternatives if available?

If these extra fields have to be included in the contract register, the challenge is that the contract register becomes very large. There would be too much sensitive information from too many different disciplines at one place and it would be a challenge to keep the information separate and secure with a lot of different access roles. It would be hard to make one person responsible for the entire register to be correct and up-to date. We also doubt if there would be suppliers who could provide a register that meets all requested requirements, including consolidation and sub-consolidation requirements and role-based access to different information. We see the greatest risk in the area of lack of clarity and responsibility and the protection of confidential information.

Q8: Do you agree that template RT.05.02 on ICT service supply chain enables financial entities and supervisors to properly capture the full (material) ICT value chain? If not, which aspects are missing?



Q9: Do you support the proposed taxonomy for ICT services in Annex IV? If not, please explain and provide alternative suggestions, if available?

The extent of ICT services should be limited. In the register, financial entities are required to identify all their operational and business and to identify the ICT services provided by ICT third-party service providers supporting the functions. It is unclear to what extent a certain function needs to be included in the register.

DORA defines ICT “services as digital and data services provided through ICT systems to one or more internal or external users on an ongoing basis, including hardware as a service and hardware services which includes the provision of technical support via software or firmware updates by the hardware provider, excluding traditional analogue telephone services.”

In our view, the functioning of a server room falls under the definition of an ICT service and should be included in the register. For example, the air conditioning of the server space is relevant to its well-functioning. But ancillary services in and around the server room should not fall under the definition. For example, the physical cleaning of the server room. Services that do not directly involved ICT hardware and/or software should not be in the remit of DORA. If they would be included, this would significantly increase the number of registered parties. At the same time, the costs of registration would not improve operational resilience.

Annex IV gives a list of ICT services. The example mentioned above could fall under S15 (network services), but it is unclear what ‘management’ in S15 entails. A more detailed definition, giving a limited interpretation of network management services, excluding non-ICT services in and around the server room, would be welcome.

Q10: Do you agree with the instructions provided in Annex V on how to report the total value of assets and the value of other financial indicator for each type of financial entity? If not, please explain and provide alternative suggestions?

Q11: Is the structure of the Register of Information clear? If not, please explain what aspects are unclear and suggest any alternatives, if available?

Q12: Do you agree with the level of information requested in the Register of Information templates? Do you think that the minimum level of information requested is sufficient to fulfill the three purposes of the Register of Information, while also considering the varying levels of granularity and maturity among different financial entities?

Q13: Do you agree with the principle of used to draft the ITS? If not, please explain why you disagree and which alternative approach you would suggest.

Q14: Do you agree with the impact assessment and the main conclusions stemming from it?

The current size of the register of information is too big. That makes it unworkable in practice. We suggest the amount of columns should be reduced.

In addition to the questions above, for each column of each template of the register of information, the following is asked:

- **proposal for amendment**
- **drafting suggestion or comment**

To properly collect your feedback on the above, please follow the steps listed below:

1. Use the links below to download the two sets of templates at entity and (sub)consolidated level respectively;
2. Once downloaded, use the dedicated fields to provide your feedback to the two questions listed above, which have been included for each column of each template;
3. Upload the file with your input, using the upload buttons below.

Please note the following:

- the two sets of templates have been reported in Excel to ease the collection of your feedback;
- it is not compulsory to provide feedback to both sets of templates;
- as a rule, the ESAs will not process feedbacks received on the fields of the templates provided in a different manner than through the steps as listed above;
- Do not modify the structure of the Excel workbook and worksheet.

Register of Information templates

Entity level

[FeedbackRegisterInformationEntityLevel.xlsx](#)

Register of Information templates

Sub-consolidated or consolidated level

[FeedbackRegisterInformationSubConsoOrConsoLevel.xlsx](#)

Register of Information templates

Entity level

Please **upload** the file with your feedback

Only files of the type xlsx are allowed

Register of Information templates

Sub-consolidated or consolidated level

Please **upload** the file with your feedback

Only files of the type xlsx are allowed

Submission of Comments

Contact

[Contact Form](#)