



## PensionsEurope's answer on the ESAs consultation for DORA Delegated acts

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

June 2023

[www.pensionseurope.eu](http://www.pensionseurope.eu)

## Part I: Criticality Criteria

### Indicative Process for Criticality Assessment

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

PensionsEurope welcomes the European Union’s commitment to establishing a digital operational resilience framework for the financial sector and recognises the importance of protecting digital infrastructures from cyber threats. However, we believe that co-legislators did not aim to define pension fund service providers as critical ICT Third-Party services providers (CTPPs) when adopting the level 1 regulation. Indeed, Recital 21 of DORA highlights that a proportional approach should be maintained by national competent authorities (NCAs) for the supervision of institutions for occupational retirement provision (IORPs) which are outsourcing a significant part of their business to service providers. 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 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.

A proportionate approach further applies because IORPs and their service providers operate mostly nationally due to labor and tax differences among Member States. Therefore, we see a limited risk of cyber incidents impacting IORPs and their service providers leading to “a systemic crisis, endangering the financial stability and integrity of the Union” as described by Recital 78 of DORA. 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, considering there is no European added value. It would only be costly to pension fund members.

Beyond the argument that pension fund service providers are not ICT service providers and the CTPP designation should not apply in the absence of significant cross-border activities, we would like to clarify why - in a holistic assessment - they do not meet the four criteria for CTPPs. Firstly, we see a limited impact on the provision of financial services. Pension fund service providers mainly provide services to pension funds, by which a ripple effect of an ICT incident would be very limited. Secondly, pension funds do not have a systemic character, nor are they of systemic importance. Thirdly, pension funds have a high level of control over critical ICT service provision. DORA Recital 21 considers the special relationship between pension funds and their service providers, which is well-managed, regulated, and supervised. A holistic assessment of criteria should render the conclusion that pension service providers are not CTPPs. ]

**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.

[TYPE YOUR TEXT HERE ]

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

[The 10% asset minimum relevance threshold per type of financial entity is particularly low, and we think it would be more appropriate to reach a higher threshold to aim for a more proportionate approach to the digital operational resilience framework. As the IORPs sector particularly concerns some member states such as the Netherlands which represent 70% of the assets under management of the sector, the proposed minimum relevance thresholds would impact unnecessarily their IORPs and related service providers. 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. 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. For the abovementioned reasons, we believe a holistic assessment of criteria should render the conclusion that pension service providers are not CTPPs. ]

**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?

[TYPE YOUR TEXT HERE ]

**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.

[TYPE YOUR TEXT HERE ]

### Criterion 1: Impact on Provision of Financial Services

**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.

[TYPE YOUR TEXT HERE ]

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

[The 10% minimum relevance threshold per type of financial entity is particularly low, and we think it would be more appropriate to reach a higher threshold to aim for a more proportionate approach to the digital operational resilience framework. Furthermore, the level 1 text provides an exclusion for 'ICT third-party service providers providing ICT services solely in one Member State to financial entities that are only active

in that Member State.’ Therefore, as it is relevant for pension funds such as IORPs and their service providers which rarely operate cross-border, we believe that a higher minimum relevance threshold could match this exclusion which recognises that ICT incidents impacting pension funds services providers have a low impact on the provision of financial services. ]

**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.

[TYPE YOUR TEXT HERE ]

**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.

[TYPE YOUR TEXT HERE ]

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

[TYPE YOUR TEXT HERE ]

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

[TYPE YOUR TEXT HERE ]

## Criterion 2: Importance of Financial Entities

**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.

[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. ]

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

[TYPE YOUR TEXT HERE ]

**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.

[TYPE YOUR TEXT HERE ]

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

[TYPE YOUR TEXT HERE ]

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

[TYPE YOUR TEXT HERE ]

**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.

[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

**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.

[TYPE YOUR TEXT HERE ]

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

[The 10% asset minimum relevance threshold per type of financial entity is particularly low, and we think it would be more appropriate to reach a higher threshold to aim for a more proportionate approach to the digital operational resilience framework.

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 States' EU Accession Treaty. Large pension funds in Sweden, Denmark, and Finland are therefore not considered 'IORPs'. That means the European IORP landscape plays a significant role in only a few Member States.

Dutch IORPs account for 70 percent of assets under management in the EU which shows the particularities of the European pension sector. Yet they are in no way systemically important financial institutions. Thus, the proposed minimum relevance thresholds would unnecessarily impact IORPs and related service providers.

Several Dutch pension fund service providers would hit the minimum thresholds for providing services to 10% of assets under the management of all EU IORPs. We, therefore, signal the risk that based on these minimum thresholds, pension fund service providers are characterized as CTPPs. 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.

Furthermore, the level 1 text provides an exclusion for 'ICT third-party service providers providing ICT services solely in one Member State to financial entities that are only active in that Member State'. Therefore, as it is relevant for pension funds such as IORPs and their service providers which rarely operate cross-border, we believe that a higher minimum relevance threshold could match this exclusion. ]

**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.

[TYPE YOUR TEXT HERE ]

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

[TYPE YOUR TEXT HERE ]

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

[TYPE YOUR TEXT HERE ]

## Criterion 4: Degree of Substitutability

**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.

[TYPE YOUR TEXT HERE ]

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

[The proposed minimum relevance threshold is not particularly relevant for the IORPs sector given the key relationship between IORPs and their services providers which should be carefully supervised by NCAs as indicated by Recital 21 of DORA. Therefore, as the IORP II directive already provides a sound supervisory framework to oversee the relationship between IORPs and their service providers, the degree of substitutability is not a solid criterion to assess the criticality of their service providers.]

**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.

[TYPE YOUR TEXT HERE ]

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

[TYPE YOUR TEXT HERE ]

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

[TYPE YOUR TEXT HERE ]

## Part II: Oversight Fees

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

**Question 28:** Do you have any comments on the scope of oversight expenditure?

[TYPE YOUR TEXT HERE ]

## Definition of the Applicable Turnover of the CTPPs

**Question 29:** 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.

[TYPE YOUR TEXT HERE ]

**Question 30:** 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.

[TYPE YOUR TEXT HERE ]

**Question 31:** 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.

[TYPE YOUR TEXT HERE ]

**Question 32:** 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.

[TYPE YOUR TEXT HERE ]

**Question 33:** 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.

[TYPE YOUR TEXT HERE ]

**Question 34:** Do you have any other related proposals/input on the applicable turnover to be used as a basis for the oversight fees?



[TYPE YOUR TEXT HERE ]

## Methods of Calculation of the Oversight Fees

**Question 35:** 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.

[TYPE YOUR TEXT HERE ]

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

[TYPE YOUR TEXT HERE ]

## Practical Issues Related to the Payment of the Fees

**Question 37:** 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.

[TYPE YOUR TEXT HERE ]

**Question 38:** Do you have comments on the method of calculation of the fees that will be paid by CTPPs designated during a given year?

[TYPE YOUR TEXT HERE ]

**Question 39:** Do you have comments on the reimbursement process of the CAs’s oversight expenditures?

[TYPE YOUR TEXT HERE ]

**Question 40:** Do you have comments on the proposal to fund the oversight activities related to the first designated CTPPs?

[TYPE YOUR TEXT HERE ]

## Treatment of the Opt-In Application

**Question 41:** 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.

[TYPE YOUR TEXT HERE ]

## **About PensionsEurope**

**PensionsEurope** represents national associations of pension funds and similar institutions for workplace and other funded pensions. Some members operate purely individual pension schemes. PensionsEurope has **25 member associations** in 18 EU Member States and 4 other European countries<sup>1</sup>.

PensionsEurope member organisations cover different types of workplace pensions for over **110 million people**. Through its Member Associations PensionsEurope represents **€ 7 trillion of assets** managed for future pension payments. In addition, many members of PensionsEurope also cover personal pensions, which are connected with an employment relation.

PensionsEurope also has **20 Corporate and Supporter Members** which are various service providers and stakeholders that work with IORPs.

PensionsEurope has established a **Central & Eastern European Countries Forum (CEEC Forum)** to discuss issues common to pension systems in that region.

PensionsEurope has established a **Multinational Advisory Group (MAG)** which delivers advice on pension issues to PensionsEurope. It provides a collective voice and information sharing for the expertise and opinions of multinationals.

## **What PensionsEurope stands for**

- A regulatory environment encouraging workplace pension membership;
- Ensure that more and more Europeans can benefit from an adequate income in retirement;
- Policies which will enable sufficient contributions and good returns.

## **Our members offer**

- Economies of scale in governance, administration and asset management;
- Risk pooling and often intergenerational risk-sharing;
- Often “not-for-profit” and some/all of the costs are borne by the employer;
- Members of workplace pension schemes often benefit from a contribution paid by the employer;
- Wide-scale coverage due to mandatory participation, sector-wide participation based on collective agreements and soft-compulsion elements such as auto-enrolment;
- Good governance and alignment of interest due to participation of the main stakeholders.

*Contact:*

***PensionsEurope***

*Montoyerstraat 23 rue Montoyer – 1000 Brussels*

*Belgium*

*Tel: +32 (0)2 289 14 14*

*info@pensionseurope.eu*

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<sup>1</sup> EU Member States: Austria, Belgium, Bulgaria, Croatia, Denmark, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Portugal, Romania, Spain, Sweden. Non-EU Member States: Iceland, Norway, Switzerland, UK.