



PensionsEurope urges the European Commission to provide legal clarification regarding the definition of “ICT services”. There is legal uncertainty on the scope of that definition, this matter is extremely important for [DORA's](#) interpretation and implementation. We recognize the importance of protecting digital infrastructures from cyber threats. Therefore, **we request the European Commission to acknowledge that “regulated financial services” —i.e., those requiring a financial entity (as defined by DORA) to notify or obtain authorization from an NCA to be provided— do not fall within this definition.** Since these regulated financial services are provided by financial entities that separately are subject to DORA compliance and supervision, additional controls on these services by financial entities using these services would be redundant. Rather, it would create unnecessary regulatory burdens and supervisory work.

We refer to the European Commission's goals in the [Political Guidelines 2024-2029](#) (page 7) to reduce administrative burdens and simplify implementation by having less red tape and reporting, more trust, and better enforcement. A definition of ICT services that does not include regulated financial services would help simplify legislation and eliminate overlaps and contradictions while maintaining high standards. It would be advisable that the Commission reflects on those issues by establishing an interpretation of the definition of ICT services in its upcoming FAQ on DORA. The FAQ instrument is deemed adequate for this purpose, in particular in light of DORA's time restrictions, i.e. entry into force in January 2025.

DORA at Recital 35 clarifies that to maintain a high level of digital operational resilience, the definition of ICT services *encompasses digital and data services provided through ICT systems on an ongoing basis*”. In our interpretation, this means the definition of ICT services should be focused on what is functional for operational risk management.

Digital operational resilience requires a risk-based approach, which means it is focused on the biggest risks. Especially in these times of shortages of well-trained IT personnel, it would be a flawed allocation of resources to put extra controls on parties that pose little risks.

Clarifying the distinction between regulated financial services and ICT services

Annex III of the ITS on the register of information limits the definition of ICT services to those explicitly included in that list. For the purposes of the communication obligations that these ITS develop it is not possible to report a service different from those (Annex III, Type of ICT services: “(...) *only the identifier (from S01 to S19) of the relevant type of ICT services shall be reported.*”). It thereby acknowledges ICT services the existence of a closed list or *numerus clausus* of ICT services.

Furthermore, risks of ICT systems and assets that are embedded in regulated financial services are already managed, as the service provider is a financial entity that must comply with DORA and is under financial supervision. Additional control activities by financial entities using these services are not likely

to provide added assurance or risk mitigation. Assurance reports such as ISAE 4302 or ISO 27001 by the regulated financial service provider will give the financial entities ample information for their third-party ICT risk management. Indeed, we believe that for the outsourcing of regulated financial services, which already comply with DORA, assurance reports instead of extensive, controls could give enough control and would allow supervisors to focus on their core tasks. As such, there should be a limit to the range of the definition of ICT services, without compromising DORA's aim of maintaining a high level of digital operational resilience.

We value that DORA will make risk management practices for outsourced ICT services just as important as for insourced services. In this context, DORA Recital 63 recognizes that *“financial entities providing ICT services to other financial entities, should also be considered as ICT third-party service providers under this Regulation.”*

We note that financial entities can provide regulated financial services alongside other services, such as ICT services. In other words, an entity can be both a ‘financial service provider’ and an ‘ICT third-party service provider’. These services and roles can and should be distinguished from each other. A regulated financial service could be defined as a service that is provided by a financial entity as defined in DORA Article 2; which is subject to European financial legislation, as referenced in the definitions of financial entities in DORA Article 3 definitions 31 until 59; and which based on that European financial legislation is subject to financial supervision.

Other than Annex III of the ITS, a definition of ‘ICT service’ is wholly absent from the relevant EU financial services legislation that DORA refers to for definitions of the financial entities in the scope of DORA. That tells us that the regulated financial services these entities provide are not regarded as ICT services in the EU acquis.

We are fully aligned with an answer by the European Supervisory Authorities in an [FAQ published on 4 July 2024](#) interpreting that *“in case a financial entity must be authorised/licenced/registered as financial entity to deliver a service, such service is therefore a regulated financial service and not an ICT service in the meaning of DORA Article 3(21)”*.

The FAQ also interprets Recital 7 of the [\(ESA's final advice on the\) ITS for the Information Register](#). Recital 7 outlines the responsibilities of insourced and outsourced ICT services. We agree with the ESA's interpretation that *“in case a financial entity is the service provider, the single exception to Recital 7 is about services for which the financial entity must be authorised/licenced/registered as financial entity to deliver it: in that case such services are therefore regulated financial services and not an ICT service in the meaning of DORA Article 3(21).”*

Even though the ESAs have since dropped these interpretations, we believe this should be the interpretation to be followed by the European Commission.

Separating regulated financial services from ICT services for operational clarity

We also foresee possible contradictions in DORA if both a financial entity and an outsourced service are in the scope of DORA. DORA grants financial entities step-in rights when changes are made to ICT service provision. But when the service is both a regulated financial service and an ICT-service, the

service provider has an independent and equivalent decision-making right as a financial entity under DORA. This contradiction will create practical problems when the financial entity and its service provider disagree on how the service should be provided, possibly harming operational continuity. This problem would not occur if a distinction of regulated financial services were not considered ICT services.

For consistency, the subcontracting chain of regulated financial services should also be excluded from the information register, which requires attention to Recital 7 of the ITS. Otherwise, it will not ensure a smooth implementation of the draft ITS for obliged entities. Considering the last few months before the implementation deadline of 17 January 2025, timeliness is of the essence.

In conclusion, we ask the European Commission to formally acknowledge that “regulated financial services” requiring a financial entity (as defined by DORA) to notify or obtain authorization from an NCA to be provided do not fall within the definition of ‘ICT services’.

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 3 other European countries¹.

PensionsEurope member organisations cover different types of workplace pensions for approximately over **90 million people**. Through its Member Associations PensionsEurope represents approximately **€ 5 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 **18 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.

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¹ 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.