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BVI[1] position on ESA's Consultation Paper 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

We take the opportunity to present our views on the consultation paper of the ESAs related to 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.

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?

In general, we support the use of LEI as an identifier, also for third-party ICT service providers (ICT TPP) that are legal entities. **However, we disagree with the proposal in Article 4(8) of the Draft ITS that financial entities shall ensure through the direct ICT third-party service provider, that, all the material subcontractors, with exception of those who are individuals acting in a business capacity, shall procure and maintain a valid and active legal entity identifier (LEI). Therefore, Article 4(8) of the Draft ITS should be deleted.** It cannot and must not be the responsibility of financial companies to ensure that ICT providers have an LEI and that it is always up to date. Such an obligation would have to be contractually agreed and is not apparent from the minimum requirements for contract content in Article 30 of the DORA Regulation. Rather, it must be the ICT TPP's responsibility to independently obtain a LEI and prove that it is up to date in order to be admissible as a counterparty for EU financial market firms as business partners.

In addition, according to the LEI statutes, the LEI must be updated at least once a year. In particular, the LEI ROC has specified that an LEI issuing organisation must re-validate the reference data associated with a previously issued LEI under its administration 'on a regular basis and no longer than one year from the previous validation check'. This re-validation check 'must include verifying with the entity that the relevant information is accurate'. Therefore, the LEI renewal process requires re-validation of the LEI reference data recorded for a legal entity against third party sources by the LEI issuer. This would therefore mean that all financial entities would have to check their ICT providers (including material subcontractors) at least once a year to see whether the LEI is up to date. With such a regulation, the ESAs exceed their mandate to merely specify the requirements under the DORA regulation. According to Article 28(9) of the DORA Regulation, the ESAs shall develop draft standards for the purposes of the register of information including information that is common to all contractual arrangements on the use of ICT services. Generally applicable standards for all financial companies must therefore be based on the specifications of the minimum contents of the contract rules of the DORA regulation.

[1] BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's 116 members manage assets of some EUR 4 trillion for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 28%, Germany represents the largest fund market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

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Moreover, we request to set the LEI for ICT TPP as an optional field within the template or with the remark, where available. However, if the LEI would be mandatory for the purposes of identifying ICT TPP (also in the supply chain), a (technical) solution must be found for cases where the LEI is (currently) not available. The documentation and reporting of a financial entity must not fail because the LEI is not available. In particular, a missing LEI identifier of ICT TPP must not lead to the question whether a register is well documented or not. Otherwise, such a solution will lead to the practical impact that ICT TPP without a LEI must be exclude from the award of contracts. This is not appropriate, prevents free competition and promotes concentration risk of ICT TPP.

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 disagree with Article 4(1)(b) of the Draft ITS 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' in combination with the detailed information to fill in template RT.05.02 (ICT service supply chains). First of all, such an approach is not required on level 1 in Article 28(3) of the DORA Regulations which limits the information of the register to all contractual arrangements on the use of ICT services provided by ICT third-party service providers on the first level without sub-contractors. If the EU legislator had wanted to include information about subcontractors, it would have explicitly mentioned them, as it has done elsewhere in the DORA regulation (such as Article 29(2) of the DORA Regulation).

The obligation to keep the information register also for material subcontractors of an ICT service provider supporting a critical or important function is, in our opinion, associated with far too much effort, which (in particular) small financial entities cannot meet. For the financial entity, the decisive factor is whether the ICT service provider can fulfil the commissioned service in accordance with the contractual regulations. If the ICT service provider has to involve subcontractors to provide this service, the responsibility for the subcontractor lies with the ICT service provider, which means that it must also monitor the subcontractor. Monitoring to the extent proposed should not be another task for a financial entity.

In any case, however, we ask that exceptions be introduced for the documentation of subcontracting of ICT providers, which themselves will be identified as critical ICT TPPs at the EU level in the future. For these providers, the ESAs will then have a clear picture of the ICT TPP on the basis of the monitoring pursuant to Art. 31 et seq. of the DORA Regulation, which each individual financial institution would then not have to request independently from the critical ICT provider.

For all other subcontractors, the ESAs should recall the objective of DORA that financial firms themselves must identify concentration risks, taking into account the subcontractor (cf. Article 29(2) of the DORA Regulation), for which the proportionality principle should also be adequately reflected in the supply chain documentation. ICT providers whose services support critical and important functions of the financial entity may nevertheless not pose a concentration risk due to the scale and impact on the overall business. This also raises the question of what qualitative added value the pure consideration of subcontractors should provide. It is disproportionate to order such an extensive data collection if one has not ensured that the qualitative purpose is also achieved with it. It would be more than disappointing if, after evaluating the data collection, the ESAs found that, unfortunately, no accurate statements could be made and the requirements for data deliveries were further increased. Therefore, as an alternative, it would also be conceivable to document only those subcontractors that have not been

identified as critical ICT providers at EU level but nevertheless support critical and important functions at the financial entity and, based on their own internal risk assessments, pose a significant concentration risk at the financial entity. If the concentration risk is significant/high, the subcontractors could then also be mapped, otherwise not.

Moreover, in any case, the content of the mandatory data to be provided with **template RT.05.02** for this purpose is very extensive (such as the identifiers and rank), especially because this data is regularly not available for existing contracts and must first be requested via the provider at the first level. However, if at all material sub-contractual relationships were also to be covered, this should be limited to the names of ICT third-party providers whose services support solely for critical and important functions of the financial entity and the locations (regions or countries) where the subcontracted functions are to be provided and where data is to be processed without mandatory identifiers and the rank of the subcontracted arrangement. Only this information results from the minimum contents for the contracts with ICT TPP according to Article 30(2)(a) and (b) of the DORA Regulation. This would be also in line with the current practices stated in the ESMA guidelines on outsourcing to cloud service providers for asset managers and investment firms. According to ESMA guideline 1, paragraph 17(l), the register should include at least, where applicable, the names of any sub-outsourcer to which a critical or important function (or material parts thereof) is sub-outsourced, including the countries where the sub-outsourcers are registered, where the sub-outsourced service will be performed, and the locations (namely regions or countries) where the data will be stored.

Moreover, there is no link between Article 5 of the Draft ITS (content of the register of information) and the template RT.05.02. It is our understanding that the documentation of sub-contracted services **outside of intragroup service providers** shall only apply to ICT TPP supporting a critical or important function or material parts thereof. However, this is only clear from the background information and from the instructions to fill in template RT.05.02. It would therefore be desirable if this were also explicitly regulated in the ITS, for example, in Article 4 or 5 of the Draft RTS.

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

We are very concerned about the statement of the ESAs in the public hearing that the register has to be fully implemented already from the entry into force of the DORA Regulation. Based on the current detailed proposals of the present draft ITS, this will not be possible, especially since it is currently not foreseeable which information will still change and what will then be adopted as final RTS at EU level. In any case, the time window is far too short to set up such substantial implementation projects in time, as these are also associated with further IT and consulting effort.

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?

We request the ESAs deleting Article 4(5) of the Draft ITS that requires financial entities maintaining the information in the register of information in relation to contractual arrangements that are terminated for at least 5 years after the termination of the ICT services provision. Financial entities are already required to fulfil sector-specific record-keeping requirements, also depending on their legal form and their business models. Therefore, the records a financial entity is required to keep should be adapted to the type of business and the range of services and activities performed, provided that the record-keeping obligations set out in the sector-specific requirements are fulfilled and that competent authorities are able to fulfil their supervisory tasks. Should the ESAs nevertheless wish to stick to

a regulation on that topic, we suggest a graduated approach based on the proportionality principle, such as the approach taken by ESMA in its guidelines on cloud outsourcing as follows:

> '**A firm should maintain an updated register of information. Taking into account national or sector-specific law, a financial entity should also maintain a record of terminated ICT service arrangements for an appropriate time period.**'

Moreover, contracts which are already terminated at the time the ITS first applies should be exempted even though they might not be terminated at a certain deadline (such as five years ago).

Furthermore, we do not believe the additional proposal in Article 4(5) of the Draft ITS where financial entities shall ensure that the register of information has an audit trail functionality that allows to retrieve changes that significantly affects or are likely to significantly affect the information contained in the register of information for at least the previous 5 years is appropriate due to the proportionality principle.

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?

We strongly disagree with the suggested approach in Article 6(1) of the Draft ITS that, in case of groups, all financial entities part of the group shall maintain and update, in addition to their register at entity level, the register of information at sub-consolidated and consolidated level. The same applies to the proposal in Article 6(3) of the Draft ITS where (all) financial entities shall ensure that the register of information at sub-consolidated and consolidated level encompasses all entities that are financial entities and ICT intra-group service providers in scope of consolidation and sub-consolidation. This approach contradicts basic standards of accountability for group consolidation such as Article 22 of the Directive 2013/34/EU and prudential consolidation such as Article 11 of the Regulation (EU) No 575/2013, Article 7 of the Regulation (EU) 2019/2033 and Article 212 et seq. of the Directive 2009/138/EC. Financial entities as subsidiaries of a group are never responsible for group or partial consolidation, which is why we expressly oppose the idea of now assigning responsibility for maintaining registers on a consolidated or partially consolidated basis to the subsidiaries. This responsibility rests solely with the responsible parent undertaking or the respective entities within the group designated in accordance with the sector-specific regulations. At most, the subsidiaries can assist the parent company to obtain the information on a consolidated basis.

We therefore request that Article 6 of the Draft ITS be amended as follows:

'Article 6
Responsibility for maintaining and updating register of information at sub-consolidated and consolidated level

1. In case of groups, ~~**all financial entities part of the group**~~ **the entity responsible for consolidated financial statements as defined in Article 22 of Directive 2013/34/EU or, where applicable, responsible for complying with the obligations on the basis of their sub-consolidated and consolidated situation according to sectoral rules as defined in Article 2, point 7 of Directive 2002/87/EC**, shall maintain and update, in addition to their register at entity level, the register of information at sub-consolidated and consolidated level.
2. In order to enable the above, the ~~**ultimate parent undertaking as defined in Article 48a(1)(1) of Directive 2013/34/EU**~~ **responsible entity referred to in paragraph 1** shall, define, taking into account the respective applicable financial regulations, the scope of consolidation and sub-consolidation.
3. For the purposes of this Regulation, ~~**financial entities**~~ **the responsible entity referred to in paragraph 1** shall ensure that the register of information at sub-consolidated and consolidated level encompasses all

entities that are financial entities and ICT intra-group service providers in scope of consolidation and sub-consolidation as defined above.'

In addition, in each of the introductory sentences of Article 7 and Article 8(1) and in Article 8(2) of the Draft ITS, the words *'financial entity'* shall be replaced by the words **'responsible entity referred to in paragraph 1 of Article 6 of this Regulation'**.

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?

We refer to our answer to Q5. Only parent undertakings must be responsible to maintain and update the register of information at sub-consolidated and consolidated level based on their legal requirements.

Irrespective of the legal responsibilities for group consolidation, a financial entity being part of a group is also not even in a practical position to fill out the group consolidation forms because it does not have the group-level information at all. Due to the fundamentally flawed approach in the consultation paper on group consolidation and the short time window of the consultation, we have also not analysed what information is appropriate in the forms on a consolidated or partially consolidated basis. These rules should therefore first be fundamentally revised again before we can provide further detailed comments on the practical impact here.

Irrespective of this, the mandatory keeping of two information registers (company level and (partially) consolidated level) is not practical in any case. Since most of the columns are identical anyway, it would be more appropriate to query only the information that a parent company needs for the valuation on a consolidated basis and that differs from the register on an individual 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?

- **Column RT.02.01.0041**

We strongly disagree with the inclusion of column RT.02.01.0041 (annual expense or estimated cost of the contractual arrangement for the past year) in relation to each contractual arrangement in scope of the register of information. First of all, we do not see the added value of which is not apparent in view of the ICT risk raised from activities of asset managers and investment firms providing portfolio management services and investment advice. At best, such information only make sense if the default of an ICT provider has or could have a significant impact on the business model and solvency ability of a company. In this case, however, asset managers and investment firms providing portfolio management - in contrast to banks - have completely different prerequisites and, as trustees with an obligation to segregate the assets of the managed portfolios, a much lower insolvency risk which is covered by the operational risk and the minimum capital requirements of the AIFMD, UCITS Directive and Investment Firm Directive.

However, the BVI has been offering to its members an industry-wide data bank for operational risks ('BVI OpRisk loss data bank') since 2004. It helps asset managers to become aware of risks that they

might not be able to identify on the basis of their own data alone. The database collects claims arising from asset manager loss risks that may result from inadequate internal processes and from human or system failure at the fund company or from external events. Included are legal, documentation and reputational risks as well as risks resulting from the trading, settlement and valuation processes operated for a fund. Currently, 39 companies with assets under management of 1.8 trillion euros in mutual and special funds are participating. This corresponds to a market share of 74 percent in terms of funds launched in Germany (as of December 31, 2022). According to our BVI OpRisk loss data bank, the **average figure per damage is around 75,000 euros in the period 2012 to 2022**. **We therefore cannot identify any risks from these figures that could justify a separate breakdown of costs.**

Neither the legal requirements for asset managers and investment firms nor the ESMA guidelines on cloud outsourcing currently require such information (cf, guideline 1, paragraph 17, of ESMA's guidelines). Therefore, this information is not currently collected at all from these companies.

Much more important, our members are not able to charge such costs per ICT contract at all or to estimate the proportion of these costs or can only do so at considerable additional expense. In particular, the use of ICT services is often part of the global IT budget and produce running cost. In these cases, our members do not account in any case for individual ICT arrangements. Due to many outsourcing arrangements by the asset managers which are combined with ICT services, the ICT service is often part of an all-up fee over other services or functions effected by these services. Moreover, the contract costs only cover the value of the service, but not the costs of a possible failure of the ICT service provider. It would also be far too time-consuming and inefficient to estimate the amount of costs that could be incurred to cover the shortfall. In principle, the financial entities assume – also due to the high standards – that the service can be provided by the ICT provider.

Furthermore, we see difficulties in assigning the costs of ICT service providers to the financial entity in groups that do not only consist of financial entities but in which the ICT services are bundled. If a group entity connects the ICT service provider and passes on the services to the group as necessary, the breakdown of the individual service provider costs in the respective financial company is not possible or at least not without considerable conversion effort – especially if the service is still available in the group is 'refined' before the financial entity acquires it.

- **Column RT.02.01.0042**

We also disagree with the inclusion of column RT.02.01.0042 (budget of the contractual arrangement for the upcoming year) in relation to each ICT contractual arrangement in scope of the register of information. In principle, we recognise that ESMA requires this information in its guidelines on cloud outsourcing only for services supporting critical and important functions (cf, guideline 1, paragraph 17, letter m) 'the estimated annual budget cost of the cloud outsourcing arrangement'). Nevertheless, the EU legislator has found a different solution for this in the DORA Regulation. This is because Article 11(10) of the DORA Regulation requires financial undertakings to report to competent authorities the estimated aggregated annual costs and losses caused by serious ICT-related incidents only upon request. If, based on the incident reports, the competent authority concludes that further risks may exist, it has the possibility to find out about these costs. We therefore do not consider further burdensome documentation in the register to be expedient, especially not for ICT services that do not affect critical and important functions and do not lead to a significant incident. In this context, we also refer to our answer above to column RT02.01.0041.

- **Further information in the template RT.02.01**

We also disagree with some other detailed information in the template RT.02.01 (also in other template drafted by the ESAs) which covers all ICT arrangements. In particular, we currently do not understand why asset managers will have to keep more information than ESMA required in its guidelines on cloud outsourcing. In particular, we cannot identify any ICT risk that has increased in the area of asset managers since the ESMA guidelines were issued and is now supposed to justify such extended requirements. At this point, we once again expressly oppose passing on the strict requirements developed by the EBA in the banking sector for banks and critical ICT infrastructure to all financial companies. This is disproportionate, is neither necessary nor does it result from the DORA regulation. Rather, we see this as an overstepping of ESMA's powers in establishing standards for the register.

Asset managers should therefore continue to be subject only to the documentation requirements defined by ESMA in its guidelines on cloud outsourcing and only for services that support critical and important functions (cf. guideline 1, paragraph 17 and 18). For ICT arrangements concerning non-critical or non-important functions, a financial entity under ESMA supervision should define the information to be included in the register based on the nature, scale, and complexity of the risks inherent to the function.

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?

We refer to our answer to Q2.

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

It is currently not clear to us what is meant by an '**ICT services taxonomy**' and to what extent it should be designed. A description of all functions and ICT services to be provided by the ICT third-party service provider will be part of the contractual agreements. Moreover, the type of contractual arrangements and the ICT services and functions which are being provided will be reported on a yearly basis to the competent authorities (cf. Article 28(3) DORA Regulation). Whether a taxonomy can be derived from this in the future should only be assessed later. In particular, the ICT services can also differ in terms of their nature and are regularly tailor-made product solutions for the respective business models of the financial companies. We therefore expressly request to refrain from further classification schemes and taxonomies. Rather, we see the danger here that this will lead to considerable effort for the financial entities in the documentation of their information registers.

The information must be determined with great effort. The question arises as to whether such a 'database' makes sense - because that is what it will be about - especially when defining services and functions and evaluating them. The evaluation is subjective, so that the question arises as to which qualitative statements one wants to gain from the data collection.

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?

We refer to our comments to the ESAs consultation on specifying further criteria for critical ICT third-party service providers (CTPPs). We see a contradiction here between the approaches proposed there

and the propoposed ‘value of the total asses in the statutory accounts’ of asset managers as defined in Annex V.

Basically, ‘the total value of assets’ is not the right starting point for asset managers in the meaning of Article 2(1)(k) and (l) of the DORA Regulation in particular to assess the impact of an ICT service provider on their business models. Therefore, we agree in principle that **assets under management** could also be used as an equivalent as proposed in the Draft RTS on specifying further criteria for critical ICT third-party service providers (CTPPs).

However, this approach should only be used by asset managers with a UCITS or AIF licence. For investment firms that also provide portfolio management services at their own discretion, the total value of assets should be relevant across the board. Otherwise, this could lead to delimitation problems for investment firms that also perform other MiFID activities (such as dealing on own account). In addition, investment firms also manage fund portfolios by way of outsourcing for asset managers, so that double counting can occur.

Moreover, it should be noted that the value of assets under management is not necessarily related to the ICT service provided. For instance, if an asset manager that manages real estate and securities portfolios uses a software provider only to support the portfolio management of the securities, the value of the assets under management in relation to the real estate portfolios would have no influence. Further differentiation (e.g., also by mapping in the information register) should be avoided because this would only lead to more documentation work for the financial entities without any tangible benefits. This applies all the more as an asset manager also uses ICT service providers that can affect him both at the company level and at the portfolio level. Such further differentiation is also not envisaged with regard to the ‘total value of the assets’ for other financial entities (such as credit institutions) as a whole.

Therefore, the indicators being part of the first step should be kept as simple as possible knowing that these data can only be an approximate reference.

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

In principle, we support a stronger integration in technological terms, such as standardised identifier, data, formats and IT processes. This would enable supervisory bodies and regulators to better utilise the loads of submitted information for supervisory purposes, especially for the prompt detection of certain risks, and might entail cost savings for market participants such as fund management companies which may run into millions of Euros in order to fulfil the current legal reporting requirements. **However, the structure of the proposed register of information in no way complies with the principle of proportionality set out in Article 4(2) of the DORA Regulation at Level 1.**

According to Article 4(2) of the DORA Regulation, the application by financial entities of Chapter V, Section I, which includes the register of information, shall be proportionate to their size and overall risk profile, and to the nature, scale and complexity of their services, activities and operations, as specifically provided for in the relevant rules of this Chapter. It will be almost impossible, especially for asset managers, small and medium-sized financial entities such as investment firms, including companies without a significant ICT structure, to create, maintain and continue this register. Our members have therefore described in particular the proposal for an ITS on the information register as a **‘bureaucratic monster’** that is unmanageable in terms of its level of detail, implementation effort as well as implementation costs.

DORA's goal of strengthening the digital resilience of financial market participants should not be weakened by too high an implementation burden as well as overly detailed requirements, which may provide further attack surfaces for cyber-attacks on IT systems. In particular, the proposals have a significant impact on the resources of financial entities, which are increasingly involved in implementing and monitoring regulatory requirements, some of which offer no discernible added value.

The requirements for the register can only be appropriate if the effort is backed up by a corresponding benefit. In particular, the benefit is questionable if data is requested that is related to internal guidelines (e.g., for risk assessment or BCM parameters). It is not expected that the ESAs will receive comparable data from different market participants here, so it is also questionable how the use will provide added value from a supervisory perspective. For example, for the sections RT.05.03 / RT.08.01 the benefit has to be questioned. In principle, the approach is understandable that alternative service providers should be defined for critical ICT TPP as well as the substitutability should be evaluated. However, this is done as part of the control process, is therefore part of the requirements of the DORA on a procedural level and will also be examined. This ensures that asset managers define alternative service providers. Transferring these into a reporting template does not offer any directly apparent added value. At the same time, maintaining the data involves considerable effort.

In particular, the rigid requirements for using a **large number of templates** which are connected with mostly identifiers and references to other templates are too restrictive and prone to error. In addition, each new template requires a new or an adjusted design of the process to produce this template, given that the respective data is stored in different systems and has to be combined via new or enhanced interfaces.

Article 9 of the Draft ITS contains requirements on how competent authorities can access the information register. Surprisingly, the ESAs do not propose any harmonised access points for this. Rather, the competent authorities themselves are to determine appropriate uniform formats and secure electronic channels. This will lead to an enormous implementation effort, especially for companies with cross-border activities, if the competent authorities have different standards. It would therefore be desirable to standardise such interfaces at EU level.

In this context, our members consider the **Excel forms** presented by the ESAs to be backward, which will also lead to different interfaces and systems - especially in cross-border business - at the supervisory authorities and thus to additional expenses for the companies. We are therefore basically in favour of a uniform format (e.g. XML), which should be specified by the ESAs and can then also be used by all supervisory authorities and companies. However, there should also be exceptions to the use of an XML data format, especially for smaller companies without the appropriate IT expertise. For these, manual maintenance of an XML format is difficult. It may be that in the future there will be software solutions for the administration of the information register, from which a transfer and technically clean import into a target system of the NCAs or ESAs is possible via an XML export.

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?

We strongly disagree with the level of information requested in the drafted register of information templates and refer to our answer to Q11. In particular, we do not understand why asset

managers need to document much more information in their policies than ESMA requires in its cloud outsourcing guidelines. In particular, we cannot identify any ICT risk that has increased in the area of asset managers since the ESMA guidelines were issued and is now supposed to justify such extended requirements. At this point, we once again expressly oppose passing on the strict requirements developed by the EBA in the banking sector for banks and critical ICT infra-structure to all financial entities. This is disproportionate, is neither necessary nor does it result from the DORA regulation. Rather, we see this as an over-stepping of ESA's powers in establishing standards for the policy.

Moreover, we reiterate our criticism from our comments on the identification of critical ICT providers, that the ESAs should not use the register of information as the sole source of data and thus impose on financial entities the implementation burden of identifying such critical providers.

Basically, according to the requirements in subparagraph 3 of Article 28(3) of the DORA Regulation, we cannot see that the information to be provided to the competent authorities at least once a year must necessarily also be part of the register. Therefore, we question in general to align the structure of the information register with these requirements. This is because subparagraph 1 of Article 28(3) of the DORA Regulation requires financial entities to maintain a register that relates to all contractual arrangements for the use of ICT services provided by third-party ICT service providers. In this respect, the mandate of the ESAs also refers only to standard templates for the register, including the information common to all contractual agreements on the use of ICT services. The content of the register can therefore only be based on the minimum content of the contracts prescribed by law, as set out in Article 30 of the DORA Regulation, because these apply equally to all financial undertakings.

In general, the question arises with regard to the standard templates whether an evaluation is actually carried out by the ESAs on the basis of the annual reporting. Are all columns of the standard templates really required for this? In many cases, the 'mandatory' could certainly give way to the 'optional'. Overall, the mandatory documentation should be reduced: an orientation towards the mandatory documentation according to the ESMA guidelines on cloud outsourcing would be appropriate for asset managers and investment firms. The initial implementation effort and also the administrative effort are considerable for our members. They currently lack an understanding of the added value of the detailed information content of the new register of information compared to the cloud outsourcing register established by ESMA.

For outsourcing (not only related to ICT services), but processes are also already implemented at the asset managers that already record some of the proposed data. However, the obligation to record in a central register is the case for a significantly smaller proportion of the data, as proposed for example in the ESMA guidelines on cloud outsourcing. Significant additional efforts would therefore arise under the current draft, through

- a larger scope of application, if there are ICT services which support important and critical functions which do not qualify as outsourcing in the sense of the AIFMD and UCITS Directive. This may well occur in practice, as the support of critical functions alone is sufficient for DORA.
- data that is recorded but not stored centrally, transferred to the new format and must be maintained on an ongoing basis. The specification in the data fields differs from the specification in the IT systems and therefore has to be adapted for each field – for example the number of decimal numbers, if the data has to be reported in percentage or not.

Moreover, based on the proposed detailed level of information that should be documented, it is not clear for us what happens to the contracts where the documentation cannot cover the required

mandatory information. Are the financial entities then obliged to terminate the contracts? This cannot seriously be the outcome, because it would prevent competition and promote concentration risks among just a few ICT providers. Instead, the ESAs should reduce the catalogue of requirements for mandatory documentation and allow much more voluntary documentation based on the principle of proportionality.

The Draft ITS does not currently regulate the **language** in which the information register is to be kept. In particular, financial entities should not be required to translate information supplied by ICT providers (in particular, in the supply chain) in another language for the purposes of documentation in the information register.

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.

Our understanding of the question is that the ESAs are asking about proportionality. The question does not seem complete here ('*the principle of [...] used to draft the ITS*').

As mentioned in our answer to Q11 and Q12, the proposed register of information is too complex, the technical implementation will mean an enormous implementation effort, especially for asset managers. In particular, this requires data (such as the LEI) that is regularly not available at the financial entity but must first be requested from the ICT TPP (also in the supply chain). Due to the many technical allocations and indicators, it will hardly be possible, especially for smaller companies, to set up such a register without external advice/support. Due to the large amount of data and links between the individual templates, the susceptibility to errors is also increased enormously.

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

We refer to our answers to Q11 and Q12. The impact of the Draft ITS for asset managers and investment firms is not appropriate considered.

In addition to the consultation questions above, for each column of each template of the register of information, the following is asked:
a) Do you think the column should be kept? Y/N
b) Do you see a need to amend the column? Y/N
c) Comments in case the answer to question (a) and/or question (b) "No"

Given the level of detail of the proposed templates and due to the short consultation period over the summer holidays, combined with the other three comprehensive consultations on ICT Risk Management, ICT Incident Classification and Contract Arrangements Policy, it was not possible for our members to evaluate the templates in detail and provide adequate and valuable input. We therefore explicitly appeal to the ESAs to significantly reduce the scope of the register or to give financial entities adequate time to give the proposals their practicability. This may also be linked to providing feedback to the EU Commission that the deadline set in Level 1 to produce the Level 2 measures cannot be met.

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