

**EACB comments on
Draft RTS to specify the detailed content of the policy in relation to the contractual
arrangements on the use of ICT services supporting critical or important functions
provided by ICT third-party service providers as mandated by Regulation (EU) 2022/2554**

Q1	Are the articles 1 and 2 regarding the application of proportionality and the level of application appropriate and sufficiently clear?	We believe that the further clarification to the proposed Art. 1 "whether the ICT third-party service providers are part of the same group of the financial entity" is needed. Specifically, we suggest using the legally defined DORA term "ICT intra-group service provider" ("whether the ICT third-party service providers are ICT intra-group service provider"), as the level 1 definition takes into account intra-group also in the meaning of "financial entities belonging to the same institutional protection scheme".
Q2	Is article 3 regarding the governance arrangements appropriate and sufficiently clear?	With regard to the outsourcing supervisory processes, we believe that a supervisory review of the existing ESAs Guidelines on outsourcing (EBA, ESMA, ...) due to ICT services is necessary. This is because, in our view, in the future ICT services should be subject only to the DORA requirements and not to the outsourcing guidelines.
Q3	Is article 4 appropriate and sufficiently clear?	
Q4	Is article 5 appropriate and sufficiently clear?	A clarification regarding the handling of existing contracts would be desirable.

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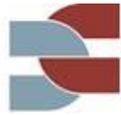
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Q5	Are articles 6 and 7 appropriate and sufficiently clear?	<p>In practice, it might be difficult to obtain all this information before signing the contract. In addition, this could restrict competition among service providers, as some ICT third-party service providers may decide to withdraw from the financial market to avoid disclosing such information.</p> <p>Moreover, the interaction of Articles 7.1 and 7.3 a) and b) is unclear to us. It should be clarified whether at least criteria 7.1 a) - e) should be assessed before entering into a contractual arrangement, or only elements of 7.1 a) - e). (7.3 a), including which of the elements listed in paragraph 1 points (a) to (e) shall be used for the required level of assurance.</p>
Q6	Is article 8 appropriate and sufficiently clear?	<p>Regarding 8.1, it should be defined in more detail what is meant by conflicts of interest through the use of third-party providers. Besides, examples would be useful.</p> <p>We strongly advise to delete section 8.2. We see no connection of the requirement "arm's length" to digital operational resilience questions and no conflicts of interest. Intra-group providers are well-managed and stand in a direct connection to the financial entities to which they offer services. Therefore, no additional requirements for this type of provider should be made. Verification can always be very complex and time-consuming, e.g., assessment of fair market price. At the same time, experience shows that such vague legal terms lead to misunderstanding.</p>
Q7	Is article 9 appropriate and sufficiently clear?	
Q8	Is article 10 appropriate and sufficiently clear?	
Q9	Is article 11 appropriate and sufficiently clear?	<p>In the case of ICT intra-group full service provider an exit is often not possible, as much as there are no plausible alternatives in short- or mid-term. In the information register, the specification of an alternative provider is rightly not required for intra-group provider.</p> <p>Therefore, we suggest grading the requirements in Art. 11 depending on the type of provider. We recommend the following text equivalent to the EBA Guidelines on outsourcing: "The policy on the use of ICT services supporting critical or important functions provided by ICT third-party service providers shall include requirements for a documented exit plan where such an exit is considered possible</p>



taking into account possible service interruptions or the unexpected termination of ICT services.”

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