

## Policy paper on the scope of ICT services under DORA

This position paper sets out the views of EACH, FESE, FIA, and AFME ('The Associations') regarding the potential treatment of EU and non-EU regulated financial services<sup>1</sup> under the Digital Operational Resilience Act (DORA). The Associations, and many EU and non-EU financial firms more broadly, are deeply concerned about the potential impacts to implementation and compliance, supervision and oversight, and broader anticompetitive impacts to the market.

In light of the European Commission's ('Commission') upcoming guidance on whether regulated financial services fall within scope of the definition of 'ICT services' under DORA, we strongly urge the Commission to clarify that financial services provided by EU and non-EU firms to financial entities, are not considered 'ICT services' under DORA.

We strongly urge the Commission to adopt an expansive approach to any exemption granted to regulated financial services that includes encompassing non-EU regulated financial services and gives consideration to the following:

- (1) Financial services make use of ICT that is intrinsically linked to or embedded in the provision of the financial service ('**digital-backed financial services**'<sup>2</sup>). These services remain financial services in nature, and should therefore not be characterised as 'ICT services' within the meaning of DORA's definition. Additionally, because these services are provided as part of the entity's broader operational structure, they are subject to robust financial regulatory oversight and risk management, leaving no regulatory gap or risk unaddressed.
- (2) Digital-backed financial services provided by non-EU financial firms are subject to heightened regulatory oversight under national financial regulatory frameworks given the fundamental role these entities play in the financial system and their crucial role in maintaining financial stability. These services should not be subject to unnecessary and duplicative supervisory oversight by being brought within scope of DORA.
- (3) Ancillary services that are connected to digital-backed financial services captured in subparagraphs (1) and (2) above should receive the same treatment.

Excluding such services from DORA's scope would be consistent with the spirit and policy intent of DORA which is to address the growing reliance of the EU financial sector on ICT third-party services providers – such as providers of cloud computing services, software solutions, data-related services and others – and not to create a duplicative regulatory overlay for financial firms already subject to the most stringent oversight and controls both inside and outside the EU. Such clarification would avoid placing EU financial entities at a competitive disadvantage by increasing costs and limiting their access to global markets

The Associations welcome the continued engagement with the Commission to ensure DORA's stated aims are achieved while ensuring the smooth provision of financial services to the European Union (EU). We cover our position in more detail below.

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<sup>1</sup> In this paper we refer to "financial services" broadly to include activities of financial market infrastructure such as CCPs, trading venues and CSDs.

<sup>2</sup> For clarity, we refer to 'digital-backed financial services' in this paper as financial services in which ICT is integrated into the delivery or operation of the offering. These services are not standalone ICT services, products or profit centres but are intrinsic to the financial service provided.



### **About EACH**

The European Association of CCP Clearing Houses (EACH) represents the interests of Central Counterparties (CCPs) in Europe since 1992. CCPs are financial market infrastructures that significantly contribute to safer, more efficient and transparent global financial markets. EACH currently has 18 members from 14 different European countries. EACH is registered in the European Union Transparency Register with number 36897011311-96.

### **About FESE**

The Federation of European Securities Exchanges (FESE) represents 36 exchanges in equities, bonds, derivatives and commodities through 17 Full Members and 1 Affiliate Member from 31 countries. At the end of November 2024, FESE members had 6,657 companies listed on their markets, of which 20% are foreign companies contributing towards European integration and providing broad and liquid access to Europe's capital markets. Many of our members also organise specialised markets that allow small and medium sized companies across Europe to access capital markets; 1,483 companies were listed in these specialised markets/segments in equity, increasing choice for investors and issuers. Through their RM and MTF operations, FESE members are keen to support the European Commission's objective of creating a competitive and efficient Capital Markets Union.

### **About FIA**

FIA is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA's membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from about 50 countries as well as technology vendors, law firms and other professional service providers. FIA's mission is to:

- support open, transparent and competitive markets,
- protect and enhance the integrity of the financial system, and
- promote high standards of professional conduct.

As the principal members of derivatives clearinghouses worldwide, FIA's clearing firm members play a critical role in the reduction of systemic risk in global financial markets.

### **About AFME**

The Association for Financial Markets in Europe (AFME) is the voice of all Europe's wholesale financial markets, providing expertise across a broad range of regulatory and capital markets issues. We represent the leading global and European banks and other significant capital market players. We advocate for deep and integrated European capital markets which serve the needs of companies and investors, supporting economic growth and benefiting society. We aim to act as a bridge between market participants and policy makers across Europe, drawing on our strong and long-standing relationships, our technical knowledge and fact-based work. Focus on a wide range of market, business and prudential issues Expertise deep policy and technical skills Strong relationships with European and global policymakers Breadth broad global and European membership Pan-European organisation and perspective Global reach via the Global Financial Markets Association (GFMA).

(1) Treatment of digital-backed financial services

**Digital-backed financial services should be treated differently from ICT services.** Digital-backed financial services operate entirely within the provider’s regulated framework. As such, they are subject to comprehensive oversight, stringent governance and risk management practices tailored to specific regulatory frameworks and requirements. The main characteristic of the service is to provide a financial service, not an ICT service.

Drawing this distinction is consistent with the DORA framework overall and corresponds to the examples in the list of types of ICT services described under Annex III of the draft ITS on the register. Furthermore, the FSB toolkit for [Enhancing Third-Party Risk Management and Oversight](#) notes, in Section 2, that:

*“regulated financial institutions, to the extent they are engaging in financial services transactions, such as correspondent banking, lending, deposit-taking, provision of insurance, clearing and settlement, and custody services, are generally not considered third-party service providers, and the financial services they provide are not in the scope of third-party service relationships. While these financial services might be objectively critical for any financial institutions that rely on them, the risks they raise are addressed through other, often more specific financial regulatory and supervisory frameworks.”*

Characterising digital-backed financial services as ‘ICT services’ under DORA risks creating unnecessary duplication of regulatory obligations without addressing any risk gaps, imposing additional burdens on both EU financial entities and their supervisors.

**Additionally, digital-backed financial services contain ICT components are often intrinsically linked to and embedded within the delivery of financial services,** forming an integral part of the overarching operational structure. This interconnectedness between ICT components and the financial service and/or operating structure makes it impractical – or in some cases, impossible to separate – and also risks disrupting the entity’s governance and risk management frameworks. Attempting to distinguish and isolate these services for the purposes of subjecting them to DORA’s oversight and risk management requirements would create unnecessary complexity. Such a division would not enhance risk management, but could instead lead to overlapping requirements, inefficiencies and confusion in supervision and compliance.

Instead, digital-backed financial services should be recognized as inherently part of the entity’s operations – and effectively managed within existing governance and risk management frameworks – and, therefore, not ‘ICT services’ in the scope of DORA.

(2) Third-country digital-backed financial services

**Digital-backed financial services provided from third-country jurisdictions fall under corresponding financial regulatory or licensing frameworks.** Such frameworks are designed to ensure operational soundness and resilience, and robust risk management. Operational resilience is a top priority for all major jurisdictions and is a main component in their supervisory and crisis management approach, as disruptions from cyber-attacks can impact financial stability, cause intolerable harm to consumers or other market participants, or disrupt market confidence. Financial firms are already subject to high standards of oversight and governance (i.e. with direct reporting obligations and accountability to a financial services regulator, for example, but not limited to, CFTC System Safeguards, SEC Reg SCI or the UK FCA / PRA / Bank of England operational resilience regime) subject to strict requirements given the fundamental role these entities play in the financial system and their crucial role in maintaining financial stability. We thus strongly urge the EU

Commission to honour principles of international comity and deference to home country regulation - also in order to avoid unnecessary regulatory overlap.

(3) Ancillary services

Financial entities often provide ancillary services that are typically indivisible from, preparatory to or necessary for the provision of the regulated financial service (e.g. give-ups, regulatory reporting, middle office, etc). These ancillary services and the ICT used to support them are embedded within the operational structure of the financial entity and are governed by the same controls and oversight as its regulated activities.<sup>3</sup> Because of their close connection to the core financial service, treating ancillary services as ICT services would not only be redundant, but also create unnecessary complexity in risk management. It would therefore be disproportionate to include these services within DORA's scope.

Some examples of ancillary services that are incorporated within a broader financial services offering include:

- A trading venue (which is a regulated financial service within the EU) provided by an FMI offered to other financial entities could also involve the trading venue operator providing the matching engine that enables customers to conduct transactions on the trading venue, a front-end software platform for customers to manage transactions, connectivity services to access the trading venue (e.g., web-based portal access or API-based information access) and/or data services in relation to trading on the venue (e.g., data analytics, report generation, or market information services), all of which are contingent on the delivery of the financial service and so are not standalone services; and
- A helpdesk or online virtual assistant that is provided as part of the operation of the regulated financial service (e.g. the trading venue example given above). These aspects are linked to and part of the operation of the regulated financial service.

### **Potential impacts for EU financial entities, supervisory objectives and markets**

Including the above categories of digital-backed financial services within DORA's scope, without a proportionate approach, could result in the following negative impacts:

- It would introduce unnecessary complexity and duplication to supervisory oversight and risk management without meaningful benefits, diverting focus from managing the real risks that DORA's framework seeks to address. We also fear the different categorisation between EU and non-EU regulated financial services might trigger retaliatory actions from third country jurisdictions - to the detriment of EU financial entities.
- Introducing an additional regulatory overlay and unnecessary complexity will place EU financial entities at a competitive disadvantage by increasing costs and limiting their access to global markets. It also risks making the EU market less attractive to third-country entities and could therefore reduce market access and competitiveness, with broader impacts for the EU economy, particularly in sectors that are reliant on non-EU market infrastructure such as for US Treasury related products, metal and energy products.

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<sup>3</sup> The regulatory framework already accounts for the inextricable close connection between of ancillary services from core regulated services. For example, under MiFID II, once an authorised firm conducts ancillary activities, it remains subject to parallel regulatory obligations with respect to those activities.

- Applying DORA's risk management requirements to certain financial services could create significant challenges and unintended consequences. For instance:
  - requirements to identify alternative services as part of a financial entities' exit plans where no viable alternatives exist (e.g., those provided by third-country CCPs cannot be substituted but are nonetheless crucial for EU financial entities.)
  - extending audit, inspection and access rights in respect of critical or important functions to third-country service providers / market infrastructures may be considered too far-reaching and risk impacting:
    - (i) the viability of the service (e.g. the financial service provider may not be permitted to contractually agree to such access rights due to confidentiality concerns or based on local jurisdictional requirements)
    - (ii) the seamless delivery of the service (e.g. if trading or clearing activities were subject to pre-execution checks).