



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

The Director-General

Brussels,

FISMA/BA/ES/fisma.b.4(2025)1023110

Ms Petra Hielkema

Chair European Insurance and
Occupational Pensions Authority

Westhafenplatz 1

60327 Frankfurt am Main

Dear Petra,

I am sending you this letter in your capacity as Chair of the Joint Committee of the European Supervisory Authorities (ESAs). On 17 July 2024, the ESAs sent the Commission a draft Delegated Regulation supplementing Regulation (EU) 2022/2554 (“DORA”) of the European Parliament and of the Council with regard to regulatory technical standards on subcontracting ICT services supporting critical or important functions (“RTS”). The draft RTS specifies the elements that a financial entity has to determine and assess when subcontracting ICT services supporting critical or important functions.

The Commission notes that the draft RTS specifies the conditions and the criteria to be taken into account by financial entities when subcontracting ICT services supporting critical or important functions throughout the lifecycle of contractual arrangements between financial entities and ICT third-party service providers. In particular, financial entities are required to assess the risks associated with subcontracting during the precontractual phase, including the due diligence process. Furthermore, the RTS includes requirements for the implementation and management of contractual arrangements on subcontracting, including conditions to ensure that financial entities monitor the subcontractors effectively underpinning the ICT services that support critical or important functions.

The Commission considers that the requirements introduced by Article 5 of the draft RTS on the “Conditions for subcontracting relating to the chain of ICT subcontractors providing a service supporting a critical or important function by the financial entity” go beyond the empowerment given to the ESAs by Article 30(5) of DORA as introducing requirements not specifically linked to the conditions for subcontracting.

Against this background, we reject the draft RTS on mainly one specific aspect, namely that the content of the provisions relating to the monitoring of the subcontracting chain is not within the scope of the mandate set out in Article 30(5) of DORA. The Commission

therefore considers that Article 5 and the related recital 5 are to be removed from the draft RTS to ensure its compliance with the mandate. Finally, the draft RTS contains targeted drafting amendments that do not affect the substance of the act and are aimed at improving the quality of the legal act

With this letter, and in line with the procedure set out in Article 10(1) of Regulation (EU) No 1095/2010, as amended, in Article 10(1) of Regulation (EU) No 1094/2010, as amended, and in in Article 10(1) of Regulation (EU) No 1093/2010, as amended, I would like to inform you that the Commission intends to reject the RTS.

In light of the above, I would also like to inform you that the Commission, acting in accordance with the procedure set out in the fifth and sixth subparagraphs of Article 10(1) of Regulation (EU) No 1095/2010, as amended, in the fifth and sixth subparagraphs of Article 10(1) of Regulation (EU) No 1094/2010, as amended, and in in the fifth and sixth subparagraphs of Article 10(1) of Regulation (EU) No 1093/2010, as amended, intends to adopt the RTS submitted by the ESAs once the above-mentioned concerns are taken into account and the necessary modifications are made by the ESAs.

As per Article 10(1), sub-paragraph 5 of Regulation (EU) No 1095/2010, as amended, Article 10(1), sub-paragraph 5 of Regulation (EU) No 1094/2010, as amended, and Article 10(1), sub-paragraph 5 of Regulation (EU) No 1093/2010, as amended, where the Commission intends to adopt a draft RTS in part or with amendments, it shall send the draft RTS back to the Authority, explaining the reasons for its amendments, and within a period of 6 weeks, the Authority may amend the draft RTS on the basis of the Commission's proposed amendments and resubmit it in the form of a formal opinion to the Commission.

It should be recalled that the procedure laid down in Article 10(1), sub-paragraph 6 of Regulation (EU) No 1095/2010, as amended, in Article 10(1), sub-paragraph 6 of Regulation (EU) No 1094/2010, as amended, and in Article 10(1), sub-paragraph 6 of Regulation (EU) No 1093/2010, as amended sets out that if, on the expiry of that six-week period, the Authority has not submitted an amended draft RTS, or has submitted a draft RTS that is not amended in a way consistent with the Commission's proposed amendments, the Commission may adopt the RTS with the amendments it considers relevant, or reject it.

In this context, it is essential to underline that the regulatory technical standards shall be **in conformity with the legal mandate set out in the DORA Regulation**.

I would like to express our appreciation for the work undertaken by the ESAs to deliver the draft RTS and look forward to continuing our good cooperation on this legal act.

Yours sincerely,

Electronically signed

John BERRIGAN

Enclosure: Draft Commission Delegated Regulation supplementing Regulation (EU) 2022/2554 of the European Parliament and of the Council with regard to regulatory technical standards specifying the elements that a financial entity has to determine and assess when subcontracting ICT services supporting critical or important functions

c.c.: Aurore Lalucq MEP, Chair of the Committee on Economic and Monetary Affairs, European Parliament; Thérèse Blanchet, Secretary-General of the Council of the European Union