



Public consultation on draft Regulatory Technical Standards on the harmonisation of conditions enabling the conduct of the oversight activities under Article 41(1) point (c) of Regulation (EU) 2022/2554

Fields marked with * are mandatory.

Introduction

The European Supervisory Authorities (EBA, EIOPA and ESMA – the ESAs) has launched a public consultation on the draft Regulatory Technical Standards (RTS) to harmonise the conditions enabling the conduct of oversight activities in relation to the joint examination teams. This consultation paper and the included draft RTS cover the areas included in point (c) of Article 41(1) of Regulation 2022/2554 specifying the criteria for determining the composition of the joint examination team ensuring a balanced participation of staff members from the ESAs and from the relevant competent authorities, their designation, tasks, and working arrangements (point c above). A dedicated consultation paper covering points (a), (b) and (d) has been published on 8 December 2023 and publicly consulted by the ESAs up to 4 March 2024. The draft RTS developed complements the DORA and constitutes the regulatory framework to define the functioning of the JET, which will be complemented by specific ad hoc internal or public policies, procedures and arrangements to ensure its operational implementation.

Market participants are invited to provide their feedback to the draft technical standards by responding to the questions presented in this consultation paper.

The feedback received will be taken into account in the finalisation of the draft technical standards, which are due to be submitted to the European Commission by 17th of July 2024.

Comments are most helpful if they:

- respond to the questions stated; indicate the specific point to which a comment relates;
- contain a clear rationale;
- provide evidence (including relevant data, where applicable) to support the views expressed;
- reflect a cross-sectoral (banking, insurance, markets and securities) approach, to the extent possible;
- and describe any alternative approaches the ESAs could consider.

To submit your comments, please click on the blue “Submit” button in the last part of the present survey. Please note that comments submitted after the 18th of May 2024, ending date of the public consultation, or submitted via other means may not be processed.

* Do you agree with the publication of your comments?

- Yes, I agree with the publication of my comments.
- No, I want that my comments are treated confidential.

A confidential response may be requested from the ESAs in accordance with the ESAs’ rules on public access to documents. We may consult you if we receive such a request.

Any decision we make not to disclose the response is reviewable by the ESAs’ Boards of Appeal and the European Ombudsman.

The protection of individuals with regard to the processing of personal data by the ESAs is based on Regulation (EU) 1725/2018 of the European Parliament and of the Council of 23 October 2018. Further information on data protection can be found under the Legal notice section of the ESA websites.

General Information

* Name of the Reporting Stakeholder

Deutsche Boerse Group

Legal Entity Identifier (LEI) if available

529900G3SW56SHYNPR95

* Type of Reporting Organisation

- ICT Third-Party Service Provider
- Financial Entity
- Industry Association/Federation
- Consumer Protection Association
- Competent Authority
- Other

* Financial Sector

- Banking and payments
- Insurance and pension
- Markets and securities
- Other

* Jurisdiction of Establishment

Germany

* Geographical Scope of Business

- EU domestic
- Eu cross-border
- Third-country
- Worldwide (EU and third-country)

* Name of Point of Contact

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Questions

* Question 1: Is the content of the RTS sufficiently clear and detailed? Please make any drafting proposal that would facilitate the understanding of your responses, specifying the article(s) and the paragraph(s) targeted.

- Yes
- No

1b. If not, please provide your reasoning and suggested changes.

Text of 2 to 5000 characters will be accepted

Deutsche Boerse Group appreciates the opportunity to provide comments regarding Regulatory Technical Standards under the DORA regulation. It is important that technological progress and the opportunities it creates - such as efficiency gains, innovation and flexibility - do not unfold unregulated bringing potentially significant risks to financial stability and consumer protection. Rules and appropriate requirements for IT security are needed that promote confidence in the new technology and ensure supervisory powers to take corrective action in the event of misconduct and clearly assign responsibility.

Please find our comments and suggestions below:

Article 1(2), points (c) – (e):

Regarding information acquired through oversight activities, especially according to Articles 37, 38 and 39 of Regulation (EU) 2022/2554: It should be clarified that confidential information is not shared by the Lead Overseer or any other member of the JET outside of the entities involved in the oversight, and purely on a need-to-know principle (compare to recital 7 RTS).

Drafting proposal:

Addition of a new Article 1(4):

The Lead Overseer and the members of the joint examination team shall ensure that confidential information acquired through activities according to points (c), (d) and (e) of paragraph 2 is not shared with entities or individuals who are not involved in the oversight of critical ICT third-party service providers.

Article 1(2), point (k):

The technical term 'Unplanned ad hoc activities' is not mentioned in Articles 35 – 40 of Regulation (EU) 2022 /2554. We regard Article 1(2), point (k) of the RTS as being too generic and clarification to be needed as regards the powers of the Lead Overseer and the assistance of JET.

We kindly ask you to further clarify the situations in which an ad hoc activity could be necessary. In its current form Article 1(2), point (k) of the RTS lacks mandatory constraints and may exceed the scope defined by the level 1 regulation.

It is our understanding that Art 1(2), point (k) is not limited to those situations referred to in Art 39 (5) of Regulation (EU) 2022/2554.

Drafting proposal:

Addition at the end of Article 1(2), point (k):

Ad hoc activities shall be limited to emergency or crisis situations or measures to ensure the effectiveness of the inspection or audit.

* Question 2: Do you agree with the impact assessment and the main conclusions stemming from it?

Yes No

2a. Please provide additional comments (if any).

Text of 1 to 5000 characters will be accepted

No comment.

Contact

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