ESMA_QA_2226

Submission Date
02/07/2024

Status: Question Rejected

Additional Information

Level 1 Regulation
Regulation (EU) 2022/2554 - The Digital Operational Resilience Act (DORA)

Topic
Other DORA topics

Subject Matter
Scope of the definition of ICT services

Question
As the manager of an Alternative Investment Fund (AIF), we provide specialized investment opportunities to professional investors such as pension funds, insurers, and banks within the EU. Consequently, both our firm and our investors fall within the scope of DORA.

Our investors can access their portfolios through an online portal operated by a third-party

service provider (an ICT third-party service provider). We intend to establish a DORA addendum with this ICT third-party service provider to address this specific ICT service.

Several of our investors have inquired about DORA compliance in relation to their contractual relationship with us. While we are committed to ensuring the portal itself is compliant, we believe our core service – providing investment opportunities – does not constitute an ICT service under DORA. The online portal is merely a supplementary tool for accessing reports, not a fundamental part of our contractual obligations. This view is further supported by the fact that our agreements with investors only stipulate that we provide them with reports, without specifying the method of delivery.

Given these considerations, do you agree with our assessment that our services to investors do not fall under the definition of an ICT service as per DORA and that we, in respect of our investors, cannot be considered an ICT third-party service provider?