



Council of the  
European Union

Brussels, 5 May 2022  
(OR. en)

8532/22

---

---

**Interinstitutional File:  
2020/0266 (COD)**

---

---

**LIMITE**

**EF 122  
ECOFIN 403  
TELECOM 195  
CYBER 157  
IA 61  
CODEC 624**

**NOTE**

---

From:	General Secretariat of the Council
To:	Permanent Representatives Committee
Subject:	Regulation on digital operational resilience of the financial sector and amending Regulations (EC) No 1060/2009, (EU) No 648/2012, (EU) No 600/2014 and (EU) No 909/2014 (DORA) - Preparation of the trilogue

---

**I. Introduction**

1. On September 24, 2020, the Commission presented its "Digital Finance Package," including the proposed Regulation on Digital Operational Resilience of the Financial Sector. The Council approved its negotiating mandate in Coreper on November 24, 2021, as outlined in ST 14068/21. The European Parliament approved a negotiating mandate on December 15, 2021.
2. The first two political trilogues took place on 25 January and 29 March 2022. The substantial progress made makes it possible to envisage important steps at the next trilogue which will take place on 10 May in the European Parliament.

## II. Preparation of the third political trilogue

3. The Council working group of 2 May discussed the preparation of the third political trilogue. In addition, the results of the work carried out at technical level were sent to the Member States on 26 April, followed by an updated version on 4 May
4. Concerning the scope of the regulation:
  - i. The Presidency will again strongly insist on the exclusion of auditors, which are not financial firms, and will propose to refer their treatment to the review clause;
  - ii. The Presidency could, however, be open to excluding only medium-sized ancillary insurance intermediaries;
  - iii. Finally, the Presidency will insist on not applying the exemptions for micro-enterprises to certain market infrastructures with a high risk profile.
5. Concerning the ICT risk management framework, the Presidency could insist on the importance of not restricting certain risk management rules to only the critical and important functions of a financial company. It will continue its efforts to convince the Parliament of the usefulness of a multi-vendor strategy, but could also show some flexibility of the Council on this point.
6. Regarding ICT-related incident reporting, the Presidency will confirm the need for alignment with the NIS Directive. The Parliament would also like to discuss the proposal of the European Supervisory Authorities (ESAs) to bring forward the production of the report on the feasibility of centralizing ICT-related incident reporting at the European level. The deadline for the report, which would be drafted by the ESAs, would be aligned with the deadline for the drafting of regulatory technical standards on ICT-related incident reporting.

7. With regard to testing, the Presidency will insist on consistency with the TIBER-EU standard developed by the ECB. The Presidency could propose the European Parliament to add strict safeguards concerning the use of internal testers, to require the use of external testers periodically as well as for credit institutions supervised by the Single Supervisory Mechanism. Finally, the Presidency could accept the principle of a harmonised minimum frequency of threat-led penetration tests, while preserving certain flexibilities to take into account specific operational conditions.
8. Regarding the oversight architecture for critical third-party service providers:
- i. The European Parliament is now proposing, instead of its initial proposal, the creation of a "Joint Supervisory Network" bringing together the three ESAs and ensuring their day-to-day coordination in the exercise of their powers. This structure would not have direct supervisory powers and would be compatible with the regulations establishing the ESAs. It would add up to the oversight architecture chosen by the Council, within which the allocation of powers would remain unchanged, but would meet the European Parliament's objective of avoiding the ESAs operating in silos on issues that could impact all financial sub-sectors simultaneously. The Presidency could therefore show openness to the European Parliament's proposal.
  - ii. For the rest, the technical work carried out could be supported in general. The Presidency will in particular stress that intra-group service providers are not less risky in nature than third party providers.
9. Regarding the review clause and the application date, the Presidency will try to preserve the Council's position.
10. Finally, the Commission will submit a new proposal for the financing of tasks entrusted to the ESAs for approval by the co-legislators. For the main part, the recalibration of resources will not have an impact on the EU budget insofar as it is financed by an increase in the fees paid by the supervised entities. Contributions from the EU budget and the competent national authorities will, however, be necessary to enable the initial adaptation of the material resources of supervision.

### III. Question:

11. In the light of the previous points, the Permanent Representatives Committee is invited to support the negotiating position proposed by the Presidency
-