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| Response Form to the Consultation Paper |
| Guidelines on Outsourcing to Cloud Service Providers |

**Responding to this paper**

ESMA invites comments on all matters in this consultation paper on guidelines on outsourcing to cloud service providers and in particular on the specific questions summarised in Appendix I. Comments are most helpful if they:

* respond to the question stated;
* indicate the specific question to which the comment relates;
* contain a clear rationale; and
* describe any alternatives ESMA should consider.

ESMA will consider all comments received by **01 September 2020.**

All contributions should be submitted online at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading ‘Your input - Consultations’.

**Instructions**

In order to facilitate analysis of responses to the Consultation Paper, respondents are requested to follow the below steps when preparing and submitting their response:

1. Insert your responses to the questions in the Consultation Paper in the present response form.
2. Please do not remove tags of the type <ESMA\_QUESTION\_COGL\_1>. Your response to each question has to be framed by the two tags corresponding to the question.
3. If you do not wish to respond to a given question, please do not delete it but simply leave the text “TYPE YOUR TEXT HERE” between the tags.
4. When you have drafted your response, name your response form according to the following convention: ESMA\_COGL\_nameofrespondent\_RESPONSEFORM. For example, for a respondent named ABCD, the response form would be entitled ESMA\_COGL\_ABCD\_RESPONSEFORM.
5. Upload the form containing your responses, in Word format, to ESMA’s website ([www.esma.europa.eu](http://www.esma.europa.eu) under the heading “Your input – Open consultations” 🡪 “Consultation on Outsourcing to Cloud Service Providers”).

**Publication of responses**

All contributions received will be published following the close of the consultation, unless you request otherwise. A standard confidentiality statement in an email message will not be treated as a request for non-disclosure. A confidential response may be requested from us in accordance with ESMA’s rules on 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 ESMA’s Board of Appeal and the European Ombudsman.

**Data protection**

Information on data protection can be found at [www.esma.europa.eu](http://www.esma.europa.eu) under the heading [Legal Notice](http://www.esma.europa.eu/legal-notice).

**Who should read this paper**

This paper is primarily of interest to national competent authorities and financial market participants. In particular, this paper is of interest to alternative investment fund managers, depositaries of alternative investment funds, undertakings for collective investment in transferable securities (UCITS) management companies, depositaries of UCITS, central counterparties, trade repositories, investment firms and credit institutions which carry out investment services and activities, data reporting services providers, market operators of trading venues, central securities depositories, credit rating agencies, securitisation repositories and administrators of benchmarks (“firms”), which use cloud services provided by third parties. This paper is also important for cloud service providers, because the draft guidelines seek to ensure that the risks that may arise for firms from the use of cloud services are properly addressed.

**General information about respondent**

|  |  |
| --- | --- |
| Name of the company / organisation | ESBG |
| Activity | Banking sector |
| Are you representing an association? |  |
| Country/Region | Belgium |

**Introduction**

***Please make your introductory comments below, if any***

<ESMA\_COMMENT\_COGL\_1>

ESBG would like to submit the following comments regarding the ESMA draft Guidelines on outsourcing to cloud service providers (hereafter, draft Guidelines).

**1. General comments**

From the perspective of credit institutions, it should be noted that the EBA has already published overarching guidelines on outsourcing arrangements (EBA/GL/2019/02), which incorporate their previous cloud outsourcing recommendations (EBA/REC/2017/03). In our understanding, the EBA's outsourcing guidelines also cover investment services; at least there are some references to the MiFID II (Directive 2014/65/EU). However, the aim should be to avoid redundancies and inconsistencies with regard to existing outsourcing requirements, so that in detail, no differing requirements emerge for banks. ESBG therefore recommends ESMA to reconcile with the EBA regarding scope and content of the respective guidelines and to provide necessary clarifications within the cloud outsourcing guidelines. Ensuring cross-sectoral consistency of work is also required by ESMA Regulation 1095/2010 (Art. 2 Para. 3).

The following is just one example of deviating requirements:

**2. Definition of cloud outsourcing arrangement**

According to the draft guidelines a cloud outsourcing arrangement means the following: “*an arrangement of any form, including delegation arrangements, between:*

*(i) a firm and a CSP by which that CSP performs a function that would otherwise be undertaken by the firm itself; or*

*(ii) a firm and a third party which is not a CSP, but which relies on a CSP (for example through a suboutsourcing chain) to perform a function that would otherwise be undertaken by the firm itself. In this case, a reference to a ‘CSP’ in these guidelines should be read as referring to such third party;*”

Regarding the first part of the definition contained in paragraph (i), we consider that the following clarifications should be made (see EBA guidelines, para. 26):

Consideration should be given to whether the function (or a part thereof) that is outsourced to a service provider is performed on a recurrent or an ongoing basis by the service provider and whether this function (or part thereof) would normally fall within the scope of functions that would or could realistically be performed by institutions.

As regards the second part of the definition contained in paragraph (ii), it has to be noted that many outsourcing providers use common SaaS[[1]](#footnote-2) as email allocated in cloud infrastructures, provided by cloud service provider (CSP). This type of SaaS is not specific for developing their activities, but necessary (for example as communication tools). However, it is not clear which will be the correct consideration and management of these cases.

**3. Third parties compliance with rules on outsourcing arrangements**

Credit institutions have to comply with the requirements established in the EBA Guidelines on outsourcing arrangements and verify that intermediaries comply with them too. However, an issue of concern for credit institutions would be when these intermediaries are only subject to ESMA guidelines. Therefore, we consider that ESMA should clarify, how the banking industry can be sure of an intermediary compliance with the EBA Guidelines on outsourcing arrangements when contracting (on its own behalf or on behalf of its customers) market services with such an intermediary (e.g. chamber, clearing houses, depositary, management companies, including through standardised documentation sponsored by international organizations) that implies cloud service.

In addition it is not clear how to deal with contracts with financial intermediaries who are located in third countries and contract cloud services located outside the EU.

<ESMA\_COMMENT\_COGL\_1>

**Questions**

1. : Do you agree with the suggested approach regarding a firm’s governance and oversight in relation to its cloud outsourcing arrangements? Please explain.

<ESMA\_QUESTION\_COGL\_1>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_COGL\_1>

1. : Do you agree with the suggested documentation requirements? Please explain.

<ESMA\_QUESTION\_COGL\_2>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_COGL\_2>

1. : Do you agree with the suggested approach regarding the pre-outsourcing analysis and due diligence to be undertaken by a firm on its CSP? Please explain.

<ESMA\_QUESTION\_COGL\_3>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_COGL\_3>

1. : Do you agree with the proposed contractual requirements? Please explain.

<ESMA\_QUESTION\_COGL\_4>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_COGL\_4>

1. : Do you agree with the suggested approach regarding information security? Please explain.

<ESMA\_QUESTION\_COGL\_5>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_COGL\_5>

1. : Do you agree with the suggested approach regarding exit strategies? Please explain.

<ESMA\_QUESTION\_COGL\_6>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_COGL\_6>

1. : Do you agree with the suggested approach regarding access and audit rights? Please explain.

<ESMA\_QUESTION\_COGL\_7>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_COGL\_7>

1. : Do you agree with the suggested approach regarding sub-outsourcing? Please explain.

<ESMA\_QUESTION\_COGL\_8>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_COGL\_8>

1. : Do you agree with the suggested notification requirements to competent authorities? Please explain.

<ESMA\_QUESTION\_COGL\_9>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_COGL\_9>

1. : Do you agree with the suggested approach regarding the supervision of cloud outsourcing arrangements by competent authorities? Please explain.

<ESMA\_QUESTION\_COGL\_10>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_COGL\_10>

1. : Do you have any further comment or suggestion on the draft guidelines? Please explain.

<ESMA\_QUESTION\_COGL\_11>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_COGL\_11>

1. : What level of resources (financial and other) would be required to implement and comply with the guidelines and for which related cost (please distinguish between one off and ongoing costs)? When responding to this question, please provide information on the size, internal set-up and the nature, scale and complexity of the activities of your organization, where relevant.

<ESMA\_QUESTION\_COGL\_12>

TYPE YOUR TEXT HERE

<ESMA\_QUESTION\_COGL\_12>

1. *Software as a Service*. [↑](#footnote-ref-2)