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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**

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| --- | --- |
| Name of the company / organisation | BVI German Fund Association |
| Activity | Investment Services |
| Are you representing an association? |[x]
| Country/Region | Germany |

**Introduction**

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

<ESMA\_COMMENT\_COGL\_1>

The BVI1 gladly takes the opportunity to present its views on ESMA’s Consultation Paper on Draft Guidelines on Outsourcing to Cloud Service Providers (CSP).

The draft guidelines contain extensive requirements, especially regarding the register, due diligence / risk analysis, contract and notification obligations. Generally, we welcome that ESMA’s intention is to apply the principle of proportionality. In this context, it is important that existing supervisory practices on outsourcing and CSP at national level are sufficiently taken into account to avoid overlapping regulation (e.g. BaFin, orientation guide on outsourcing to cloud providers, https://www.bafin.de/SharedDocs/Downloads/DE/Merkblatt/BA/dl\_181108\_orientierungshilfe\_zu\_auslagerungen\_an\_cloud\_anbieter\_ba.pdf?\_\_blob=publicationFile&v=4).

1 BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Asset Managers act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI’s 114 members manage assets more than 3 trillion euros for retail investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 23%, Germany represents the largest fund market in the EU. BVI’s ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

<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>

The register of information provides a comprehensive set of documentation on cloud outsourcing. However, regarding the scope we would like to note that the requirements for a cloud outsourcing register are particularly extensive and require process-related statements that might already be included in existing descriptions of processes such as "decision making body" or "date of the next planned risk assessment/audit" etc. It is important to avoid duplicate documentation obligations as these provide no additional value but increase the administrative burden.

<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>

Yes, prior to outsourcing a pre-outsourcing analysis and due diligence should be undertaken. However, with respect to the examination the requirement to assess local insolvency and enforcement law appears to be rather far-reaching. Furthermore, depending on the actual economic situation/insurance coverage of the outsourcing company, insolvency issues might in fact only play a minor role in the evaluation. If mandatory, expert opinions and related costs on this issue might therefore be disproportionate.

<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>

Yes, for planned and unplanned exits of cloud services there should be a plan. The exit assessment should be risk-based and demonstrate the feasibility of the plan. With regard to the testing of exit plans, we would like to note that some requirements of the exit strategy cannot be reasonably tested (such as the transfer to another CSP). We therefore recommend to allow for sub-sets of exit scenarios in the test.

<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>

While guidance on the notification requirements is generally helpful, we believe that the level of detail of the notification to competent authorities should be reconsidered. Certain notification obligations will provide limited added value for supervisory authorities but cause an increased administrative burden (e.g. information re "next contractual renewal date", "notice periods for the CSP", "date of the most recent assessment of the criticality or importance of the outsourced function" etc). Information on outsourcing controlling and random checks are regularly included in the annual audit reports and the supervisory authority may already review controlling procedures.

<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>