|  |
| --- |
| 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 | ZIA German Property Federation |
| Activity | Other Financial service providers |
| Are you representing an association? |  |
| Country/Region | Germany |

**Introduction**

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

<ESMA\_COMMENT\_COGL\_1>

Dear Sir/Madam,

the German Property Federation (ZIA) is the leading association of the real es-tate industry in Germany. Through our members we represent over 37.000 companies along the entire value chain. A significant part of our members are classified as AIFMs and therefore the guidelines are of great relevance for our members.

We thank you for the opportunity of commenting the draft and answering some of your questions.

<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>

While we support ESMA’s initiative to establish clear rules for governance, oversight and documentation when outsourcing to cloud service providers, we strongly recommend to emphasize the principle of proportionality in the guidelines. Proportionality is only mentioned in no. 26c when referring to the size and complexity of firms.

In our opinion the principle of proportionality should be underlined as a crucial element for using the guidelines.

<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>

We only partially agree with the pre-outsourcing guideline. Especially regarding no. 33a we consider this requirement unnecessary as long as the client can be sure that EU law applies, that the data is protected and that he can enforce his claims against the service provider in accordance with present jurisdiction. <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>

The requirements for the exit strategy should be proportionate and take into account the reliability (availability, commitments, creditworthiness) of the CSP.

In particular, no. 44a and 44b should be formulated in such a way that there is no de-facto obligation to permanently maintain an alternative system and that these requirements do not automatically lead to an economic inefficiency of the cloud solutions.

<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>

We only partially agree with this guideline and recommend an adjustment of the proposed requirements.

We suggest to specify the term “timely manner” in no. 57 of guideline 8 to get a precise reporting time. In order to avoid unnecessary notification of an outsourced service, especially if contract negotiations between a firm and the service provider are terminated, the notification should only be submitted if the counterparties have already been entered obligations into and a contract is in place. Also we recommend to reduce the information which should be included in the written notification (no. 58), especially no. 58b, h, i and j, because this type of information goes beyond the usual reporting standard for outsourcing. Also the requested information may not be clearly identifiable at the time the notification should be delivered. <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>