

## Regulatory News Alert

### EBA finalizes outsourcing guidelines

**27 February 2019**

On 25 February, the European Banking Authority (EBA) published its revised guidelines on outsourcing arrangements. It sets out the specific provisions for the outsourcing governance frameworks applicable to financial institutions that are subject to capital requirements, as well as to payment providers. These guidelines cover outsourcing in its broadest sense, hence including cloud outsourcing.

Applicable from June 2019, the guidelines incorporate the most recent digitalization efforts and the latest financial technology as proposed by Fintech solutions.

It aims to provide a single, principle-based approach to outsourcing consistently across the key financial regulations: Payments Services Directive (PSD2), Markets in Financial Instruments Directive (MiFID II) and Commission's Delegated Regulation (EU) 2017/565 (MiFID II governance delegated regulation).

The EBA guidelines clarify:

- Which arrangements are considered outsourcing
- There are **three degrees of outsourcing: critical, important and "other"**, a concept already envisaged under MiFID rules, with NCA prior approval for the most critical outsourcing
- The management body of each financial institution remains responsible for itself and its activities at all times
- The institution should ensure sufficient resources are available to appropriately support and perform its responsibilities
- The institution oversees all risks and manages the outsourcing arrangements
- Outsourcing cannot lead to the creation of empty shells
- There must be a **sound and robust policy and process applicable to any outsourcing including for cloud** arrangements (notably preventing inappropriate use of personal data)
- A key new requirement is the need to prepare and maintain a register of all outsourcing relations (activity, contract; provider, nature of data...)
- Finally, there must be so called exit plan or contingency and remediation mechanisms in place, were the outsourcing arrangements cease to function.



The fundamental idea is that the **focus should be on substance** and, just as for the CSSF 18/698 Circular on ManCo and AIFM, the overarching principle is that **when a firm has responsibilities, it shall be able to abide by them**, and deliver.

The release of these guidelines is rather timely notably for **its provisions vis-à-vis third countries**. It recalls that financial institutions shall **comply with applicable EU legislations**, in particular regarding critical or important functions outsourced to service providers outside the EU.

Where there are clear expectations for institutions, the paper also addresses the National Competent Authorities' (NCA) monitoring activities and powers to mitigate concentration risks and ensure that outsourcing is completely assessed and documented. In due time, this may lead to some on-site visits.

### **How Deloitte can help ?**

Deloitte can help you in the design of your outsourcing arrangements and optimization; by evidencing current situations, potential gaps or breaches, and by setting up the appropriate models to optimize your resources in line with these new rules.

With its regulatory watch service, Deloitte can help you to stay on top of industry news, preparing your organization for the future.

# Your contacts

**Simon Ramos**

Partner – IM Advisory & Consulting

Leader

Tel : +352 45145 2702

[siramos@deloitte.lu](mailto:siramos@deloitte.lu)

**Xavier Zaegel**

Partner – Capital Markets/Financial Risk Leader

Tel : +352 45145 2748

[xzaegel@deloitte.lu](mailto:xzaegel@deloitte.lu)

**Jean-Philippe Peters**

Partner – Risk & Capital Management

Tel : +352 45145 2276

[jppeters@deloitte.lu](mailto:jppeters@deloitte.lu)

**Stéphane Hurtaud**

Partner – Information & Technology Risk

Tel : +352 45145 4434

[shurtaud@deloitte.lu](mailto:shurtaud@deloitte.lu)

**Benoit Sauvage**

Senior Manager – RegWatch, Strategy  
& Consulting

Tel : +352 45145 2220

[bsauvage@deloitte.lu](mailto:bsauvage@deloitte.lu)

Deloitte Luxembourg

560, rue de Neudorf

L-2220 Luxembourg

Tel: +352 451 451

Fax: +352 451 452 401

[www.deloitte.lu](http://www.deloitte.lu)

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