

Newsalert

Financial Regulation EBA Guidelines on outsourcing arrangements

On 25 February 2019 the European Banking Authority ("**EBA**") published its revised Guidelines on outsourcing arrangements.

The Guidelines, that are updating the CEBS guidelines on outsourcing that were issued in 2006 (which applied exclusively to credit institutions), aim to establish a more harmonised framework for credit institutions and investment firms, as well as for payment and electronic money institutions. The recommendation on outsourcing to cloud service providers, published in December 2017 (EBA/REC/2017/3), has also been integrated into the Guidelines.

The revised Guidelines set out which arrangements with third parties are to be considered as outsourcing; within this assessment, consideration should be given to (i) 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 (ii) whether this function (or part thereof) would normally fall within the scope of functions that would or could realistically be performed by institutions or payment institutions. The Guidelines also provide criteria for the identification of critical or important functions that have a strong impact on the financial institution's risk profile or on its internal control framework: if such functions are outsourced, stricter requirements apply to these outsourcing arrangements than to other outsourcing arrangements.

Concerning the impact of outsourcing arrangements within the overall internal control framework, each financial institution's management body remains responsible for that institution and has to ensure an effective oversight on outsourcing arrangements. The Guidelines include requirements that aim to ensure that there is effective day-to-day management by senior management or the management body, there are sound outsourcing policy and outsourcing processes, all the risks associated with the outsourcing of critical or important functions are identified, assessed and managed and there are appropriate exit plans.

Where institutions and payment institutions intend to outsource important or critical functions to entities within the same group, they should ensure that the selection of a group entity is based on objective reasons and that the conditions of the outsourcing arrangement are set at arm's length and explicitly deal with conflicts of interest that such an outsourcing arrangement may entail. However, when outsourcing within the same group, institutions and payment institutions may have a higher level of control over the outsourced function.

In relation to outsourcing to service providers located in third countries, the EBA states that financial institutions are expected to take particular care that compliance with EU legislation and regulatory requirements (e.g. professional secrecy, access to information and data, protection of personal data) is ensured and that the competent authority is able to effectively supervise financial institutions.

The revised guidelines will enter into force on 30 September 2019. The CEBS 2006 guidelines on outsourcing and the EBA's recommendation on outsourcing to cloud service providers will be repealed at the same time.

Institutions and payment institutions should complete the documentation of all existing outsourcing arrangements, other than for outsourcing arrangements to cloud service providers, in line with the Guidelines following the first renewal date of each existing outsourcing arrangement, but by no later than 31 December 2021.

For any question, please do not hesitate to call your contact lawyer at Chiomenti