



European Securities and  
Markets Authority

# 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](#).

## **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	ASSOGESTIONI
Activity	Investment Services
Are you representing an association?	<input checked="" type="checkbox"/>
Country/Region	Italy

## Introduction

*Please make your introductory comments below, if any*

<ESMA\_COMMENT\_COGL\_1>

Assogestioni<sup>1</sup>, the Italian Investment Management Association, welcomes the opportunity to respond to ESMA's Consultation Paper on Draft Guidelines on Outsourcing to Cloud Service Providers.

First of all, in general, we would like to express our appreciation for the work carried out by ESMA and, in particular, we appreciate the analysis of the specific issues related with the implementation of the abovementioned Draft Guidelines.

<ESMA\_COMMENT\_COGL\_1>

## Questions

**Q1** : 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>

As a general comment, we hereby agree with the approach adopted by ESMA regarding the promotion of the principle of proportionality. Moreover, in particular, in order to clarify the scope of the provisions, it is considered important to go beyond what is provided in the definitions, that substantially reproduce the content of art. 30, paragraph 1, of the Delegated Regulation 565/2017. To be more precise, we deem that it should be identified with greater precision when an activity or function should

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<sup>1</sup> Assogestioni represents the interest of the Italian fund and asset management industry. Its members manage funds and discretionary mandates around EUR 2.239 billion (as of June 2020).



be considered critical or important, also through the use of additional criteria or examples.

<ESMA\_QUESTION\_COGL\_1>

**Q2** : Do you agree with the suggested documentation requirements? Please explain.

<ESMA\_QUESTION\_COGL\_2>

We agree with the suggested documentation requirements, also in view of the distinction made between the critical or important functions and the other functions.

<ESMA\_QUESTION\_COGL\_2>

**Q3** : 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>

First of all, we want to reiterate that we appreciate that the principle of proportionality is promoted in the approach followed by ESMA. However, among the aspects to be assessed in the event of outsourcing of critical or important functions, in connection with the assessment of the risks to be considered in the context of pre-outsourcing, we believe that those aspects concerning the legal system of the host country of the CSP are burdensome, especially those ones related to the applicable law (including bankruptcy law) and even when the CSP is located in an EU country.

<ESMA\_QUESTION\_COGL\_3>

**Q4** : Do you agree with the proposed contractual requirements? Please explain.

<ESMA\_QUESTION\_COGL\_4>

Yes, we agree with the proposed contractual requirements.

<ESMA\_QUESTION\_COGL\_4>

**Q5** : Do you agree with the suggested approach regarding information security? Please explain.

<ESMA\_QUESTION\_COGL\_5>

Yes, we agree with the suggested approach regarding information security and, therefore, also with the approach adopted regarding the critical or important functions.

<ESMA\_QUESTION\_COGL\_5>

**Q6** : Do you agree with the suggested approach regarding exit strategies? Please explain.

<ESMA\_QUESTION\_COGL\_6>

Although we totally share the importance of having exit strategies ensuring that a firm is able to exit from cloud outsourcing arrangements without undue disruption to its business activities and services to its clients, and without any detriment to its compliance with the applicable legal requirements, as well as the confidentiality, integrity and availability of its data, especially in case of critical or important functions, we also do believe that most of the safeguards to ensure this must be included in the outsourcing written arrangements with the CSP. Apart from the possible identification



of alternative CSPs, we do believe that the development of an exit plan might result in a more theoretical than effective exercise, with limited benefits (compared to the costs) from a practical point of view.

<ESMA\_QUESTION\_COGL\_6>

**Q7** : Do you agree with the suggested approach regarding access and audit rights? Please explain.

<ESMA\_QUESTION\_COGL\_7>

We agree with the approach suggested in Guideline 6, especially because it differentiates between the case of outsourcing of “ordinary” functions and the case of outsourcing of critical or important functions.

<ESMA\_QUESTION\_COGL\_7>

**Q8** : Do you agree with the suggested approach regarding sub-outsourcing? Please explain.

<ESMA\_QUESTION\_COGL\_8>

We agree with the approach suggested in Guideline 7, especially since it considers and enhances the principle of proportionality.

<ESMA\_QUESTION\_COGL\_8>

**Q9** : Do you agree with the suggested notification requirements to competent authorities? Please explain.

<ESMA\_QUESTION\_COGL\_9>

We hereby agree with the notification requirements to competent authorities suggested in Guideline 8.

<ESMA\_QUESTION\_COGL\_9>

**Q10** : Do you agree with the suggested approach regarding the supervision of cloud outsourcing arrangements by competent authorities? Please explain.

<ESMA\_QUESTION\_COGL\_10>

Yes, we agree with the approach by ESMA.

<ESMA\_QUESTION\_COGL\_10>

**Q11** : Do you have any further comment or suggestion on the draft guidelines? Please explain.

<ESMA\_QUESTION\_COGL\_11>

We hereby reiterate the point made in our response to Q1 regarding the need to identify additional criteria or examples for the identification of critical or important functions.

Moreover, considering that the Guidelines proposed by ESMA, as it has been acknowledged by the Authority itself in the Consultation Paper, fit into the framework already traced by the Guidelines by EBA and EIOPA, we ask to clarify how the application of these Guidelines should be coordinated when the entity subject to the Guidelines proposed by ESMA is part of an insurance or banking group.



<ESMA\_QUESTION\_COGL\_11>

**Q12** : 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>

N/A

<ESMA\_QUESTION\_COGL\_12>