

## **BVI<sup>1</sup> position 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](https://www.bafin.de/SharedDocs/Downloads/DE/Merkblatt/BA/dl_181108_orientierungshilfe_zu_auslagerungen_an_cloud_anbieter_ba.pdf?__blob=publicationFile&v=4)).

### **Guideline 1. Governance, oversight and documentation**

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

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.

### **Guideline 2. Pre-outsourcing analysis and due diligence**

**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.

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.

### **Guideline 5. Exit strategies**

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

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.

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**Guideline 8. Written notification to competent authorities**

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

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.