



BANKING STAKEHOLDER GROUP

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CONSULTATION PAPER

EBA DRAFT GUIDELINES ON OUTSOURCING ARRANGEMENTS

COMMENTS

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Comments to the Consultation Paper.

We welcome the opportunity to comment on this EBA consultation paper. In particular, we appreciate the EBA introduction of a specific section on outsourcing arrangements within a group - including the situation where institutions are permanently affiliated to a central body - and within members belonging to the same institutional protection scheme (IPS).

However, it seems that intragroup outsourcing arrangements are considered as especially risky. We believe that this perception does not take into account the higher ability of outsourcing institutions to control companies within their consolidation perimeter nor the complementary measures and controls already required by other financial regulations such as the Bank Resolution and Recovery Directive. The GLs should recognise the degree of integration reached within many banking groups, where centralised functions at group level act as a service provider for the other entities of the group. In this context, the proposed requirements on documentation, due diligence, concentration risk and exit strategy prove to be less relevant or even irrelevant from an intragroup perspective

Furthermore, we believe that it is crucial – for a harmonised implementation of the guidelines - to understand the processes/services/activities that fall into the scope of outsourcing. In other words, it is of utmost importance to have a clear understanding of the **definition of outsourcing**. In this context, some clarifications are required.

Although we understand that the definition of outsourcing¹ cannot be changed to the extent that it is based on Commission delegated Regulation (EU) 2017/565², at least the EBA should shed light on the interpretation of the following aspects:

1. The meaning of "(...) not normally performed by the institutions (...)".

While we appreciate the intention of para. 23 of the draft GLs to clarify to some extent the definition of outsourcing and to exclude the acquisition of services, goods or utilities that are not normally performed by the institution, the para. is unfortunately very lean and seems limited to a minimum.

We would believe that "*normally performed*" (as mentioned by para. 23) implies a certain regularity and stability of the provision of the service. Therefore, one-off or single projects would be indicators against "normally performing". At least, we would

¹ EBA draft Guidelines on Outsourcing arrangements, para. 11: "*outsourcing means an arrangement of any form between an institution, a payment institution or an electronic money institution and a service provider by which that service provider performs a process, a service or an activity, or parts thereof that would otherwise be undertaken by the institution, the payment institution or the electronic money institution itself*".

² the proposed definition of the draft GLs is actually broader than the definition set out in the Commission delegated Regulation (EU) 2017/565 since, after "*by which that service provider performs a process, a service or an activity*" it adds the words "*or parts thereof*" that can significantly broaden the definition

like to see a clarification in this respect: **non-recurring or occasional purchase of goods or services from third parties is not outsourcing.**

In this context, as an example, the following processes/services/activities should not fall into the scope of definition of outsourcing:

- ❖ external consultancy only hired to provide technical, legal/tax, organizational or strategic advice on operations fully managed by the institution itself;
- ❖ temporary hiring of external project staff;
- ❖ staff training;
- ❖ purchasing market data or market research activities (e.g. analysis, surveys, data modelling, processing of analytical information);
- ❖ Standard ICT assets license agreement, software development agreement, supply of market/standard hardware, software platform or infrastructures as well as provision of maintenance services (both software and hardware) ancillary to the above-mentioned items;
- ❖ Public facilities (supply of electricity, water, gas, telephone and broadband) and the according ad-hoc operational assistance (this includes the provision of such services to (proprietary or rented) datacentres of banks, similar to the 'infrastructure tenant' exception).

Moreover, we would believe that services, utilities and goods "*not normally performed by the institutions*" means that they are not related to the core banking activity requiring a license. Against this background, the following processes/services/activities should not fall into the scope of outsourcing:

- ❖ payroll accounting;
- ❖ infrastructure tenant: electricity, cooling, connections,...
- ❖ purchase of computers.

2. The meaning of "*otherwise be undertaken by the institution (...) itself.*"

We would believe that "*otherwise be undertaken by the institution (...) itself*" implies that certain processes/services/activities in financial groups or networks that an institution itself cannot undertake itself due to:

- (i) legal / regulatory reasons or
- (ii) operational circumstances

should not be considered as outsourcing.

This is especially the case of small cooperative banks affiliated to a central body / institution in the context of arrangements according to Article 10 or 113(7) CRR which are characterized by a clear division-of-labour structures.

Moreover, we feel that "*otherwise be undertaken by the institution (...) itself*" could cover any third party agreement, since it is obvious that if an institution subject to these guidelines needs a service and there is not a reliable provider in the market it will produce the service itself, even though it is not part of its main activity.

Therefore, it should be made clear that only arrangements made with third parties in relation to activities that are subject to approval/licensing by financial authorities and

are not usually provided by specialized third parties (as it is the case of utilities supply, security services, etc.) are considered outsourcing.

In this context, the following processes/services/activities provided by the parent undertaking/central institution do not fall into the scope of outsourcing:

- ❖ Services of clearing houses within the framework of payment transactions and securities settlement;
- ❖ Risk models;
- ❖ Liquidity management;
- ❖ Internal auditing.

Intragroup outsourcing

Intragroup outsourcing should be subject to lower obligations than extra-group third-party outsourcing agreements. The GLs should recognise the degree of integration reached within many banking groups, where centralised functions at group level act as a service provider for the other entities of the group. In this context, the proposed requirements on documentation, due diligence, concentration risk and exit strategy prove to be less relevant or even irrelevant from an intragroup perspective

Notification/Information

It should also be clarified that no prior approval by the NCA and also no notification or information to the NCA are necessary for an outsourcing arrangement. The proposed information requirements for the institutions will not generate any justifiable value added. The requirement for advanced notification from CEBS GL from 2006 was also not implemented by many competent authorities in the past for good reasons.

To give a little bit more insight (with regard to notification/information requirement) we would like to share the follow thoughts:

A Bank plans activities, which are in line which the criteria of outsourcing (activities related and close to banking business). This bank sends an information/notification to supervisor. Afterwards some changes can happen, e.g.:

- Scope of outsourcing activities
- Name of outsourcing company
- Changes in the assessment regarding whether the outsourcing is critical or important.
- Etc.

The changes would mean that an additional information is required. We believe that a lot of information could be necessary and send to the supervisor. Who, from the supervisor, will analyse this information? Is the requirement useful? Is it better so send one update with this information each year to the supervisor?

In our view, it would be sufficient for any bank to have a repository available which could be delivered upon request to the NCAs. Nevertheless, if these Guidelines keep the obligation to inform Competent Authorities, it should become an ex-post requirement, that is, it should be allowed that institutions inform Competent Authorities after the outsourcing arrangement has been put in place. This would avoid that some Competent Authorities interpret this information requirement as an authorization procedure.

Table of Requirement:

Across the GLs it is not clear which requirements apply to general outsourcing, which to outsourcing of a critical or important function and which to intragroup arrangements respectively. In order to provide clarity on which are the specific requirements for each type of outsourcing, it would be helpful to compile them all in a specific table or diagram to identify which are applicable to each service. At least, each chapter should clearly define for which kind of outsourcing is each rule applicable

Register

In addition to the definition, the other aspect which represents a new development is the so-called register. According to the draft Guidelines, "*institutions (...) should maintain a register of all outsourcing arrangements at institution and group level (...)*".

In this context, we appreciate that less restrictive provisions are provided concerning the maintenance of register for institutions within a group, permanently affiliated to a central body or which are members of the same IPS.

However, due to the important administrative burden this register would imply and in line with the low level of risk related to outsourcing of non-critical or non-important function, we consider that its content should be limited to arrangements related to outsourcing (including cloud outsourcing) of critical or important function.

In case all arrangements remained in the scope of the register, we consider that for the arrangements of non-critical or non-important function the documentation should be limited to:

- ❖ a brief description of the function outsourced;
- ❖ the name of the service provider.

Scope of application and transitional period

We believe that the scope of the guidelines should be limited to critical/important outsourcing agreements. Extending the guidelines' contractual requirements to non-critical/non-important outsourcing arrangements means that financial institutions are prevented from entering into a non-critical/non-important outsourcing agreement with a service provider unless a contractual right for the institution and its competent

authorities to access and audit the service provider, is granted. This seems disproportional given the low(er) level of risk.

Exit strategies.

We believe that in particular comprehensive exit strategies should be mandatorily developed for outsourcing of important and critical functions as exactly in such cases continuity of services are endangered. We further believe that the term “tested” could be misinterpreted in a way that a successful transfer or in-housing of outsourced functions could be requested which would in fact be very burdensome (if not connected with major risks as some outsourcings are usually requiring several years of preparation, e.g. outsourcing of core-banking systems or move of services from captive providers to external providers). Therefore, we propose the rewording of paragraph 90a of the Draft GL as follows:

“90. Institutions and payment institutions should ensure that they are able to exit outsourcing arrangements, without undue disruption of their business activities or adverse effects on their compliance with the regulatory framework and without detriment to the continuity and quality of its provision of services to clients. To achieve this, they should:

a. develop and implement exit plans for the outsourcing of important or critical functions that are addressing the main considerations (e.g. potential costs, impact, resource and timing implications of transferring an outsourced service to alternative provider) relevant to execute an exit and which are sufficiently documented;”

Transitional period.

Although we appreciate the introduction of a transitional period – i.e. 31 December 2020 - to “*complete the documentation of all existing outsourcing arrangements (...) in line with these guidelines (...)*”, we would suggest a more appropriate timeframe.

Moreover, since the draft guidelines differentiate between different types of outsourcing with different risk profile and requirements, we suggest that this transitional period only apply to outsourcing arrangements of critical or important functions and the rest of arrangements can be aligned with the guidelines once the contract is renewed.