

The European Banking Authority's Guidelines on Outsourcing - as transposed by national competent authorities across the EU Member States

The European Banking Authority's Guidelines on Outsourcing became effective in September 2019 and have now been transposed by national competent authorities in most EU Member States. This guide provides an overview of selected topics addressed in the EBA Outsourcing Guidelines and national differences across the EU Member States.

June 2021

Background

The European Banking Authority's Guidelines on Outsourcing (**EBA Outsourcing Guidelines**) addressed to competent national authorities in the EU Member States, financial institutions¹, payments institutions and e-money institutions became effective in September 2019.

The EBA Outsourcing Guidelines set out the internal governance arrangements, including sound risk management, that financial institutions, payment institutions and e-money institutions should implement when outsourcing functions, in particular with regard to the outsourcing of critical or important functions.

In line with the requirement in the EBA Outsourcing Guidelines for competent national authorities to supervise financial institutions', payment institutions' and e-money institutions' compliance with the EBA Outsourcing Guidelines, the EBA Outsourcing Guidelines have been transposed in national law in most EU Member States.

The approach taken by the EU Member States varies a bit – as set out in this overview – and some Member States have introduced stricter national requirements compared to the requirements laid down in the EBA Outsourcing Guidelines.

Outsourcing Overview

This outsourcing guide provides an overview of the following selected topics addressed in the EBA Outsourcing Guidelines:

- 1 Scope & Implementation
- 2 Subcontractors
- 3 Audit Rights
- 4 Termination Rights
- 5 Transitional Services
- 6 Notification to Regulators
- 7 Outsourcing Officer

The overview covers Belgium, Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Netherlands, Poland, Slovakia, Spain, Sweden and UK.

¹ As defined in point 3 of Article 4(1) of Regulation (EU) No 575/2013

Scope & Implementation

The EBA Outsourcing Guidelines became effective on 30 September 2019 to all outsourcing arrangements entered into, reviewed or amended on or after this date, and financial institutions, payment institutions and e-money institutions were obligated to review and amend accordingly existing outsourcing arrangements with a view to ensuring that these were compliant with the EBA Outsourcing Guidelines.

For existing outsourcing agreements, the EBA Outsourcing Guidelines lay down that financial institutions, payment institutions and e-money institution are obligated to complete the documentation of all existing outsourcing arrangements, other than for outsourcing arrangements to cloud service providers, in line with the EBA Outsourcing Guidelines following the first renewal date of each existing outsourcing arrangement, but by no later than 31 December 2021.²

Belgium

The National Bank of Belgium (NBB) Circular 2019_19 transposing the EBA Outsourcing Guidelines became effective as of 30 September 2019.

Outsourcing agreements entered into prior to 30 September 2019 must be compliant with the EBA Outsourcing Guidelines by 31 December 2021.

The NBB Circular is applicable to less significant institutions i.e. those that are not supervised by the ECB. It is recommended that significant institutions (i.e. those supervised by the ECB) comply with NBB Circular to the extent the ECB does not publish similar guidance.

Regulated entities covered by the NBB Circular: Belgian credit institutions, Belgian stockbroking firms, local branches of non-EU credit institutions and investment firms; Belgian payment institutions (not AISPs), and Belgian e-money institutions.

Note on local branches of non-EU institutions: Branches are required to comply with EBA Outsourcing Guidelines even in case of intra-group outsourcing. However, 'intra-entity outsourcing' is not in scope, i.e. local outsourcing of a function to the head office or to another branch of the same legal entity. This exclusion also includes situations where a branch makes use of the outsourcing arrangements concluded by its head office or by another branch office of the same legal entity.

Czech Republic

The Czech National Bank (CNB) issued a statement on 30 September 2019 saying that it will comply with the EBA Outsourcing Guidelines when executing its supervision.

Denmark

The Danish executive order no. 877 of 12 June 2020 (**Danish Outsourcing Order**) transposing the EBA Guidelines generally became effective as of 1 July 2020 and is applicable to outsourcing agreements entered into, amended or renegotiated on or after 1 July 2020.

Outsourcing agreements entered into prior to 1 July 2020 must be compliant with the requirements in the new executive order no later than 31 December 2022.

The Danish Outsourcing Order is applicable to credit institutions, mortgage-credit institutions, investments firms, investment management companies, savings undertakings, shared data centres, operators of regulated markets, e-money institutions, payment institutions (not AISPs), and Danmarks Skibskredit A/S.

Finland

The Finnish Financial Supervisory Authority (**FIN-FSA**) has issued guidelines on outsourcing which most recently were revised in November 2018. The EBA Outsourcing Guidelines have currently not been transposed in Finland.

² Some EU Member States have – as set out in the following – extended the deadline to December 2022

The current Finnish outsourcing guidelines are applicable to credit institutions, management companies, exchanges, Finnish branches of foreign credit institutions authorised in a non-EEA country (branches of credit institutions of a third country), and payment institutions.

France

The French Banking Authority's ("ACPR") compliance notice transposing the EBA Guidelines generally became effective as of 30 September 2019.

It is applicable to outsourcings agreements entered into, amended or renegotiated on or after 30 September 2019.

There is no specific delay under French law, in order to update the outsourcing agreement. Therefore, the EBA deadline should prevail (which is 31 December 2021).

However, the institutions have one year from the publication of the order of 6 January 2021 to bring outsourcing contracts (concerning the AML-CTF obligations) concluded before 1 March 2021 into line with the regulations set out in the same order.

The regulation will be applicable to credit institutions, financing institutions, investment firms, payment institutions and account information service providers, e-money institutions.

Germany

The German Federal Financial Supervisory Authority (**BaFin**) has originally confirmed compliance with the EBA Outsourcing Guidelines by 31 December 2020 within the framework of comply or explain. BaFin will implement the EBA Outsourcing Guidelines in its "*Minimum Requirements for Risk Management (MaRisk)*". A corresponding amendment was consulted, but a new publication of the MaRisk has still not taken place. In a communication issued in the meantime, BaFin has acknowledged delays in the revision of MaRisk. The implementation date of December 31 2020 was missed. A new deadline has not yet been set. The EBA Guidelines are expected to be implemented in the course of 2021. The following statements relate to the consulted draft MaRisk (and are therefore subject to its final form).

New/changed outsourcing agreements: The current draft of MaRisk does not provide for any details in this regard.

Existing outsourcing agreements: There will be transition periods in line with the principle of proportionality. Further details remain to be determined.

The regulation will be applicable to credit institutions, financial services institutions, companies domiciled abroad which maintain a branch in Germany that conducts banking business or provides financial services (unless passported from another EEA state), branches of German institutions abroad, securities trading banks.

Hungary

The Recommendation No. a 7/2020. (VI.3.) from the Hungarian Central Bank (**MNB Recommendation**) implemented the EBA Outsourcing Guideline and became effective as of 5 May 2020.

The MNB Recommendation is applicable to outsourcings agreements entered, amended or renegotiated on or after 1 April 2021.

Outsourcing agreements entered into prior to 1 April 2021 must be compliant with the requirements in the MNB Recommendation no later than 31 December 2022.

The MNB Recommendation is applicable to credit institutions, group financial companies that are not financial holding companies, non-group financial enterprises with a balance sheet total of over HUF 5 billion, financial holding companies, mixed financial holding companies, investment firms, and payment service providers.

Italy

The EBA Outsourcing Guidelines are implemented with regard to credit institutions. However, as the EBA Outsourcing Guidelines concern other intermediaries such as investment firms, payment institutions and electronic money institutions, the Bank of Italy and Consob (Italian national commission for listed companies and the stock exchange) still have to expressly adopt the relevant implementing provisions. The Bank of Italy Circular transposing the EBA Outsourcing Guidelines generally became effective as of 24 September 2020.

It is applicable to outsourcing agreements entered into, amended or renegotiated on or after 24 September 2020.

Outsourcing agreements entered into prior to 24 September 2020 must be compliant with the requirements in the new executive order no later than 31 December 2021.

It is applicable to credit institutions, investment firms, payment institutions and electronic money institutions, as well as the Supervisory Authorities themselves.

Netherlands

The EBA Outsourcing Guidelines have effect in national law after the Dutch competent authority (DNB) has incorporated the EBA Outsourcing Guidelines into its policy. Before the DNB adopts that policy, it must inform the EBA of its intention to apply the EBA Outsourcing Guidelines in whole or in part.

The DNB informed the EBA that it intends to comply with the EBA Outsourcing Guidelines by such time as the necessary legislative or regulatory proceedings have been completed. At this point national legislation exempts intra-group outsourcing to group entities within the EU/EEA from the DNB's supervision. As a result, the DNB cannot fully comply with the EBA Outsourcing Guidelines yet. However, the consultation period for the decree containing the amendments to bring the provisions on intra-group outsourcing in line with the EBA Outsourcing Guidelines has already passed, and the decree is scheduled to be published this year.

Poland

The Polish Financial Supervision Authority (KNF) has issued a communication which indicates that the EBA's Outsourcing Guidelines should apply, excluding the part of the EBA Outsourcing Guidelines relating to cloud and cloud services, which are regulated in a separate KNF communication. However, where Polish law provides for stricter rules with respect to banking outsourcing, Polish law prevails.

It applies to outsourcing agreements entered into, amended or renegotiated on or after 30 June 2020.

Outsourcing agreements entered into prior to 30 June 2020 must be compliant with the EBA

Outsourcing Guidelines no later than on 31 December 2021.

It is applicable to credit institutions, payment institutions, e-money institutions.

Slovakia

The Slovak National Bank issued a Methodical Guideline as of 14 December 2020 transposing the EBA Outsourcing Guidelines and generally became effective in Slovakia as of 22 December 2020.

It is applicable to outsourcing agreements entered into, amended or renegotiated on or after 22 December 2020.

Institutions and payment institutions should review and amend accordingly existing outsourcing arrangements with a view to ensuring that these are compliant with EBA Outsourcing guidelines.

It is applicable to credit institutions, payment institutions and e-money institutions.

Spain

The EBA Outsourcing Guidelines as adopted by the Bank of Spain became effective as of 30 September 2019.

It is applicable to outsourcing agreements entered into, amended or renegotiated on or after 30 September 2019.

Outsourcing agreements entered into prior to 30 September 2021 must be compliant with the requirements under the EBA Outsourcing Guidelines no later than 31 December 2021.

It is applicable to credit institutions, investment firms, e-money institutions and payment institutions (excluding AISPs whose regulated activity is based solely on the provision of AIS).

Sweden

The EBA Outsourcing Guidelines have not been specifically transposed into Swedish law, however, the EBA Outsourcing Guidelines are directly applicable as the Swedish Financial Supervisory Authority's (SFSA) view is that the EBA Outsourcing Guidelines' status is the same as Swedish general guidelines issued by the SFSA.

It is applicable to credit institutions, securities companies, payment institutions and electronic

money institutions. Note that the SFSA has stated that the EBA Outsourcing Guidelines shall function as a general guidance for all companies in the financial sector. According to the SFSA, complying with the guidelines may be a way to comply with applicable outsourcing rules even if the EBA Outsourcing Guidelines should not formally apply to the operations.

UK

The FCA and PRA notified that it will comply with the EBA Outsourcing Guidelines. In relation to Brexit, the FCA and the PRA has stated that it expects Institutions to continue to comply with EBA Outsourcing Guidelines. The PRA has published a Supervisory Statement (**PRA SST**) which sets out the PRA's expectations of how PRA authorised firms should comply with regulatory requirements and expectations relating to outsourcing and third-party risk management.

The PRA SST aims to implement the EBA Outsourcing Guidelines but also provides further clarity and requirements on how regulated firms ought to engage and contract with third parties. The PRA expects outsourcing arrangements entered into on or after 31 March 2021 to be compliant with the PRA SST and for all relevant outsourcing agreements to comply with the PRA SST by 31 March 2022.

The EBA Outsourcing Guidelines are applicable to banks, building societies, IFPRU categorised investment firms, electronic money institutions and payment institutions (**Institutions**). The PRA SST is only applicable to banks, building societies and PRA authorised investment firms (i.e. it does not apply to e-money institutions or payment institutions).





Subcontractors

The EBA Outsourcing Guidelines lay down requirements for sub-outsourcing of critical or important functions as set out in Section 13.1 of the EBA Outsourcing Guidelines.

This includes the following requirements:

- The service provider to inform the outsourcing undertaking of any planned sub-outsourcing, or material changes thereof.
- Where appropriate, the outsourcing undertaking shall have the right to object to intended sub-outsourcing, or material changes thereof, or require explicit approval.
- The notification period shall at least allow the outsourcing undertaking to carry out a risk assessment of the proposed changes and to object to changes before the planned sub-outsourcing, or material changes thereof, come into effect.

Denmark

Generally transposed in line with the EBA Outsourcing Guidelines. The Danish FSA has in their guidelines to the Danish Outsourcing Order clarified that the outsourcing undertaking may terminate the outsourcing agreement in case a new subcontractor/changes in sub-outsourcing is not acceptable but cannot by objecting block the use of the new subcontractor/change in subcontractor.

Further, with respect to the length of the notice period the Danish FSA is of the view that the notice period may need to allow the outsourcing undertaking to be able to insource or transfer the services to another provider within the notice period.

Finland

The FIN-FSA recommends that if an outsourced material activity is outsourced further to a third party, the supervised entity shall notify FIN-FSA hereof.

Germany

In case of sub-outsourcing, the contractual requirements must include an obligation on the

part of the service provider to inform the outsourcing undertaking. It must be ensured that the service provider remains obligated to report to the outsourcing undertaking in the event of a further outsourcing to a subcontractor.

With regard to sub-outsourcing, the outsourcing agreement should, if possible, contain reservations of consent on the part of the outsourcing undertaking or concrete conditions as to when further outsourcing of individual work and process steps is possible.

Hungary

Where the outsourcing agreement allows the use of a contributor, the outsourcing agreement is expected to include any planned use of the contributor and any material changes to the use of the contributor, in particular that may affect the contractual obligations between the financial institution and the service provider, that there is an obligation to inform the financial institution in advance.

The outsourcing agreement shall ensure that retaining a contributor and material changes affecting the contributor are allowed only with the prior consent of the financial institution, or the financial institution has the right to prevent them in some other way.

The notification period must be long enough for the financial institution to be able to assess the development of risks.

Poland

For banking outsourcing the main provider can only have one level of subcontractors; namely subcontractors cannot use any further contractors. For the purpose of engaging subcontractors, the bank's approval is required.

Spain

Generally transposed in line with the EBA Outsourcing Guidelines. However, national law prohibits credit institutions to outsource functions involving regulated activities that are reserved to them as well as outsourcing of regulated payment

services, which is only possible where the service provider in which the payment services are outsourced is authorised or registered by a competent authority to carry out regulated payment services.

UK

The UK transposes EBA Guidelines but the PRA SST also sets out a (non-exhaustive) list of situations where firms may consider exercising its contractual right to terminate the outsourcing agreement in relation to sub-outsourcing (e.g. where actions taken by a sub-outsourcer following an incident fail to deliver appropriate remediation).

Belgium, Czech Republic, France, Italy, Netherlands, Slovakia and Sweden

Generally transposed in line with the EBA Outsourcing Guidelines.



Audit Rights

The EBA Outsourcing Guidelines lay down requirements for audits of critical or important functions as set out in Section 13.3 of the EBA Outsourcing Guidelines. This includes the following requirements:

- With regard to the outsourcing of critical or important functions, outsourcing undertakings should ensure within the written outsourcing agreement that the service provider grants them and their competent authorities, including resolution authorities, and any other person appointed by them or the competent authorities, the following:
 - a full access to all relevant business premises (e.g. head offices and operation centres), including the full range of relevant devices, systems, networks, information and data used for providing the outsourced function, including related financial information, personnel and the service provider's external auditors ('access and information rights'); and
 - b unrestricted rights of inspection and auditing related to the outsourcing arrangement ('audit rights'), to enable them to monitor the outsourcing arrangement and to ensure compliance with all applicable regulatory and contractual requirements.
- Outsourcing undertakings should ensure that the outsourcing agreement or any other contractual arrangement does not impede or limit the effective exercise of the access and audit rights by them, competent authorities or third parties appointed by them to exercise these rights.
- Outsourcing undertakings may use:
 - a pooled audits organised jointly with other clients of the same service provider, and performed by them and these clients or by a third party appointed by them, to use audit resources more efficiently and to decrease the organisational burden on both the clients and the service provider;

- b third-party certifications and third-party or internal audit reports made available by the service provider.

Finland

The outsourcing undertaking must ensure that outsourcing providers continuously provide them with all information necessary for official supervision, risk management and internal control, and that they have the right to forward such information to the FIN-FSA. The FIN-FSA shall, confidentiality provisions notwithstanding, have the right to obtain all information that is necessary for supervisory purposes at the place of business of the outsourcing provider. A clause granting FIN-FSA access to information and right of inspection should be included in outsourcing contracts.

France

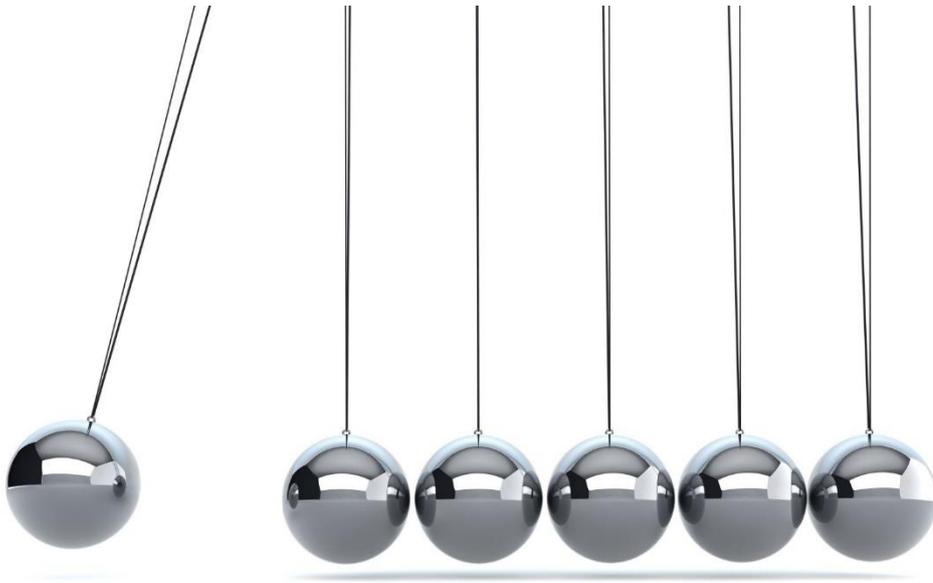
The outsourcing undertakings shall ensure, in their relations with their external providers, that the latter accept that the ACPR or any other equivalent foreign authority may have access to information on outsourced activities necessary for the exercise of its mission, including on site.

Furthermore, the outsourcing agreement should allow outsourcing undertakings, whenever necessary, to access, where appropriate, on the spot, to any information on the services made available to them, in compliance with the regulations on the communication of information.

Germany

In the case of significant outsourcing, the written outsourcing agreement shall in particular stipulate appropriate information and audit rights of the internal audit department as well as external auditors. Ensuring the unrestricted information and audit rights as well as the control options of the competent authorities with regard to the outsourced activities and processes also includes access rights to the buildings of the outsourcing company relevant for the outsourced processes and activities (e.g. administration buildings, computer centres, production buildings).

In the case of significant outsourcing, provisions on the possibility and modalities of further outsourcing must be agreed in the written outsourcing



agreement to ensure that the institution continues to comply with the requirements of the banking supervisory law.

The outsourcing agreement shall include appropriate audit rights for external auditors.

Hungary

Outsourcing agreements involving a critical or important function are expected to be under unrestricted access and audit rights determined in accordance with points (n) and (o) using a risk based approach (taking into account the nature of the function, 24/30 associated operational and reputational risk and whether the function is critical or whether it can become an important function).

Poland

The KNF and the bank has the right to inspect the outsourcing undertaking's premises. Moreover, the KNF has the right to check the outsourcing undertaking's financial situation.

Spain

Generally transposed in line with the EBA Outsourcing Guidelines. Additionally, payments and e-money institutions shall ensure that the

arrangement includes a clause providing for direct and unrestricted access by the institution and the

Bank of Spain to the institution's information held by the third parties, as well as the possibility of verifying, on the third parties' own premises, the suitability of the systems, tools or applications used in the provision of outsourced functions. In addition, if the third party is based abroad, a clause must be included specifying the jurisdiction of the country to which the contract will be subject, so that the institution is aware of the potential legal risks it may incur in the event of conflict.

UK

In addition to the EBA Outsourcing Guidelines, the PRA SST states that PRA authorised firms should ensure the agreement provides the firm, its auditors, the PRA and the Bank of England (as a resolution authority) and any other person appointed by the firm, PRA or Bank of England with full access and unrestricted rights for audit and information to enable firms to (i) comply with its legal and regulatory obligations and (ii) monitor the arrangement.

Belgium, Czech Republic, Denmark, Italy, Netherlands, Slovakia and Sweden

Generally transposed in line with the EBA Outsourcing Guidelines.



Termination Rights

The EBA Outsourcing Guidelines lay down requirements for termination rights as set out in Section 98 of the EBA Outsourcing Guidelines:

The outsourcing arrangement should expressly allow the possibility for the outsourcing undertaking to terminate the arrangement, in accordance with applicable law, including in the following situations:

- a where the provider of the outsourced functions is in a breach of applicable law, regulations or contractual provisions;
- b where impediments capable of altering the performance of the outsourced function are identified;
- c where there are material changes affecting the outsourcing arrangement or the service provider (e.g. sub-outsourcing or changes of sub-contractors);
- d where there are weaknesses regarding the management and security of confidential, personal or otherwise sensitive data or information; and
- e where instructions are given by the institution's or payment institution's competent authority, e.g. in the case that the competent authority is, caused by the outsourcing arrangement, no longer in a position to effectively supervise the institution or payment institution.

Finland

FIN-FSA recommends that an outsourcing agreement concerning material activities include outsourcing entities' rights to cancel or terminate the contract.

France

The outsourcing activity may, if necessary, be interrupted without prejudice to the continuity or quality of the services provided to customers. But French law does not describe into detail the transitional services regarding the critical/important outsourcing.

Germany

In the case of significant outsourcing, termination rights and reasonable notice periods in particular shall be agreed in the written outsourcing agreement.

The outsourcing agreement should require the outsourcing entity, in the event of termination, to assist the institution in transferring the outsourced activity or process to another outsourcing/service provider or reintegrating it into the institution. Notice periods need to be appropriate.

Hungary

It is expected to be explicitly stated in the outsourcing agreement that a financial institution shall have the right to terminate the outsourcing agreement in the following cases:

- a the external service provider infringes applicable laws or regulations, or its contractual obligations,
- b circumstances arise that may alter the outsourced function performance,
- c deterioration in the quality of the function performed and inadequate or defective function actual or potential business interruptions resulting from the provision of harm to the interests of the financial institution's customers,
- d significant risks to the proper and continuous operation of the function growth,
- e the outsourcing agreement or external service provider (such as an intermediary or a change in the identity of the contributor) change management, the security of protected data deficiency, summoning or obliging the supervisory authority (e.g. because of the outsourcing agreement impedes effective supervision of the financial institution).

Poland

Banking outsourcing agreement can be concluded as one of several types of agreements (depending on the type of outsourced activities) under the Polish Civil Code (e.g., agency agreement, contract of

mandate). Each of them provides for termination rights.

Depends on what type of agreement is concluded. However, usually the bank has the right to terminate the agreement without termination notice in certain situations. Moreover, the market practice is that the termination occurs upon the KNF's demand (KNF demands from the bank to terminate the outsourcing agreement if performance of the agreement jeopardises the prudent and stable management of the bank or the insourcer has lost the required authorisations necessary to perform this agreement) and/or if material incompliance with Polish law and/or the KNF's recommendations, can be proceeded without any notice of termination.

UK

The PRA SST states that the outsourcing agreement should expressly include termination rights covering both stressed scenarios (e.g. following the failure or insolvency of the service provider) and non-stressed scenarios (e.g. due to commercial, performance, or strategic reasons). There are additional rights that should be included in relation to sub-outsourcing as set out in the sub-outsourcing section above.

[Belgium, Czech Republic, Denmark, Italy, Netherlands, Slovakia, Spain and Sweden](#)

Generally transposed in line with the EBA Outsourcing Guidelines.



Transitional Services

The EBA Outsourcing Guidelines lay down requirements for transitional services as set out in Section 99 of the EBA Outsourcing Guidelines:

The outsourcing arrangement should facilitate the transfer of the outsourced function to another service provider or its re-incorporation into the outsourcing undertaking.

To this end, the written outsourcing arrangement should:

- a clearly set out the obligations of the existing service provider, in the case of a transfer of the outsourced function to another service provider or back to the outsourcing undertaking, including the treatment of data;
- b set an appropriate transition period, during which the service provider, after the termination of the outsourcing arrangement, would continue to provide the outsourced function to reduce the risk of disruptions; and
- c include an obligation of the service provider to support the outsourcing undertaking in the orderly transfer of the function in the event of the termination of the outsourcing agreement.

Finland

The notification to the FIN-FSA of the outsourcing must include a description of how the supervised entity intends to preserve key areas of competence relating to the outsourced activities so that they can be resumed by the supervised entity itself or transferred to another supplier.

Germany

The outsourcing agreement should require the outsourcing/service provider, in the event of termination, to assist the outsourcing institution in transferring the outsourced activity or process to another outsourcing/service provider or reintegrating it into the institution.

When outsourcing activities and processes in control areas and core banking areas, it must be ensured that, if necessary - in the event of

termination of the outsourcing relationship or a change in the group structure - orderly operations can continue in these areas.

Hungary

The exit plan is expected to include the following:

- a) it shall be determined in accordance with the financial institution's service
- b) it shall be comprehensive, properly documented and tested (taking into account the different functions of the outsourcing or re-functionality to your own organizational framework impact, costs, resource requirements and time requirements),
- c) it shall include alternative solutions as well as outsourced function and external the movement of data held by the service provider and the critical or important function or ensuring business continuity and continuity of service, controlled and properly tested measures

Poland

The KNF's expectation is that the transition period is as long as needed to enable smooth transition to another provider and/or taking over the outsourced service by the bank.

UK

In addition to the EBA Outsourcing Guidelines, the PRA SST states that the outsourcing agreement should expressly include exit strategies covering both stressed scenarios (e.g. following the failure or insolvency of the service provider) and non-stressed scenarios (e.g. through a planned and managed exit due to commercial, performance, or strategic reasons). Also, the outsourcing agreement should take account of a firm's impact tolerances for important business services, which should include a commitment on both parties to take reasonable steps to support the testing of exit plans.

Belgium, Czech Republic, Denmark, Italy, Netherlands, Slovakia, Spain and Sweden

Generally transposed in line with the EBA Outsourcing Guidelines.



Notification to National Regulators

The EBA Outsourcing Guidelines lay down requirements for notification of competent authorities as set out in Section 59 of the EBA Outsourcing Guidelines.

Outsourcing undertakings should adequately inform competent authorities in a timely manner or engage in a supervisory dialogue with the competent authorities about the planned outsourcing of critical or important functions and/or where an outsourced function has become critical or important.

Belgium

Notice must be given adequately (i.e. by using dedicated template) and in a timely manner (i.e. min. two-month notice). Information referred to in para. 54 of EBA Outsourcing Guidelines must be included.

The NBB clarified that a function which is not critical or important may become critical or important for several reasons (e.g. amendment to outsourcing arrangement, or a change in the circumstances). A dedicated template is made available on the NBB's website.

Notification in the event of material changes to and/or critical incidents concerning outsourced critical or important functions: the NBB requires all information referred to in para. 54 and 55 of the EBA Outsourcing Guidelines. The information can be provided to the NBB by using the dedicated template or by submitting the extract of the outsourcing register.

Denmark

Generally transposed in line with the EBA Outsourcing Guidelines. However, payment institutions and e-money institutions are required to notify all outsourcings and not just critical or important outsourcings.

Finland

The FIN-FSA must be notified in advance of outsourcing of a material activity. On the basis of the details in a supervised entity's notification for outsourcing arrangements, FIN-FSA will assess whether the planned outsourcing project is likely to impede the supervised entity's internal control or risk management, conduct of business or any other material activities or hinder efficient supervision by FIN-FSA.

France

Payment institutions, account information service providers and electronic money institutions that intend to outsource operational functions of payment services or electronic money issuance and management shall inform the ACPR in advance.

Germany

No notification requirement.

Hungary

The notification to the MNB related to the conclusion of outsourcing agreements, the deadline and content of the obligation is determined by the applicable sectoral legislation. The notification must be done in a timely manner prior to a planned critical or important outsourcing.

Italy

Banks are required to file a prior notification with Bank of Italy or ECB (as the case may be) before proceeding with the outsourcing of critical or important functions. Banks are also entitled to engage in a preliminary discussion with the supervisory authority on the most relevant and/or innovative outsourcing projects, before proceeding with the outsourcing.

Banks shall inform the ECB or Bank of Italy if a function has been subsequently qualified as a critical or important operational function. Banks must also promptly inform the ECB or Bank of Italy of significant changes and/or serious events

concerning their outsourcing arrangements that could have a significant impact on the continuity of their business operations.

After approval by the competent bodies of the outsourcing undertaking, the latter shall file a prior notice to the Supervisory Authority before proceeding with the outsourcing of critical or important functions.

Poland

Approval: The bank is obliged to obtain the KNF's approval if: (i) the service provider has no permanent place of residence or registered office in the EEA, or the outsourcing provides that the outsourced services will be performed outside the EEA, (ii) if the bank delegates the performance of activities other than those explicitly indicated in the Polish Banking Law. The payment institution is obliged to inform the KNF of the outsourcing of an important function.

Notification: Banking outsourcing: 14 days prior to the planned conclusion of the outsourcing agreement that provides for one off emergency service to be provided by the non-EEA insourcer. Payment outsourcing: 14 days prior to planned conclusion of the outsourcing agreement. Clouds services: 14 days notification prior to planned commencement of provision of the services.

Spain

Requirement of notification of critical/important outsourcing to the Bank of Spain. Payments and e-money institutions are also required to notify non-critical or important outsourcings.

For payments and e-money institutions, 1 month prior to a planned critical or important outsourcing or in the period of 1 month after a non-critical or important outsourcing has entered into effect. Credit institutions are required to notify the outsourcing of critical or important functions prior to them becoming effective.

UK

Requirement of notification of critical/important outsourcing to the FCA or PRA. The regulator has a right to ask for a copy of the agreement or draft agreement and to ask more information on the outsourcing arrangement. The notification must be done in a timely manner prior to a planned critical or important outsourcing.

Czech Republic, Netherlands, Slovakia and Sweden

Generally transposed in line with the EBA Outsourcing Guidelines.





Outsourcing Officer

The EBA Outsourcing Guidelines lay down requirements in Section 38 for outsourcing undertakings to establish an outsourcing function or designate a senior staff member who is directly accountable to the management body (e.g. a key function holder of a control function) and responsible for managing and overseeing the risks of outsourcing arrangements as part of the institutions internal control framework and overseeing the documentation of outsourcing arrangements.

Denmark

The Executive Board must appoint an outsourcing officer. The function of the outsourcing manager should as a main principle be understood as performed in the 1st line of defence.

If the outsourcing manager is a key employee, such individual must be fit-and-proper assessed. As a main principle, the outsourcing officer will not be a key employee solely by virtue of the responsibility for outsourcing officer.

Finland

No requirement for an outsourcing officer, but the FIN-FSA recommends that the supervised entity's board adopts outsourcing policies and have them regularly updated. The policies should include at least the following information: operational goals for outsourcing, activities that are to be regarded as material taking into account the FIN-FSA's guidelines regarding material activity, definition of the types of activities that may be outsourced under the supervised entity's operational policy, selection of the outsourcing partner and monitoring of the outsourced activity, issues dealt with in the outsourcing agreement, safeguarding the continuity of activities and decision-making process for outsourcing.

France

There is no requirement to appoint an "Outsourcing Officer".

Germany

Each outsourcing undertaking that outsources shall establish a central outsourcing officer within the institution itself.

Tasks of the outsourcing officer include in particular:

- Implementation and further development of appropriate outsourcing management and corresponding control and monitoring processes;
- Preparation and maintenance of complete documentation of outsourcing (including sub-outsourcing);
- Supporting the respective departments with regard to the internal and legal requirements for outsourcing;
- Coordination and review of the risk analysis carried out by the responsible divisions;
- The central outsourcing officer reports directly to the management.

Hungary

The Executive Board must appoint an outsourcing manager. The role of the outsourcing officer is to manage the risks associated with outsourcing and to be responsible for the control of outsourcing and the recording of outsourcing.

If the outsourcing manager is a key employee, such individual must be fit-and-proper assessed. For financial institutions with smaller and less complex tasks, a member of the management body may be appointed to perform the above task if the tasks and responsibilities are appropriately isolated.

Italy

The outsourcing undertaking must appoint an outsourcing officer within its own organization.

The outsourcing officer is responsible for the supervision of a specific outsourced function. There can be a single outsourcing officer supervising more than one outsourced function if the size of the outsourcing undertaking allows it.

If the outsourcing manager is a key employee, such individual must be fit-and-proper assessed. As a main principle, the outsourcing officer will not be a

key employee solely by virtue of the responsibility for outsourcing officer.

Poland

Not regulated.

Slovakia

Outsourcing undertakings should designate a senior staff member as the Outsourcing Officer who is directly accountable to the management body.

The Outsourcing Officer is responsible for managing and overseeing the risks of outsourcing arrangements as part of the institutions internal control framework and overseeing the documentation of outsourcing arrangements.

If the outsourcing manager is a key employee, such individual must be fit-and-proper assessed. As a main principle, the outsourcing officer will not be a key employee solely by virtue of the responsibility for outsourcing officer.

UK

There is not a requirement for a specific outsourcing officer. The outsourcing risk is likely to be expected to be managed through the compliance and risk teams of the Institution further to the risk framework and risk assessment procedures set out in the EBA Guidelines. There are also general

requirements that an Institution is likely to consider in relation to responsibilities of managing outsourcing risk:

1 when relying on a third party for the performance of operational functions which are critical for the performance of regulated activities, listed activities or ancillary services on a continuous and satisfactory basis, ensure that it takes reasonable steps to avoid undue additional operational risk; and

2 not undertake the outsourcing of important operational functions in such a way as to impair materially;

a the quality of its internal control; and

the ability of the FCA/PRA to monitor the Institution's compliance with all obligations under the regulatory system and, if different, of a competent authority to monitor the Institution's compliance with all obligations under the relevant regulatory system.

Belgium, Czech Republic, Netherlands, Spain and Sweden

Generally transposed in line with the EBA Outsourcing Guidelines.

Contacts

Belgium

Scott McInnes

Partner

Tel: +3222826059
scott.mcinnnes@twobirds.com



Julien Sad

Associate

Tel: +3222826041
julien.sad@twobirds.com



Czech Republic

Ivan Sagál

Partner

Tel: +420226030509
ivan.sagal@twobirds.com



Barbora Ružicková

Associate

Tel: +420226030525
Barbora.ruzickova@twobirds.com



Denmark

Annette Printz Nielsen

Partner

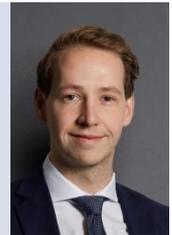
Tel: +45 30851346
annette.nielsen@twobirds.com



Daniel Holst-Fritz

Associate

Tel: +45 39141636
daniel.holst-fritz@twobirds.com



Finland

Kristiina Lehtilä

Senior Counsel

Tel: +358 962266756
kristiina.lehvila@twobirds.com



Josefina Aalto

Senior Associate

Tel: +358 96226670
josefina.aalto@twobirds.com



France

Cathie-Rosalie Joly

Partner

Tel: +33 142686000
Cathie-rosalie.joly@twobirds.com



Hungary

Konrad Siegler

Partner

Tel: +3613018916
konrad.siegler@twobirds.com



Germany

Dr. Michael Jünemann

Partner

Tel: +4969742226000
michael.juenemann@twobirds.com



Johannes Wirtz, LL.M.
(London)

Counsel

Tel: +4969742226000
johannes.wirtz@twobirds.com



Italy

Stefano Febbi

Partner

Tel: +390230356030
stefano.febbi@twobirds.com



Diego Cefaro

Associate

Tel: +390669667003
diego.cefaro@twobirds.com



Netherlands

Jeroen van der Lee

Partner

Tel: +31703538807
jeroen.lee@twobirds.com



Tessa Van Den Ende

Associate

Tel: +31703538884
tessa.van.den.ende@twobirds.com



Poland

Slawomir Szepietowski

Partner

Tel: +48225837913
slawomir.szepietowski@twobirds.com



Marta Stanislawska

Associate

Tel: +48225837937
marta.stanislawska@twobirds.com



Slovakia

Ivan Sagál

Partner

Tel: +420226030509
ivan.sagal@twobirds.com



Zuzana Jurickova

Associate

Tel: +421232332816
zuzana.jurickova@twobirds.com



Spain

José Luis Lorente Howell
Partner

Tel: +34917906022
jose.luis.lorente.howell@twobirds.com



Alvaro Gonzalez
Associate

Tel: +34917906096
alvaro.gonzalez@twobirds.com



Sweden

Mattias Lindberg
Partner

Tel: +46850632018
mattias.lindberg@twobirds.com



Mikael Bock
Senior Counsel

Tel: +46850632005
mikael.bock@twobirds.com



United Kingdom

Gavin Punia
Partner

Tel: +442030176884
gavin.punia@twobirds.com



Thomas Hepplewhite
Associate

Tel: +442074156777
tom.hepplewhite@twobirds.com



International expertise & a
market leading team & on
your side & delivering
success & developing
relationships & supporting
you throughout the project
& that's Outsourcing with
Bird & Bird.

twobirds.com

Abu Dhabi & Amsterdam & Beijing & Bratislava & Brussels & Budapest & Copenhagen & Dubai & Dusseldorf & Frankfurt & The Hague & Hamburg & Helsinki & Hong Kong & London & Luxembourg & Lyon & Madrid & Milan & Munich & Paris & Prague & Rome & San Francisco & Shanghai & Singapore & Stockholm & Sydney & Warsaw & Satellite Office: Casablanca

The information given in this document concerning technical legal or professional subject matter is for guidance only and does not constitute legal or professional advice. Always consult a suitably qualified lawyer on any specific legal problem or matter. Bird & Bird assumes no responsibility for such information contained in this document and disclaims all liability in respect of such information.

This document is confidential. Bird & Bird is, unless otherwise stated, the owner of copyright of this document and its contents. No part of this document may be published, distributed, extracted, re-utilised, or reproduced in any material form.

Bird & Bird is an international legal practice comprising Bird & Bird LLP and its affiliated and associated businesses.

Bird & Bird LLP is a limited liability partnership, registered in England and Wales with registered number OC340318 and is authorised and regulated by the Solicitors Regulation Authority. Its registered office and principal place of business is at 12 New Fetter Lane, London EC4A 1JP. A list of members of Bird & Bird LLP and of any non-members who are designated as partners, and of their respective professional qualifications, is open to inspection at that address.