Cebs guidelines on outsourcing issued in 2006

On 25 February 2019, the European Banking Authority (EBA) published new Guidelines on outsourcing arrangements (the 'Guidelines') applicable to banks, investment firms, payment institutions and electronic money (hereinafter: financial institutions). The Guidelines recognize and address the fact that in recent years, financial institutions have been increasingly interested in outsourcing business activities in order to reduce costs, improve their efficiency and have easy access to new financial technologies (fintech). The Guidelines aim to establish a more harmonized framework for outsourcing arrangements for financial institutions, specifying the internal governance arrangements they must implement when outsourcing functions and determining how competent authorities should review and monitor these arrangements. Except for a provision, the Guidelines will apply to all outsourcing arrangements signed, revised or amended on or after September 30, 2019. Institutions, however, are obliged to review and amend all existing outsourcing arrangements by December 31, 2021, at most, with a view to compliance. In addition, the Guidelines replace the 2006 Outsourcing Guidelines issued by the EBA's predecessor, the Committee of European Banking Supervisors (CEBS) and incorporate the EBA Recommendations on outsourcing to cloud service providers 2017, which will be repealed after the entry into force of the Guidelines.7 drawn from the EBA guidelines on outsourcingWith up to 125 pages, the EBA Guidelines provide a comprehensive tool for financial institutions to take into force when considering outsourcing an activity outsourcing, service, process or function. To save the reading, below are the 7 main takeaways of the new Guidelines:1. Clear definition of outsourcingIn its Guidelines, the EBA aligns its definition of outsourcing with that established in the MiFID II* framework and gives valuable guidance on how to evaluate whether an agreement with third parties falls within the definition of outsourcing. According to the EBA, it is essential to assess whether the function (or a part thereof) that is outsourced to a service provider is performed on a recurring or continuous basis by the service provider and whether that function (or part of it) would normally fall within the scope of functions that would or could be performed realistically by the financial institution, even if that institution does not have exter; In addition, the Guidelines indicate certain processes, services and activities, which as a general principle should not be considered outsourcing. These include: functions that are legally required to be performed by service providers (such as statutory audits), market information services (such as the provision of data by Bloomberg), and global network infrastructures (such as Visa and MasterCard).2. Criteria for assessing whether a function critical or importantThe new Guidelines also provide provide for the identification of critical or important functions that have a strong impact on the risk profile of the financial institution or its internal control framework (previously the so-called material activities). If such critical or important functions are outsourced, stricter requirements apply to these outsourcing arrangements. As such, the Guidelines draw a distinction between outsourcing that is critical or important and other outsourcing. When assessing whether outsourcing relates to a critical or important function, financial institutions must take into account at least 10 factors mentioned in the Guidelines (such as the size and complexity of any affected business area, the ability to reintegrate the outsourced function into the institution, if necessary or desirable...) In addition, the Guidelines define 3 situations in which a financial institution should always consider a function as critical or important. Unfortunately, the EBA has not provided a clear consolidated list of which guidelines apply to what types of arrangements apply, arguing that the Guidelines are sufficiently clear with respect to the scope of the requirements.3. Need for sound governanceWith respect to governance, the EBA emphasizes that financial institutions remain fully responsible and responsible for fulfilling all their regulatory obligations, including the ability to oversee the outsourcing of critical or important functions. To this end, financial institutions must make sure to: clearly assign responsibilities for documentation, management and control of outsourcing arrangements, allocate sufficient resources to ensure compliance with all legal and regulatory requirements, and establish an outsourcing function or appoint a senior team member who is directly responsible for the management body and responsible for managing and supervising the risks of outsourcing arrangements , as well as his documentation. In any case, it is important that financial institutions maintain sufficient substance at all times and do not become empty shells or mailbox entities.4. Requirements for the pre-outsourcing phase Before entering into any outsourcing agreement in accordance with the Guidelines, financial institutions should always conduct a pre-outsourcing analysis, which includes several different assessments. Thus, financial institutions need to:assess whether the outsourcing agreement relates to a critical or important function, assess whether the supervisory conditions for outsourcing are met (e.g., authorization of the service provider by the competent authority to carry out certain banking activities or payment services), identify and assess all relevant risks of the outsourcing agreement (e.g. authorization of the service provider by the competent authority to carry out certain banking or payment services), identify and assess all relevant risks of the outsourcing agreement (e.g. authorization of the service provider by the competent authority to carry out certain banking or payment services), identify and assess all relevant risks of the outsourcing agreement (e.g. authorization by the service provider to carry out certain banking or payment services activities), identify and assess all relevant risks of the outsourcing agreement (e.g. authorization of the service provider by the competent authority to carry out certain banking or payment services), identify and assess all relevant risks of the outsourcing agreement (e.g. authorization of the service provider by the competent authority to carry out certain banking or payment services), identify and assess all relevant operational risks), perform due diligence on the potential service provider and identify and evaluate interests that outsourcing may cause.5. Requirements for the contractual phase At the contractual level, the Guidelines require that a written agreement be concluded the financial institution and the service provider. This agreement shall clearly allocate and define the rights and obligations of the parties and shall include certain specified provisions. In addition, the agreement should detail whether sub outsourcing of critical or important functions is permitted. In such a case, the processor must comply with certain requirements and the financial institution shall ensure that the service provider supervises the sub-contractor. In addition, appropriate IT security standards should be imposed on the service provider and should be continuously monitored. Finally, outsourcing contracts shall contain provisions relating to the rights of access, information and audit of both the financial institution and the competent authorities, as well as a provision on termination rights.6. Outsourcing to third-country service providers With regard to outsourcing to service providers located in third countries, the EBA stresses that financial institutions should take special care to ensure compliance with EU legislation and regulatory requirements (e.g. professional secrecy, access to information and data, protection of personal data) is ensured. In addition, the EBA points out that additional safeguards are put in place to ensure that outsourcing does not lead to an undue increase in risk or does not impair the ability of the competent authorities to effectively monitor the financial institution, especially in the case of critical or important functions.7. Document maintenance: outsourcing policy and outsourcing registrationThe EBA guidelines imply two important document maintenance obligations. First, financial institutions that are currently outsourcing certain activities or are planning to do so in the future have to implement a written outsourcing policy that includes the main life cycle phases of outsourcing arrangements and defines the principles, responsibilities, and processes in relation to outsourcing. This policy should be implemented, regularly revised and updated. Second, in the context of risk management, financial institutions must keep an up-to-date record of information on all outsourcing arrangements of the institution and must document all existing outsourcing arrangements, distinguishing between outsourcing critical or important functions and other outsourcing arrangements. Even documentation on the outsourcing arrangements that have ended should be kept within the register for an appropriate period.*See: Article 2(3) of the Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplemental Directive 2014/65/EU of the European Parliament and the Council with regard to the organisational requirements and operating conditions of investment firms and terms defined for the purposes of that Directive.In need to be on the EBA outsourcing guidelines? Please feel free to contact us. On 25 February 2019, the European Banking Authority (EBA) (EBA) revised guidelines on outsourcing arrangements. The guidelines update the guidelines of the Committee of European Banking Supervisors (CEBS) on outsourcing that were issued in 2006. The EBA recommendation on outsourcing to cloud service providers, published in December 2017, was also integrated into the revised guidelines. The EBA states that the objective behind the revision of the guidelines is to establish a more harmonised framework for all financial institutions under the EBA mandate, i.e. credit institutions and investment firms subject to CRD IV, as well as payment and electronic institutions. The revised guidelines establish which agreements with third parties should be considered as outsourcing and provide criteria for identifying critical or important functions that have a strong impact on the risk profile of the financial institution or its internal control framework. If such critical or important functions are outsourced, stricter requirements apply to these outsourcing arrangements than to other outsourcing arrangements. The EBA states that each managing body of financial institutions remains responsible for this institution and all its activities at all times. The managing body shall ensure that sufficient resources are available to adequately support and ensure the performance of these responsibilities, including the supervision of all risks and the management of outsourcing arrangements. Outsourcing should not lead to a situation where an institution becomes an empty shell that does not have the substance to remain authorized. With regard to outsourcing to service providers located in third countries, the EBA states that financial institutions are expected to take special care to ensure 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 , in particular with regard to critical or important functions outsourced to service providers. The revised guidelines will take effect on September 30, 2019. Cebs 2006 guidelines on outsourcing and the EBA recommendation on outsourcing to cloud service providers will be repealed at the same time. Time.