

**CISPE Response
to the EBA consultation on Guidelines on outsourcing**

Dear Sir or Madam,

We are writing on behalf of the alliance of Cloud Infrastructure Services Providers in Europe (CISPE) to respond to the consultation on revised Outsourcing Guidelines. This follows our original response to the Authority dated 17th August 2017.

It is of significant concern to CISPE and its members that by superseding the implementation of its own *Recommendations on outsourcing to cloud providers* with revised outsourcing guidelines - that singularly fail to take the nature of cloud into account - the EBA risks introducing legal and regulatory misinterpretation, and the inappropriate implementation of audit, security and other measures by regulated entities, cloud providers, and supervisory authorities.

These are the very risks the EBA had previously sought to mitigate by publishing its recommendations in the first place. CISPE believes the EBA's original purpose in accounting for the specificities of cloud services remains not only valid but is absolutely essential.

A major aim of the EBA *Recommendations* was to clarify how existing regulatory and supervisory frameworks should apply to the use of cloud services. As your *Recommendations* stated, "there is a high level of uncertainty regarding the supervisory expectations that apply to outsourcing to cloud service providers." However, in the space of a few months, the EBA has reversed the expectations of EU financial institutions and cloud service providers about how regulated entities can use cloud services to be more competitive, innovative and responsive to their customers. This is a lost opportunity.

Indeed, it was our understanding from interactions with numerous EU financial supervisory authorities that the text of the EBA *Recommendations* would be transposed into the revised outsourcing guidelines - but this did not occur in several critical ways, resulting in important inconsistencies in key areas such as access, audit rights and sub-outsourcing, which do require a high level of regulatory clarity.

This development is worrying, as attempts to fit cloud into traditional outsourcing models (e.g. a one-to-one relationship between provider and customer) will result in potentially dangerous ambiguities covering, for example, the shared security responsibilities of cloud providers and their customers. You cannot fit a square peg in a round hole. Instead, we believe the EBA should be actively encouraging cloud-specific, scalable practices – via pilot projects, for example - that enable regulated entities to gain the visibility and assurances they need regarding their use of cloud services (such as pooled audits).

At the same time, cloud providers and financial institutions have already modified their contractual agreements, spent time and resources establishing robust internal policies and procedures, and have hired personnel to implement what was expected to be the prevailing EBA guidance on the use of cloud services.

Therefore, CISPE is urging the EBA to attach its existing *Recommendations* as an annex to the revised outsourcing guidelines and clarify that the annex shall apply to regulated entities' use of cloud services. We are, of course, happy to provide further information and advice on these, to engage with the EBA in its efforts. Please do not hesitate to contact our Chairman or General Secretary directly:

Chairman: Alban SCHMUTZ - alban.schmutz@ovh.net

General Secretary: Francisco MINGORANCE - francisco.mingorance@europa-insights.com

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