
Consultation Response

ECB Public Consultation on Outsourcing Registers

21 January 2022

The Association for Financial Markets in Europe (AFME) welcomes the opportunity to comment on the ECB's **consultation on the Reporting Instructions for the outsourcing register template**. AFME represents a broad array of European and global participants in the wholesale financial markets. Its members comprise pan-EU and global banks as well as key regional banks, brokers, law firms, investors and other financial market participants. We advocate stable, competitive, sustainable European financial markets that support economic growth and benefit society.

AFME is the European member of the Global Financial Markets Association (GFMA), a global alliance with the Securities Industry and Financial Markets Association (SIFMA) in the US, and the Asia Securities Industry and Financial Markets Association (ASIFMA) in Asia. AFME is registered on the EU Transparency Register, registration number 65110063986-76.

Below we provide our comments on the proposed outsourcing register.

Harmonisation

AFME supports a harmonised approach across the EU and member states with regards information collected on outsourcing. We have noted that there is a degree of variation to the application of the register referred to the EBA's Guidelines in different member states which could undermine the ability of competent authorities to gain a consistent view of outsourcing activities by financial entities for the purpose of tracking dependence and concentration risk.

We therefore encourage the ECB and National Competent Authorities (NCAs) to work together closely to ensure a consistent application of the outsourcing registers, to prevent that supervised entities are required to maintain different outsourcing registers with different data points and structures, and to ensure minimum duplication for banks and supervisors. Ideally, branches of entities directly supervised by the ECB would not need to report at national level and would only be required to provide a single register to the ECB, with information to be provided to the NCAs by the ECB where required.

We also encourage the ECB to remain cognisant of the fact that their supervision includes subsidiaries of international banking groups. It would therefore be helpful to coordinate on reporting requirements to the extent possible, also at the international level. Global harmonised reporting will better aid authorities in monitoring and tracking concentration risk in the use of global critical third parties, who are now critical part of the global financial supply chain and overall financial stability and resilience.

Scope

With regards to territorial scope of the requirements, we note that the ECB in the consultation states that SIs are required to submit one outsourcing register template per supervised entity with information for the "supervised entity or banking group, its subsidiaries that are part of the prudential scope of consolidation, and related branches." We would welcome if the ECB clarified that information will not have to be provided for

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subsidiaries or branches in third countries, particularly where the outsourcing arrangements have no implications for the financial stability in the EU.

For intragroup outsourcing arrangements as stipulated by column 130 we would welcome clarification of what would fall under the definition of “corporate group”, e.g., should this be read in relation to the definition above “subsidiaries that are part of the prudential scope of consolidation, and related branches”?

Consistency with EBA guidelines

We note that the consultation states that the planned collection of outsourcing registers is based on the EBA Guidelines on Outsourcing Arrangements (EBA/GL/2019/02, the “EBA guidelines”). However, we have identified a number of data points included in the proposals that are in addition to, or seem to go beyond the EBA guidelines.

Overall, we would urge the ECB to ensure consistency with the EBA guidelines as much as possible. We understand that the ECB has also considered its supervisory priorities with regards to outsourcing in establishing the proposed template. We also understand that the ECB is anticipating reporting requirements which will arise out of the future adoption of DORA. Nonetheless, where requirements of the ECB template go beyond the EBA guidelines, banks must be provided with ample time to enable implementation, given that this additional information is unlikely to be currently recorded and banks may lack the methodology to do so.

This is to ensure that banks can review and, where necessary, adjust their existing reporting processes to accommodate for the additional information requirements. We would therefore welcome if the ECB allowed for these additional data points to be reported at a later date and not for the initial reporting phase in 2022.

A list of identified data points is below:

Columns 020, 030, 040, 050, 060, and 070: The corresponding EBA guidelines in para. 55 require these data points only for critical or important outsourcing arrangements. However, we note that the draft ECB template requires these for all outsourcing arrangements. Especially column 070 should be restricted to material outsourcing only. The collection of information in lines 020 to 070 goes beyond the EBA Guideline para. 54 and also beyond mere “identification”. EBA guidelines para. 77 requires firms to “determine whether the part of the function to be sub-outsourced is, as such, critical or important (i.e. a material part of the critical or important function) and, if so, record it in the register.” Para. 77 however does not specify a need to categorise the data stored by the sub-contractor as appears to be required in the register.

Column 140: This field is not listed in the EBA guidelines. Supervisory conditions (section 12.1) in the EBA guidelines apply only to outsourcing of functions of banking activities or payment services and para. 61 requires assessing these conditions in the pre-outsourcing analysis before entering into the outsourcing arrangement and during the regular updates of this risk assessment but there is no obligation to collect and keep up-to-date any information regarding the supervisory authority of the service provider in the outsourcing register.

Column 160: This field is not listed in EBA guidelines. The following topics are requirements of the guidelines but are not explicitly required as an inventory attribute by para. 54 and 55. Critical aspects related to entering or maintaining an agreement with an outsource provider which is subject to directives provided by its parent company located in a third country should be assessed in the pre-outsourcing analysis and in the regular updates of this risk assessment. However, no legal basis or current contractual clauses oblige the outsourcer to notify a moving of its parent company’s headquarters to allow banks to provide this information as part of the register.

Column 240: The EBA guidelines in para. 54c require to specify “whether or not personal data (e.g. by providing a yes or no in a separate data field) have been transferred or if their processing is outsourced to a service provider”. The ECB template proposal extends this requirement also to commercially sensitive data and focuses on data storage and not on data transfer, requirements not part of the EBA guidelines. It is worth noting that some of our member firms currently record details for data storage only. For global firms, requesting this data on processing could mean a far reaching scope and we therefore recommend a focus on data storage.

Columns 300 and 310: We believe that column 300 and 310 do not necessarily fall within the EBA’s guidelines, particularly para. 54h, and would therefore constitute new attributes.

Columns 330 and 410: Requirements of these columns are explicitly required as an inventory attribute by the EBA guidelines.

Columns 420 to 450: These columns reference para. 55g which, whilst requiring the financial entity to know which country/location data is stored in the event of a material sub-outsourcing of a critical or important function, is not asking for categorisation of such data as it appears to be required in the register.

Column 430: The relevant guidelines in para. 55g refers to “country where the subcontractors are registered” rather than “headquartered”. The use of “headquartered” in the proposed register template could be unclear if for example, a sub-contractor has a legal entity registered in a country providing a service but also has a parent company headquartered in another jurisdiction. We would call for consistency with the EBA guidelines and request the data field name to be adjusted to read “Country/countries where contractors for sub-outsourcing of material parts are registered” and the description adjusted to reflect this clarification.

Column 460: With regards to the storage of data by sub-outsourcers, the corresponding requirement in the EBA guidelines in para. 54c applies only to the main contractor. Furthermore, para. 54 refers to personal data and not to the confidential data and is related to data transfer only, not to data storage. We also note that EBA guidelines para. 77 require firms to “determine whether the part of the function to be sub-outsourced is, as such, critical or important (i.e. a material part of the critical or important function) and, if so, record it in the register.” Para. 77 does not however make mention of categorising the data stored by the sub-contractor as it appears to be required in the register.

Column 490: The EBA guidelines in para. 55h refers to “the possibility of reintegrating a critical or important function into the institution or the payment institution or the impact of discontinuing the critical or important function” which has been split out into two separate data fields. We believe the separate field on impact would go beyond the EBA requirements and should at least be flagged as optional based upon the preceding text.

Further comments on the proposed Outsourcing Register

We would welcome further clarity from the ECB with regards to the technical points mentioned below:

Data field format in the ECB register proposed: We note that the nature of the data field formats in the template is very prescriptive and firms would appreciate some flexibility from the ECB in this regard. Examples of restrictive fields include the use of alpha-2 country codes for country format rather than just listing the country names in totality, use of full names for cloud service model format (Platform-as-a-Service) rather than commonly used abbreviations (e.g. PaaS). Each financial services institution has different systems and data sources to capture the data fields for reporting and we ask the ECB to consider this.

LEI Code (column 080): To avoid misunderstanding we suggest specifying in the description of the field “If the service provider doesn’t have a LEI code, please fill with “N/A”.

Reporting frequency, submission dates, and submission process: The consultation paper noted that the Joint Supervisory Teams (JSTs) can collect outsourcing register templates with a different reference date at their discretion. The industry will require some definition and guidance on the expected turnaround time for accommodating register requests, to allow Institutions to plan and ensure their reporting processes can make provision for the requests. We would recommend a minimum of 4 weeks for such requests.

Service Provider Details

We understand that LEI and corporate registration numbers are two unique identifiers which allow regulators to identify legal entities in a standardised way. However, we would question the benefit of capturing both identifiers for each service provider, given the nature and applicability of LEI. We believe that a need to report only one of the corporate registration number or the LEI condition would be optimal. Furthermore we would like to highlight the following:

- A need for a valid LEI only applies to a small proportion of businesses that fall under certain regulatory requirements, however it may be issued to any business that requests to be assigned an LEI. The LEI has a dynamic nature i.e. it can change, be withdrawn or expire – therefore maintenance of this data point has a high cost vis a vis its benefits.
- On this basis, we would recommend for this data-point to be non-mandatory. If LEI is to be a mandatory field, it should be defined that the requirement only applies to Service providers that fall in scope of regulatory requirements that trigger a need for an LEI and have an active LEI issued. To avoid misunderstanding we suggest specifying in the description of the field “If the service provider doesn’t have a LEI code, please fill with “N/A”. The industry would also welcome some guidance for the maintenance of a CRN and where it may be mandatory. We would recommend a similar guidance such as the guidance on National Identifiers and their equivalent maintained by the ECB for AnnaCredit reporting; including a pre-defined list of jurisdictions; types of Legal entities that fall in scope of the CRN requirement and acceptable sources for this information.

The guidance requested above will be very pertinent especially as the consultation has suggested that empty cells in a submitted register will be interpreted as missing data.

Notice period for institution: the format in the template limits the reporting of the notice period to numerical number of days only. This could result in a reporting process that is divergent from the commercial language (i.e. contractual terms and the way termination period may be defined within the contractual agreement). For example, contractual language on termination provisions may define a trigger and/or any other conditions. Our recommendation is to allow for this field to be reported as a free-text field and include a termination term in number of days where that is available.

Description of outsourced function: the ECB has indicated a reference of about 300 characters in the description fields. However, we understand from some of our member banks from their bilateral interaction with their respective JSTs, that additional details would be preferred. It is our view that in many cases, the service description may be detailed and significantly above the 300 character limit. Restricting the characters to 300 may introduce a need to report a brief description and the need to re-format existing information for the purposes of submitting the outsourcing register only.

Additionally, having two separate fields within the template to report on outsourced data within the template (i.e. within the service description field as well as having a separate field for reporting of data outsourced

detail), may not be optimal for the information being reported. Our recommendation is to expand the character limit and/or add a note that existing descriptions that go above the limit, should be cut at the limit for reporting purposes. We would also recommend for the requirement of including “data outsourced information” within the service description field to be removed.

Reasons for criticality or importance (column 280): In the provided multiple choice selection, some situations are missing which are listed by NCAs as conditions to always consider the outsourcing arrangement as critical or important¹. Therefore we also suggest including a free text field to be used.

A requirement for a drop-down selection in this field will require firms to map their existing decisions to these options. This will be a manual exercise that may be significant depending on the number of C/I arrangements. As a result, we would recommend for this to be a longer-term goal to give the firms an opportunity to adjust their processes accordingly.

Cloud Service Model(s) (column 300): The description only suggests limited selections: (i.e. "Software-as-a-Service", "Infrastructure-as-a-Service", "Platform-as-a-Service" or "N/A"). We would recommend an additional field “Other” in that section, as this would allow for further flexibility for banks.

Estimated annual budget cost: We wish to highlight that submitting the estimated budget cost of the outsourcing arrangement for the reporting period may be very challenging for international organisations with complex structures.

Furthermore, not all institutions will use EUR as their financial reporting currency and subsequently a conversion would need to be applied. Guidance should be provided by the ECB on currency conversion expectations in terms of sources and timelines to be used. The exchange rates should be applied in reference to a reporting period date, e.g conversion as at contract signing date would be burdensome and potentially impact the accuracy of the information submitted. It should be further noted that where institutions use a different currency for their reporting, changes in exchange rates could result in continual changes to this data.

Date of next audit: We recommend that future audit coverage should be maintained within the year of the register’s coverage as timing of audits within the audit year form part of each year’s annual planning at the start of the year.

Impact of discontinuing the outsourced function: It would be appreciated if further guidance can be provided on what is expected to be covered within the text reported here, to help ensure standardisation and alignment to reporting on this data field.

¹ for example, Bank of Italy: Functions necessary to carry out the "main operational/business lines activities" and "essential functions" (as defined in Article1, paragraph1, letters hh) and bb) of Legislative Decree180/2015) unless the assessment by the company does not indicate that the inadequate performance or non-performance of the outsourced function would have a negative impact on the business continuity of the main business line or essential function.

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