



## Circular CSSF 21/777

Implementation of the Guidelines of the European Securities and Markets Authority (ESMA) on outsourcing to cloud service providers by amending the scope of Circular CSSF 17/654, as amended

## **Circular CSSF 21/777**

**RE** : Implementation of the Guidelines of the European Securities and Markets Authority (ESMA) on outsourcing to cloud service providers by amending the scope of Circular CSSF 17/654, as amended

Luxembourg, 12 July 2021

**To all credit institutions and PFS within the meaning of the Law of 5 April 1993 on the financial sector (LFS)**

**To all payment institutions and electronic money institutions within the meaning of the Law of 10 November 2009 on payment services (LPS)**

**To all investment fund managers subject to Circular CSSF 18/698**

**To alternative investment fund managers (AIFMs) and depositaries of alternative investment funds (AIFs)**

**To undertaking for collective investment in transferable securities (UCITS), to management companies and depositaries of UCITS, as well as to investment companies that have not designated a management company authorised in accordance with the UCITS Directive**

**To central counterparties, including Tier 2 third-country central counterparties, complying with the relevant requirements of EMIR**

**To data reporting services providers and to market operators operating a trading venue**

**To central securities depositories**

**To administrators of critical benchmarks**

Ladies and Gentlemen,

This circular implements the Guidelines of the European Securities and Markets Authority (hereinafter "ESMA") on outsourcing to cloud service providers (reference: ESMA50-164-4285, hereinafter the "Cloud Guidelines").

To this end, it amends the scope of Circular CSSF 17/654, as amended, on IT outsourcing relying on a cloud computing infrastructure in order to include all the entities covered by the Cloud Guidelines.

## **I. Implementation of the Guidelines of the European Securities and Markets Authority ESMA50-164-4285**

1. By way of this circular, the CSSF, in its capacity as competent authority, complies with and applies the Guidelines (hereinafter the “Cloud Guidelines”) of ESMA on outsourcing to cloud service providers (reference: ESMA50-164-4285).
2. The CSSF already included equivalent guidelines in its administrative practice and regulatory approach by way of Circular CSSF 17/654, as amended, on IT outsourcing relying on a cloud computing infrastructure (hereinafter the “Cloud Circular”).
3. However, the scope of the Cloud Circular does not comprise all the entities covered by the Cloud Guidelines. By way of this circular and its Section II below which extends the scope of the Cloud Circular to all the entities covered by the Cloud Guidelines, the CSSF applies the Cloud Guidelines and includes them in its administrative practice and regulatory approach for all the entities concerned with a view to promoting convergence of supervisory practices in this field at European level.

## **II. Amendment of Circular CSSF 17/654, as amended**

4. The scope of Circular CSSF 17/654, as amended, is extended and the Cloud Circular thus applies:
  - a. to all credit institutions and PFS within the meaning of the Law of 5 April 1993 on the financial sector (LFS);
  - b. to all payment institutions and electronic money institutions within the meaning of the Law of 10 November 2009 on payment services (LPS);
  - c. to all investment fund managers subject to Circular CSSF 18/698;
  - d. to alternative investment fund managers (AIFMs) within the meaning of point (b) of Article 4(1) of the AIFMD<sup>1</sup> and to depositaries of alternative investment funds (AIFs) referred to in Article 21(3) of the AIFMD;

<sup>1</sup> Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

- e. to undertaking for collective investment in transferable securities (UCITS), to management companies of UCITS within the meaning of point (b) of Article 2(1) of the UCITS Directive<sup>1</sup> and to depositaries of UCITS within the meaning of point (a) of Article 2(1) of the UCITS Directive, as well as to investment companies that have not designated a management company authorised in accordance with the UCITS Directive;
- f. to central counterparties (CCPs) within the meaning of Article 2(1) of EMIR<sup>2</sup>, including Tier 2 third-country CCPs within the meaning of Article 25(2a) of EMIR, complying with the relevant requirements of EMIR in accordance with point (a) of Article 25(2b) of EMIR;
- g. to data reporting services providers within the meaning of point (63) of Article 4(1) of MiFID II<sup>3 4</sup> and to market operators operating a trading venue within the meaning of point (24) of Article 4(1) of MiFID II;
- h. to central securities depositories within the meaning of point (1) of Article 2(1) of the CSDR<sup>5</sup>;
- i. to administrators of critical benchmarks within the meaning of point (25) of Article 3(1) of the Benchmark Regulation<sup>6</sup>.

### III. Entry into force

- 5. This circular will apply as from 31 July 2021. As regards the entities referred to in letters (d) to (i) of point (4) of this circular which had not yet been subject to Circular CSSF 17/654, as amended, (hereinafter the

<sup>1</sup> Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

<sup>2</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

<sup>3</sup> As from 1 January 2022, the reference to this provision must be read as a reference to point (36a) of Article 2(1) of MiFIR.

<sup>4</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.

<sup>5</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

<sup>6</sup> Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014.

“new entities concerned”), Circular CSSF 17/654, as amended, applies to all cloud outsourcing arrangements entered into, renewed or amended on or after that date.

6. The new entities concerned should review and amend accordingly the existing cloud outsourcing arrangements with a view to ensuring that they take into account the requirements of Circular CSSF 17/654 by 31 December 2022.
7. Where the review of cloud outsourcing arrangements of critical or important functions<sup>1</sup> is not finalised by 31 December 2022, the new entities concerned must inform their competent authority of this fact, including the measures planned to complete the review or the possible exit strategy.
8. The Cloud Guidelines are available on ESMA's website at: <https://www.esma.europa.eu/databases-library/esma-library?ref=ESMA50-164-4285>.

**Claude WAMPACH**  
Director

**Marco ZWICK**  
Director

**Jean-Pierre FABER**  
Director

**Françoise KAUTHEN**  
Director

**Claude MARX**  
Director General

<sup>1</sup> As defined under “Definitions” in Chapter II of the ESMA Guidelines on outsourcing to cloud service providers (reference: ESMA50-164-4285).



**Commission de Surveillance du Secteur Financier**

283, route d'Arlon

L-2991 Luxembourg (+352) 26 25 1-1

[direction@cssf.lu](mailto:direction@cssf.lu)

[www.cssf.lu](http://www.cssf.lu)