

New CSSF circular on outsourcing arrangements – what will change for you

On 22 April 2022, the CSSF published [CSSF circular 22/806](#) on outsourcing arrangements. The CSSF provided useful guidance on the implementation of the new CSSF circular in a dedicated [FAQ](#). It also clarified in a separate [CSSF circular 22/805](#) how existing CSSF circulars dealing with outsourcing requirements will be amended or repealed. In-scope entities of CSSF circular 22/806 must ensure that outsourcing arrangements entered into, reviewed or amended on or after 30 June 2022 are compliant with the new requirements. In respect of existing outsourcing arrangements, in-scope entities shall adjust the relevant documentation the earliest of either the first renewal date of the arrangement or 31 December 2022¹.



CSSF circular 22/806 applies across the financial sector and promotes regulatory convergence at Luxembourg level²

The scope of application of CSSF circular 22/806 has been extended beyond the scope of application of the **EBA Guidelines**³. It applies to credit institutions, investment firms and e-money and payment institutions, and to entities which are not in-scope of the EBA and ESMA Guidelines, only in relation to ICT outsourcing arrangements. Luxembourg branches of the entities concerned whose head office is in another Member State of the EEA may, under certain conditions, be subject to the CSSF circular 22/806 in respect of areas for which the CSSF retains an oversight responsibility⁴.

¹ This eAlert discusses the key points of the new CSSF circular. It should not purport to be an exhaustive analysis of, or contain definitive advice on the changes brought by the CSSF circular 22/806.

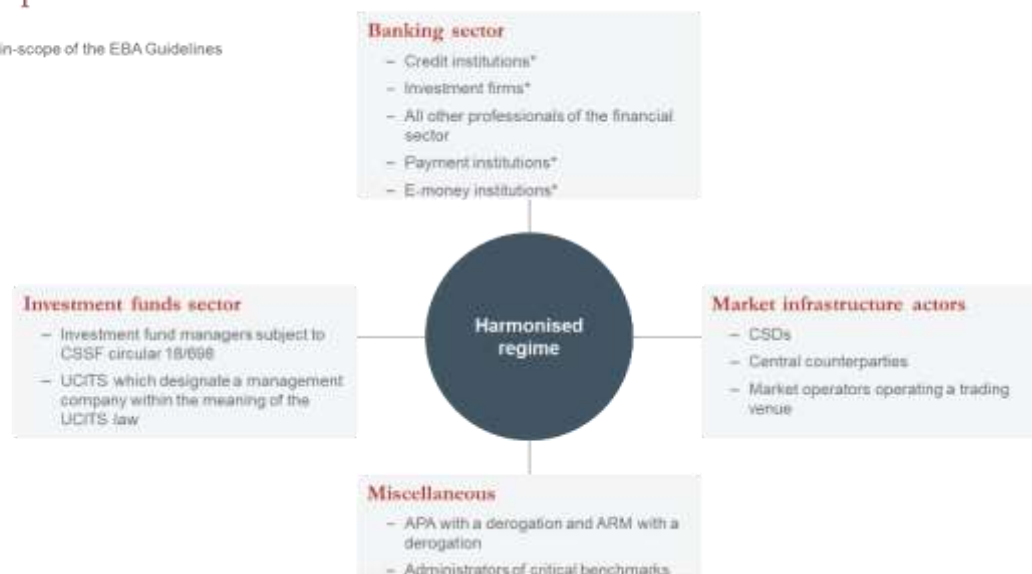
² The names of certain CSSF circulars have been shortened for formatting reasons.

³ Revised EBA guidelines on outsourcing arrangements (EBA/GL/2019/02) (the **EBA Guidelines**).

⁴ Point 3 of the new CSSF circular.

In-scope entities

* Entities in-scope of the EBA Guidelines



CSSF circular 22/806 consolidates all outsourcing requirements previously disseminated in various CSSF circulars. Existing CSSF circulars will therefore be amended or repealed accordingly.

Impact on existing CSSF circulars

CSSF circulars that will be amended as of 30 June 2022

CSSF circular 12/552 on central administration, internal governance and risk management
 CSSF circular 20/758 on central administration, internal governance and risk management
 IMIL circular 95/120 on central administration
 IMIL circular 98/116 on administrative and accounting organisation
 IMIL circular 98/143 on internal control
 CSSF circular 04/155 on the compliance function

CSSF circulars that will be amended at a later date

CSSF circular 16/644 on the provisions applicable to credit institutions acting as UCITS depository subject to part I and UCIs subject to part II of the law of 17 December 2010
 CSSF circular 18/697 on the organisational arrangements applicable to fund depositaries which are not subject to Part I of the law of 17 December 2010 relating to undertakings for collective investment
 CSSF circular 18/698 on the authorisation and organisation of investment fund managers incorporated under Luxembourg law

CSSF circulars that will be repealed as of 30 June 2022

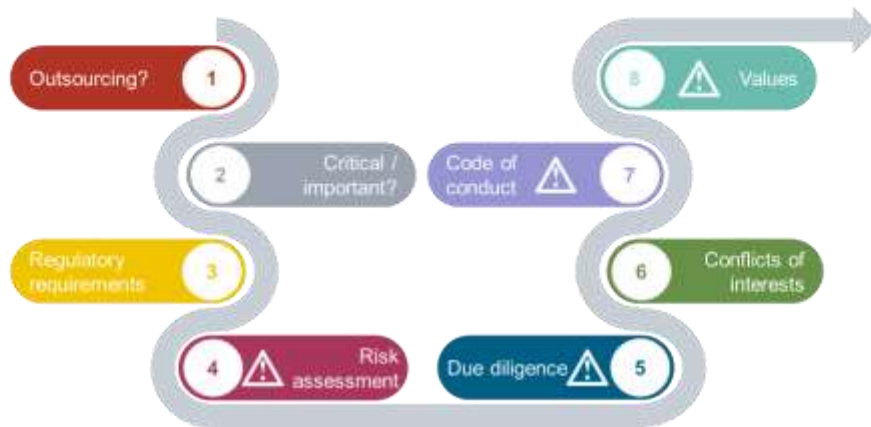
CSSF circular 13/554 on the evolution of the usage and control of the tools for managing information technology resources and the management of access to these resources
 CSSF circular 15/811 concerning the management of the risks related to the outsourcing of systems that allow the compilation, distribution and consultation of management board/strategic documents
 CSSF circular 17/654 as amended, concerning IT outsourcing relying on a cloud computing infrastructure
 CSSF circular 17/656 as amended, concerning administrative and accounting organisation; IT outsourcing
 CSSF circular 19/714 concerning the update of Circular CSSF 17/654 on IT outsourcing relying on a cloud computing infrastructure
 CSSF circular 21/777 concerning the implementation of the ESMA Guidelines on outsourcing to cloud service providers
 CSSF circular 21/785 concerning the replacement of the prior authorisation obligation by a prior notification obligation in the case of material IT outsourcing



CSSF circular 22/806 implements the requirements of the EBA and ESMA guidelines on outsourcing arrangements⁵

The EBA guidelines generally set out operational, contractual requirements and oversight requirements applicable to in-scope entities. The requirements may vary depending on whether an outsourcing arrangement relates to a critical or important function or other functions⁶. They may be summarized as follows:

Outsourcing process



Corresponding contractual arrangements



⁵ EBA Guidelines and ESMA guidelines on outsourcing to cloud service providers (ESMA50-164-4285) previously implemented by the CSSF circular 21/777 amending the CSSF circular 17/654

⁶ The new CSSF circular now refers to the concept of outsourcing of critical or important functions (instead of “material outsourcing”), in line with the MiFID II terminology.

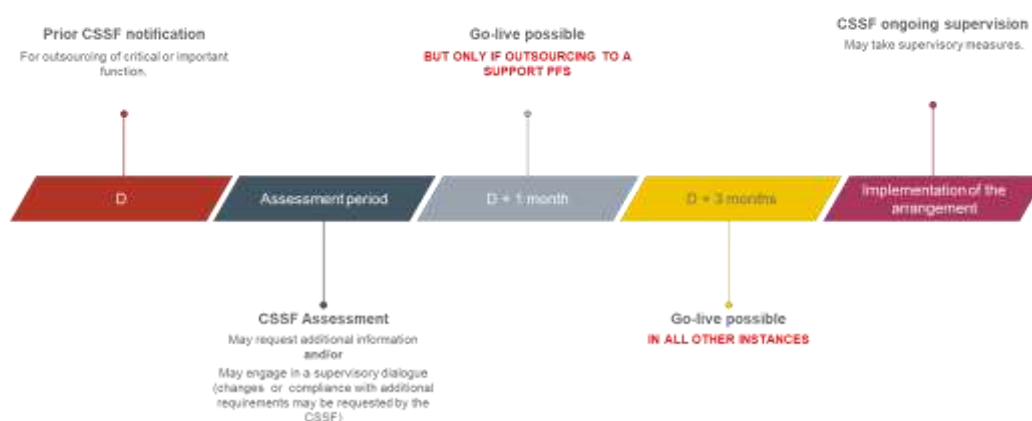
The ESMA guidelines set out specific rules for outsourcing to cloud service providers. These requirements are reflected in Part II of CSSF circular 22/806 dedicated to ICT outsourcing arrangements (a distinction is however made in this Part II between the requirements applicable to ICT outsourcing arrangements relying on a cloud computing infrastructure and other types of ICT outsourcing arrangements).



CSSF circular 22/806 sets out specific Luxembourg requirements in respect of outsourcing arrangements

CSSF circular 22/806 formalises a change of approach in the CSSF supervisory approach. The prior approval requirement is replaced by a prior notification requirement for outsourcing arrangements relating to critical or important functions in line with the approach taken in respect of IT outsourcing arrangements in CSSF circular 21/785⁷.

Formalities with the CSSF – timeline



Notifications shall be made by using standard CSSF forms where available. In the absence of feedback from the CSSF within the applicable time period, the in-scope entity can implement the outsourcing arrangement (however, this shall not constitute an implicit approval and the CSSF will still have the possibility to control compliance of such arrangement with applicable requirements at a later stage)⁸.

⁷ The prior notification approach applies with immediate effect for ICT outsourcing arrangements pursuant to point 7 of CSSF circular 22/805. By derogation, support PFS and their branches will, under certain circumstances, still need to get prior approval.

⁸ The notification process applies to (a) planned, new critical or important outsourcing arrangements, (b) material changes to existing critical or important outsourcing arrangements and (c) changes to outsourcing arrangements that lead to an outsourced function becoming critical or important. In the cases (b) and (c), the notification shall be done without undue delay i.e. as early as possible before the planned implementation date and at least three (3) months or one (1) month before this date, where possible. Material changes and/or severe events regarding existing outsourcing arrangements that could have a material impact on the continuing provision of the business activities shall also be notified with no delay.

CSSF circular 22/806 formalises a series of CSSF supervisory expectations in respect of in-scope entities in terms of the:

- applicability of the proportionality principle and the requirement to document the proportionality analysis;
- enhancement of the internal control framework and procedures to integrate the additional risks to which they may be exposed due to outsourcing arrangements;
- appropriate oversight of outsourcing arrangements (including in particular in terms of quality of internal control, adequacy of resources and in a group context) and the ultimate responsibility of the management body in that respect;
- compliance with professional secrecy and data protection requirements (including the obligations to designate a relationship manager for each outsourced activity that will manage access to confidential data and to comply with the “need to know” and “least privilege” principles);
- compliance with legal and regulatory requirements on central administration;
- specific requirements where outsourcing arrangements relate to internal control functions or the financial and accounting function;
- specific requirements in case of outsourcing of support PFS activities;
- independence of the service providers from the statutory auditors of the in-scope entity;
- prohibition to include in an outsourcing arrangement any termination clause in case of bankruptcy, controlled management, suspension of payments, compositions and arrangements with creditors aimed at preventing bankruptcy and other similar proceedings affecting the in-scope entity.

Such expectations shall also be observed in case of sub-outsourcing.

For further information on the topic, please reach out to your usual A&O contact, or any of the below relevant contacts.



Henri Wagner
Partner
Tel +352 44 445 5285
henri.wagner@allenoverly.com



Carole Schmidt
PSL-Counsel
Tel +352 44 44 5 5275
carole.schmidt@allenoverly.com



Catherine Di Lorenzo
Counsel
Tel +352 44 44 5 5129
Catherine.dilorenzo@allenoverly.com



Baptiste Aubry
Counsel
Tel +352 44 44 5 5245
baptiste.aubry@allenoverly.com



Andrei Costica
Senior Associate
Tel +352 44 44 5 5342
andrei.costica@allenoverly.com

Allen & Overy means Allen & Overy LLP and/or its affiliated undertakings. Allen & Overy LLP is a limited liability partnership registered in England and Wales with registered number OC306763. Allen & Overy (Holdings) Limited is a limited company registered in England and Wales with registered number 07462870. Allen & Overy LLP and Allen & Overy (Holdings) Limited are authorised and regulated by the Solicitors Regulation Authority of England and Wales. The term partner is used to refer to a member of Allen & Overy LLP or a director of Allen & Overy (Holdings) Limited or, in either case, an employee or consultant with equivalent standing and qualifications or an individual with equivalent status in one of Allen & Overy LLP's affiliated undertakings. A list of the members of Allen & Overy LLP and of the non-members who are designated as partners, and a list of the directors of Allen & Overy (Holdings) Limited, is open to inspection at our registered office at One Bishops Square, London E1 6AD.

© Allen & Overy LLP 2022. This document is for general guidance only and does not constitute advice. | # 2,002,256,420