

BVI¹ position on EIOPA's Consultation paper on the proposal for Guidelines on outsourcing to cloud service providers

BVI members are asset managers providing management services to collective investment undertakings such as UCITS or AIF. Most of them are investment management companies within the meaning of Directive 2009/65/EC ("UCITS Directive") or Directive 2011/61/EU ("AIFMD") for which the Solvency II Directive does not apply and sector-specific requirements are in place. However, for some of them the consultation at hand can be relevant if they are part of an insurance group.

We are concerned about the scope defined under **paragraph 2** of the draft Guidelines that is focused on "*both individual (insurance) undertakings and mutatis mutandis for groups*". The latter reference could be misunderstood in the sense that the Guidelines should also apply directly on solo-level to asset management companies being part of an insurance group. This would lead to the situation that these companies would be required to implement two different regimes on solo level, the regime of the UCITS Directive/AIFMD and the EIOPA Guidelines as an outcome of the Solvency II Directive. These requirements differ in key aspects such as functions which could be outsourced, including specific conditions for delegation of functions into third countries and, in particular, the outsourcing process including the content of outsourcing agreements and controlling process. Moreover, the outsourcing requirements proposed by the EIOPA in its guidelines are not designed to reflect these sector-specific requirements and specific business models of asset management companies.

In view of financial stability, there may be a need for further development of a common understanding of outsourced business activities in the insurance sector and for issuing EIOPA guidelines on internal governance processes regarding the risks insurance undertakings are or might be exposed to, also in a group context. However, the legal mandate given to EIOPA does not involve issuing guidelines with regard to the application of Solvency II rules to subsidiaries of insurance undertakings for which sector-specific requirements apply. In this context, we refer to the Joint Advice² of the ESAs on the need for legislative improvements relating to ICT risk management requirements in the EU financial sector that makes a precise distinction between banking, insurance and securities markets legislation. EBA has also clarified in its final report³ on EBA Guidelines on outsourcing arrangements that firms subject to the UCITS Directive or the AIFMD are not in scope on an individual level.

We therefore request EIOPA to explicitly clarify in their Guidelines that investment management companies licensed under the UCITS Directive or AIFMD and being part of an insurance group are out of the scope of the proposed guidelines and are not required to implement all these requirements drafted in the guidelines on solo-level.

¹ BVI represents the interests of the German fund industry at national and international level. The association promotes sensible regulation of the fund business as well as fair competition vis-à-vis policy makers and regulators. Fund companies act as trustees in the sole interest of the investor and are subject to strict regulation. Funds match funding investors and the capital demands of companies and governments, thus fulfilling an important macro-economic function. BVI's more than 100 members manage assets of some 3 trillion euros for private investors, insurance companies, pension and retirement schemes, banks, churches and foundations. With a share of 22% in the EU Germany represents the largest fund market as well as the second fastest growing market in the EU. BVI's ID number in the EU Transparency Register is 96816064173-47. For more information, please visit www.bvi.de/en.

² Available under the following link:

https://www.esma.europa.eu/sites/default/files/library/jc_2019_26_joint_esas_advice_on_ict_legislative_improvements.pdf

³ Cf. EBA/GL/2019/02, 25 February 2019, page 78.