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CLOUD OUTSOURCING REGULATION: UPDATES & IMPLICATIONS

12 JUNE 2019



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Welcome address

*Jean-François Terminaux, Chairman, FTL
&*

*Jean Hilger, Head, ABBL Digital Banking and FinTech
Innovation Cluster*



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Ask your
questions live!



ADOPTION OF CLOUD COMPUTING SERVICES BY FINANCIAL INSTITUTIONS IN LUXEMBOURG

SURVEY 2019

JEAN HILGER

Head, ABBL's Digital
Banking and FinTech
Innovation Cluster



ABBL Digital Banking and Fintech Innovation Cluster: Acton Plan 2019

GOAL 1

To disseminate knowledge

EVENTS:

- **Interactive conferences** dedicated to specific subjects (Cloud Computing, Regulatory Reporting, Outsourcing...)
- **Information sessions and workshops** on various Digital Banking and FinTech topics
- **Speed-dating** with FinTech firms
- **Innovation sharing sessions** by ABBL members

KNOWLEDGE:

- Extension of the **MemberNet** (the database of opinion papers and the database of FinTech firms)
- The **Luxembourg FinTech Map**:
- Weekly **newsletter** on Digital Banking and FinTech

EDUCATION:

- Review and extension of “**Digital Banking**” training courses at the House of Training

GOAL 2

To cooperate with regulators

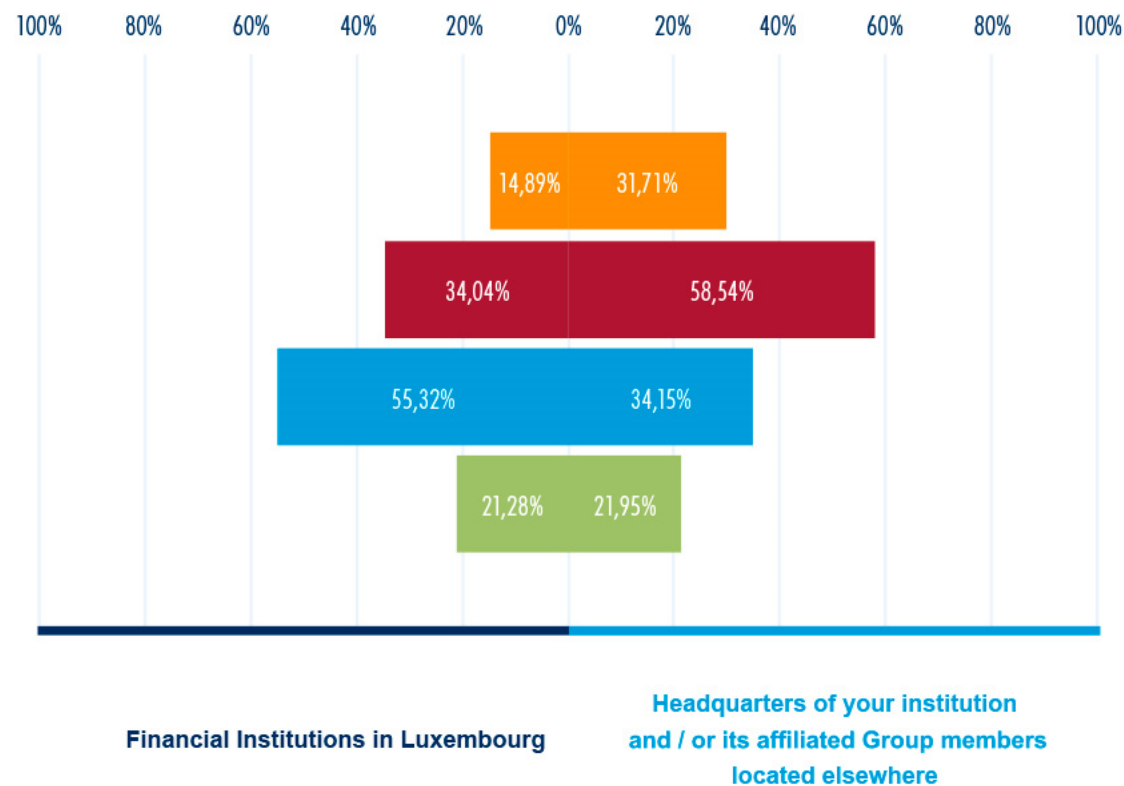
- Working Group “**Cloud Computing**”
- Working Group “**Distributed Ledger Technology**”
- Working Group “**Open Banking**”
- Contribution to FinTech working groups at the **High Committee for the Financial Centre (HCPF)**
- Cooperation on digital banking and FinTech topics with the **Luxembourg for Finance**

GOAL 3

To be an impactful actor in the FinTech ecosystem

- Feasibility study: **Luxembourg Regulatory Reporting Hub**
- R&D project on the **Application of the DLT to KYC Processes** (jointly with BCEE, BGL BNP Paribas, BNY Mellon, SnT and LSF)
- R&D Project on **Trustworthy Artificial Intelligence**
- Exploring synergies with **LHoFT**
- Study: **DLT Adoption** by Luxembourg’s financial sector
- Study: **Cloud Outsourcing Adoption** by Luxembourg’s financial sector
- Promotion of ABBL’s **FinTech Service Pack**
- The **list of LU banks interested in onboarding FinTech firms**

Adoption of cloud computing services by financial institutions in Luxembourg and respective Group members



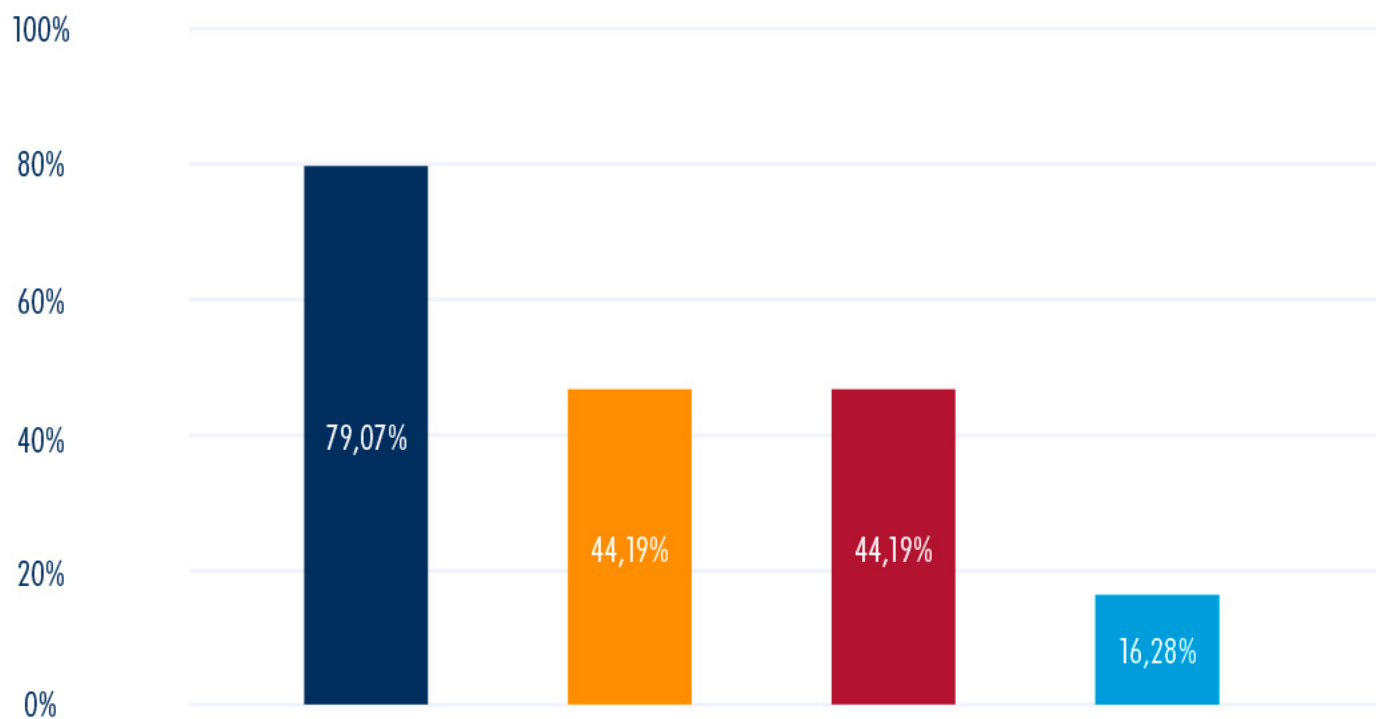
Adopted cloud computing services
in the past

Currently adopts
cloud computing services

Plans to adopt cloud computing services
in the future

Not
applicable

Cloud computing service models currently used
and planned to be used by financial institutions in Luxembourg



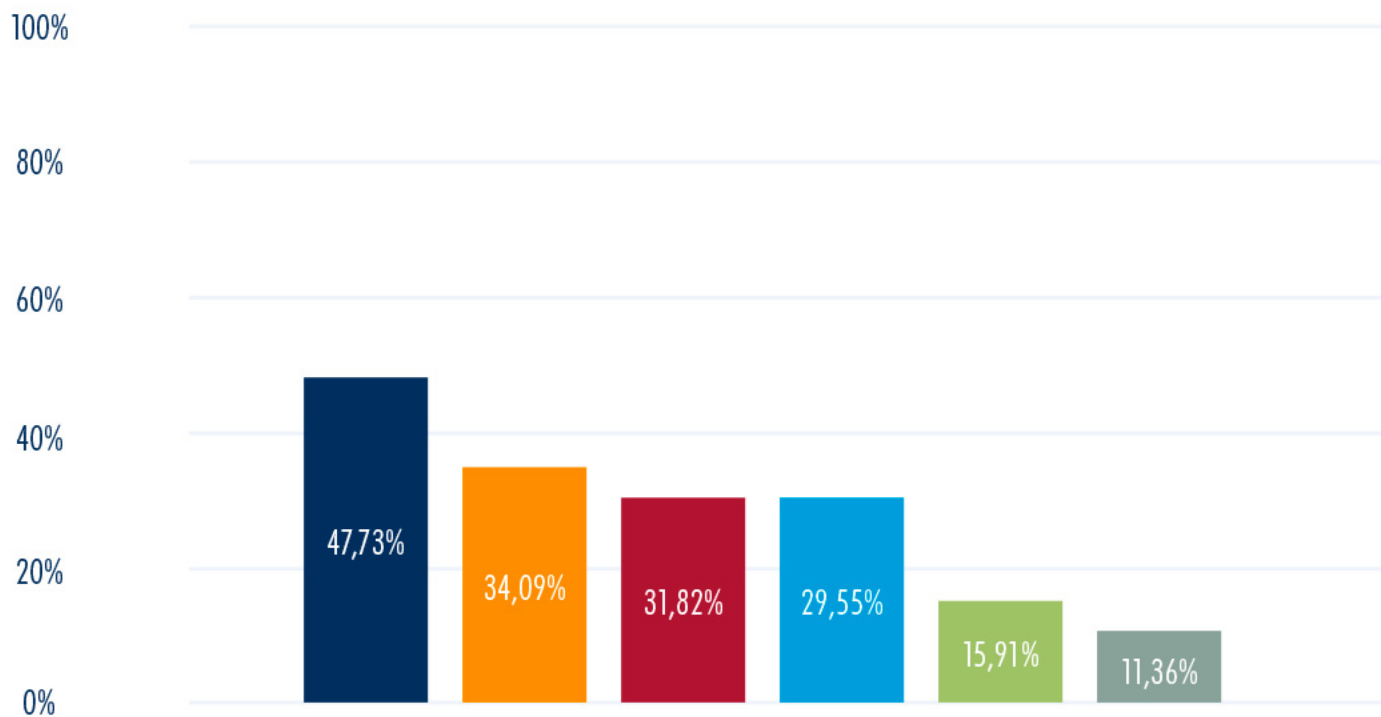
Software as a service (SaaS)

Infrastructure as a service (IaaS)

Platform as a service (PaaS)

Other

Cloud computing deployment models currently used and planned to be used by financial institutions in Luxembourg



Private cloud

Public cloud

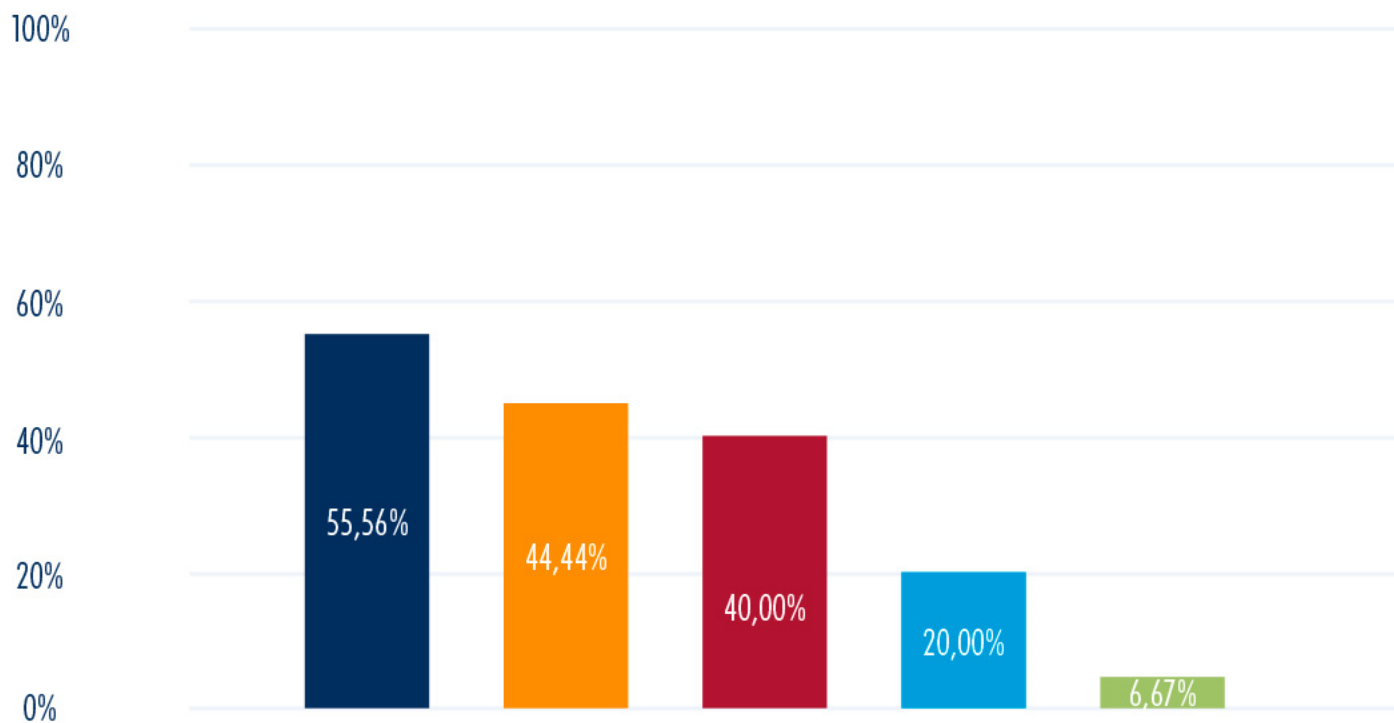
Multi-cloud

Hybrid cloud

Community Cloud

Other

Approaches to cloud computing outsourcing used by financial institutions in Luxembourg



Subcontractor abroad (group or not)
or a group exemption

Direct outsourcing to a CSP

Use of a support PSF

Other

Indirect outsourcing to CSP
through a non regulated entity

Major issues financial institutions in Luxembourg face while adopting cloud computing services

Notification to the CSSF or authorisation of the CSSF



Management of outsourcing risks



Governance



Systems security



Criticality



Client notification and consent



Definition of materiality



Outsourcing chain



Contractual clauses



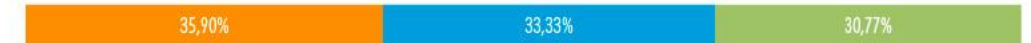
Right to audit



Definition of outsourcing



Signatory of a cloud computing service contract



Business continuity



Monitoring of activities



Roles of cloud officer



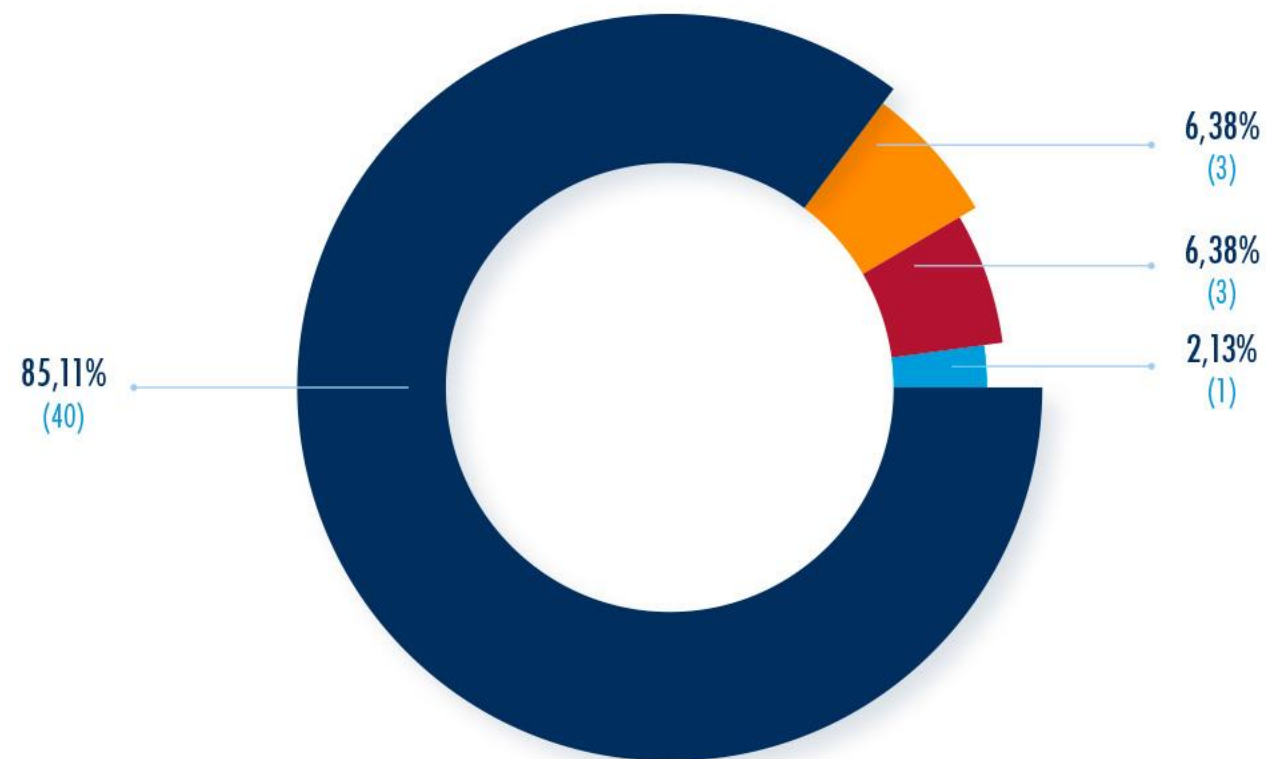
Resource operation



Capacity



Types of financial institutions that took part in the survey



Credit institution

Payment institution

Financial sector professional (PSF)

Market infrastructure



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What to expect from the European Banking Authority (EBA) revised guidelines on outsourcing arrangements?

Laurent de la Vaissière, Associate Partner, KPMG



EBA Guidelines on Outsourcing What to expect?

ABBL & FTL
Cloud Outsourcing Regulation Conference

June 2019

Agenda

① Brief word on the EBA

② Where are we coming from/going?

③ EBA Guidelines on Outsourcing

- Key principles
- Outline of the guidelines / highlights
- Timeline

④ Suggested next steps

25,457 views | May 31, 2019, 03:28pm

The European Banking Authority Leaves London

**Frances Coppola** Senior Contributor

Banking & Insurance

I write about banking, finance and economics.

Yesterday, May 30, an important part of London's influence in the European financial world quietly slipped away. The European Banking Authority (EBA) closed its Canary Wharf office. There was no press release, no news report, only a [statement on its website](#) giving its new address. On Monday, June 3, it will re-open in Paris, France.



- Successor of the Committee of European Banking Supervisors (CEBS, 2004-2010)
- EU regulatory agency belonging to the European System of Financial Supervision (ESFS, 2011-today)
- Contributes common rules underpinning the EU single market in banking

The Europlaza tower, where the London-based European Banking Authority (EBA) has just relocated, stands in the La Defense business district in Paris, France, on Wednesday April 10, 2019. The Paris region government has been a key driver of France's Project Brexit.

Photographer: Christophe Morin/Bloomberg © 2019 BLOOMBERG FINANCE LP

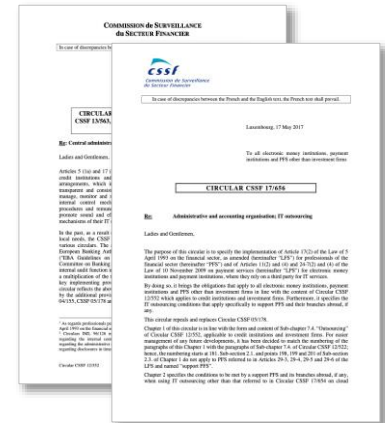
Where are we coming from?

Outsourcing (incl. IT)

- CEBS Guidelines on outsourcing (2006)



- Circular CSSF 12/552 as amended
- Circular CSSF 17/656



Cloud Computing

- EBA/REC/2017/03 Recommendations on outsourcing to cloud service providers



- Circular CSSF 17/654 as amended on IT outsourcing relying on a cloud computing infrastructure



Where are we going?

Outsourcing (incl. IT)

Cloud Computing

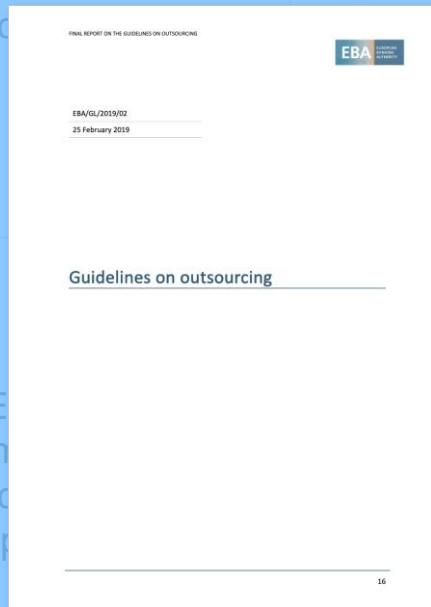


EU

30/9/2019

EBA/GL/2019/02 Guidelines on outsourcing

- CEBS Guidelines on outsourcing



Luxembourg

- Circular CSSF 12/552 as amended
- Circular CSSF 17/656



- Circular CSSF 17/654 as amended on IT outsourcing relying on a cloud computing infrastructure



Key principles



More harmonized framework – applies to payment and electronic money institutions (on top of credit institutions and investment firms)

Significantly more detailed and prescriptive requirements

New definition of outsourcing and of degrees thereof, i.e. “critical or important” and “other”

Introduction of a register of outsourcing arrangements

New focus on service providers located in third countries

New emphasis on exit plans

Outline of the guidelines

**Title I.
Proportionality:
group application
and institutional
protection schemes**

**Title II. Assessment
of outsourcing
arrangements**

**Title III.
Governance
framework**

**Title IV.
Outsourcing
process**

**Title V. Guidelines
on outsourcing
addressed to
competent
authorities**

Title II. Assessment of arrangements

Title I Introduction and general provisions	Title II Assessment of arrangements	Title III Concluding provisions
Title IV Outsourcing arrangements	Title V Outsourcing arrangements involving central banks	

Institutions should establish whether an arrangement with a third party falls under the definition of outsourcing:



Outsourcing

“An arrangement of any form between an institution, a payment institution or an electronic money institution and a service provider by which that service provider performs a process, a service or an activity that would otherwise be undertaken by the institution, the payment institution or the electronic money institution itself.”

Guidelines include 7 types of services not to be considered as outsourcing

Title II. Assessment of arrangements

Title I Introduction and scope of the assessment	Title II Assessment of arrangements	Title III Conclusions
Title IV Annexes	Title V Appendix on the assessment	

- Institutions should always consider a function as **critical or important**:

Where a defect or failure in its performance would materially impair:

- Continuing compliance,
- Financial performance, or
- Soundness or continuity of banking and payment services and activities

When operational tasks of internal control functions are outsourced

When outsourcing a function would require authorization by a competent authority

- Functions that are necessary to perform activities of **core business lines or critical functions** should be considered as critical or important functions
- The guidelines outline **10 criteria** to perform the evaluation

Title III. Governance framework

Title I Organizational governance and transparency arrangements	Title II Assessment of governance arrangements	Title III Governance framework
Title IV Outsourcing policy	Title V Conflicts of interest and business continuity plans	

Sound governance arrangements and third-party risk

Sound governance arrangements and outsourcing

Outsourcing policy

Conflicts of interest

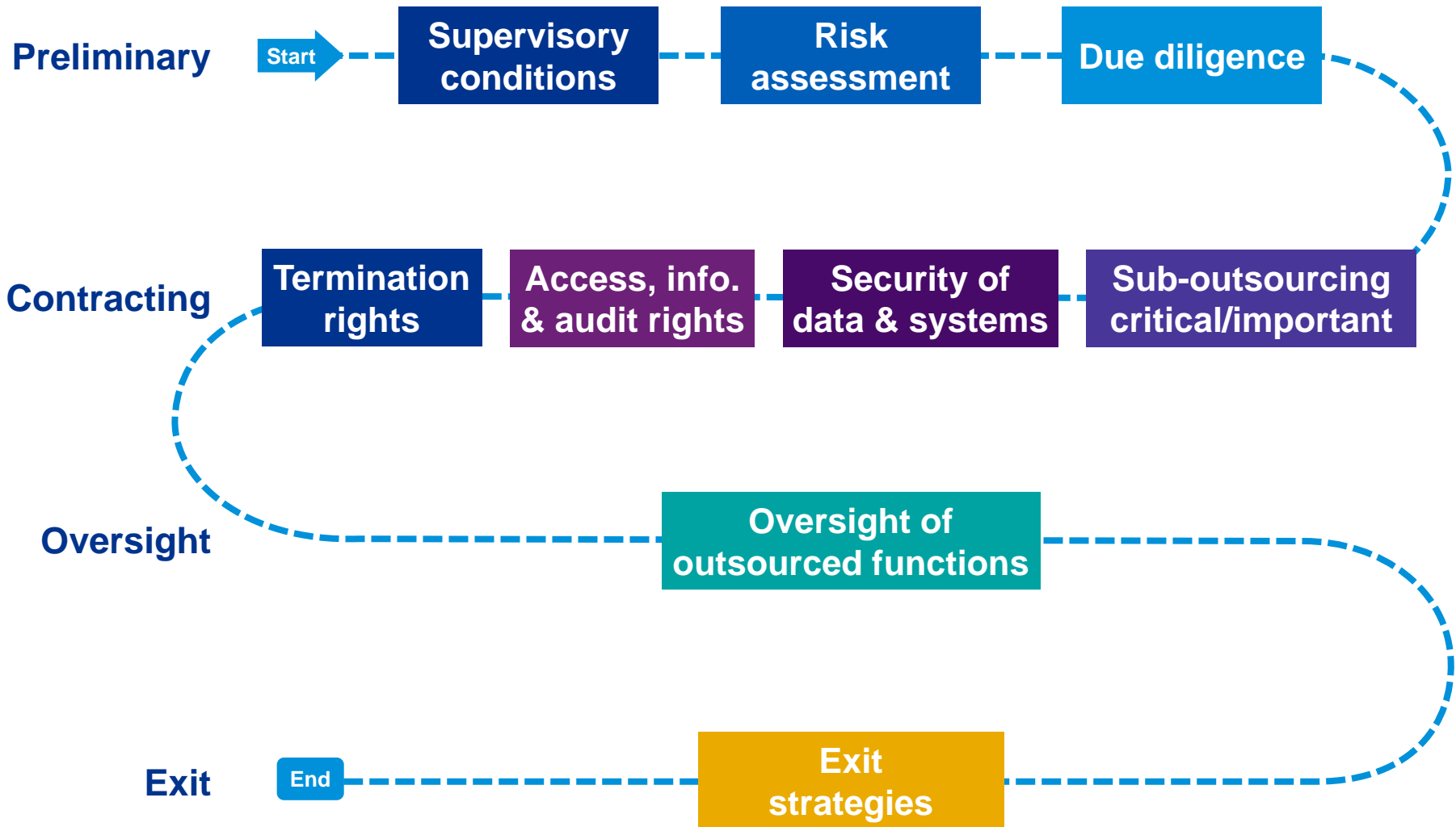
Business continuity plans

Internal audit function

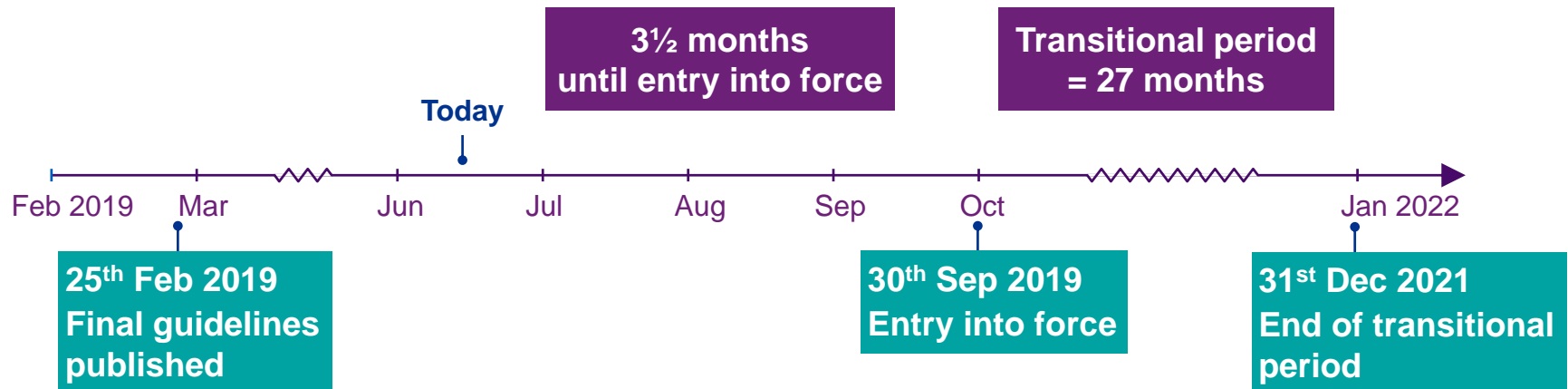
Documentation requirements

Title IV. Outsourcing process

Title I Organizational governance and control structure	Title II Assessment of outsourcing arrangements	Title III Contracting process
Title IV Outsourcing process	Title V Termination rights and audit rights	Title VI Security of data & systems



Timeline



Transitional period

- Guidelines apply to all outsourcing arrangements entered into, reviewed or amended on or after 30th September 2019
- Institutions should review and amend accordingly existing outsourcing arrangements
- Where the review of outsourcing arrangements of critical or important functions is not finalized by 31st December 2021, institutions should inform their competent authority

Suggested next steps

1

Inventory arrangements with a third party that fall under definition of outsourcing, including whether they should be deemed material or important

2

Start completing the register of information on all outsourcing arrangements

3

Assess your existing outsourcing governance framework against upcoming requirements & plan your remediation actions

4

Plan the review and renegotiation of your outsourcing arrangements according to their contractual lifecycle

5

Investigate innovative technology solutions which may support your remediation efforts (contract analysis, cyber ratings, etc.)



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Revised CSSF 17/654 (19/714) Circular on Cloud Computing Outsourcing

*David Hagen, Head of IT Supervision
and Support PSF, CSSF*

Revised CSSF 17/654 (CSSF 19/714) Circular on Cloud Computing Outsourcing

12 June 2019

David HAGEN
CSSF, Head of IT supervision



FINDINGS TWO YEARS AFTER PUBLICATION (17 MAY 2017)

- Scope of the Cloud Circular to be aligned with Circular CSSF 18/698
- High workload (for supervised entities and for the CSSF) and perfectible efficiency
 - 1/3 of the files in progress address cloud outsourcing
 - 67% of cloud files are non-material, which today represents a significant workload for all parties for a potential low risk coverage
 - Very (too) complete files are requested with a negative impact on the quality of the information received and consequent loss of time in "back and forth" between CSSF and FI to obtain usable information
- Lack of flexibility for non-material subcontracting
 - The CSSF's requirements were the same for material or non-material activities outsourcing
 - Some requirements cannot be met (right of audit)
- Lack of guidance for the qualification of materiality
- Clarity of some paragraphs to be reviewed
- Publication of the EBA Guidelines on outsourcing

FACTS (CSSF 19/714)

- Many authorisation or notification requests were submitted to the CSSF by the supervised entities in order to use cloud computing solutions. Two thirds of the intended cloud outsourcing fall under non-critical or non-material activities.
- Many questions were addressed by the supervised entities to the CSSF. The supervised entities expressed, in that way, the need for more guidance from the CSSF, particularly with respect to the qualification of materiality of the outsourced activities.
- In December 2017, the European Banking Authority (EBA) published its Recommendations on outsourcing to cloud service providers (EBA/REC/2017/03). The CSSF assessed that Circular CSSF 17/654 includes the requirements laid down in the European texts but is stricter and less flexible in some aspects.
- Circular CSSF 18/698 published in August 2018 made Circular CSSF 17/654 applicable to investment fund managers wishing to outsource to a cloud computing infrastructure.

CIRCULAR CSSF 19/714: AMENDMENTS TO THE CIRCULAR CSSF 17/654

- Addition of investment fund managers in the scope of application (in line with Circular CSSF 18/698)
- Reminder of the general principle of proportionality; in this context, introduction of optionality for some requirements for non-material activities only
- Introduction of a register to be maintained by the supervised entities which includes all the cloud computing outsourcing of material as well as non-material activities
- Cancellation of the necessity to notify the CSSF of a cloud computing outsourcing of non-material activities in favour of maintaining the register
- Replacement of the “compliance table” by more specific and pragmatic forms
- Rewording and/or reorganisation of some paragraphs for more clarity (minor changes).

POINT OF ATTENTION: PRINCIPLE OF PROPORTIONALITY

- Application of the principle of proportionality:
 - Is optional (the choice remains to the entity)
 - For non-material outsourcing AND the following points only:

27.j	Notification by the cloud computing service provider in case of change of functionalities
27.k	Notification by the resource operator in case of change of functionalities
28.b	Continuity in case of resolution or reorganisation or another procedure
28.c	Transfer of services in case the continuity is threatened
30	Monitoring of activities
31.a	Contract under the European Union law
31.b	Resiliency of the services in the European Union
31.j	Right of audit for the ISCR
32	Details regarding the right of audit
33	Exercise of the right of audit

POINT OF ATTENTION: PRINCIPLE OF PROPORTIONALITY

- The use of the principle of proportionality, its justification and the points concerned will be entered in the register:
 - The register will not be automatically submitted to the CSSF but may be requested at any time by the CSSF

TRANSITIONAL PERIOD

- Apart from investment fund managers subject to Circular CSSF 18/698, the ISCR shall establish and complete the register referred to in point 26.a within six months as from the entry into force of this circular. (October 2019)
- The investment fund managers subject to Circular CSSF 18/698 which have already outsourced on a cloud computing infrastructure before the entry into force of this circular do not have to submit a notification or authorisation request to the competent authority for this outsourcing as referred to in points 26.b and 26.c. They shall, however, establish and complete the register referred to in point 26.a within one year as from the entry into force of this circular. (April 2020)

ADDITIONAL DOCUMENTS

- The CSSF has published two documents helping to understand the topic on its website:
 - A guide to assist the entities in qualifying the materiality of the activities

http://www.cssf.lu/fileadmin/files/Systemes_d_informations/Form_A.docx

- An FAQ to assist the entities in their analyses and procedures

http://www.cssf.lu/fileadmin/files/Systemes_d_informations/FAQ_materiality_eng_270319.pdf

MATERIALITY

An IT outsourcing is considered material if at least one of the following statements is met:

1. From a technical point of view, the outsourced IT operational functions, activities or services safeguard the security and continuity of critical parts of the IT infrastructure. A deficiency in these outsourced IT operational functions, activities or services may significantly disrupt the ability of the supervised entity to protect its IT infrastructure and, therefore, the ability of the supervised entity to operate its material activities in a controlled manner.
2. From a business point of view, the outsourced IT operational functions, activities or services support a material activity.

MATERIALITY

In case of failure or dysfunction of the IT operational functions, activities or services, there is a major impact on the business activity. The impact may be one of the following:

- A [financial impact](#), including (but not limited to) loss of funds or assets, potential customer compensation, legal and remediation costs, contractual damages, loss of revenue.
- A [potential for business disruption](#), considering (but not limited to) the criticality of the financial services affected; the number of customers and/or branches and employees potentially affected.
- A [potential reputational impact](#) on the institution based on the criticality of the financial service or operational activity affected (e.g. theft of an important volume of customer data); the external profile/visibility of the IT systems and services affected (e.g. mobile or on-line banking systems, point of sale, ATMs or payment systems).
- A [regulatory impact](#), including the potential for public censure by the regulator, fines or even variation of permissions.
- A [strategic impact](#) on the institution, for example if strategic product or business plans are compromised or stolen.

QUESTIONS





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The EBA / CSSF regulations on outsourcing and the use of cloud solutions: which impact from a contractual perspective?

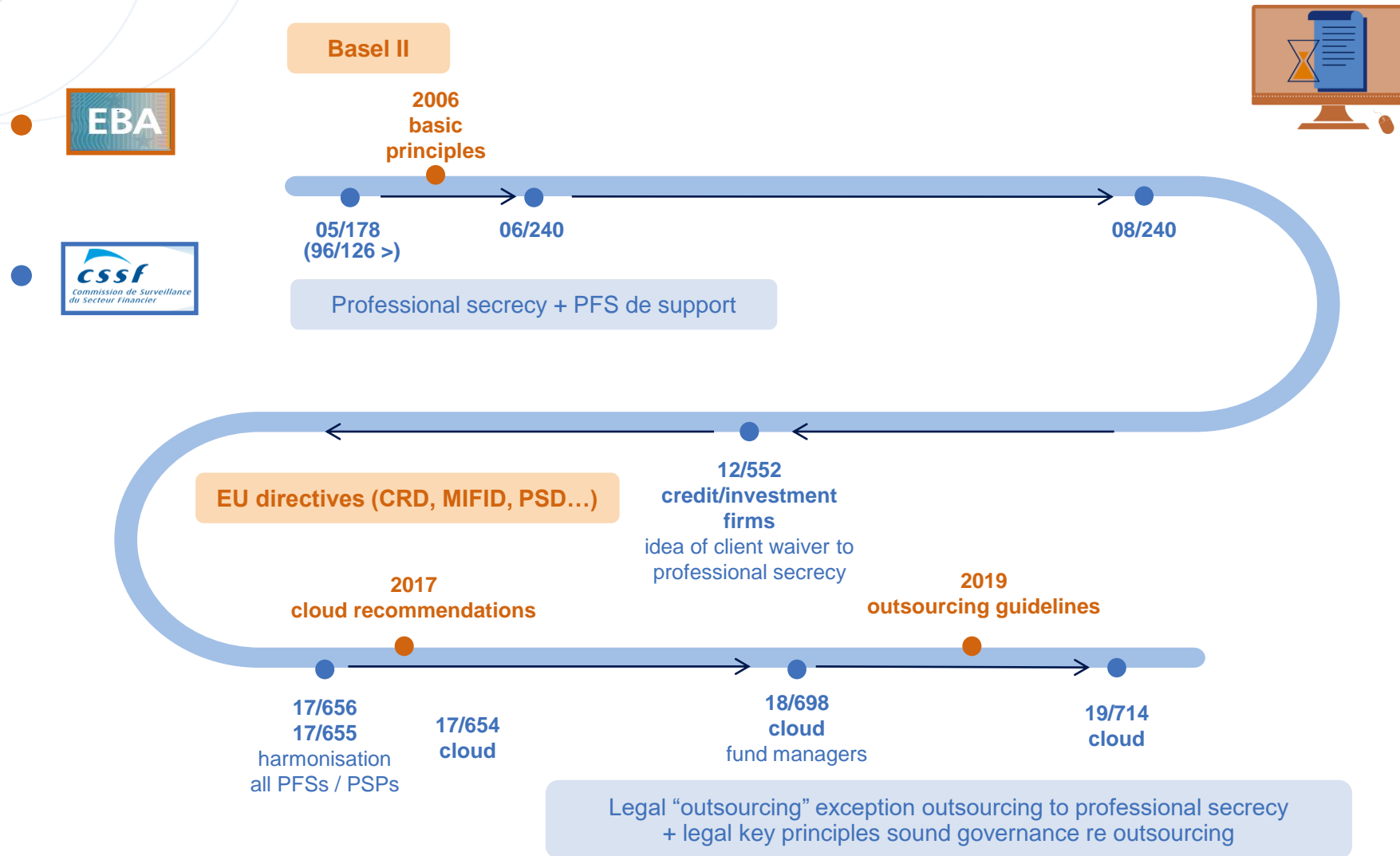
Vincent Wellens, Partner, NautaDutilh



EBA/CSSF rules on outsourcing and cloud: which impact from a contractual perspective ?

Vincent Wellens, avocat à la Cour

Outsourcing regulation in the financial sector: history



Some preliminary remarks



EBA deadline: 30.9.2019 for new, reviewed or amended outsourcing arrangements - 31.12.2021 for existing, non-cloud outsourcing




EU trend towards type CSSF regulation on outsourcing = level playing field BUT CSSF and EBA rules still show differences and both must be respected



Intra-group outsourcing : Luxembourg regulation does not make a distinction; the EBA guidelines take intra-group specifics into account

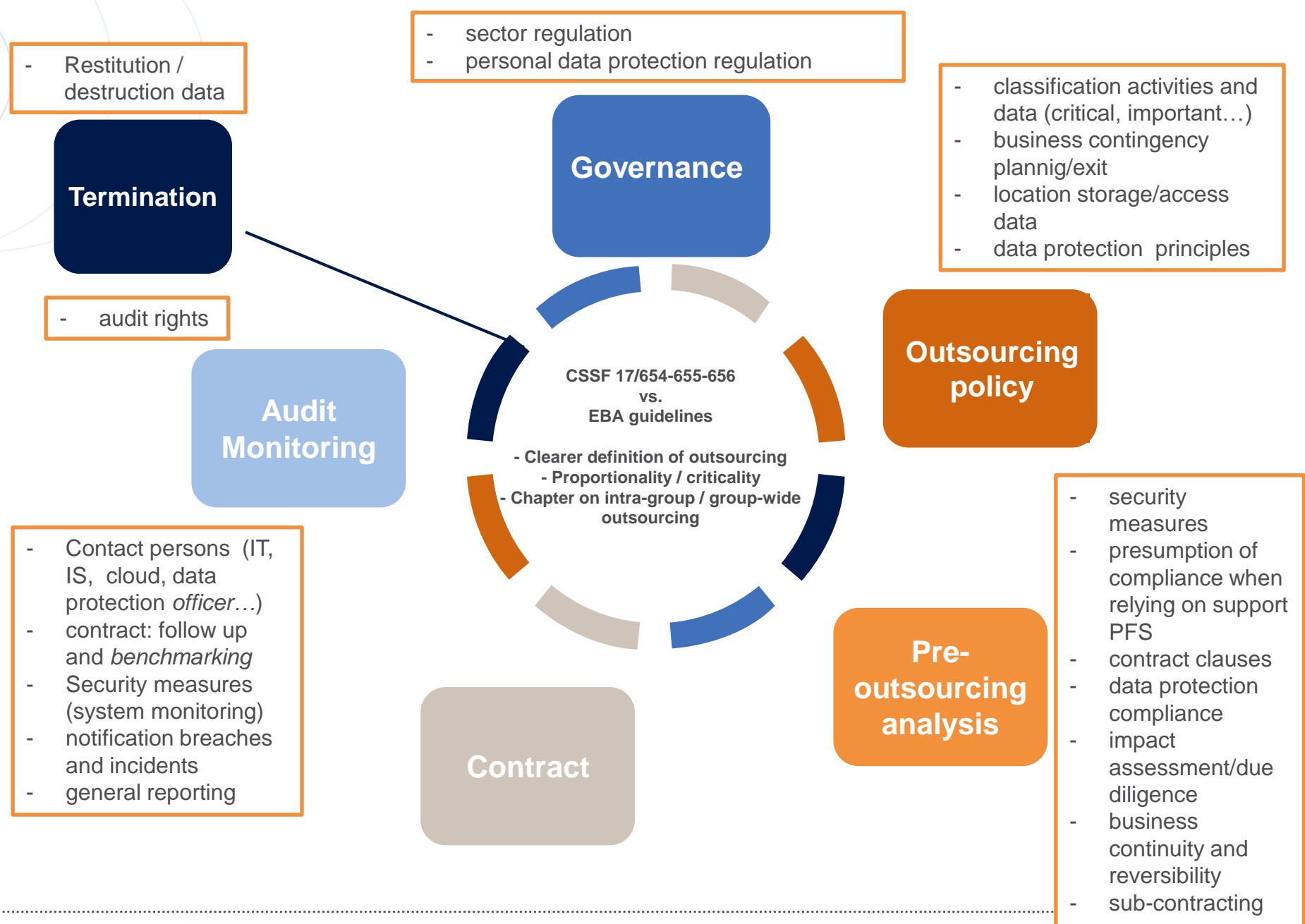


Luxembourg level: difference non-cloud / cloud based regulation remains with different roles: client – resource operator – signatory - CSP



Best practices outsourcing contracts	CSSF rules (PFS + payment)	EBA	CSSF rules cloud	GDPR
Prior risk analysis / due diligence	✓	✓ (more detail / role management)	✓	✓
Detailed scope (incl. specifications)	✓	✓	✓	✓
R&R matrix	✓	✓	✓	✓
SLA / KPI (monitoring)	✓ (investment firms)	✓	✓ (2017 version: +penalties)	
Financial counterpart	(tax laws)	✓	(tax laws)	
Subcontracting (control)	✓	✓	✓	✓
Subcontracting (consent)	✓	✓	✓	✓
Applicable law		✓	✓ (law EU Member State)	

Best practices outsourcing contracts	CSSF rules (PFS + payment)	EBA	CSSF rules cloud	GDPR
Service / data localisation	(v)	v	v (resilience in EU)	v (if outside EU/EEA)
Information security (confidentiality, integrity, privacy) (incl. need to know/least privilege)	v	v (explicit mention of IS measures)	v	v
Business continuity (incl. in case of crisis/insolvency of financial institution)	v	v (incl. contingency <u>testing</u> + access to data)	v (resilience in EU)	v (availability and resilience)
Reversibility / transferability of services (incl. restitution of data)	v	v (more focus on exit strategy)	v	v
Reporting significant issues	v	v	v	v (data breach)
Reporting in order to assure regulatory compliance	v	v	v	v
Audit right / cooperation with authorities	v	v	v	v
Termination rights	v	v (termination events/transition)	v	v





30.9.2019 = tomorrow



The time of no or very short “pro forma” outsourcing agreements is over



Outsourcing agreements must reflect the prior risk assessments and vendor due diligences

Questions?



At your disposal



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Meliha Dacic

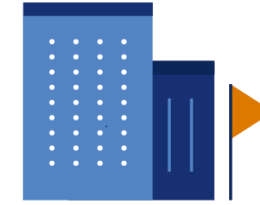
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Sebastiaan Hooghiemstra

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A brief presentation of our firm

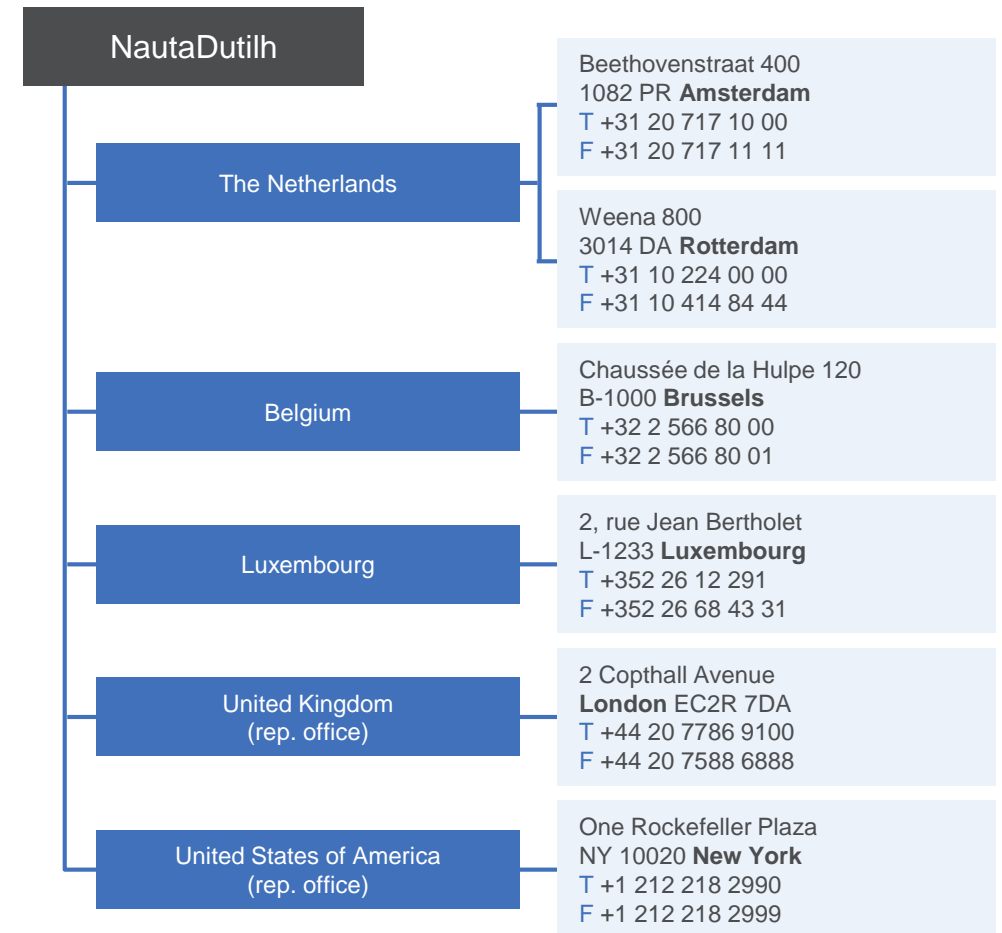


Firm profile

Number of partners, associates and other legal staff.

- An international law firm practising Dutch, Belgian, Luxembourg and Dutch Caribbean law, founded in 1724.
- One of the largest law firms in the Benelux region:
 - 388 lawyers including 72 partners, including 14 female partners.
 - 10 of our lawyers are also university professors.
- Spread across 6 offices and 5 country desks: Offices in Amsterdam, Brussels, London, Luxembourg, New York and Rotterdam.
- Our country desks focus on: Germany, France, India, China and Japan. We also monitor growth markets such as Brazil, Mexico, Indonesia, South Korea and Turkey.
- An independent firm with non-exclusive relations with the top law firms in more than 80 countries.

Office locations





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The role of PSF de support in the context of the revised circular on cloud outsourcing

Denis Stoz, Vice-Chairman, FTL



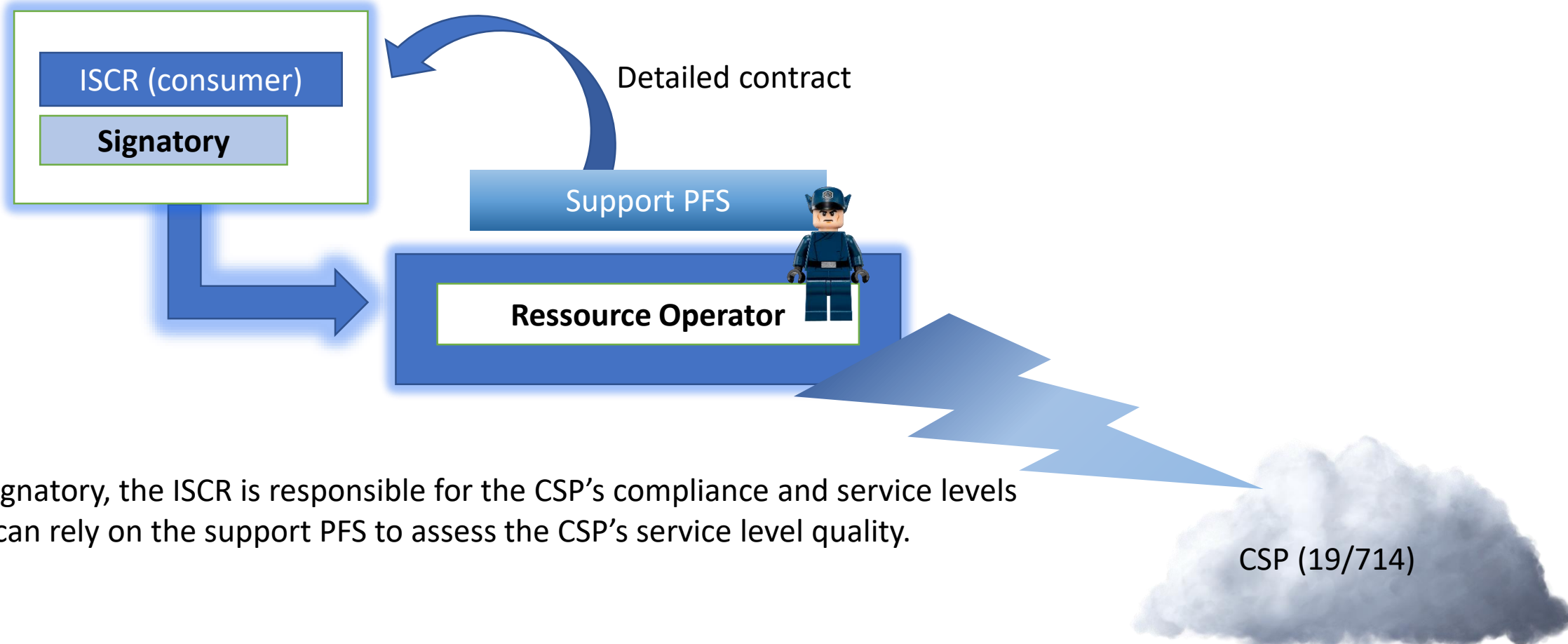
If subcontracting
is aligned with
the 7 criterias:

- No longer subject to

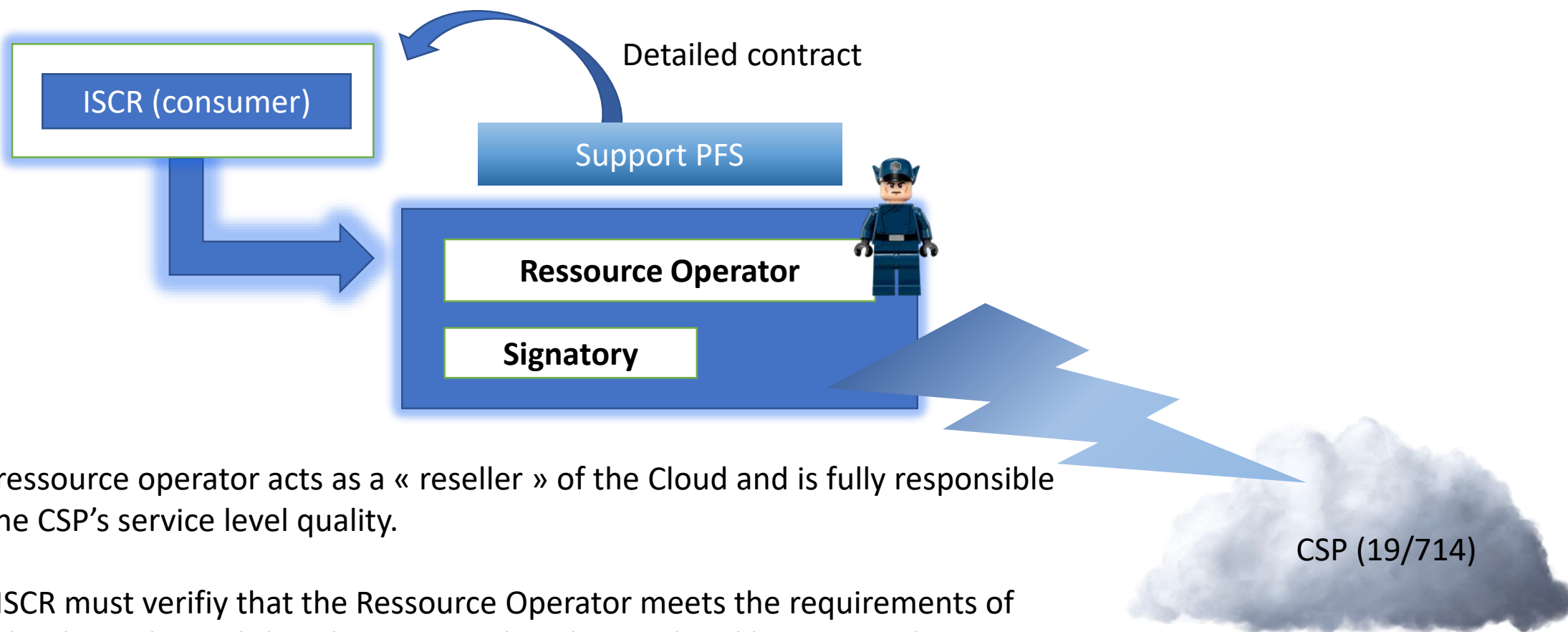
- circular 17/656 (formerly : 05/178)
- Subchapter 7.4 of 12/552
- Or provisions related to outsourcing of section 5.1.2 and to subchapter 6.2 of 18/698 (Investment Fund Managers)

... Only if the CSP and the ressource operator are different entities/services duly segregated.

Two cases where a support PFS is used (indirect outsourcing to CSP)



Two cases where a support PFS is used (indirect outsourcing to CSP)



The ressource operator acts as a « reseller » of the Cloud and is fully responsible for the CSP's service level quality.

The ISCR must verify that the Ressource Operator meets the requirements of the Cloud Circular and that the operator has done a due diligence on the CSP covering the cloud circular elements.

Material or non-material?

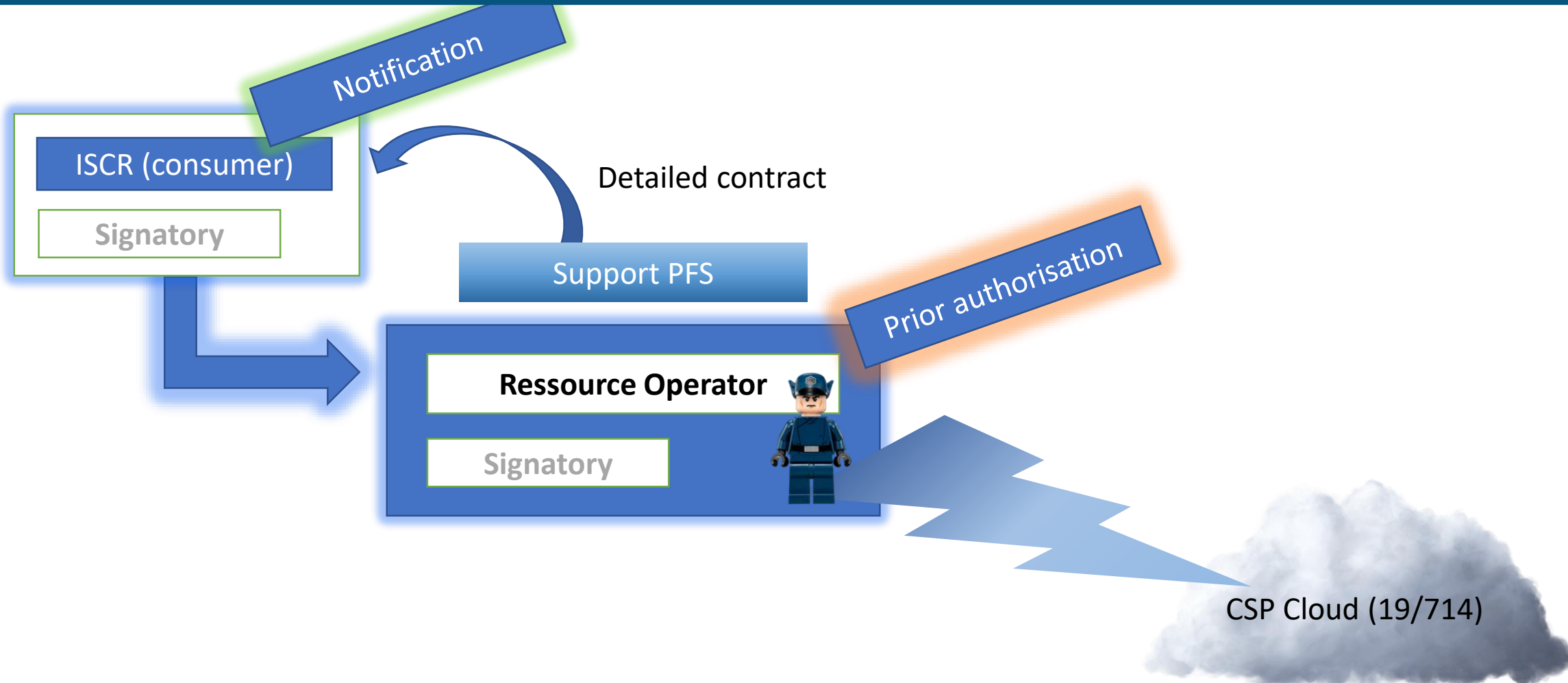
- Non-material : register – no notification
- Material : authorisation (or notification if outsourced to PFS 29-3 or 29-4)

But...

- For PFS 29-3 or 29-4, outsourcing is ALWAYS MATERIAL
 - If the PFS is operator for CSP, .. PFS customer may run ANY software (whether material or not)
 - If the software is core to the FS activities, 29-3 license applies



Notification/ prior authorisation





Rules

- Circular applies to 29-3 or 29-4 for operation of resources carried out for an institution which is not subject to supervision of the competent authority (CSSF in Luxembourg)
- Any institution falling under the scope of this circular shall maintain a register of all cloud computing infrastructure outsourced (non material AND material)
- PSF 29-3 or 29-4 have to fill in **Form D** for prior authorisation to provide a cloud resource operation service to its clients supervised by the competent authority



[Banks](#)

[Professionals of the financial sector \(PFS\)](#)

[Payment institutions/electronic money
institutions](#)

[Investment vehicles and managers](#)

[Securities markets](#)

[Macroprudential supervision](#)

[Benchmarks](#)

[Information systems of the supervised entities](#)

[Regulation](#)

[Authorisation/Notification](#)

[FAQ](#)

[Documentation](#)

[EMIR](#)

[Central securities depositories](#)

[MiFID II/MiFIR](#)

[Legal reporting](#)

[Financial crime](#)

[Audit profession](#)

[Supervision](#) > [Information systems of the supervised entities](#) > [Authorisation/Notification](#)

Authorisation/Notification

Cloud computing outsourcing

[Summary of the information to be transmitted to the competent authority relating to your outsourcing to a cloud computing infrastructure under Circular CSSF 17/654](#) [PDF](#)

[Register of cloud computing outsourcing](#) [XLS](#)

[Form A](#) [DOC](#) – Form for the prior notification to be transmitted to the competent authority by an institution which intends to outsource to a cloud computing infrastructure to support a material activity and use an institution authorised under Articles 29-3 and 29-4 of the LFS

[Form B](#) [DOC](#) – Form for the prior application for authorisation, to be transmitted to the competent authority by an institution which intends to outsource to a cloud computing infrastructure to support a material activity

[Form C](#) [DOC](#) – Form for the notification of the discontinuation of the outsourcing of a material activity to a cloud computing infrastructure

[Form D](#) [DOC](#) – Form for the prior authorisation application, to be transmitted to the competent authority by an institution authorised under Articles 29-3 or 29-4 of the LFS and which intends to outsource to a cloud computing infrastructure as a signatory to provide a resource operation service to its clients supervised by the competent authority

[Form E](#) [DOC](#) – Form for the prior authorisation application, to be transmitted to the competent authority by an institution authorised under Articles 29-3 or 29-4 of the LFS and intending to provide a cloud computing infrastructure to its clients supervised by the competent authority, acting thus as cloud computing service provider

Application form to request an exemption from obligation to set-up the contingency mechanism under Article 33(6) of Regulation (EU) 2018/389 (RTS on SCA and CSC)

[Exemption request](#) [DOC](#)

Useful document



[Circular CSSF 17/654](#) [PDF](#) (as amended by Circular CSSF 19/714)



Form D – Form for the prior authorisation application, to be transmitted to the competent authority by an institution authorised under Articles 29-3 or 29-4 of the LFS and which intends to outsource to a cloud computing infrastructure as a signatory to provide a resource operation service to its clients supervised by the competent authority

Your internal reference: [insert your internal reference]	Reference of the administration:
---	---

Where an institution authorised under Articles 29-3 or 29-4 of the LFS intends to outsource to a cloud computing infrastructure as a signatory to provide a resource operator service to its clients supervised by the competent authority, the institution must request a prior authorisation to the competent authority by completing this form.

Administrative information:

1. Legal name of the entity:

	<i>Reserved for the administration</i>
--	--

- Type of outsourcing of the Cloud Computing Infrastructure
 - IaaS/PaaS/SaaS
 - Justification (7 criterias)
 - Scope
- Compliance with 17/654
 - Exit Strategy
 - Business Continuity
 - Backup Plan
- European Union located (Y/N)
- Right of Audit
- Architecture and security measures



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Panel discussion

Moderator: Gilles Pierre, ABBL

David Hagen, CSSF

Patrick Useldinger, BCEE

Vincent Wellens, Nautadutilh

Denis Stoz, FTL



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Concluding remarks

Jean-François Terminaux, Chairman, FTL



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