



SUBMISSION FROM

THE CREDIT UNION DEVELOPMENT ASSOCIATION

IN RESPONSE TO

**The Central Bank of Ireland's Consultation Paper
Cross-Industry Guidance on Outsourcing
CP138**

26th July 2021

Introduction

CUDA (Credit Union Development Association) welcomes the opportunity to part take in the Central Bank of Ireland's Consultation on Cross-Industry Guidance on Outsourcing.

As a representative body for some of the largest most progressive credit unions regulated by the Central Bank of Ireland, we agree that reliance on outsourced service providers (OSPs) in order to meet the needs of their members is increasingly prevalent and necessary. Outsourcing allows small companies to access specialist skills that may not otherwise be available to them, and it provides access to deeper pools of expertise and resources to help manage capacity/resource shortages. Where outsourcing partners are carefully selected and the process or service specifically meets the needs of the credit union, we support an outsourcing framework to supplement the functions of current IT systems and allow standardised and collaborative offerings to their members which reduce costly and sometimes unsupported one-off developments.

Our responses are arranged under the four Questions as set out in the Consultation Paper. We highlight some concerns with the application of cross industry guidance on the credit union sector. Aligning the draft Guidance with existing legal requirements is not straightforward and this will require understanding (training and workshops) prior to implementation. Once the Guidance is concluded, we could propose a transitional period to allow credit unions carry out an assessment of their outsourced arrangements to ensure compliance.

Finally, we note the comments in the draft Guidance on concentration risk (@5.4). We would like greater clarity on this point for credit unions to ensure confusion does not arise from what might appear to be contradictory messages from the Central Bank. Key messages from the Registry of Credit Unions are for collaboration, shared services and economies of scale within the sector¹: -

"In this analysis, the issue of scale economies need to be considered and as mentioned earlier sectoral collaboration through vehicles such as shared services, properly constituted, are important in that space". [Address by Deputy Registrar of Credit Unions Elaine Byrne to the CUDA Annual Conference, January 2017]"

Need for scale lead to commercial solutions, as stated by the Central Bank, but due to the size of the credit union sector this can create concentration risk.

Responses to Questions on CP138

1. Are there any aspects of the Guidance that are unclear? If so, please advise what these are and provide suggestions on the additional clarity required

¹ See Addresses from the Registrar / Deputy Registrar of Credit Unions at CUDA Annual Conferences from January 2016 to 2020.

Please see responses to succeeding questions.

2. What, if any, are the other areas/topics that should be covered in the Guidance (specify sections) or in future versions of the Guidance?

1. One of the objectives as set out in the draft Guidance is the “resolution of financial difficulties in credit institutions”. We would like to see this objective further developed in the Guidance.
2. Please provide a definition of “intergroups” for the purposes of this Guidance.
3. With regard to the definition of outsourcing, please provide examples of the Central Bank of Ireland’s expectations of what are not regarded as outsourcing for the purposes of this Guidance.

3. What, if any, are the significant issues or concerns or unintended consequences that might arise due to the provisions of the Guidance?

1. The EBA Guidelines on outsourcing arrangements² bases the use of the term ‘critical or important functions’ on the wording of MiFID II and the Commission Delegated Regulation (EU) 2017/565 supplementing MiFID II. It also references Solvency II³ in this context. We acknowledge the focus of outsourcing risk by the EBA and an EU outsourcing framework, albeit many Papers and Guidance are not directly applicable to credit unions. The draft Guidance makes reference to a discussion paper⁴ of which credit unions were invited to contribute to. Credit unions were also not party to the Outsourcing Conference of April 2019. It would appear that credit unions are a *tag on* for the application of the draft Guidance but not in its design. The cross sectoral Guidance does not work in this instance and compliance becomes a concern. To avoid compliance risk, please provide guidance specific to the sector that is aligned and compatible with the governing legislation on outsourcing⁵ and with the Central Bank guidance as set out in the Credit Union Handbook⁶ and other circulars⁷.
2. We also refer to our response to CP140 (Q4) on use of the concept of “critical or important”, and its evolution. The Central Bank of Ireland’s “Cross Industry Guidance in respect of Information Technology and Cybersecurity Risks” September 2016 references “critical business functions” and “critical business operations”.

More recently, the “Outsourcing – Findings and Issues for Discussion” November 2018 provides that the “term ‘critical or important’ is used in this paper and replaces the terms ‘material’ and ‘critical’ that were used in the Survey. The use of the term

² EBA/GL/2019/02

³ Directive 2009/138/EC12

⁴ Discussion Paper 8, 2018.

⁵ Section 76J, Credit Union Act 1997, as amended

⁶ Ie Chapters 15, and 16

⁷ Ie Investment and Participation in Credit Union Owned Outsourced Service Providers 7th October 2019
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'critical or important' is in line with MiFID, PSD2 and the EBA Draft Guidelines on Outsourcing Arrangements and is used only for the purpose of identifying services, activities or functions under outsourcing arrangements".

- In our experience, all business services that are critical are also important. However, not all business services that are important are critical. To avoid the ambiguous nature of the evolving concepts, please provide examples or further clarification on the difference between "critical" and "important".
- The relationship between "critical and important" and the legal definition of "material business activity" requires further clarity. Please see response to Question 4 of the draft Guidance below.

3. We appreciate that the draft Guidance aims to set out good practice when outsourcing a process, service or activity. We agree with the message on the importance of good risk management of outsourcing activities. The Thematic Review carried out by the Central Bank⁸ in 2017 highlighted deficiencies with the oversight of outsourced activities within the sector. As noted by CUDA in CP140 (Q6) "a risk for smaller F.I.s is the cost of Risk Management advice. External consultants with appropriate knowledge can be inaccessible to a smaller F.I. Finding (especially in less urban areas) and affording appropriately skilled risk managers for a smaller F.I. is challenging and more detailed guidance proportionate to nature, scale and complexity will reduce that risk". This draft Guidance in CP138 notes that "aspects of this Guidance may not be appropriate to all regulated firms, due to their nature, scale and complexity. The Central Bank acknowledges that it may not be appropriate for certain smaller, less complex regulated firms to adopt, in full, all measures set out in the Guidance". We would reiterate our comments in CP140 – please provide clear and proportionate guidance for the credit union sector. Alternatively, credit unions are subjected to very prescriptive legislative requirements regarding outsourcing and we believe was enacted to ensure compliance with same would safeguard against any inherent risks.

4. The Central Bank has considered existing sector specific legislation and guidance as they pertain to outsourcing and is of the view that this Guidance serves to provide additional clarity on the Central Bank's expectations and best practice when firms utilise outsourcing. Are there any particular aspects of the Guidance that appear to be at odds with existing sectoral requirements and could give rise to confusion/ misinterpretation? If so please provide details on any aspects which you believe may cause confusion and suggest how best to address such issues.

CP138 provides that the draft Guidance is "supplemental to existing sectoral regulations" and "supports and complements" existing legislative or regulatory requirements. There are areas of ambiguity and incompatibility.

1. Please clarify the relationship between outsourcing that is of "critical and important service" and outsourcing that is "material business activity" - which provides certain obligations on credit unions under the Credit Union Act. Whilst the draft Guidance

⁸ Central Bank of Ireland Report on Thematic Outsourcing Inspections in Credit Unions, 2017

provides that a “regulated firm should at all times continue to adhere to legislation as a priority”, the concept of critical and important services is the vital component of the draft Guidance from a compliance perspective and can hardly be ignored when attempting to implement the Guidance. Furthermore, the draft Guidance provides the “Central Bank expects that each regulated firm will utilise, at a minimum, the following guidance in its determination of the applicability of defining an outsourcing arrangement as critical or important”.

2. Please clarify if credit unions will be obliged to notify the Central Bank of Ireland when they propose to outsource to a service provider a material business activity, as required under the Credit Union Act, and also notify the Central Bank of Ireland when they are outsourcing a critical and important service. Please confirm in the Guidance that credit unions do not have to adhere to the notification requirements.
3. Please confirm that credit unions do not need to comply with Part B, Section 7.1 with respect to general requirements for SLA/Outsourcing Agreements. Credit unions are obligated to include requirements that must for part of every agreement as contained in Section 76J(5)
4. Similarly, please provide direction on the maintenance of Registers, as credit unions maintain a register of material business activities.

The Guidance will have to be a lot clearer with regard to the relationship between existing legal requirements (and other requirements set by the Central Bank but may not be statutory in nature) and the concepts of the draft Guidance which are fundamental features of the Paper. However, as noted above, sector specific Guidance could make understanding the Central Bank supervisory expectations less of a compliance challenge.

Many thanks to the Central Bank of Ireland for allowing us the opportunity to comment on Consultation Paper 138. As always, CUDA is happy to meet with the Central Bank to discuss any of the points raised in this Response.