

ETDF response to EBA Consultation – Draft Guidelines on the sound management of third-party risk (non-ICT services)

The European Trustee and Depositary Forum (ETDF) welcomes the EBA's initiative to provide a coherent, risk-based framework for non-ICT third-party risk management that complements DORA and replaces legacy approaches focused solely on "outsourcing."

The ETDF represents the interests of EU Member State trustees/depositaries of collective investment schemes. With reference to the questions contained in the draft guidelines submitted by EBA to public consultation, ETDF wants to provide the latter with a response to "*Question 5: Is Annex I, provided as a list of non-exhaustive examples, appropriate and sufficiently clear?*", as agreed among its members¹:

1 – Depositary tasks should not be commingled with Administration for UCI

"Administration for UCI" is a category of activities pertaining to Asset management companies.

"Depositary tasks for UCI" is a category of activities pertaining to Depositaries.

European and national laws/regulations/Q&A address the two categories in two different manners, and it should be noted that Asset managers are not subject to these EBA guidelines

2 – Depositary tasks for UCI are not "functions that could be provided by a third party"

With reference to "Depositary tasks for UCI", according to European and national laws/regulations/Q&A currently in force:

- *In accordance with article 22a paragraph 1 of UCITS Directive 2009/65/EC and article 21 paragraph 11 of AIFMD Directive 2011/61/EU, "Cash flow monitoring" and "oversight duties" cannot be delegated by a depositary to a third party.*
- "Safekeeping duties" can be provided by a depositary using delegates which are regulated financial institutions generally not considered third-party service providers, and the financial services they provide are not in the scope of third-party service relationships. While these financial services might be objectively critical for any depositaries that rely on them, the risks they raise are addressed through other more specific financial regulatory and supervisory frameworks. More broadly, clearing and custody services, including safekeeping, asset servicing, and fiduciary functions (which are not investment services in accordance with MiFID2), are provided by entities subject to stringent regulatory oversight under sectoral legislation such as MiFID, UCITS, AIFMD. These entities are already required to maintain robust operational resilience, risk management, and transparency standards, which are regularly reviewed by competent authorities (according to page 5 of the consultation paper, EBA states that it has no mandate to provide guidelines by an article of MiFID2). Including such arrangements within the scope of the Guidelines would result in significant duplication of oversight and contractual remediation efforts, without delivering meaningful risk management benefits. This would also prevent unintentional regulatory overlap.

For these reasons, the ETDF suggests reviewing annex I - Non exhaustive list of functions that could be provided by a third-party service provider" and delete both sections "depositary tasks & administration for UCI" and "Securities".

1. List of countries whom national trade associations are members of the ETDF: Austria, Denmark, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Spain, Sweden, and non-voting members Norway, United Kingdom