

EBA/REC/2017/01

11 January 2017

Final Report

On recommendations on the equivalence of confidentiality regimes

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1. Executive Summary

The EBA has assessed confidentiality regimes of third countries with respect to Article 116 (6) CRD. The results were published in a first set of Recommendations on 1 April 2015, and an amended Recommendation on 11 September 2015. The assessments will be an ongoing process and the EBA has since then completed the assessment of a further set of authorities. The new results lead to these amending Recommendations.

Next steps

The Recommendations will be translated into the official EU languages and published on the EBA website. The deadline for competent authorities to report whether they comply with the recommendations will be two months after the publication of the translations. The recommendations will apply from 12 January 2017.

2. Background and rationale

Article 116(6) of the Capital Requirements Directive provides the following:

'The competent authorities responsible for the supervision of subsidiaries of an EU parent institution or an EU parent financial holding company or EU parent mixed financial holding company and the competent authorities of a host Member State where significant branches as referred to in Article 51 are established, ESCB central banks as appropriate, and third countries' supervisory authorities where appropriate and subject to confidentiality requirements that are equivalent, in the opinion of all competent authorities, to the requirements under Chapter 1, Section II of this Directive and where applicable, Articles 54 and 58 of Directive 2004/39/EC, may participate in colleges of supervisors.'

The EBA shall, under Article 21 of the EBA Regulation, promote the efficient, effective and consistent functioning of the colleges of supervisors and foster consistent application of European Union law within the colleges of supervisors. For that purpose, and in accordance with paragraph 3 of Article 21 of the EBA Regulation, the EBA may exercise its powers, in particular to issue guidelines and recommendations in accordance with Article 16 of the EBA Regulation and to promote convergence in supervisory functioning and best practices adopted by the colleges of supervisors. Furthermore, the EBA shall provide assistance, in accordance with Article 33 of the EBA Regulation, on equivalence issues.

With the authorities included in these amending Recommendations, the EBA has proceeded to perform its assessment to evaluate the professional secrecy and confidentiality regimes applicable to third-country supervisory authorities. These assessments will also be continued in the future.

These Amending Recommendations are issued on the basis of Article 16 of the EBA Regulation and are aimed at informing the opinion of the competent authorities, as referred to in Article 116(6) of the Capital Requirements Directive. The EBA expects to receive confirmation of the competent authorities' compliance or of their intention to comply irrespective of whether an actual case of college participation exists.

3. Recommendations

EBA/REC/2017/01

DD December 2016

Recommendations amending Recommendations EBA/REC/2015/01

on the equivalence of confidentiality
regimes

1. Compliance and reporting obligations

Status of these recommendations

1. This document contains recommendations issued pursuant to Article 16 of Regulation (EU) No 1093/2010¹. In accordance with Article 16(3) of Regulation (EU) No 1093/2010, competent authorities and financial institutions must make every effort to comply with the recommendations.
2. Recommendations set the EBA view of appropriate supervisory practices within the European System of Financial Supervision or of how Union law should be applied in a particular area. Competent authorities as defined in Article 4(2) of Regulation (EU) No 1093/2010 to whom recommendations apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where recommendations are directed primarily at institutions.

Reporting requirements

3. According to Article 16(3) of Regulation (EU) No 1093/2010, competent authorities must notify the EBA as to whether they comply or intend to comply with these recommendations, or otherwise with reasons for non-compliance, by ([dd.mm.yyyy]). In the absence of any notification by this deadline, competent authorities will be considered by the EBA to be non-compliant. Notifications should be sent by submitting the form available on the EBA website to compliance@eba.europa.eu with the reference 'EBA/REC/2017/01'. Notifications should be submitted by persons with appropriate authority to report compliance on behalf of their competent authorities. Any change in the status of compliance must also be reported to EBA.
4. Notifications will be published on the EBA website, in line with Article 16(3).

¹ Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, (OJ L 331, 15.12.2010, p.12).

2. Addressees

5. These recommendations are addressed to competent authorities as defined in of Article 4(2) of Regulation (EU) No 1093/2010.

3. Implementation

Date of application

6. These recommendations apply from 12 January 2017.



4. Amendments

7. Recommendations EBA/REC/2015/01 on the equivalence of confidentiality regimes are amended as follows:

The following rows are added to the Annex “Table of authorities assessed and equivalence assessment performed”

AUTHORITY ASSESSED	<u>PRINCIPLE 1: NOTION OF CONFIDENTIAL INFORMATION</u>	<u>PRINCIPLE 2: PROFESSIONAL SECURITY REQUIREMENTS</u>	<u>PRINCIPLE 3: RESTRICTIONS ON THE USE OF CONFIDENTIAL INFORMATION</u>	<u>PRINCIPLE 4: RESTRICTIONS ON FURTHER DISCLOSURE OF CONFIDENTIAL INFORMATION</u>	<u>ADDITIONAL INFORMATION FOR CONSIDERATION: BREACH OF PROFESSIONAL SECURITY AND OTHER REQUIREMENTS RELATED TO CONFIDENTIAL INFORMATION DISCLOSURE</u>	<u>OVERALL ASSESSMENT</u>
Australia 1) Australian Prudential Regulation Authority (APRA) - http://www.apra.gov.au/Pages/default.aspx	Section 56 (1) of the Australian Prudential Regulation Authority Act 1998, No.50, 1998	Section 56 of the Australian Prudential Regulation Authority Act 1998, No.50, 1998	Section 56, Section 10 A(1) of the Australian Prudential Regulation Authority Act 1998, No.50, 1998	Section 56 of the Australian Prudential Regulation Authority Act 1998, No.50, 1998 Section 56, Section 10A. Article 2 of the APRA Protocol for Release of Documents to Third Parties so as to	Section 56 (2) of the Australian Prudential Regulation Authority Act 1998, No.50, 1998	Equivalent



fault.aspx				Maintain Confidentiality, February 2013		
2) Reserve Bank of Australia (RBA) - http://www.rba.gov.au/	Section S79A of the Reserve Bank Act 1959, No. 4, 1959	Section S79 A,B of the Reserve Bank Act 1959, No. 4, 1959	Section S79 of the Reserve Bank Act 1959, No. 4, 1959	Reserve Bank Act 1959, No. 4, 1959, Section S79, Section 10 A(1). RBA Protected Information, Protected Documents and Maintaining Confidentiality – Instructions, October 2016, Section 7.	Section S79A of the Reserve Bank Act 1959, No. 4, 1959	Equivalent
Hong Kong 1) Hong Kong Monetary Authority (HKMA) - http://www.hkma.gov.hk/eng/index.shtml	Section 120.1-4 of the Hong Kong Banking Ordinance	Section 120.1.a-c; and Section 120.2 of the Hong Kong Banking Ordinance Chapter 521, Hong Kong Official Secrets Ordinance Para. 2-5 (Integrity) of the HKMA Administration Circular No. 4/2014	Section 120.1 and Section 7.1-2 of the Hong Kong Banking Ordinance	Section 120.5 of the Hong Kong Banking Ordinance	Section 120.6 of the Hong Kong Banking Ordinance	Equivalent



		Code of conduct Para. 7-8, and para. 27 of the HKMA Policy and Procedures on Post-Termination Employment of HKMA Staff				
Japan 1) Bank of Japan (BoJ) https://www.boj.or.jp/en/	Article 29 of the Bank of Japan Act Article 100 (1) of National Service Public Act Supreme Court Sentence (only available in Japanese) Judgement date: May 31, 1978; Case number: 1976 (A) 1581; http://www.courts.go.jp/app/hanrei_jp/detail2?id=51114	Article 29 of the Bank of Japan Act Article 23 of the Attorney Act Article 27 of the Certified Public Accountants Act (<i>courtesy translation provided by BoJ</i>)	Article 1,29 of Bank of Japan Act	Article 1,29 of the Bank of Japan Act Article 4 of the Act for Establishment of the Ministry of Finance Article 4 of the Act for Establishment of the Financial Services Agency Articles 22, 23, 34 of the Deposit Insurance Act Article 1-3 of the Internal Rule on Treatment of Confidential Information Received from Foreign	Article 63 of the Bank of Japan Act	Equivalent



				<p>Authorities</p> <p>Article 190, 197, 220 of the Code of Civil Procedure</p> <p>Art. 218 of the Code of Criminal Procedure</p>		
<p>2) Japan Financial Services Agency (JFSA) - http://www.fsa.go.jp/en/</p>	<p>Article 100(1) National Public Service Act (NPSA)</p> <p>Supreme Court Sentence (only available in Japanese)</p> <p>Judgement date: May 31, 1978</p> <p>Case number: 1976 (A) 1581</p> <p>http://www.courts.go.jp/app/hanrei_jp/detail2?id=51114</p>	<p>Article 100(1) of the National Public Service Act</p>	<p>Article 100(1) of the National Public Service Act</p> <p>Article 4 of the Act for Establishment of the JFSA (AEJFSA) - <i>courtesy translation provided by JFSA</i></p> <p>Chapter III, Article 3.1.1 of the JFSA Information Security Policy, (only available in Japanese)</p>	<p>Article 191, 197, 223 of the Code of Civil Procedure</p> <p>- Article 103, 144 of the Code of Criminal Procedure</p> <p>Article 97 (5), (6) of the Labor Bank Act</p> <p>Article 37 of Deposit Insurance Act</p> <p>Act on International Assistance in Investigation and Other Related Matters</p> <p>Implementing rules on grading and handling of information, Art. 7</p>	<p>Article 82 and Article 109 of the National Public Service Act</p>	<p>Equivalent</p>



<p>Kosovo</p> <p>Central Bank of the Republic of Kosovo</p> <p>(Banka Qendrore e Republikës së Kosovës; Centralna Banka Republike Kosova) - http://bqk-kos.org/index.php</p>	<p>Articles 74, 23 (4) of Law No. 03/L-209 on Central Bank of the Republic of Kosovo</p> <p>Articles 4 and 9 of the Central Bank of the Republic of Kosovo - Internal Rule on Confidentiality, 03 October 2014</p> <p>Articles 79 and 80 of Law No. 04/L-093 on Banks, Microfinance institutions and Non-bank financial institutions</p>	<p>Articles 74, and 23 (4) of Law No. 03/L-209 on Central Bank of the Republic of Kosovo</p> <p>Articles 18 and 22 of Central Bank of the Republic of Kosovo - Internal Rule on Confidentiality, 03 October 2014</p> <p>Article 80 (2) of Law No. 04/L-093 on Banks, Microfinance institutions and Non-bank financial institutions</p>	<p>Articles 8 (1), 32 (4), and 74 of Law No. 03/L-209 on Central Bank of the Republic of Kosovo</p> <p>Article 79 (1) of Law No. 04/L-093 on Banks, Microfinance institutions and Non-bank financial institutions</p>	<p>Articles 32 (4), 74 (1) and (2) of Law No. 03/L-209 on Central Bank of the Republic of Kosovo</p> <p>Article 21 of Central Bank of the Republic of Kosovo - Internal Rule on Confidentiality, 03 October 2014</p> <p>Articles 79 (1) and 80 of Law No. 04/L-093 on Banks, Microfinance institutions and Non-bank financial institutions</p>	<p>Article 203 of Code No. 04/L-082 Criminal Code of the Republic of Kosovo</p> <p>Article 25 of Central Bank of the Republic of Kosovo - Internal Rule on Confidentiality, 03 October 2014</p> <p>Article 67 of Law No. 03/L-209 on Central Bank of the Republic of Kosovo</p>	<p>Equivalent</p>
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5. Accompanying documents

5.1 Views of the Banking Stakeholder Group (BSG)

The BSG was consulted on the draft Recommendations and did not provide any comments.