

**Recommendations amending Recommendations EBA/REC/2015/01 on the  
equivalence of confidentiality regimes  
(EBA/REC/2017/01)**

These European Banking Authority (EBA) Recommendations, issued on the basis of Article 16 of Regulation (EU) No 1093/2010, are addressed to competent authorities as referred to in Article 4 (2) of Regulation (EU) No 1093/2010.

The EBA published on 2 April 2015 the Recommendations on the equivalence of confidentiality regimes (EBA/REC/2015/01), whose purpose is to harmonize the application of Article 116 (6) of the Capital Requirements Directive (CRD) on the composition of supervisory colleges, and in particular the participation of supervisory authorities from third countries. These Recommendations considered as equivalent the supervisory authorities of the following countries: Bosnia Herzegovina, Brazil, Canada, China, Macedonia, Mexico, Montenegro, Serbia, Singapore, Switzerland, Turkey and the USA. The Recommendations were modified following the publication on 11 September 2015 of EBA/REC/2015/02 to include as equivalent the supervisory authority of Albania.

With the publication of the EBA/REC/2017/01 on 11 January 2017 (date of application on 12 January 2017), EBA/REC/2015/01 have been modified again, expanding the number of authorities considered equivalent to the Australian Prudential Regulation Authority, the Reserve Bank of Australia, the Hong Kong Monetary Authority, the Bank of Japan, the Japan Financial Services Agency and the "Central Bank" of the territory of Kosovo.

With the exception of the "Central Bank" of the territory of Kosovo, these Recommendations were adopted by the Executive Committee of the Banco de España, as the competent authority for the direct supervision of the less significant credit institutions, on 18 July 2017. The recommendation referred to the "Central Bank" of the territory of Kosovo was not adopted in consistency with the Spanish position of non-recognizing its unilateral declaration of independence maintained since 2008.

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EBA/REC/2017/01

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06/06/2017

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# Recommendations amending Recommendations EBA/REC/2015/01

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## on the equivalence of confidentiality regimes

# 1. Compliance and reporting obligations

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## Status of these recommendations

1. This document contains recommendations issued pursuant to Article 16 of Regulation (EU) No 1093/2010<sup>1</sup>. 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 07.08.2017. 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](mailto: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).

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<sup>1</sup> 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

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

## 3. Implementation

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### 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”

<b>AUTHORITY ASSESSED</b>	<b><u>PRINCIPLE 1: NOTION OF CONFIDENTIAL INFORMATION</u></b>	<b><u>PRINCIPLE 2: PROFESSIONAL SECRECY REQUIREMENTS</u></b>	<b><u>PRINCIPLE 3: RESTRICTIONS ON THE USE OF CONFIDENTIAL INFORMATION</u></b>	<b><u>PRINCIPLE 4: RESTRICTIONS ON FURTHER DISCLOSURE OF CONFIDENTIAL INFORMATION</u></b>	<b><u>ADDITIONAL INFORMATION FOR CONSIDERATION: BREACH OF PROFESSIONAL SECRECY AND OTHER REQUIREMENTS RELATED TO CONFIDENTIAL INFORMATION DISCLOSURE</u></b>	<b><u>OVERALL ASSESSMENT</u></b>
Australia  1) Australian Prudential Regulation Authority (APRA) - <a href="http://www.apra.gov.au/Pages/default.aspx">http://www.apra.gov.au/Pages/default.aspx</a>	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 Maintain Confidentiality, February 2013	Section 56 (2) of the Australian Prudential Regulation Authority Act 1998, No.50, 1998	Equivalent

<b>AUTHORITY ASSESSED</b>	<b><u>PRINCIPLE 1: NOTION OF CONFIDENTIAL INFORMATION</u></b>	<b><u>PRINCIPLE 2: PROFESSIONAL SECRECY REQUIREMENTS</u></b>	<b><u>PRINCIPLE 3: RESTRICTIONS ON THE USE OF CONFIDENTIAL INFORMATION</u></b>	<b><u>PRINCIPLE 4: RESTRICTIONS ON FURTHER DISCLOSURE OF CONFIDENTIAL INFORMATION</u></b>	<b><u>ADDITIONAL INFORMATION FOR CONSIDERATION: BREACH OF PROFESSIONAL SECRECY AND OTHER REQUIREMENTS RELATED TO CONFIDENTIAL INFORMATION DISCLOSURE</u></b>	<b><u>OVERALL ASSESSMENT</u></b>
2) Reserve Bank of Australia (RBA) - <a href="http://www.rba.gov.au/">http://www.rba.gov.au/</a>	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) - <a href="http://www.hkma.gov.hk/eng/index.shtml">http://www.hkma.gov.hk/eng/index.shtml</a>	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	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

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		(Integrity) of the HKMA Administration Circular No. 4/2014 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) <a href="https://www.boj.or.jp/en/">https://www.boj.or.jp/en/</a>	Article 29 of the Bank of Japan Act  Article 100 (1) of National Service Public Act  Supreme Court	Article 29 of the Bank of Japan Act  Article 23 of the Attorney Act  Article 27 of the Certified Public	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	Article 63 of the Bank of Japan Act	Equivalent

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	Sentence (only available in Japanese) Judgement date: May 31, 1978; Case number: 1976 (A) 1581;  <a href="http://www.courts.go.jp/app/hanrei_jp/detail2?id=51114">http://www.courts.go.jp/app/hanrei_jp/detail2?id=51114</a>	Accountants Act ( <i>courtesy translation provided by BoJ</i> )		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 Authorities  Article 190, 197, 220 of the Code of Civil Procedure Art. 218 of the Code of Criminal Procedure		
2) Japan Financial Services Agency (JFSA) - <a href="http://www">http://www</a>	Article 100(1) National Public Service Act (NPSA)  Supreme Court Sentence (only	Article 100(1) of the National Public Service Act	Article 100(1) of the National Public Service Act  Article 4 of the Act for Establishment of the JFSA	Article 191, 197, 223 of the Code of Civil Procedure  - Article 103, 144 of the Code of Criminal Procedure  Article 97 (5), (6) of the	Article 82 and Article 109 of the National Public Service Act	Equivalent



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<a href="http://w.fsa.go.jp/en/">w.fsa.go.jp/en/</a>	available in Japanese  Judgement date: May 31, 1978  Case number: 1976 (A) 1581  <a href="http://www.courts.go.jp/app/hanrei_jp/detail2?id=51114">http://www.courts.go.jp/app/hanrei_jp/detail2?id=51114</a>		(AEJFSA) - <i>courtesy translation provided by JFSA</i>  Chapter III, Article 3.1.1 of the JFSA Information Security Policy, (only available in Japanese)	Labor Bank Act  Article 37 of Deposit Insurance Act  Act on International Assistance in Investigation and Other Related Matters  Implementing rules on grading and handling of information, Art. 7		
Kosovo  Central Bank of the Republic of Kosovo  (Banka Qendrore e Republikës së Kosovës; Centralna Banka	Articles 74, 23 (4) of Law No. 03/L-209 on Central Bank of the Republic of Kosovo  Articles 4 and 9 of the Central Bank of the Republic of Kosovo - Internal	Articles 74, and 23 (4) of Law No. 03/L-209 on Central Bank of the Republic of Kosovo  Articles 18 and 22 of Central Bank of the Republic of	Articles 8 (1), 32 (4), and 74 of Law No. 03/L-209 on Central Bank of the Republic of Kosovo  Article 79 (1) of Law No. 04/L-093 on Banks, Microfinance	Articles 32 (4), 74 (1) and (2) of Law No. 03/L-209 on Central Bank of the Republic of Kosovo  Article 21 of Central Bank of the Republic of Kosovo - Internal Rule on Confidentiality, 03 October	Article 203 of Code No. 04/L-082 Criminal Code of the Republic of Kosovo  Article 25 of Central Bank of the Republic of Kosovo - Internal Rule on Confidentiality, 03 October 2014	Equivalent

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Republike Kosova) - <a href="http://bqk-kos.org/index.php">http://bqk-kos.org/index.php</a>	Rule on Confidentiality, 03 October 2014  Articles 79 and 80 of Law No. 04/L-093 on Banks, Microfinance institutions and Non-bank financial institutions	Kosovo - Internal Rule on Confidentiality, 03 October 2014  Article 80 (2) of Law No. 04/L-093 on Banks, Microfinance institutions and Non-bank financial institutions	institutions and Non-bank financial institutions	2014  Articles 79 (1) and 80 of Law No. 04/L-093 on Banks, Microfinance institutions and Non-bank financial institutions	Article 67 of Law No. 03/L-209 on Central Bank of the Republic of Kosovo	