

Recommendations amending Recommendations EBA/REC/2015/01 on the equivalence of confidentiality regimes

(EBA/REC/2018/03)

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 have been modified in several occasions. Up to now, authorities corresponding to the following countries have been recognized as equivalent: Bosnia Herzegovina, Brazil, Canada, China, Macedonia, Mexico, Montenegro, Serbia, Singapore, Switzerland, Turkey and the USA (EBA/REC/2015/01), Albania (EBA/REC/2015/02), Australia, Hong Kong, Japan and the "Central Bank" of the territory of Kosovo (EBA/REC/2017/01), as well as Bailiwick of Guernsey, Oriental Republic of Uruguay as well as Republic of Korea (EBA/REC/2018/01)

With the exception of the "Central Bank" of the territory of Kosovo, all the aforementioned Recommendations have been adopted successively by the Executive Commission of the Banco de España.

The EBA/REC/2015/01 have been modified again on 8 November 2018 with the publication of the EBA/REC/2018/03, including as equivalent the following authorities: ADGM Financial Services Regulation Authority (Abu Dhabi Global Market), Financial Supervisory Service (Republic of South Korea), National Bank of Moldova (Republic of Moldova), and Securities and Futures Commission (Hong Kong). The EBA published the Spanish version of them on 3 April 2019.

The Executive Commission of the Banco de España, in its role of competent authority for the direct supervision of the less significant institutions, adopted these Recommendations as their own on 5 September 2019.

EBA/REC/2018/03

8 November 2018

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 in 2015, which were amended in December 2017 and June 2018, to include other third-country authorities that were assessed as equivalent. As the assessment is an ongoing process, and the EBA has since then completed the assessment of a further set of authorities, the outcomes of these new assessments are reflected in the present 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 [*Publication date +1*].

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/2018/03

8 November 2018

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/XX/XX'. 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 dd.XX.XXX.



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>
Abu Dhabi Global Market 1) ADGM Financial Services Regulation Authority	Sections 198, 203, 204 and 258 of the Financial Services and Markets Regulations	Article 12(16) of the Law No. (4) of 2013 Sections 198 and 204 of the Financial Services and Markets Regulations Paragraph 2.10 of the FSRA Code of Conduct	Sections 199, 215 and 216 of the Financial Services And Markets Regulations	Sections 198 and 199 of the Financial Services And Markets Regulations The Application of English Law Regulation 2015	Section 2.10 of the FSRA’s Code of Conduct Article 379 of the Penal Code of the UAE	Equivalent



<p>https://www.adgm.com/doining-business/financial-services-regulatory-authority/</p>		<p>Paragraphs 3 and 4.2 of the FSRA Confidentiality Policy</p> <p>Section 2.10 of the FSRA Employment Contracts</p> <p>Article 379 of the UAE Penal Code</p>				
<p>Republic of South Korea</p> <p>1) Financial Supervisory Service</p> <p>english.fss.or.kr/</p>	<p>Articles 3 and 35 of the Act on the establishment of the Financial Services Commission</p> <p>Article 9 of the Official Information and Disclosure Act</p> <p>Article 22 of the Foreign Exchange Transaction Act</p> <p>Article 4 of the Act on Real Name Financial</p>	<p>Article 35 of the Financial Services Commission Act</p> <p>Article 20 of the Certified Public Accountant Act</p> <p>Article 26 of the Attorney-at-Law Act</p> <p>Article 4 (1), (4) of the Act on Real Name Financial Transactions and Confidentiality (ARNFTC)</p> <p>Article 22 of the Foreign Exchange</p>	<p>Articles 17, 35 (2), 37, 38, 51 – 57, and 65 of the Financial Services Commission Act</p>	<p>Articles 17 and 21 (4) of the Depositor Protection Act</p> <p>Article 65 of the Financial Services Commission Act</p> <p>Articles 9 (1) 5, 11 and 21 of the Official Information Disclosure Act</p> <p>Article 4 (1), (6) of the Act on Real Name</p>	<p>Articles 127 and 317 of the Criminal Act</p> <p>Article 68 of the Financial Services Commission Act</p> <p>Article 6 of the Act on Real Name Financial Transactions and Confidentiality</p> <p>Article 28 of the Foreign Exchange Transactions Act (FETA)</p>	<p>Equivalent</p>



	<p>Transactions and Confidentiality</p>	<p>Transactions Act (FETA)</p>		<p>Financial Transactions and Confidentiality Articles 303, 315 and 344 of the Civil Procedure Act</p> <p>Articles 106-109 of the Criminal Procedures Code</p> <p>Articles 24 and 25 of the Board of Audit and Inspection Act</p> <p>Articles 4 and 5 of the Act on the Submission and Management of Taxation Data</p> <p>Article 128 of the National Assembly Act</p> <p>Article 127 of the Criminal Act</p> <p>Article 7 of Regulation on exchange of information with</p>		
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<p>Republic of Moldova</p> <p>1) National Bank of Moldova</p> <p>https://www.bnm.md/en</p>	<p>Article 126(6) of the Law on Banks' Activities</p> <p>Decision of the Executive Committee of the National Bank of Moldova No.91 of 6 April 2017, paragraph 17</p>	<p>Article 126 of the Law on Banks' Activity</p> <p>Article 36 (Professional secrecy) of the Law no. 548/1995 on the National Bank of Moldova</p> <p>Decision of the Executive Committee of the National Bank of Moldova No.91 of 6 April 2017, paragraph 17</p>	<p>Articles 126 and 127 of the Law on Banks' Activity</p> <p>Articles 5 and 44 of the Law on the National Bank of Moldova</p>	<p>Articles 126(3), 127(1), 128(2), 129(1), 130(2), 130(3)(c), 131, 132(2) and 134(3) of the Law on Banks Activities</p> <p>Article 214 of the Criminal Procedure Code of the Republic of Moldova (Law No.122-XV of 14 March 2003)</p> <p>Article 36(4) of the Law on the National Bank of Moldova</p> <p>Article 7(4) of the Law on access to information No.982</p>	<p>Article 245¹⁰ of the Criminal Code of the Republic of Moldova (Law No. 985-XV dated 18 April 2002)</p> <p>Article 107 of the Contravention Code of the Republic of Moldova (Law No. 218 dated 24 October 2008)</p> <p>Articles 53 and 211¹ of the Labour Code of the Republic of Moldova (Law No. 154-XV dated 28.03.2003)</p>	Equivalent
Hong Kong	Chapter 571, Section 378.1.a and c and Schedule	Chapter 571, Section 378.1. of the Hong Kong Securities and	Section 5.1. of the Hong Kong Securities and Futures Ordinance	Section 378.2-3, 5, 7 and 9 of the Hong Kong	Section 378.10-11 of the Hong Kong Securities and	Equivalent



<p>1) Securities and Futures Commission</p> <p>https://www.sfc.hk/</p>	<p>1, Part 1.1 (definitions in alphabetical order) of Hong Kong Securities and Futures Ordinance (SFO)</p>	<p>Futures Ordinance (SFO)</p>	<p>(SFO)</p>	<p>Securities and Futures Ordinance (SFO)</p> <p>Manual of the Intermediaries Supervision Department (ISD), Section VII, Art. 7.1, 7.2, 7.3</p>	<p>Futures Ordinance (SFO)</p>	
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5. Accompanying documents

5.1 Views of the Banking Stakeholder Group (BSG)

One of the BSG members provided a detailed feedback about latest developments in Moldova, noting that during last three years the National Bank of Moldova devoted a lot of effort in reforming its banking sector in terms of regulatory and supervisory framework. In particular, Moldova is transitioning from Basel I to Basel III, while on 1st January 2018 the new Law on Banking Activity entered in force, which mirrors closely the EU's Capital Requirements Directive 2013/36 (EU).

The banking sector itself has been changing significantly, and half of it is now controlled by large cross-border EU banking groups. The financial situation of banks has improved lately (banks are well-capitalized, have excessive liquidity, are profitable, NPLs are recognized in their balance-sheets) and currently the focus of NBM is on strengthening banks' internal governance and risk management.