

EBA/REC/2015/02

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11 September 2015

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# Final Report

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On recommendations on the equivalence of confidentiality regimes

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# Contents

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<b>1. Executive Summary</b>	<b>3</b>
<b>2. Background and rationale</b>	<b>4</b>
<b>3. Recommendations</b>	<b>5</b>
<b>4. Accompanying documents</b>	<b>10</b>
4.1 Views of the Banking Stakeholder Group (BSG)	10

# 1. Executive Summary

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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. The assessments will be an ongoing process and the EBA has since then completed the assessment of a further supervisory authority. 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 September 2015.

## 2. Background and rationale

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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 authority included in these amending Recommendations, the EBA has proceeded to perform its assessment to evaluate the professional secrecy and confidentiality regime 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

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EBA/REC/2015/02

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11/09/2015

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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 recommendation 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 ([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](mailto:compliance@eba.europa.eu) with the reference 'EBA/REC/2015/02'. 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 12.09.2015.



## 4. Amendments

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

The following row is 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 OF FURTHER DISCLOSURE OF CONFIDENTIAL INFORMATION</u></b>	<b><u>ADDITIONAL INFORMATION FOR CONSIDERATION: BREACH OF BUSINESS SECRECY AND OTHER REQUIREMENTS RELATED TO CONFIDENTIAL INFORMATION DISCLOSURE</u></b>	<b><u>OVERALL ASSESSMENT</u></b>
Albania - Bank of Albania (BANKA E SHQIPËRISË) - <a href="http://www.bankofalbania.org/">http://www.bankofalbania.org/</a>	Article 58 (1) 1 of the Law On the Bank of Albania (BoA-Law)  Art 91(1) Law On Banks in the Republic of Albania (Banking Law)  Regulation no. 42 (On transparency and	Art 58(1) BoA-Law  Article 91 (1) Law On Banks  Art 19 of the Statute of the Bank of Albania dated 19.12.2000  Art 13 and 27 of the Code of Conduct	Art 58(1) BoA-Law  Article 91 (1) Law On Banks  Art 19 of the Statute of the Bank of Albania dated 19.12.2000  Art 13 and 27 of the Code of Conduct  Art 6 of the	Art 58 BoA-Law  Art 91 (2) Banking Law  Article 23 of the Law “On the Bank of Albania”  Art 58 (2) Banking Law  Regulation no. 42 (On transparency and	Art 91 Banking Law  Art 91(3) Banking Law  Supervisory Council Decision nr. 21, Article 30, 54	Equivalent





	<p>confidentially in BoA)</p> <p>Governor’s Decision no. 2005 (On use and classification of the information classified as “banking secret” at the BoA)</p>		<p>Governor’s Decision no 2005</p>	<p>confidentially in BoA)</p>		
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## 5. Accompanying documents

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### 5.1 Views of the Banking Stakeholder Group (BSG)

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