

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. Emendi

7. Ir-rakkomandazzjonijiet EBA/REC/2015/01 dwar l-ekwivalenza ta' regimi ta' kunfidenzjalità huma emendati kif ġej:

Ir-ringieli li ġejjin jiżiedu għall-Anness "Tabella tal-awtoritajiet ivvalutati u l-valutazzjoni tal-ekwivalenza mwettqa"

AWTORITÀ VVALUTATA	<u>PRINĊIPJU 1:</u> <u>KUNĊETT TA'</u> <u>INFORMAZZJONI</u> <u>KUNFIDENZJALI</u>	<u>PRINĊIPJU 2:</u> <u>REKWIŻITI TA'</u> <u>SEGRETEZZA</u> <u>PROFESSIONALI</u>	<u>PRINĊIPJU 3:</u> <u>RESTRIZZJONIJIET</u> <u>DWAR L-UŻU TA'</u> <u>INFORMAZZJONI</u> <u>KUNFIDENZJALI</u>	<u>PRINĊIPJU 4:</u> <u>RESTRIZZJONIJIET</u> <u>DWAR ŻVELAR</u> <u>ULTERJURI TA'</u> <u>INFORMAZZJONI</u> <u>KUNFIDENZJALI</u>	<u>INFORMAZZJONI</u> <u>ADDIZZJONALI</u> <u>GĦAL</u> <u>KUNSIDERAZZJONI</u> <u>: KSUR TA'</u> <u>SEGRETEZZA</u> <u>PROFESSIONALI U</u> <u>REKWIŻITI</u> <u>OĦRAJN RELATATI</u> <u>MAL-IŻVELAR TA'</u> <u>INFORMAZZJONI</u> <u>KUNFIDENZJALI</u>	<u>VALUTAZZJONI</u> <u>GLOBALI</u>
Abu Dhabi Global Market 1) L-Awtorità tar-Regolazzjoni tas-Servizzi Finanzjarji tal-ADGM	It-taqsimiet 198, 203, 204 u 258 tar-Regolamenti tas-Servizzi u s-Swieq Finanzjarji	L-Artikolu 12(16) tal-Liġi Nru (4) tal-2013 It-taqsimiet 198 u 204 tar-Regolamenti tas-Servizzi u s-Swieq Finanzjarji	It-taqsimiet 199, 215 u 216 tar-Regolamenti tas-Servizzi u s-Swieq Finanzjarji	It-taqsimiet 198 u 199 tar-Regolamenti tas-Servizzi u s-Swieq Finanzjarji L-Applikazzjoni tar-Regolament dwar il-Liġi Ingliża tal-2015	It-taqsimiet 2.10 tal-Kodiċi ta' Kondotta tal-FSRA L-Artikolu 379 tal-Kodiċi Penali tal-EGħM	Ekwivalenti



<p>https://www.adgm.com/doin-business/financial-services-regulatory-authority/</p>		<p>Il-paragrafu 2.10 tal-Kodiċi ta' Kondotta tal-FSRA</p> <p>Il-paragrafi 3 u 4.2 tal-Politika ta' Kunfidenzjalità tal-FSRA</p> <p>It-taqsim 2.10 tal-Kuntratti ta' Impjeg tal-FSRA</p> <p>L-Artikolu 379 tal-Kodiċi Penali tal-EGhM</p>				
<p>Ir-Repubblika tal-Korea t'Isfel</p> <p>1) Servizz Supervizorju Finanzjarju</p> <p>english.fss.or.kr/</p>	<p>L-Artikoli 3 u 35 tal-Att dwar l-istabbiliment tal-Kummissjoni tas-Servizzi Finanzjarji</p> <p>L-Artikolu 9 dwar l-Att tal-Infommazzjoni Uffiċjali u l-Iżvelar</p> <p>L-Artikolu 22 tal-Att dwar it-Tranzazzjonijiet</p>	<p>L-Artikolu 35 tal-Att dwar il-Kummissjoni tas-Servizzi Finanzjarji</p> <p>L-Artikolu 20 dwar l-Att dwar il-Kontabilisti Ċertifikati Pubbliċi</p> <p>L-Artikolu 26 tal-Att dwar l-Avukati</p> <p>L-Artikolu 4 (1), (4) tal-Att dwar it-Tranzazzjonijiet Finanzjarji tal-Isem</p>	<p>L-Artikoli 17, 35 (2), 37, 38, 51 – 57, u 65 tal-Att dwar il-Kummissjoni tas-Servizzi Finanzjarji</p>	<p>L-Artikoli 17 u 21 (4) tal-Att dwar il-Protezzjoni tad-Depozitaturi</p> <p>L-Artikolu 65 tal-Att dwar il-Kummissjoni tas-Servizzi Finanzjarji</p> <p>L-Artikolu 9 (1), 5, 11 u 21 dwar l-Att tal-Infommazzjoni Uffiċjali u l-Iżvelar</p>	<p>L-Artikoli 127 u 317 dwar il-Kodiċi Kriminali</p> <p>L-Artikolu 68 tal-Att dwar il-Kummissjoni tas-Servizzi Finanzjarji</p> <p>L-Artikolu 6 tal-Att dwar it-Tranzazzjonijiet Finanzjarji tal-Isem</p>	<p>Ekwivalenti</p>



	<p>tal-Munita Barranija</p> <p>L-Artikolu 4 tal-Att dwar it-Tranzazzjonijiet Finanzjarji tal-Isem Reali u l-Kunfidenzjalità</p>	<p>Reali u l-Kunfidenzjalità (ARNFTC)</p> <p>L-Artikolu 22 tal-Att dwar it-Tranzazzjonijiet tal-Munita Barranija (FETA)</p>		<p>L-Artikolu 4 (1), (6) tal-Att dwar it-Tranzazzjonijiet Finanzjarji tal-Isem Reali u l-Kunfidenzjalità</p> <p>L-Artikoli 303, 315 u 344 tal-Att dwar il-Proċedura Ċivili</p> <p>L-Artikoli 106-109 tal-Kodiċi dwar il-Proċeduri Kriminali</p> <p>L-Artikoli 24 u 25 tal-Att dwar il-Bord tal-Awditjar u l-Ispezzjoni</p> <p>L-Artikoli 4 u 5 tal-Att dwar is-Sottomissjoni u l-Ġestjoni tad-Data tat-Tassazzjoni</p> <p>L-Artikolu 128 tal-Att dwar l-Assemblea Nazzjonali</p>	<p>Reali u l-Kunfidenzjalità</p> <p>L-Artikolu 28 tal-Att dwar it-Tranzazzjonijiet tal-Munita Barranija (FETA)</p>	
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<p>Ir-Repubblika tal-Moldova</p> <p>1) Il-Bank Nazzjonali tal-Moldova</p> <p>https://www.bnm.md/en</p>	<p>L-Artikolu 126(6) tal-Liġi dwar l-Attivitajiet tal-Banek</p> <p>Id-Deciżjoni tal-Kumitat Eżekuttiv tal-Bank Nazzjonali tal-Moldova Nru 91 tas-6 ta' April 2017, paragrafu 17</p>	<p>L-Artikolu 126 tal-Liġi dwar l-Attivitajiet tal-Banek</p> <p>L-Artikolu 36 (Is-Segretezza Professjonali) tal-Liġi Nru 548/1995 dwar il-Bank Nazzjonali tal-Moldova</p> <p>Id-Deciżjoni tal-Kumitat Eżekuttiv tal-Bank Nazzjonali tal-Moldova Nru 91 tas-6 ta' April 2017, paragrafu 17</p>	<p>L-Artikoli 126 u 127 tal-Liġi dwar l-Attivitajiet tal-Banek</p> <p>L-Artikoli 5 u 44 tal-Liġi dwar il-Bank Nazzjonali tal-Moldova</p>	<p>L-Artikoli 126(3), 127(1), 128(2), 129(1), 130(2), 130(3)(c), 131, 132(2) u 134(3) tal-Liġi dwar l-Attivitajiet tal-Banek</p> <p>L-Artikolu 214 tal-Kodiċi tal-Proċedura Kriminali tar-Repubblika tal-Moldova (Liġi Nru 122-XV tal-14 ta' Marzu 2003)</p>	<p>L-Artikolu 24510 tal-Kodiċi Kriminali tar-Repubblika tal-Moldova (Liġi Nru 985-XV tat-18 ta' April 2002)</p> <p>L-Artikolu 107 tal-Kodiċi tal-Kontravvenzjonijiet tar-Repubblika tal-Moldova (Liġi Nru 218 tal-24 ta' Ottubru 2008)</p> <p>L-Artikoli 53 u 2111 tal-Kodiċi tax-Xogħol</p>	<p>Ekwivalenti</p>



				<p>L-Artikolu 36(4) tal-Liġi dwar il-Bank Nazzjonali tal-Moldova</p> <p>L-Artikolu 7(4) tal-Liġi dwar l-aċċess għall-informazzjoni Nru 982</p>	<p>tar-Repubblika tal-Moldova (Liġi Nru 154-XV tat-28.03.2003)</p>	
<p>Hong Kong</p> <p>1) Kummissjoni dwar it-Titoli u l-Futuri</p> <p>https://www.sfc.hk/</p>	<p>Il-Kapitolu 571, it-Taqsima 378.1.a u c u l-Iskeda 1, il-Parti 1.1 (definizzjonijiet f'ordni alfabetika) tal-Ordinanza dwar it-Titoli u l-Futuri ta' Hong Kong (SFO)</p>	<p>Il-Kapitolu 571, it-Taqsima 378.1. tal-Ordinanza dwar it-Titoli u l-Futuri ta' Hong Kong (SFO)</p>	<p>It-Taqsima 5.1. tal-Ordinanza dwar it-Titoli u l-Futuri ta' Hong Kong (SFO)</p>	<p>It-Taqsima 378.2-3, 5, 7 u 9 tal-Ordinanza dwar it-Titoli u l-Futuri ta' Hong Kong (SFO)</p> <p>Manwal tad-Dipartiment tas-Sorveljanza tal-Intermedjarji (ISD), Taqsima VII, Art. 7.1, 7.2, 7.3</p>	<p>It-Taqsima 378.10-11 tal-Ordinanza dwar it-Titoli u l-Futuri ta' Hong Kong (SFO)</p>	<p>Ekwivalenti</p>

5. Dokumenti ta' appogg

5.1 Fehmiet tal-Grupp ta' Partijiet Ikkoncernati Bankarji (BSG)

Wieħed mill-membri tal-BSG ipprova feedback iddettaljat dwar l-aħħar żviluppi fil-Moldova, filwaqt li nnota li matul l-aħħar tliet snin il-Bank Nazzjonali tal-Moldova ddedika ħafna sforzi fir-riforma tas-settur bankarju tiegħu f'termini ta' qafas regolatorju u supervizorju. B'mod partikolari, il-Moldova qed tagħmel it-tranzizzjoni minn Basel I għal Basel III, filwaqt li fl-1 ta' Jannar 2018 daħlet fis-seħħ il-Liġi l-ġdida dwar l-Attività Bankarja, li tirrifletti mill-qrib id-Direttiva 2013/36 tal-UE dwar ir-Rekwiżiti ta' Kapital (UE).

Is-settur bankarju nnifsu qed jinbidel b'mod sinifikanti, u nofsu issa huwa kkontrollat minn gruppi bankarji kbar transkonfinali tal-UE. Is-sitwazzjoni finanzjarja tal-banek tgiebet dan l-aħħar (il-banek huma kapitalizzati tajjeb, għandhom likwidità eċċessiva, huma profittabbli, is-self improduktiv huwa rikonoxxut fil-karti tal-bilanċ tagħhom) u attwalment il-fokus tal-NBM huwa fuq it-tisħiħ tal-governanza interna u l-ġestjoni tar-riskju tal-banek.