

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. Spremembe

7. Priporočila EBA/REC/2015/01 o enakovrednosti ureditev zaupnosti se spremenijo:

Prilogi „Seznam ocenjenih organov in izvedenih ocen enakovrednosti“ se dodajo naslednje vrstice:

OCENJENI ORGAN	<u>NAČELO 1: POJEM ZAUPNIH INFORMACIJ</u>	<u>NAČELO 2: ZAHTEVE GLEDE POSLOVNE SKRIVNOSTI</u>	<u>NAČELO 3: OMEJITVE GLEDE UPORABE ZAUPNIH INFORMACIJ</u>	<u>NAČELO 4: OMEJITVE GLEDE NADALJNEGA RAZKRITJA ZAUPNIH INFORMACIJ</u>	<u>DODATNE INFORMACIJE, KI JIH JE TREBA UPOŠTEVATI: KRŠITEV POSLOVNE SKRIVNOSTI IN DRUGIH ZAHTEV V ZVEZI Z RAZKRITJEM ZAUPNIH INFORMACIJ</u>	<u>SPLOŠNA OCENA</u>
Abu Dhabi Global Market 1) Regulativni organ za finančne storitve (FSRA) družbe ADGM	Oddelki 198, 203, 204 in 258 predpisov o finančnih storitvah in trgih (Financial Services and Markets Regulations)	Člen 12(16) zakona št. (4) iz leta 2013 (Law No. (4)) Oddelka 198 in 204 predpisov o finančnih storitvah in trgih Odstavek 2.10 kodeksa ravnanja organa FSRA	Oddelki 199, 215 in 216 predpisov o finančnih storitvah in trgih	Oddelka 198 in 199 predpisov o finančnih storitvah in trgih uredba o uporabi angleškega prava iz leta 2015 (Application of English Law Regulation 2015)	Oddelek 2.10 kodeksa ravnanja organa FSRA Člen 379 kazenskega zakonika Združenih arabskih emiratov	Enakovredno



<p>https://www.adgm.com/doinforming-business/financial-services-regulatory-authority/</p>		<p>(FSRA Code of Conduct)</p> <p>Odstavek 3 in odstavek 4.2 politike zaupnosti organa FSRA (FSRA Confidentiality Policy)</p> <p>Oddelek 2.10 pogodb organa FSRA o zaposlitvi (FSRA Employment Contracts)</p> <p>Člen 379 kazenskega zakonika Združenih arabskih emiratov (UAE Penal Code)</p>				
<p>Južna Koreja</p> <p>1) Služba za finančni nadzor</p> <p>english.fss.or.kr/</p>	<p>Člena 3 in 35 zakona o ustanovitvi komisije za finančne storitve (Act on the establishment of the Financial Services Commission)</p>	<p>Člen 35 Zakona o komisiji za finančne storitve (Financial Services Commission Act)</p> <p>Člen 20 Zakona o pooblaščenih javnih revizorjih (Certified Public Accountant Act)</p>	<p>Člen 17, člen 35(2), člani 37, 38, 51–57 in 65 zakona o komisiji za finančne storitve</p>	<p>Člen 17 in člen 21(4) zakona o zaščiti vlagateljev (Depositor Protection Act)</p> <p>Člen 65 zakona o komisiji za finančne storitve</p>	<p>Člena 127 in 317 kazenskega zakonika</p> <p>Člen 68 zakona o komisiji za finančne storitve</p> <p>Člen 6 zakona o finančnih transakcijah, opravljenih pod</p>	<p>Enakovredno</p>



	<p>Člen 9 zakona o uradnih informacijah in razkritju (Official Information and Disclosure Act)</p> <p>Člen 22 zakona o deviznem poslovanju (Foreign Exchange Transactions Act)</p> <p>Člen 4 zakona o finančnih transakcijah, opravljenih pod pravim imenom, in zaupnosti (Act on Real Name Financial Transactions and Confidentiality)</p>	<p>Člen 26 Zakona o pravnih zastopnikih (Attorney-at-law Act)</p> <p>Člen 4(1) in (4) zakona o finančnih transakcijah, opravljenih pod pravim imenom, in zaupnosti (ARNFTC)</p> <p>Člen 22 zakona o deviznem poslovanju (FETA)</p>		<p>Člen 9(1)5 ter člena 11 in 21 zakona o razkritju uradnih informacij (Official Information Disclosure Act)</p> <p>Člen 4(1) in (6) zakona o finančnih transakcijah, opravljenih pod pravim imenom, in zaupnosti</p> <p>Členi 303, 315 in 344 zakona o pravnem postopku (Civil Procedure Act)</p> <p>Členi 106–109 zakonika o kazenskem postopku (Criminal Procedures Code)</p> <p>Člena 24 in 25 zakona o odboru za revizijo in pregled (Board of Audit and Inspection Act)</p>	<p>pravim imenom, in zaupnosti (Act on Real Name Financial Transactions and Confidentiality)</p> <p>Člen 28 zakona o deviznem poslovanju (FETA)</p>	
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				<p>Člena 4 in 5 zakona o predložitvi in upravljanju podatkov o obdavčitvi (Act on the Submission and Management of Taxation Data)</p> <p>Člen 128 zakona o državnem zboru (National Assembly Act)</p> <p>Člen 127 kazenskega zakonika (Criminal Act)</p> <p>Člen 7 uredbe o izmenjavi informacij s tujimi organi za finančni nadzor (Regulation on exchange of information with foreign financial supervisory authorities)</p>	
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<p>Republika Moldavija</p> <p>1) Nacionalna banka Moldavije</p> <p>https://www.bnm.md/en</p>	<p>Člen 126(6) zakona o bančnih dejavnostih (Law on Banks' Activities)</p> <p>Odstavek 17 sklepa izvršnega odbora Nacionalne banke Moldavije št. 91 z dne 6. aprila 2017 (Decision of the Executive Committee of the National Bank of Moldova)</p>	<p>Člen 126 zakona o bančnih dejavnostih</p> <p>Člen 36 (Poslovna skrivnost) zakona št. 548/1995 o Nacionalni banki Moldavije (Law No. 548/1995 on the National Bank of Moldova)</p> <p>Odstavek 17 sklepa izvršnega odbora Nacionalne banke Moldavije št. 91 z dne 6. aprila 2017 (Decision of the Executive Committee of the National Bank of Moldova)</p>	<p>Člena 126 in 127 zakona o bančnih dejavnostih</p> <p>Člena 5 in 44 zakona o Nacionalni banki Moldavije (Law on the National Bank of Moldova)</p>	<p>Členi 126(3), 127(1), 128(2), 129(1), 130(2), člen 130(3)(c), člen 131 ter člena 132(2) in 134(3) zakona o bančnih dejavnostih</p> <p>Člen 214 zakonika o kazenskem postopku Republike Moldavije (zakon št. 122-XV z dne 14. marca 2003) (Criminal Procedure Code of the Republic of Moldova (Law No.122-XV))</p> <p>Člen 36(4) zakona o Nacionalni banki Moldavije</p> <p>Člen 7(4) zakona št. 982 o dostopu do informacij (Law on access to information No. 982)</p>	<p>Člen 245¹⁰ kazenskega zakonika Republike Moldavije (zakon št. 985-XV z dne 18. aprila 2002) (Criminal Code of the Republic of Moldova (Law No. 985-XV))</p> <p>Člen 107 zakonika o kršitvah Republike Moldavije (zakon št. 218 z dne 24. oktobra 2008) (Contravention Code of the Republic of Moldova (Law No. 218))</p> <p>Člena 53 in 211¹ zakonika o delovnih razmerjih Republike Moldavije (zakon št. 154-XV z dne 28. marca 2003) (Labour Code of the</p>	<p>Enakovredno</p>
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					Republic of Moldova (Law No. 154-XV)	
<p>Hongkong</p> <p>1) Komisija za vrednostne papirje in standardizirane terminske pogodbe</p> <p>https://www.sfc.hk/</p>	<p>Poglavje 571, oddelek 378.1.a in c ter seznam 1, del 1.1 (opredelitve v abecednem vrstnem redu) hongkonškega odloka o vrednostnih papirjih in standardiziranih terminskih pogodbah (Hong Kong Securities and Futures Ordinance, SFO)</p>	<p>Poglavje 571, oddelek 378.1 hongkonškega odloka o vrednostnih papirjih in standardiziranih terminskih pogodbah (SFO)</p>	<p>Oddelek 5.1 hongkonškega odloka o vrednostnih papirjih in standardiziranih terminskih pogodbah (SFO)</p>	<p>Oddelek 378.2–3, 5, 7 in 9 hongkonškega odloka o vrednostnih papirjih in standardiziranih terminskih pogodbah (SFO)</p> <p>Oddelek VII, člani 7.1, 7.2 in 7.3 priložnika Sektorja za nadzor posrednikov (Manual of the Intermediaries Supervision Department, ISD)</p>	<p>Oddelek 378.10–11 hongkonškega odloka o vrednostnih papirjih in standardiziranih terminskih pogodbah (SFO)</p>	<p>Enakovredno</p>

5. Spremni dokumenti

5.1 Mnenje interesne skupine za bančništvo

Eden od članov interesne skupine za bančništvo je podal podrobne povratne informacije o najnovejših spremembah v Moldaviji, pri čemer je navedel, da je Nacionalna banka Moldavije v zadnjih treh letih vložila veliko truda v reformo svojega bančnega sektorja v zvezi z regulativnim in nadzornim okvirom. Moldavija namreč prehaja od uporabe okvira Basel I k uvedbi okvira Basel III, pri čemer je 1. januarja 2018 začel veljati novi zakon o bančnih dejavnostih, ki v širokem obsegu odraža direktivo Evropske unije o kapitalskih zahtevah 2013/36 (EU).

Bančni sektor se zelo spreminja; polovica ga je zdaj pod nadzorom velikih čezmejnih bančnih skupin EU. Finančni položaj bank se je v zadnjem času izboljšal (banke so kapitalsko močne, imajo čezmerno likvidnost, so donosne, slaba posojila se priznavajo v njihovih bilancah stanja). Nacionalna banka Moldavije si trenutno prizadeva na okrepitev notranjega upravljanja bank in obvladovanja njihovih tveganj.