

EBA/REC/2018/01

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20/06/2018

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# Final Report

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On recommendations on the equivalence of confidentiality regimes

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# 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, and an amended Recommendation on 11 September 2015. The assessments will be an ongoing process and the EBA has since then completed the assessment of a further set of authorities. 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 [*Publication date +1*].

## 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 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

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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 ([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/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).

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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 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”

<b>AUTHORITY ASSESSED</b>	<b><u>PRINCIPLE 1: NOTION OF CONFIDENTIAL INFORMATION</u></b>	<b><u>PRINCIPLE 2: PROFESSIONAL SECURITY 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 SECURITY AND OTHER REQUIREMENTS RELATED TO CONFIDENTIAL INFORMATION DISCLOSURE</u></b>	<b><u>OVERALL ASSESSMENT</u></b>
<b>Bailiwick of Guernsey</b>  1) Guernsey Financial Services Commission	Art. 21 of the Financial Services Commission (Bailiwick of Guernsey) Law  Article 43 of the Banking Supervision (Bailiwick of Guernsey) Law	Article 21 of the Financial Services Commission (Bailiwick of Guernsey) Law  Article 43 of the Banking Supervision (Bailiwick of Guernsey) Law  Article 34A of the Protection of Investors	Section 2(2) and 2(3) of the Financial Services Commission (Bailiwick of Guernsey) Law  Article 34B of the Protection of investors (Bailiwick of Guernsey) Law  Article 80 of the Insurance Business	Section 21 of the Financial Services Commission (Bailiwick of Guernsey) Law  Articles 44 and 45 of the Banking Supervision (Bailiwick of Guernsey) Law  Articles 34B and 34C if the Protection of	Section 21 of the Financial Services Commission (Bailiwick of Guernsey) Law  Article 43 of the Banking Supervision (Bailiwick of Guernsey) Law	Equivalent





<p><a href="https://www.gfsc.gg/">https://www.gfsc.gg/</a></p>	<p>Article 34A of the Protection of Investors (Bailiwick of Guernsey) Law</p> <p>Article 79 of the Insurance Business (Bailiwick of Guernsey) Law</p> <p>Article 56 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law</p> <p>Article 43 of the Regulation of Fiduciaries, Administration businesses and Company Directors etc. (Bailiwick of Guernsey) Law</p>	<p>(Bailiwick of Guernsey) Law</p> <p>Article 79 of the Insurance Business (Bailiwick of Guernsey) Law</p> <p>Article 56 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law</p> <p>Article 43 of the Regulation of Fiduciaries, Administration businesses and Company Directors etc. (Bailiwick of Guernsey) Law</p>	<p>(Bailiwick of Guernsey) Law</p> <p>Article 57 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law</p> <p>Article 44 of the Regulation of Fiduciaries, Administration businesses and Company Directors etc. (Bailiwick of Guernsey) Law</p>	<p>Investors (Bailiwick of Guernsey) Law</p> <p>Articles 80, 84, 81A of the Insurance Business (Bailiwick of Guernsey) Law</p> <p>Articles 57, 58, 58A of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law</p> <p>Articles 44 and 45 of the Regulation of Fiduciaries, Administration businesses and Company Directors etc. (Bailiwick of Guernsey) Law</p> <p>Paragraph 2.7 of the Instrument of Delegation</p>	<p>Article 34A of the Protection of Investors (Bailiwick of Guernsey) Law</p> <p>Article 79 of the Insurance Business (Bailiwick of Guernsey) Law</p> <p>Article 56 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law</p> <p>Article 43 of the Regulation of Fiduciaries, Administration businesses and Company Directors etc. (Bailiwick of Guernsey) Law</p>	
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<p><b>Oriental Republic of Uruguay</b></p> <p>1) Superintendencia of the Financial Services of the Central Bank of Uruguay</p> <p><a href="http://www.bcu.gub.uy/ingles/Paginas/Financial-Institutions.aspx">http://www.bcu.gub.uy/ingles/Paginas/Financial-Institutions.aspx</a></p>	<p>Articles 8, 9, 10, 11 of the Law 18.381</p> <p>Items 1, 2 and 3 of the Resolution D-46-2016</p>	<p>Articles 20 and 21 of the Central Bank Uruguay Organic Charter</p> <p>Articles 163 and 302 of the Criminal Code</p>	<p>Articles 34 and 35 of the Central Bank of Uruguay Charter</p> <p>Articles 14 – 27 of the Law 18.401</p> <p>Articles 5 – 8 of the Law 17.835</p>	<p>Article 190(3) of the Code of Civil Procedure</p> <p>Articles 120 and 197 of the Uruguayan Constitution</p> <p>Articles 20 – 23 of the Law 16.698</p> <p>Articles 9 – 10 of the Law 13.381</p> <p>Article 1 of the Board of Directors Regulation</p>	<p>Article 21 of the Central Bank of Uruguay Charter</p> <p>Articles 163 and 302 of the Criminal Code</p>	<p>Equivalent</p>
<p><b>Republic of Korea</b></p> <p>1) Bank of Korea</p> <p><a href="http://www.bok.or.kr/eng/engMain.action">http://www.bok.or.kr/eng/engMain.action</a></p>	<p>Article 42 of the Bank of Korea Act</p> <p>Article 9 of the Official Information and Disclosure Act</p> <p>Article 31, 33 of the Statistics Act</p>	<p>Article 42 of the Bank of Korea Act</p> <p>Article 34 of the Statistics Act</p> <p>Article 4 of the Act on Real Name Financial Transactions</p> <p>Article 127 of the Criminal Act</p> <p>Article 20 of the</p>	<p>Articles 1, 28, 42, 56-59, 64-65, 68-69, 81 of the Bank of Korea Act</p>	<p>Article 94 of the Bank of Korea Act</p> <p>Article 20 of the Foreign Exchange Transactions Act</p> <p>Articles 303, 315 and 3017 of the Civil Procedure Act</p>	<p>Article 104 of the Bank of Korea Act</p> <p>Article 127 of the Criminal Act</p> <p>Article 4 and 6 of the Act on Real name Financial Transactions and Guarantee of Secrecy</p>	<p>Equivalent</p>



	<p>Article 4(1) of the Act on Real Name Financial Transactions</p> <p>Articles 313 and 314 of the Debtor Rehabilitation and Bankruptcy Act</p>	<p>Certified Public Accountant Act</p> <p>Article 26 of the Attorney-at-law Act</p>		<p>Articles 106 – 109 and 111 of the Criminal Procedure Act</p> <p>Article 4 of the Act on Real Name Financial Transactions</p> <p>Article 11, 21 of the Official Information and Disclosure Act</p> <p>Article 4 of the Regulation on exchange of information according to Article 94 of the Bank of Korea Act</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 Recommendations and did not provide any comments.