

# CRD Equivalence

## Methodology for the assessment of the equivalence of Third Country Professional Secrecy Standards with the Capital Requirements Directive for the purposes of colleges of supervisors

1. Pursuant to Article 116 of the Directive 2013/36/EU (CRD)<sup>1</sup> third countries' supervisory authorities may participate in colleges of supervisors provided that they are subject to confidentiality requirements that are equivalent, in the opinion of all competent authorities, to the requirements under Art. 53 and 54 of the CRD.
2. In order to support competent authorities in making such assessments and to promote a high degree of convergence and consistency in treatment of third countries, a set of criteria for the assessment was prepared.
3. The following proposed methodology is built on former work of CEBS up onto the year 2010.
4. The starting point in the CRD is Article 55, which provides that Member States may enter into agreements providing for information exchanges with the competent authorities or bodies of third countries as defined in Articles 56 and 57 of the CRD, only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those in the CRD, and the exchange of information must be for the purpose of performing the supervisory task of the authorities or bodies receiving the information.
5. Accordingly, the methodology comprises:
  - key principles which encapsulate the standards of professional secrecy required by the CRD;
  - the objective that each principle seeks to achieve in accordance with the CRD; and
  - core indicators of equivalence, which provide guidance in determining whether provisions within the legal system of the relevant jurisdiction together with other factors, achieve those principles and objectives that follow from the wording of the CRD.
6. The Network on Equivalence will perform the initial assessment of professional secrecy provisions of selected countries. The set of criteria outlined below will be used when assessing third countries' confidentiality provisions.

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<sup>1</sup> Capital Requirements Directive (CRD) is a technical expression which in legal terms is Directive 2013/36/EU. Please note that, in general, references to 'Directive 2013/36/EU' or 'CRD' refer to the latest amended versions of the Directives. The Directive can be found under: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0036&from=EN>

## Annex I: Principles

### Principle 1 – Definition of Confidential Information

#### Objective:

To establish the definition of confidential information through the provisions in national law which legally protect the type of information that could be defined as confidential information.

#### Articles:

The CRD does not specifically require Member States to define confidential information in their legislation. Confidential information in the context of the CRD should have regard to Article 53 (1).

Indicators	Standard Required
<b>Legal requirements</b>	Provisions in national law which protect certain information as confidential should include a clear assessment of what type of information is captured as 'confidential'.
<b>Nature of information</b>	Information which: <ul style="list-style-type: none"> <li>• has been received in the course of a person's work for or on behalf of the competent authority;</li> <li>• is not in the public domain; and</li> <li>• is not in summary or aggregate form such that individual credit institutions cannot be identified.</li> <li>• Does a definition exist when former confidential information is further regarded as non-confidential information?</li> </ul>

## Principle 2 – Existence of professional secrecy obligation

### Objective:

To establish that an ongoing obligation of professional secrecy is imposed on all persons who work or have worked, as well as all auditors or experts acting or who have acted on behalf of the competent authority in respect of information received in the course of their work for or on behalf of the competent authority.

### Articles:

CRD Article 53 (1).

Indicators	Standard Required
Legal requirements	Specific professional secrecy provisions in national law or in other laws binding the jurisdiction applying to the competent authority(ies) and other persons. <sup>2</sup>
Applicability - persons	Professional secrecy obligations must apply to all persons: <ul style="list-style-type: none"> <li>• working or who have worked for the competent authority(ies) ; and</li> <li>• acting or who have acted on behalf of the competent authority(ies) (including all auditors and experts).</li> </ul>
Duration of obligation	Professional secrecy obligation applicable: <ul style="list-style-type: none"> <li>• at all times whilst working for, or acting on behalf of, the competent authority; and</li> <li>• on an ongoing basis thereafter.</li> </ul>
Nature of information	Professional secrecy obligation applicable: <ul style="list-style-type: none"> <li>• to confidential information received in the course of their work for, or on behalf of the competent authority.</li> </ul>

<sup>2</sup> For the purpose of this examination a contractual definition as a professional secrecy is regarded the same as a legal definition if the legal framework includes sanction mechanisms in case of a breach of contractual confidentiality

### Principle 3 – Use of confidential information

#### Objective:

To establish that confidential information should only be used for the purposes for which it was properly disclosed, as detailed in the CRD.

#### Articles:

CRD 54, 56, 57, 58 and 116.

Indicators	Standard Required
<b>Performance of supervisory tasks (ref. Article 54)</b>	Confidential information received by the competent authority should be used in the course of its duties and only: <ul style="list-style-type: none"> <li>• to ensure compliance with conditions pertaining to the establishment and ongoing business of a credit institution;</li> <li>• to impose penalties;</li> <li>• in administrative appeals; and</li> <li>• in court proceedings initiated pursuant to Article 72 or to specific provisions of Directives adopted in the field of credit institutions.<sup>3</sup></li> </ul>
<b>Oversight/ legal supervision (ref. Article 56)</b>	<ul style="list-style-type: none"> <li>• public duty of supervision of other financial organisations, insurance companies or financial markets;</li> <li>• involvement in the liquidation, bankruptcy or similar procedures with respect to credit institutions;</li> <li>• carrying out statutory audits of the accounts of credit institutions and other financial institutions.</li> </ul>
<b>Administration of deposit-guarantee scheme (ref. Article 56)</b>	Ensure proper administration of the national deposit-guarantee scheme if one exists.

<sup>3</sup> For the purpose of this examination the handing over of confidential information to a court (and eventually the “use” by the court) is regarded in the same way as a direct “use” by the involved entities.

<b>Detection / investigation of breaches of company law (ref. Article 57 (3-6)).</b>	Detection/Investigation into suspected breaches of company law where disclosing country has as its aim the strengthening of stability and integrity of the financial system.
<b>Central banks and other bodies with similar function in capacity as monetary authorities (ref. Article 58)</b>	Exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payments, clearing and settlement systems and the safeguarding of the financial system, including in emergency situations.
<b>Payment systems oversight (ref. Article 58)</b>	Ensure proper oversight of payment system.
<b>Government departments responsible for financial legislation (ref. Article 59 (2))</b>	Prudential control and emergency situations.

#### Principle 4 – Restrictions on disclosure of confidential information

##### Objective:

To establish that confidential information received by a competent authority in the performance of the competent authority's duties can only be disclosed in restricted and clearly defined circumstances, except for cases covered by criminal law.

##### Articles:

CRD 53(1), 53(2), 55, 56, 57(1)-57(6), 58, 59(1), 60, 61 and 116.

Indicators	Standard Required
<b>Legal requirements</b>	Legal provisions establishing that the disclosure of confidential information cannot be divulged except in certain clearly delineated circumstances, with clear conditions of disclosure that need to be secured.
<b>Authorities or bodies to which information can be disclosed</b> (ref. CRD Articles 53 and 56 – 61)	<p>In fulfilling their supervisory functions competent authorities may disclose confidential information in the following circumstances:</p> <ul style="list-style-type: none"> <li>• to other competent authorities of the same state; or</li> <li>• to authorities entrusted with the public duty of supervising other financial institutions, insurance companies and the financial markets; or</li> <li>• to bodies involved in liquidation and bankruptcy of credit institutions or other similar procedures; or</li> <li>• to persons responsible for carrying out statutory audits of accounts of credit institutions and other financial institutions; or</li> <li>• to bodies responsible for the administration of deposit-guarantee schemes so far as the information is required for the exercise of their functions; or</li> <li>• to central banks and other bodies with a similar function in their capacity as monetary authorities; or</li> <li>• to public authorities responsible for overseeing payment systems.</li> <li>• to authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.</li> </ul> <p>or for reasons of prudential control:</p>

	<ul style="list-style-type: none"> <li>• to government administrations responsible for financial legislation (precluding that information obtained through the means of on-site verification).</li> </ul> <p>or to ensure the proper functioning of those bodies charged with the provision of clearing or settlement services:</p> <p>to a clearing house or similar body recognized under national law (which may not be within the same country) for the provision of clearing and settlement services for one of their national markets.</p>
<p><b>Conditions on disclosure</b></p>	<ul style="list-style-type: none"> <li>• The purpose of disclosure of the confidential information is essential to the performance of the receiving competent authority's duties ; and</li> <li>• The confidential information itself is subject to conditions of professional secrecy.</li> <li>• Where the confidential information has originated in another jurisdiction, and it is proposed to onwardly disclose it to a body falling under (a), (b) or (c) below, the competent authorities that originally disclosed the information must give express agreement to its disclosure and where appropriate the information may only be used for the purposes for which the authorities give their consent.</li> </ul> <p>(a)authorities responsible for overseeing those bodies involved in the liquidation and bankruptcy of credit institutions and other similar procedures;</p> <p>(b)authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions; and</p> <p>(c)authorities or bodies responsible for detecting and investigating breaches of company law.</p>

<p><b>Specific consent of originating EU competent authority required in case of disclosure by another EU authority to a non-EU supervisory authority (ref. CRD Article 55).</b></p>	<p>Where the confidential information originates in another jurisdiction, disclosure is only permitted where:</p> <ul style="list-style-type: none"><li>- the express consent to the disclosure of the information by the competent authority from which the information originated is obtained by the competent/national authority.</li><li>- it is for the purposes for which the originating authority has given its consent.</li></ul>
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**Additional important information to be taken into account: Breach of professional secrecy and disclosure requirements relating to confidential information**

**Objective:**

To establish that disclosure of confidential information in breach of the obligation of professional secrecy by any person bound by the obligation is unlawful and sanctionable.

**Article:**

The consequences of a breach of professional secrecy are not described in the CRD, although Article 53 implies their existence.

Indicators	Standard Required
<b>Legal requirements</b>	Provisions in national law in respect of the breach of professional secrecy obligation, comprising of: <ul style="list-style-type: none"> <li>• offences</li> <li>• penalties</li> </ul>
<b>Enforcement process</b>	Provision in national law relating to enforcement powers in respect of the breach/threatened breach of the professional secrecy obligation.  Evidence of previous relevant and successful enforcement action.

## Annex II: Template for the assessment of the equivalence to the CRD of third countries' professional secrecy and confidentiality provisions

### **NAME OF THIRD COUNTRY:**

### **PRINCIPLE 1: DEFINITION OF CONFIDENTIAL INFORMATION**

**Third country's legal provisions relating to the definition of confidential information:**

**Broad assessment of equivalence with the CRD regarding the definition of confidential information:**

### **PRINCIPLE 2: EXISTENCE OF PROFESSIONAL SECRECY OBLIGATION**

**Third country's legal provisions relating to the existence of professional secrecy obligation:**

**Broad assessment of equivalence with the CRD regarding the existence of professional secrecy obligation:**

### **PRINCIPLE 3: USE OF CONFIDENTIAL INFORMATION**

**Third country's legal provisions relating to the use of confidential information:**

**Broad assessment of equivalence with the CRD regarding the use of confidential information:**

### **PRINCIPLE 4: RESTRICTIONS ON THE DISCLOSURE OF CONFIDENTIAL INFORMATION**

**Third country's legal provisions relating to restrictions on the disclosure of confidential information:**

**Broad assessment of equivalence with the CRD regarding restrictions on the disclosure of confidential information:**

**ADDITIONAL IMPORTANT INFORMATION TO BE TAKEN INTO ACCOUNT: BREACH OF PROFESSIONAL SECRECY AND DISCLOSURE REQUIREMENTS RELATING TO CONFIDENTIAL INFORMATION**

**Third country's legal provisions relating to the breach of professional secrecy and disclosure requirements relating to confidential information:**

**Broad assessment of equivalence with the CRD regarding the breach of professional secrecy and disclosure requirements relating to confidential information:**

**OTHER RELEVANT POINTS NOT COVERED BY THE PRINCIPLES ABOVE:**

**OVERALL BROAD ASSESSMENT OF EQUIVALENCE TO THE CONFIDENTIALITY PROVISIONS OF THE CRD:**