

EBA/REC/2018/03

8 November 2018

Final Report

On recommendations on the equivalence of confidentiality regimes

Contents

1. Executive Summary	3
2. Background and rationale	4
3. Recommendations	5
5. Ledsagedokumenter	13
5.1 Synspunkter hos interessentgruppen for banker (BSG)	13

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. Ændringer

7. Henstilling EBA/REC/2015/01 om ækvivalensen af fortrolighedsordninger ændres således:

Følgende rækker indsættes i bilaget "Oversigt over myndigheder, der er vurderet, og den foretagne ækvivalensvurdering"

MYNDIGHED, DER ER VURDERET	<u>PRINCIP 1:</u> <u>BEGREBET</u> <u>FORTROLIGE</u> <u>OPLYSNINGER</u>	<u>PRINCIP 2:</u> <u>BESTEMMELSER OM</u> <u>TAVSHEDSPLIGT</u>	<u>PRINCIP 3:</u> <u>RESTRIKTIONER FOR</u> <u>ANVENDELSEN AF</u> <u>FORTROLIGE</u> <u>OPLYSNINGER</u>	<u>PRINCIP 4:</u> <u>RESTRIKTIONER FOR</u> <u>VIDEREGIVELSEN AF</u> <u>FORTROLIGE</u> <u>OPLYSNINGER</u>	<u>YDERLIGERE</u> <u>OPLYSNINGER TIL</u> <u>OVERVEJELSE:</u> <u>KRÆNKELSE AF</u> <u>TAVSHEDSPLIGT OG</u> <u>ANDRE KRAV OM</u> <u>AT VIDEREGIVE</u> <u>FORTROLIGE</u> <u>OPLYSNINGER</u>	<u>SAMLET</u> <u>VURDERING</u>
Abu Dhabi Global Market (ADGM) 1) ADGM's finanstilsyns myndig https://www.adgm.com/doinc-business/financial-services-	Afsnit 198, 203, 204 og 258 i de lovgivningsmæssige bestemmelser om finansielle tjenesteydelser og markeder	Artikel 12, stk. 16, i lov nr. 4 af 2013 Afsnit 198 og 204 i de lovgivningsmæssige bestemmelser om finansielle tjenesteydelser og markeder Punkt 2.10 i finanstilsynsmyndighedens adfærdskodeks	Afsnit 199, 215 og 216 i de lovgivningsmæssige bestemmelser om finansielle tjenesteydelser og markeder	Afsnit 198 og 199 i de lovgivningsmæssige bestemmelser om finansielle tjenesteydelser og markeder Lov om Anvendelse af engelsk lovgivning (2015)	Afsnit 2.10 i finanstilsynsmyndighedens adfærdskodeks Artikel 379 i De Forenede Arabiske Emiraters straffelov	Ækvivalent



<p>regulatory-authority/</p>		<p>Stykke 3 og 4.2 i finansstilsynsmyndighe dens fortrolighedspolitik</p> <p>Afsnit 2.10 i finansstilsynsmyndighe dens arbejdsaftaler Artikel 379 i De Forenede Arabiske Emiraters straffelov</p>				
<p>Republikken Sydkorea</p> <p>1) Finanstilsyns myndighed</p> <p>english.fss.or.kr/</p>	<p>Artikel 3 og 35 i loven om oprettelse af finansstilsynsmyndi gheden</p> <p>Artikel 9 i loven om aktindsigt</p> <p>Artikel 22 i loven om valutatransaktioner</p> <p>Artikel 4 i loven om finansielle transaktioner med</p>	<p>Artikel 35 i loven om finansstilsynsmyndighe den</p> <p>Artikel 20 i loven om statsautoriserede revisorer</p> <p>Artikel 26 i loven om advokater</p> <p>Artikel 4, stk. 1 og 4, i loven om finansielle transaktioner med rigtige navne og fortrolighed (ARNFTC)</p>	<p>Artikel 17, artikel 35, stk. 2, artikel 37, artikel 38, artikel 51-57 og artikel 65 i loven om finansstilsynsmyndighe den</p>	<p>Artikel 17 og artikel 21, stk. 4, i loven om beskyttelse af indskydere</p> <p>Artikel 65 i loven om finansstilsynsmyndighe den</p> <p>Artikel 9, stk. 1, artikel 5, artikel 11 og artikel 21 i loven om aktindsigt</p>	<p>Artikel 127 og 317 i straffeloven</p> <p>Artikel 68 i loven om finansstilsynsmyndig heden</p> <p>Artikel 6 i loven om finansielle transaktioner med rigtige navne og fortrolighed</p> <p>Artikel 28 i loven om valutatransaktioner (FETA)</p>	<p>Ækvivalent</p>



	<p>rigtige navne og fortrolighed</p>	<p>Artikel 22 i loven om valutatransaktioner (FETA)</p>		<p>Artikel 4, stk. 1 og 6, i loven om finansielle transaktioner med rigtige navne og fortrolighed</p> <p>Artikel 303, 315 og 344 i den civile retsplejelov</p> <p>Artikel 106-109 i strafferetsplejeloven</p> <p>Artikel 24 og 25 i loven om revisions- og kontrolmyndigheden</p> <p>Artikel 4 og 5 i loven om indgivelse og forvaltning af beskatningsdata</p> <p>Artikel 128 i loven om nationalforsamlingen</p> <p>Artikel 127 i straffeloven</p> <p>Artikel 7 i de lovgivningsmæssige</p>		
--	--------------------------------------	---	--	---	--	--



				bestemmelser om udveksling af oplysninger med udenlandske finanstillsynsmyndigheder		
Republikken Moldova 1) Moldovas nationalbank https://www.bnm.md/en	Artikel 126, stk. 6, i bankloven Punkt 17 i beslutning nr. 91 af 6. april 2017 truffet af Moldovas nationalbanks direktion	Artikel 126 i bankloven Artikel 36 (tavshedspligt) i lov nr. 548/1995 om Moldovas nationalbank Punkt 17 i beslutning nr. 91 af 6. april 2017 truffet af Moldovas nationalbanks direktion	Artikel 126 og 127 i bankloven Artikel 5 og 44 i loven om Moldovas nationalbank	Artikel 126, stk. 3, artikel 127, stk. 1, artikel 128, stk. 2, artikel 129, stk. 1, artikel 130, stk. 2, artikel 130, stk. 3, litra c), artikel 131, artikel 132, stk. 2 og artikel 134, stk. 3, i bankloven Artikel 214 i Republikken Moldovas strafferetsplejelov (lov nr. 122-XV af 14. marts 2003) Artikel 36, stk. 4, i loven om Moldovas nationalbank	Artikel 245 ¹⁰ i Republikken Moldovas straffelov (lov nr. 985-XV af 18. april 2002) Artikel 107 i Republikken Moldovas lov om mindre alvorlige overtrædelser (lov nr. 218 af 24. oktober 2008) Artikel 53 og 211 ¹ i Republikken Moldovas arbejdsretslov (lov nr. 154-XV af 28.3.2003)	Ækvivalent



				Artikel 7, stk. 4, i lov nr. 982 om aktindsigt		
Hongkong 1) Værdipapir- og futureskommission https://www.sfc.hk/	Kapitel 571, afsnit 378.1.a og c, samt tabel 1, del 1.1 (definitioner i alfabetisk orden), i Hongkongs regulativ om værdipapirer og futures (SFO)	Kapitel 571, afsnit 378.1., i Hongkongs regulativ om værdipapirer og futures (SFO)	Afsnit 5.1. i Hongkongs regulativ om værdipapirer og futures (SFO)	Afsnit 378.2-3, 5, 7 og 9 i Hongkongs regulativ om værdipapirer og futures (SFO) Vejledning fra afdelingen for tilsyn med mellemlandere, afsnit VII, punkt 7.1, 7.2 og 7.3	Afsnit 378.2-3, 10-11 i Hongkongs regulativ om værdipapirer og futures (SFO)	Ækvivalent

5. Ledsagedokumenter

5.1 Synspunkter hos interessentgruppen for banker (BSG)

Et af gruppens medlemmer gav detaljeret feedback om den seneste udvikling i Moldova, idet vedkommende bemærkede, at Moldovas nationalbank i løbet af de seneste tre år havde gjort en stor indsats for at reformere banksektoren med hensyn til regulering og tilsynsrammer. Moldova er navnlig ved at overgå fra Basel I til Basel III, samtidig med at den nye banklov trådte i kraft den 1. januar 2018, hvilket nøje afspejler EU's kapitalkravsdirektiv 2013/36 (EU).

Banksektoren er i sig selv ændret betydeligt, og halvdelen af den kontrolleres nu af store grænseoverskridende EU- bankkoncerner. Bankernes finansielle situation er blevet forbedret på det seneste (bankerne har et solidt kapitalgrundlag, har stor likviditet, er rentable, og misligholdte lån opføres i deres balancer), og Moldovas nationalbank har i øjeblikket fokus på at styrke bankernes interne ledelse og risikostyring.