

EBA/GL/2020/03

15/04/2020

Final Report

On guidelines on the equivalence of confidentiality regimes

Contents

| | |
|--|-----------|
| 1. Executive Summary | 3 |
| 2. Background and rationale | 4 |
| 3. Guidelines | 5 |
| 5. Accompanying documents | 11 |
| 5.1 Views of the Banking Stakeholder Group (BSG) | 11 |

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, June 2018, and November 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 these guidelines which amend the Recommendations of 2015.

Next steps

The guidelines 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 guidelines will be two months after the publication of the translations. The guidelines will apply from 16/04/2020.

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 guidelines, 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. Guidelines

EBA/GL/2020/03

15/04/2020

Guidelines amending Recommendations EBA/REC/2015/01

on the equivalence of confidentiality regimes

1. Compliance and reporting obligations

Status of these guidelines

1. This document contains guidelines 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 guidelines.
2. Guidelines 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 guidelines apply should comply by incorporating them into their practices as appropriate (e.g. by amending their legal framework or their supervisory processes), including where guidelines 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 guidelines, or otherwise with reasons for non-compliance, by 29/06/2020. 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 with the reference 'EBA/GL/2020/03'. 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 guidelines are addressed to competent authorities as defined in point i) of Article 4(2) of Regulation (EU) No 1093/2010.

3. Implementation

Date of application

6. These guidelines apply from 16/04/2020.



4. Amendments

7. Recommendations EBA/REC/2015/01 on the equivalence of confidentiality regimes are amended as follows:

a) The title is replaced by the following:

‘Guidelines on Equivalence of Confidentiality Regime’

b) The following row is added to the Annex “Table of authorities assessed and equivalence assessment performed”:

| AUTHORITY ASSESSED | <u>PRINCIPLE 1: NOTION OF CONFIDENTIAL INFORMATION</u> | <u>PRINCIPLE 2: PROFESSIONAL SECURITY REQUIREMENTS</u> | <u>PRINCIPLE 3: RESTRICTIONS ON THE USE OF CONFIDENTIAL INFORMATION</u> | <u>PRINCIPLE 4: RESTRICTIONS ON FURTHER DISCLOSURE OF CONFIDENTIAL INFORMATION</u> | <u>ADDITIONAL INFORMATION FOR CONSIDERATION: BREACH OF PROFESSIONAL SECURITY - OTHER REQUIREMENTS ON CONFIDENTIAL INFORMATION DISCLOSURE</u> | <u>OVERALL ASSESSMENT</u> |
|--|---|---|--|---|---|--------------------------------------|
| USA 1) New York State Department of Financial Services | The New York Banking Law, paragraph 36.10 | New York Public Officers Law, paragraphs 74.3(c) and 74.4 | New York Banking Law, paragraphs 24, 36, 39, 44, 367, 606, 618 and 641 | New York Banking Law, paragraph 36.10 New York State Department of Financial Services, Executive Order | New York Public Officers Law, paragraph 74.4 | Equivalent |



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5. Accompanying documents

5.1 Views of the Banking Stakeholder Group (BSG)

The BSG was consulted on the draft guidelines and no views were expressed.