



BANKING STAKEHOLDER GROUP

CONSULTATION ON EBA/CP/2015/18 ON
“THE PROVISION OF INFORMATION IN SUMMARY OR COLLECTIVE
FORM FOR THE PURPOSES OF ARTICLE 84(3) OF DIRECTIVE
2014/59/EU”

General Comments and Replies to Questions

BY THE EBA BANKING STAKEHOLDER GROUP

London, January 27, 2016

Foreword

The EBA Banking Stakeholder Group (BSG) welcomes the opportunity to comment on the Consultation Paper EBA/CP/2015/18 on the provision of information in summary or collective form for the purposes of Article 84(3) of Directive 2014/59/EU.

The BRRD stipulates, under article 84(3) related to confidentiality terms, that the persons referred to in paragraph 1 of that article shall be **prohibited from disclosing confidential information** received during the course of their professional activities or from a competent authority or resolution authority in connection with its functions under this Directive, to any person or authority **unless**

- it is in the exercise of their functions under this Directive (first exemption),
- **or in summary or collective form such that individual institutions or entities** referred to in point (b), (c) or (d) of Article 1(1) **cannot be identified (second exemption)**
- or with the express and prior consent of the authority or the institution or the entity referred to in point (b), (c) or (d) of Article 1(1) which provided the information (third exemption).

The BRRD empowers the EBA to issue guidelines to develop the second exemption, that is, to specify how information should be provided in summary or collective form such that entities cannot be identified.

This response has been prepared on the basis of comments circulated and shared among the BSG members. This response outlines some general comments by the BSG, as well as our answers to the questions indicated in the Consultation Paper.

General comments

BSG emphasises that achieving a level playing field in the context of recovery and resolution in Europe is paramount. As such, the BSG welcomes the EBA's initiative that aims to promote symmetric information and convergence of supervisory and resolution practices regarding the very delicate subject of disclosing confidential information, in summary or collective form, especially in the context of resolution.

The BGS agrees in general with the EBA's approach regarding the three factors that need to be considered (number of institutions, specific patterns and context

of disclosure). Nevertheless, BSG judges that several aspects require further clarification.

Given the narrow scope of the EBA's mandate, which "covers a limited number of cases comparing with the disclosure under the other two exemptions", the timing of disclosure of confidential information under the exemption 2 should be clarified. Disclosing confidential information by the defined persons (article 84(1) of the BRRD) when not exercising their functions under the BRRD and without the express and prior consent of the authority, institution or corresponding entity should be carefully analyzed and limited to the maximum extent. In particular, confidential information that may be disclosed should be collected under the BRRD only. Furthermore, the entity which provides the corresponding confidential information should be informed prior to its disclosure.

The BSG agrees with the requirement that at least three entities must be included in order to disclose confidential information to ensure that the process should be done in anonymised form. In fact, the more entities grouped under the disclosure, the better (i.e. not only three). In any case, disclosing information of less than three entities may endanger the requirement of disclosure in anonymised form and may increase substantially the risk of identifying those entities. Therefore, the importance of disclosing this information in such cases should be clearly spelled out by the authorities.

Finally, the BSG, in line with article 84(3) of the BRRD, would welcome additional criteria on how entities would be compensated in case they are identified when their confidential information is disclosed.

Replies to Questions

1. Do you agree with the principle based factors which have to be considered before disclosing information in summary or collective form such that individual institution should not be identified?

Overall, the BSG agrees with the three principle based factors. However their application should be cumulative, that is not on a standalone basis: factors a), b) and c) of paragraph 10 (number of institutions, specific patterns and context of disclosure) must all be met at the same time. This needs to be a minimum requirement, in line with the Policy objectives of "key common factors which should be considered at a minimum" in order to disclose confidential information such that individual institutions or entities cannot be identified.

Also, disclosing confidential information of only one or two entities should be avoided. Preferably, the minimum number of entities grouped should be three or more. In fact, disclosing "summary" or "collective" information of one entity seems to be contradictory.

The word “avoided” should be amended and replaced with “prohibited” in point a) of paragraph 10.

All in all, under the exemption 2, confidential information should refer to at least three entities (in order to comply with the “summary” or “collective” form), not containing specific characteristics allowing the identification of those entities and it must not be released when a set of circumstances create a risk of identifying the institutions.

2. If not, what kind of other principle based factors might be useful to introduce?

Although the BSG agrees with the EBA’s approach and considering the suggestions above, a higher level of anonymity could be achieved if the confidential information disclosed under the exemption 2 were to be collected from a given percentage of the entities included in the BRRD context or if a minimum percentage of heterogeneity among entities would be required in order to disclose this confidential information.

Should disclosure of confidential information of less than three entities be absolutely necessary then an explanation of the importance to do so ought to be provided by the corresponding authority based on specified criteria.

Another principle that should be considered when sharing confidential information between the persons referred to in article 84(1) of the BRRD is that it must be protected or encrypted.

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Submitted on behalf of the EBA Banking Stakeholder Group

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