

In case of discrepancies between the French and the English text, the French text shall prevail.

Luxembourg, 9 February 2017

To all credit institutions, investment
firms and financial conglomerates

CIRCULAR CSSF 17/649

Re: Adoption of the guidelines issued by the European Banking Authority (EBA) on the provision of information in summary or collective form for the purposes of Article 84(3) of Directive 2014/59/EU¹ (“Banking Recovery and Resolution Directive”, “BRRD” for short), (EBA/GL/2016/03)

Ladies and Gentlemen,

The purpose of this circular is to draw your attention to the guidelines of the European Banking Authority (EBA) on the provision of information in summary or collective form in accordance with Article 84(3) of the BRRD (EBA/GL/2016/03) which entered into force on 19 January 2017 and with which the CSSF committed to comply.

Article 84(1) of the BRRD introduces the list of persons which are bound by professional secrecy and lays down the principle of prohibiting these persons from disclosing to any person or authority confidential information received during the course of their professional activities from a competent authority or resolution authority in connection with its functions under the BRRD.

Nevertheless, Article 84(3) of the BRRD provides for three derogations from this principle, one of which² allows the disclosure of confidential information, in summary or collective form, by

¹ Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012, of the European Parliament and of the Council (“BRRD”).

<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014L0059&from=EN>

²It should be borne in mind that EBA/GL/2016/03 only concerns the second derogation, namely the possibility to disclose confidential information in summary or collective form.

the persons referred to in the preceding paragraph, in such a way that individual institutions or entities cannot be identified.

The purpose of the guidelines is to present all the factors that have to be taken into account in order to ensure that the information, provided in summary or collective form, is disclosed in anonymised form.

The guidelines are appended as an Annex to this circular. They are also available on the EBA's website at:

https://www.eba.europa.eu/documents/10180/1523874/EBA-GL-2016-03+GL+on+the+provision+of+information+in+summary+or+collective+form_FR.pdf/5ae6a7c8-dca6-4d4d-89b5-9e2e1c2d47ce

https://www.eba.europa.eu/documents/10180/1523874/EBA-GL-2016-03+GL+on+the+provision+of+information+in+summary+or+collective+form_EN.pdf/d9b35825-28e8-4b77-9207-5d4add90df26

Yours faithfully,

COMMISSION de SURVEILLANCE du SECTEUR FINANCIER

Jean-Pierre FABER	Françoise KAUTHEN	Simone DELCOURT	Claude MARX
Director	Director	Director	Director General

Annex:

- EBA Guidelines on the provision of information in summary or collective form for the purposes of Article 84(3) of Directive 2014/59/EU.

EBA/GL/2016/03

19/07/2016

Guidelines

on the provision of information in summary or collective form for
the purposes of Article 84(3) of Directive 2014/59/EU



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 19.09.2016. 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/GL/2016/03'. 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 the 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. Subject matter, scope and definitions

Subject matter

5. These guidelines specify how information should be provided in summary or collective form for the purposes of Article 84(3) of Directive 2014/59/EU², pursuant to the mandate conferred on the EBA in Article 84(7) of that Directive.

Scope of application

6. These guidelines apply in relation to the disclosure of confidential information in summary or collective form for the purposes of Article 84(3) of Directive 2014/59/EU by the persons referred to in Article 84(1) of that Directive.

Addressees

7. These guidelines are addressed to competent authorities as defined in point (i) and resolution authorities as defined in point (iv) of Article 4(2) of Regulation (EU) No 1093/2010 and to financial institutions as defined in Article 4(1) of that Regulation.

Definitions

8. Unless otherwise specified, terms used and defined in Directive 2014/59/EU have the same meaning in the guidelines.

3. Implementation

Date of application

9. Competent authorities should implement these guidelines by [6 months from the date of publication of the translation of the guidelines in all EU official languages on the EBA's website]

² Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms (OJ L 173 of 12 June 2014, p. 190).

4. Provision of information in summary or collective form

10. For the purposes of disclosing information in summary or collective form according to Article 84(3) of Directive 2014/59/EU, such that individual institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of that Directive cannot be identified, the information should be provided either by means of a brief statement or on an aggregate basis, in anonymised form.
11. For the purposes of paragraph 10 of these guidelines all the following factors should be considered in order to ensure that the information in summary or collective form is disclosed in anonymised form:
- 11.1. Number of institutions:** if the confidential information relates to fewer than three institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU, disclosure should be avoided, unless the specific patterns, as specified in point 11.2 of this paragraph, and the context of disclosure, as specified in point 11.3 of this paragraph, do not create a risk of those individual institutions or entities being identified.
- 11.2. Specific patterns:** when disclosing confidential information any reference to specific characteristics, distinctive features, names or to numerical, qualitative or other distinctive data allowing identification of the individual institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU should be avoided.
- 11.3. Context of disclosure:** disclosure of confidential information should be avoided when a set of circumstances such as the means of the disclosure, the number and the characteristics of the addressees, the timing of the disclosure and any other distinctive circumstance creates a risk of the individual institutions or entities referred to in point (b), (c) or (d) of Article 1(1) of Directive 2014/59/EU being identified.