



EUROPEAN COMMISSION

Directorate General Financial Stability, Financial Services and Capital Markets Union

REGULATION AND PRUDENTIAL SUPERVISION OF FINANCIAL INSTITUTIONS

Brussels, **12 MAI 2015**
FXLB/MN/ad.fisma.ddg.d.1(2015)1833122

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Per email:
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Subject : Your letter of 30th October 2014 on Banking secrecy

Dear Mr. Holger Hartenfels,

Thank you for your letter dated 30 October 2014 concerning banking secrecy. Please accept my apologies for the delayed response. Your letter required a thorough analysis work before formulating an opinion.

In your letter, you draw our attention to the potential problems which may arise from the application of different national banking secrecy regimes in the EU. You imply that in a number of Member States the transfer of customer information by EU financial institutions to supervisory authorities or other entities belonging to the same banking group could breach banking secrecy restrictions laid down in national legislation. In particular, you highlight the difficulties faced by cross-border EU banking groups in disclosing or transferring transaction-based information to national authorities for regulatory purposes or to entities within the same group for consolidated risk management purposes.

The problems highlighted in your letter are somewhat different to those posed by banking secrecy rules for tax matters. In fact, it was the latter that gave rise to the Council Directive 2014/107/EU of 9 December 2014 extending the scope for the mandatory automatic exchange of information between tax administrations. You invite the Commission to investigate the issue with a view to harmonising national banking secrecy regimes across the EU so as to remove potential obstacles which could prevent European banking groups from meeting prudential reporting requirements and from establishing group-wide risk management.

Banking secrecy is protected by criminal, civil and/or administrative law and exists in various forms in most Member States. However, in our view national banking secrecy laws cannot be an obstacle to the transfer of information for prudential purposes in the financial service sectors, which is primarily regulated by Union legislation. Member States are bound by the reporting and disclosure requirements in Regulation (EU) No 575/2013 and Directive 2013/36/EU and have to ensure that competent authorities (whether in a home, host or consolidating supervisor capacity) are equipped with the necessary powers to receive, share and transfer the information as laid down in these legal acts. National legislation may not curtail the powers of the supervisory authorities or hamper obligations relating to reporting, disclosure or the exchange of information as laid down in Union legislation.

Article 65(3) of Directive 2013/36/EU confers on banking supervisory authorities the power to require banks established in their Member State to provide them with all information necessary for the exercise of their functions. This supervisory power is extended to all third parties to whom banks have outsourced operational functions and activities. All persons working for or who have worked for banking supervisory authorities are bound by the obligation of professional secrecy pursuant to Article 53 of that Directive. The use of confidential information is further limited to the specific instances referred to in Article 54 of that Directive. However, those provisions read together with Article 56 of that Directive do not preclude banking supervisory authorities from exchanging information with banking supervisory authorities located in another Member State. Similarly those Articles also do not preclude the exchange of information with persons, bodies or authorities involved in i) the supervision of other financial entities or financial markets, ii) the maintaining of the stability of the financial system, iii) the liquidation and bankruptcy of banks, and iv) the carrying out of statutory audits of bank accounts.

Furthermore Article 124(1) of Directive 2013/36/EU explicitly requires Member States to ensure that there are no legal impediments preventing the exchange of any information between entities belonging to the same banking group, which would be relevant for the purpose of prudential supervision of the banking group.

National banking secrecy rules also cannot hinder information exchanges within cross-border banking groups for consolidated risk management purposes. Section II of Chapter 2 of Title VII and Article 109(2) of Directive 2013/36/EU requires EU banking groups to have robust group-wide risk management frameworks for identifying, managing, monitoring and reporting risks at group level so that they could have a complete view of the whole range of risks to which they are exposed. In particular, EU banking groups are required to have effective, consistent and well-integrated processes to identify, manage, monitor and report their risk and to ensure that any group entities, including subsidiaries established in third countries, except in cases specified in paragraph 3 of Article 109 of Directive 2013/36/EU, have to be able to produce data and information relevant for the purposes of consolidated supervision.

As regards potential problems encountered by international banking groups, Article 55 of Directive 2013/36/EU empowers Member States and the European Banking Authority to set up cooperation agreements with third country authorities in order to permit the exchange of information subject to professional secrecy requirements at least equivalent to those in Article 53(1) of that Directive.

As outlined, current prudential requirements enshrined in Union law has taken a balanced approach between professional secrecy concerns and the need for the exchange of

information for prudential supervisory and risk management purposes. National bank secrecy regimes should observe such a balance and accordingly allow for disclosure, information requests and exchange of information as required under Union law, when transposed in the legislation of Member States. A certain level of harmonisation has therefore already been achieved. The establishment of the Single Supervisory Mechanism and Single Resolution Mechanism also contributes to harmonising and facilitating the exchanges of information.

As you point out in your letter, there is also an international dimension to this issue. The impact of bank secrecy laws on the ability of banking groups to perform effective risk data aggregation and reporting is currently being analysed by the FSB. To the extent that any problems will be identified, a solution will need to be found and agreed at international level. The European Commission is following that work with great interest.

If you have any further questions do not hesitate to contact the Bank Regulation and Supervision Unit of DG FISMA.

This letter does not prejudge the opinion which could be formulated by the Court of Justice of the European Union if this issue was brought before the Court.

Yours sincerely,



Mario Nava

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