

CLIENT (legal entities) DATA TRANSFER RULES - SURVEY

The guiding questions of the below survey are:

1. What are the Banking Secrecy Rules in your country (Legal Source, scope – data types)
2. How does these rules deal with / interact with data transfer for Risk Management Consolidation ,KYC ,Foreign Authority Requests, and Intra Group business steering purposes?
3. Is a client consent for data transfer required in these cases and if so are there any formalities?
4. What are the sanctions associated with a breach of banking secrecy and are there any pre-requisites?

Definitions/Types of data considered:

1. Biographic data: e.g. customer's name, registered office address, correspondence address, legal form (Ltd etc.), fiscal code, registration code etc.
2. Risk data: e.g. credit analysis, rating, financial position, granted lines, utilized balances, provided collateral etc.
3. Commercial data: e.g. Client Service Team composition, profitability by product, volumes, RWA, profit planning, competitive environment, market strategies
4. If not specified otherwise in the respective field or column
 - a. "Data Transfer Intra-Group" means a transfer of data among credit institutions controlled by a parent institution (including such parent institution)
 - b. "Authorities" means any local or foreign authority which is a (i) public authority or body officially recognised by national law, which is empowered by national law to supervise institutions as part of the supervisory system in operation, or (ii) a public authority which is empowered as tax, criminal, or administrative body including courts or other judicial bodies

Country	SECRECY RULES [under the condition that data do not refer to physical persons]	DATA TRANSFER Intra-group	to Authorities	to Other 3 rd Parties	REQUIREMENTS FOR DATA TRANSFER	SANCTIONS (w/o Reputational Risk)	PREREQUISITES FOR APPLYING SANCTIONS
Austria	BIO DATA Disclosable in specific cases (among which "overriding legitimate interests pursued by the controller")	for Risk Management & Consolidation purposes a. up-stream b. intra group			The client's explicit consent is required Exemptions are for Risk Management Purposes Foreign Authorities	ADMINISTRATIVE - fines up to € 19,000 and 30,000 for, respectively, violations of data protection and banking secrecy provisions; - other measures possible under Banking Act (the most serious	CIVIL sanction: proving the damage/distress suffered

	<p>RISK DATA Banking secrecy (Sec. 38 BWG)</p> <p>COMMERCIAL DATA Banking secrecy (Sec. 38 BWG)</p>	<p>Sec. 30 (7) BWG for Intra-Group business steering purposes : KYC Sec. 40 BWG</p>				<p>being the revocation of the banking license)</p> <p>CRIMINAL - imprisonment up to 1 year</p> <p>CIVIL - compensation for damages</p>	
Belgium	<p>Belgian bank secrecy rules were not embodied in a statutory provision. Note however that there are different legal sources on which the bank secrecy rules may be based, in particular the confidentiality obligations arising out of the contractual relationship between a financial institution and its client in relation to the banking business carried out for the client. Additional legal sources include amongst others customary law (this duty was created to a large extent by the legal doctrine). Note that the application of the banker's duty of confidentiality is often explicitly confirmed in the general terms of contract of the Belgian financial institutions.</p> <p>All data shall be subject to the banker's duty of confidentiality.</p>				<p>Data transfer of all data is prohibited unless (i) a prior written consent of the counterparty is obtained; (ii) if disclosure is required or authorized by or under law or if (iii) if the bank's own interests require such disclosure.</p>	<p>Criminal: A breach of a duty of confidentiality does not constitute a criminal offence <u>unless</u> if there is a breach of the Belgian personal data protection acts at the same time.</p> <p>CIVIL: compensation for damages</p>	<p>Client may claim damages for breach of contract (art. 1145 of the Civil Code). However if evidence of an agreement cannot be shown, article 1382 of the Civil Code will come into play (here, client will have to prove that there has been a fault, damage and a causal link between the two).</p>
Germany	<p>BIO DATA Banking secrecy (already existence or non existence of a banking relationship is</p>	<p>for Risk Management & Consolidation purposes</p>			<p>The client's consent is required but per Special Business Terms possible</p>	<p>ADMINISTRATIVE - by repeated banking secrecy breaching, BAFIN orders measures to be taken to reduce</p>	<p>BaFin may investigate on its own initiative or based on customer</p>

	covered; only public register data disclosable); RISK DATA Banking Secrecy COMMERCIAL DATA Banking secrecy (unless publicly available)	a. up-stream b. intra group for Intra-Group business steering purposes: not possible KYC: GeldwäscheG ; no intra-group information sharing			Within the constraints of § 44a KWG Article 11 (1) CRR up-stream flow is possible.	the risk (high reputational risk); if the Board does not comply, BAFIN may revoke Board members or finally cancel the banking license. CRIMINAL - none for banking secrecy CIVIL - compensation for damages - right to terminate customer relationship	complaints and will impose a sanction if "findings" individual: proving the damage/distress suffered
Portugal	General consideration concerning bio data: Data protection rules are not applicable to legal entities, including when relating to individuals such as corporate representatives, when such information is made available to the public (i.e. public registries) or directly provided by the client. However, depending on the purposes of the processing of such information, data protection rules may be applicable in relation to such representatives (consent from data subject and/or notification duties at the Data Protection Authority) (e.g. marketing, money laundering, accounting purposes etc). ALL DATA is covered by banking secrecy,	General consideration concerning bio data: Data protection rules are not applicable to legal entities, including when relating to individuals such as corporate representatives, when such information is made available to the public (i.e. public registries) or directly provided by the client. However, depending on the purposes of the processing of such information, data protection rules may be applicable in relation to such representatives (consent from data subject and/or notification duties at	ALL DATA: Facts and elements covered by the secrecy duty may be transferred to the Bank of Portugal, the Portuguese Securities Commission , the Deposit Guarantee Fund, the Investors Compensation System and the judicial and tax authorities in accordance with the applicable law.	The client's explicit consent is required.	The client's explicit consent is required. Exemptions mentioned in the previous columns.	ADMINISTRATIVE Breach of data protection rules: - Fines that may range between EUR 1,500.00 and EUR 15,000.00. Breach of banking secrecy rules: - Pursuant to the RGICSF, if a credit institution breaches the banking secrecy rules it is bound to, it is considered to be committing an administrative offence (<i>contraordenação</i>), entailing a fine ranging from EUR 3,000.00 to EUR 1,500,000.00. Furthermore, under the RGICSF, an administrative offence (<i>contraordenação</i>) may lead to the imposition of ancillary penalties, such as the apprehension and loss of the object of the infringement, including its proceeds, and the release to the public of the final	CIVIL sanction: proving the damage/distress suffered BdP may investigate on its own initiative or based on customer complaints and may impose sanctions and other measures to stop the breach of secrecy duties – article 76 and 116 RGIC The Data Protection Authority may also investigate on its own initiative based on a complaint and may impose sanctions – articles 23 and 38 of the Data Protection Act

	<p>established by Article 78 of the Portuguese Credit Institutions and Financial Companies Legal Framework (“RGICSF”), <i>i.e.</i>, may not be disclosed without the client’s authorisation</p>	<p>the Data Protection Authority) (e.g. marketing, money laundering, accounting purposes etc).</p> <p>ALL DATA is covered by banking secrecy, established by Article 78 of the Portuguese Credit Institutions and Financial Companies Legal Framework (“RGICSF”), <i>i.e.</i>, may not be disclosed without the client’s authorisation</p>				<p>punishment by the BdP, at the expense of the defaulting party.</p> <p>CRIMINAL</p> <ul style="list-style-type: none"> - Imprisonment up to 1 year for violation of the banking secrecy. - imprisonment up to 1 year or fine up to 120 days for unauthorized access do private data <p>CIVIL</p> <ul style="list-style-type: none"> - compensation for damages 	
Spain	<p>BIO DATA Disclosable pursuant to article 2.2. RD 1720/2007 (provided it does not make reference to individuals).</p> <p>RISK DATA Banking secrecy, unless publicly available (first additional provision of Law 26/1988).</p> <p>COMMERCIAL DATA Banking secrecy, unless publicly available (first additional provision of Law 26/1988).</p>	<p>With respect to credit institutions belonging to the same consolidated group (including affiliates of foreign jurisdictions).</p>	<p>Supervisory competent authorities when requested or pursuant to applicable law.</p>	<p>If disclosure is authorized by the Client or is made pursuant to applicable law.</p>	<ul style="list-style-type: none"> - Client’s explicit consent. - Applicable law. - Supervisory competent authorities. - Intra-group data transfer. 	<p>ADMINISTRATIVE Infringements of the bank secrecy regulation constitutes a “serious offence”, implying monetary sanctions (maximum amount of 500.000 euros or 0,5% of the bank’s shareholder equity) or other administrative measure (the notification obligation of the infringement in the official gazette).</p> <p>CRIMINAL Imprisonment up to 5 years. May be associated to monetary sanctions and disqualification from the exercise of the profession.</p> <p>CIVIL Client may seek compensation before the appropriate courts.</p>	<p>For administrative sanctions, the Bank of Spain is the competent body to carry out the administrative proceeding and impose the corresponding sanction.</p>

<p>Italy</p>	<p>BIO, RISK, COMMERCIAL DATA Banking Secrecy (principal rules, no laws)</p> <p>Data Protection legal entities removed from the Italian Privacy Code (196/2003) as per December 2011 (i.e. a bank is enabled to share the data related to its corporate customers (legal entities) within its banking group)</p>				<p>no consent needed for the legal entities related data transfer (if the purpose is <u>not</u> marketing)</p>	<p>CIVIL the bank is liable in case of causing a damage to the customer</p>	<p>proving the damage suffered</p>
<p>France</p>	<p>ALL THE DATA Banking secrecy (French Monetary and Financial Code)</p>	<p>for Risk Management & Consolidation purposes a. up-stream b. intra group c. KYC</p> <p>for Intra-Group business steering purposes</p>			<p>Financial institutions may disclose confidential information to entities belonging to the same group i) with an explicit consent of the client ii) on a case by case basis ("need to know basis") where any type of contract or transaction is under consideration or is being worked on</p>	<p>ADMINISTRATIVE fine up to EUR 15,000</p> <p>CRIMINAL - 1 year imprisonment</p>	

UK					implicit consent possible via GBTs	<p>not every breach of the UK's Data Protection Act is an offence</p> <p>ADMINISTRATIVE in case of individuals suffering damage, a financial penalty may be imposed by the Information Commissioner (the Information Commissioner's Office is the UK's independent authority set up to uphold data privacy for individuals, the most common)</p> <p>CRIMINAL none</p> <p>CIVIL claim for damage / distress compensation from individuals</p>	<ul style="list-style-type: none"> - Authority: a claim - individual: proving the damage/distress suffered
LUX	ALL THE DATA Banking secrecy (Law on the financial sector)				<p>Data sharing to third parties is a criminal offence and as such may not be waived (not even an explicit customer's consent is valid)</p> <p>Questionable whether professional secrecy may be waived by client's consent (no court ruling decision so far)</p> <p>In any case, if client's consent is viable, the following criteria must be met: i) it must be in person's interest ii) clause must be specific in terms of precise information,</p>	<p>ADMINISTRATIVE fine EUR 500 – 5,000</p> <p>CRIMINAL imprisonment for up to 6 months (upon the directors of the company)</p>	the fact of committing the offence

					recipients, purpose and time		
US	BIO DATA disclosable RISK DATA Banking Secrecy COMMERCIAL DATA Banking Secrecy				US has no comprehensive data protection legislation of the sort that exists in Europe with respect to B2B relationships. US does not impose any legal limitations relevant to the transfer of company data from one UniCredit LE to another	ADMINISTRATIVE none* CRIMINAL none* CIVIL SANCTIONS information sharing without client's consent / violation of a non-disclosure agreement which causes monetary damages entitles for a suit to recover the damages (*to be confirmed)	only measurable monetary damage caused by exchange of information may entitle to file for a suit

CRR reads:

Article 11

General treatment

1. Parent institutions in a Member State shall comply, to the extent and in the manner prescribed in Article 18, with the obligations laid down in Parts Two to Four and Part Seven on the basis of their consolidated situation. The parent undertakings and their subsidiaries subject to this Regulation shall set up a proper organisational structure and appropriate internal control mechanisms in order to ensure that the data required for consolidation are duly processed and forwarded. In particular, they shall ensure that subsidiaries not subject to this Regulation implement arrangements, processes and mechanisms to ensure a proper consolidation.