



# Proposal for a single EU professional secrecy standard for the supervision of the financial sector

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# Background

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Inherent conflict between

1. **transparency** and accountability of supervisors and
2. **confidentiality** stakeholders of financial information
3. **interest of third parties** in confidential information regarding the financial entity they contract with

Result:

Differentiated framework which grants confidentiality by ordering professional secrecy, but exceptions in specific cases

# Status quo

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## Common professional secrecy standards in three financial sectors (Art.76 MiFID II, Art.53 CRD IV, Art.64 Solvency II)

### Obligation not to divulge confidential information

- Persons working for or who have worked for supervisory authorities
- Auditors and experts acting on behalf of supervisory authorities

### Exceptions:

- Confidential information in summary or aggregate form – no identification of individual market participants possible
- Criminal law
- In case of bankruptcy or winding-up:  
confidential information may be disclosed in civil or commercial proceedings if it does not concern third parties involved in rescue attempts

# Problem: lack of cohesion

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## Differences between MiFID II, CRD IV and Solvency II

Besides different wording: Art.76 (1),(2) MiFID II differs in content

- Additional exceptions:
  - national criminal law
  - taxation law or
  - provisions of MiFID II/MiFIR
- Restriction of civil and commercial proceedings:  
„if necessary for carrying out the proceeding“ + „any third person“

## Out of the picture: ESAs, ECB



# Need for reform?

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ECJ remedying lack of cohesion is insufficient for market participants (cases *Baumeister*, *Buccioni*, *UBS Europe*)

Level playing field between three financial sectors needed as well as legal certainty

Regulatory alignment across sectoral boundaries is necessary for cooperation between supervisory authorities

➤ Hence: Proposal of **single professional secrecy standard** for financial supervisory authorities in EU

# Policy proposal: legal basis

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## Legal basis: **Art.114(1) s.2 TFEU**

“The European Parliament and the Council shall, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, adopt the measures for the approximation of the provisions laid down by law, regulation or administrative action in Member States **which have as their object the establishment and functioning of the internal market**”

Legislative Act	Legal basis
CRD IV, MiFID II	Art.53(1) TFEU
Solvency II	Art.47(2) TEC (predecessor)
CRR, MiFIR and ESA Regulations	Art.114 TFEU
SSM Regulation	Art.127(6) TFEU

Here: focus on **internal market harmonisation**, thus Art.114 TFEU

# Policy proposal: content

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## Enhanced transparency:

- Exception for tax law in all sectors
- Information confidential only for 5 years unless party affected by disclosure proves confidentiality needs to be upheld (ECJ in *Baumeister*)

## Exchange of information between

- National competent and designated authorities
- Authorities competent for different financial sectors
- Including EBA, ESMA, EIOPA and the ECB in SSM

**Particular focus:** information regarding **money laundering and terrorist financing (AML/CTF)**

=> special need for transparency



# Thank You!

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Questions and discussion