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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND  
THE COUNCIL**

**Assessment on the Adequacy of the Information to be disclosed under Article 89(1) of  
Directive 2013/36/EU**

# **REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND TO THE COUNCIL**

## **Assessment on the Adequacy of the Information to be disclosed under Article 89(1) of Directive 2013/36/EU**

### **1. INTRODUCTION**

Directive 2013/36/EU of the European Parliament and of the Council<sup>1</sup>, commonly referred to as Capital Requirements Directive IV (hereinafter: CRD IV), established an EU framework to coordinate national provisions concerning access to the activity of credit institutions and investment firms, the modalities for their governance, and their supervision. It was adopted in 2013 as a part of a legislative package including Regulation (EU) No 575/2013<sup>2</sup>, commonly referred to as Capital Requirements Regulation (hereinafter: CRR), laying down uniform rules on general prudential requirements.

This package was adopted in a context of mounting public pressure on the financial sector since the financial and debt crisis started in 2007, and included specific provisions aimed to address this pressure with a view to regaining the trust of European citizens and taxpayers in the overall financial sector.

For the sake of “increased transparency”<sup>3</sup>, Article 89 (“country-by-country reporting”, hereinafter: CBCR) of CRD IV hence required that Member States ensure that credit institutions and investment firms (hereinafter: “institutions”) subject to this legislative framework disclose specific information – both financial and non-financial – regarding their activities.

The present report is prepared under Article 89(6) of CRD V<sup>4</sup>, which requires the Commission to review whether the CBCR information is still adequate and whether further relevant information should be added. Moreover, it provides the obligation to present the outcome of this assessment to the European Parliament and to the Council in view of a possible legislative proposal.

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<sup>1</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013L0036&from=EN>

<sup>2</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0575&from=EN>

<sup>3</sup> See Recital (52) of CRD IV

<sup>4</sup> Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers and capital conservation measures.

[EUR-Lex - 32019L0878 - EN - EUR-Lex \(europa.eu\)](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019L0878-EN-20190520-01&from=EN)

The assessment acknowledges the findings of the supporting study<sup>5</sup> carried out by an external contractor and is based on the internal review conducted at the Commission. EBA, EIOPA and ESMA were consulted.

The methodology used by the contractor for collecting and assessing data relies on a combination of desk research, legal mapping, interviews, surveys, and sample analysis: the relatively low response rate from institutions and stakeholders invited to take part in this exercise is a limitation to be considered throughout the present assessment.

## **2. CONTEXT BEHIND THE INTRODUCTION OF CBCR REQUIREMENTS**

In the aftermath of the global financial crisis (2007-2009) and of the debt crisis affecting the Eurozone (2010-2012), public confidence in the financial system dropped to a very low level. Institutions had been at the origin of the crisis, and the general feeling of distrust was exacerbated by the widespread perception of financial institutions as enablers of tax avoidance.

In this context, the European Parliament proposed to amend the Commission's CRD IV proposal by putting forward transparency requirements<sup>6</sup>. This initiative resulted in Article 89, the objective of which was to regain trust by increasing "transparency regarding the activities of institutions, and in particular regarding profits made, taxes paid and subsidies received"<sup>7</sup>. The CBCR requirements are listed in paragraphs (a) to (f) of Article 89(1), as follows:

- (a) name(s), nature of activities and geographical location;
- (b) turnover;
- (c) number of employees on a full time equivalent basis;
- (d) profit or loss before tax;
- (e) tax on profit or loss;
- (f) public subsidies received.

Particularly, each Member State shall require institutions to disclose the information above:

- on a country-by-country basis: with regards to each jurisdiction the reporting entity operates in, and
- annually: on a consolidated basis for the financial year.

As provided by Article 89(4), the information above shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the institution concerned.

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<sup>5</sup> Study on the Adequacy of the Information to be Disclosed under Article 89(1) of the Capital Requirements Directive IV [Company law and corporate governance | European Commission \(europa.eu\)](https://ec.europa.eu/economy_finance/press_corner/detail.do?lang=en&press_release=1212)

<sup>6</sup> Report on the proposal for a directive of the European Parliament and of the Council on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms and amending Directive 2002/87/EC of the European Parliament and of the Council on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate (COM(2011)0453 – C7-0210/2011 – 2011/0203(COD)). See Recital 12(b) and Article 86a.

[https://www.europarl.europa.eu/doceo/document/A-7-2012-0170\\_EN.html](https://www.europarl.europa.eu/doceo/document/A-7-2012-0170_EN.html)

<sup>7</sup> See Recital 52 of CRD IV

In compliance with Article 89(3), in 2014 the Commission conducted a general assessment of the potential negative economic consequences of the public disclosure of such information, including the impact on competitiveness, investment and credit availability and the stability of the financial system<sup>8</sup>. The resulting report concluded that the disclosure requirements under Article 89(1) of CRD IV were unlikely to have a significant negative economic impact: on the contrary, the assessment highlighted positive consequences of CBCR on the transparency and accountability of, and on the public confidence in, the financial services sector in the EU.

### 3. ASSESSMENT OF THE ADEQUACY OF CBCR REQUIREMENTS

Following the adoption of the CRD IV in 2013, the Member States had to require financial institutions to disclose the CBCR information by 1 January 2015. To date, all EU Member States completed the transposition of Article 89(1) CRD IV into their national laws.<sup>9</sup> CBCR requirements are thus mandatory and have fully applied as implemented in national legislations since 1 January 2015.

In accordance with the provisions of Article 89(6) of the CRD V, the present report covers the assessment of the adequacy of the CBCR requirements, notably by checking whether they serve the overall purpose of enabling public scrutiny while ensuring resilience in the sector and whether they should be revised or supplemented with further relevant information to continue fostering transparency of institutions.

In this chapter, the legal and practical implementation of Article 89(1) will be assessed. First, a general overview of the principles and means of disclosure will be given (section 3.1). Subsequently, each CBCR requirement will be reviewed individually (section 3.2). Where specific issues are identified, possible adaptations to the legislative text, following proposals by the contractor, are also being considered. In line with the Better Regulation Guidelines<sup>10</sup> and toolbox, the CBCR information will then be assessed against five standard criteria used to check the performance of EU interventions (section 3.3), namely:

- **effectiveness** in achieving the CRD objectives;
- **efficiency** of the use of resources as regards potential administrative costs;
- continued **relevance** of mandatory requirements and CRD objectives;
- internal and external **coherence**;
- **added value** at Union level.

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<sup>8</sup> Report from the Commission to the European Parliament and the Council, General assessment of economic consequences of country-by-country disclosure requirements set out in Article 89 of Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014DC0676&qid=1639170286777&from=EN>

<sup>9</sup> The transposition deadline was 31 December 2013.

<sup>10</sup> SWD(2021) 305 final Commission Staff Working Document Better Regulation Guidelines [https://ec.europa.eu/info/sites/default/files/swd2021\\_305\\_en.pdf](https://ec.europa.eu/info/sites/default/files/swd2021_305_en.pdf)

### 3.1 Implementation of Article 89(1) of CRD IV: horizontal aspects

#### *Breakdown of information: establishment and country-by-country disclosure*

The driving principle of the country-by-country approach is that information is required to be disclosed at a level of granularity corresponding to the national jurisdiction where the institution concerned has an establishment. As clarified by the European Banking Authority (EBA)<sup>11</sup>, the term ‘establishment’ should be interpreted broadly, as referring to subsidiaries, branches and other relevant entities through which an institution has a physical presence in a particular country, whether Member States or third countries. However, despite the EBA’s clarifications, it seems that Member States are still generally uncertain as to whether European branches of non-EEA institutions should comply with CBCR, and there is no consistent interpretation of this term across the Member States.

As for EU institutions active in multiple countries, most comply with CBCR requirements and include the relevant information concerning their entities in the country-by-country report. At the same time, it has to be noted that approximately 90% of the institutions in the EU-27 are only domestically active, not having foreign branches or subsidiaries, or are themselves the subsidiary of an internationally operating bank. This means that out of the approximately 4.600<sup>12</sup> credit institutions (July 2021 data<sup>13</sup>) within the scope of Article 89<sup>14</sup>, *de facto* only around 600 of them have significant relevance in the context of CBCR.

To address the fact that most EU institutions are only active in their own Member State, and to clarify the situation of European branches of non-EEA institutions, it could be useful to consider refocusing the CBCR requirement on institutions which are active in several Member States or in both a Member State and third-country jurisdiction.

It might also be beneficial to clarify that the term “establishment” should cover both subsidiaries and branches. This would ensure that branches are recognised as a part of the activities in the respective Member State or tax jurisdiction (outside the EU) where they are active.

Lastly, it could be made clear that activities in offshore financial centres and tax havens are reported with reference to those tax jurisdictions rather than the sovereign states of which they form a part.

#### *Annual reporting: scope of consolidation*

Article 89(1) CRD IV generally refers to “a consolidated basis” without further specifying the approach to follow. Consequently, there is room for interpretation on whether the scope of consolidation should be on a prudential or an accounting basis. The EBA clarified that it

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<sup>11</sup> EBA Q&A 2014\_1248 [https://eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2014\\_1248](https://eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2014_1248)

<sup>12</sup> ECB “List of Monetary Financial Institutions (daily data)”, available at: [https://www.ecb.europa.eu/stats/financial\\_corporations/list\\_of\\_financial\\_institutions/html/elegass.en.html](https://www.ecb.europa.eu/stats/financial_corporations/list_of_financial_institutions/html/elegass.en.html)

<sup>13</sup> As reported in the Study on the Adequacy of the Information to be disclosed under Article 89(1) of the Capital Requirements Directive IV. Page 63 [Company law and corporate governance | European Commission \(europa.eu\)](https://ec.europa.eu/economy_finance/docs/company-law-and-corporate-governance-2019-01-20.pdf)

<sup>14</sup> The credit institutions not subject to CRD as defined under Article 2(5) CRD IV have been excluded from the list.

refers to the prudential scope of consolidation while allowing Member States to “prescribe a more extensive scope of consolidation”. In addition, the EBA invited the institutions to make clear the scope of consolidation used<sup>15</sup>. In practice, most institutions report in line with the accounting basis. In addition, the derogation offered to very large institutions in Directive 2021/2101<sup>16</sup> to avoid double reporting is conditioned by the fact that the scope of the institution’s reporting is based on accounting principles.

In addition, it appears that Member States interpret Article 89 as meaning that not only parent institutions have the duty to report, but also their European subsidiaries. A possible clarification could relate to a requirement to report at ultimate parent company level only, in order to prevent double reporting.

### ***Means of disclosure: data reporting format***

Article 89(4) of CRD IV provides that CBCR information shall be published, where possible, as an annex to the annual financial statements or, where applicable, to the consolidated financial statements of the institution concerned. The EU legislation does not provide further instructions on the reporting format to be used for disclosing the information, and no harmonised template is developed at Union level. In the absence of specific guidance providing a standardised EU approach, the reporting institutions are free to develop their own format or template, which might affect the consistency of the reported information.

The majority of the institutions comply with this provision through disclosing the CBCR information as a note or annex to the annual financial statement, while some institutions prepare a separate country-by-country report. Furthermore, during the study it has been the case that annual reports were not always available on the corporate websites of the credit institutions concerned.

In order to further improve the accessibility and comparability of information, the introduction of standard templates and the harmonisation of reporting procedures could be considered. Particularly, institutions could systematically publish their CBCR report on their corporate website and where the institution is a listed company the CBCR report could in addition be systematically annexed to their annual report rather than in a separate report.

## **3.2 Information to be disclosed**

### ***Name(s), nature of activities and geographical location***

The first set of information, laid down in Article 89(1)(a), is purely descriptive. Its interpretation is of utmost importance as it sets the disclosure boundaries for CBCR and thus determines the scope of the other measurable information listed in Article 89(1). From a formal perspective, it was literally transposed by all Member States, and most institutions comply with the disclosure requirement.

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<sup>15</sup> See footnote 11

<sup>16</sup> Directive (EU) 2021/2101 of the European Parliament and of the Council of 24 November 2021 amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches – Article 48b(3)

Some interpretation issues concern: the nature of activities, with institutions being allowed discretion in their own selection of categories, which might include categories such as retail, corporate, wholesale, leasing, property development, etc.; or the geographical location, especially in relation to territories associated with tax havens and offshore financial centres<sup>17</sup>, with a minority of institutions disclosing information by sovereignty instead of by country.

### ***Turnover***

Article 89(1)(b) of CRD IV requires the institutions to annually disclose their “turnover” by Member State and by third country. When transposing this requirement, only few Member States provided a more detailed definition.

In line with the clarifications made by the EBA<sup>18</sup>, the term “turnover” in the banking sector should be understood as ‘net banking income’. The large majority of the banks adhere to the EBA indications and report net revenues (considering e.g. net interest income, net commission income).

Therefore, to ensure further legal certainty and a harmonised and comparable implementation of Article 89(1)(b), the term “turnover” could be replaced with “net operating revenues” (including net interest income, net commissions and fees income, net investment income and other operating income).

### ***Number of employees on a full-time equivalent basis***

The reporting requirement under Article 89(1)(c) of CRD IV covers the “number of employees on a full-time equivalent basis” (FTE). It was literally transposed by all Member States and its interpretation is non-controversial as it clearly defines the approach to follow, namely FTE (the number of hours considered full time) instead of headcount (the number of individual employees), which is the alternative definition traditionally applied.

The general application of the FTE definition in country-by-country reports facilitates the comparison of figures. However, considering that the financial statements of most banks report the number of employees as headcount, this may affect the comparability. Besides, the financial statements usually provide information as an annual average, while the country-by-country reports may indicate the number of employees at the end of the year.

Based on these observations, this requirement could be revised to ensure consistency with the accounting requirements or be specific to the country-by-country obligation, including as adopted via Directive 2021/2101.

### ***Profit or loss before tax***

Article 89(1)(d) of CRD IV requires the institutions to include the “profit or loss before tax” in their country-by-country report. All Member States completed the transposition of this requirement and also its interpretation is straightforward in terms of definition and coverage: all reporting institutions include it in their country-by-country report and, in most cases, the information is consistent with the figures provided in the financial statements.

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<sup>17</sup> As an example, the activities in the Cayman Islands are considered part of the UK activities.

<sup>18</sup> EBA in Q&A 2014\_1249 [https://eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2014\\_1249](https://eba.europa.eu/single-rule-book-qa/-/qna/view/publicId/2014_1249)

However, the term “profit or loss before tax” could also be changed to “profit or loss before business income tax” to avoid that taxes other than corporate income taxes are being considered and to correctly calculate the effective corporate tax rate.

### ***Tax on profit or loss***

Directly related to the preceding information, Article 89(1)(e) of CRD IV concerns the disclosure of “tax on profit or loss”. Its transposition in national legislation is complete and all reporting institutions provide information of taxation in their country-by-country reports, in consistency with the figures of their financial statements.

The interpretation of this requirement depends on whether the calculation of taxes on profit is based on an accrual (taxes accounted for) or on a cash accounting (taxes paid) basis. In the interest of transparency and comparability, the EBA recommended providing separate information using both cash and accrual principles, for example those used under IAS 12 Income Taxes<sup>19</sup>. Nevertheless, most institutions autonomously choose to apply either cash or accrual method, therefore hampering the comparability of the information across country-by-country reports. To facilitate the assessment of the effective tax rate and enhance the comparability of the figures across countries and institutions, the requirement on “tax on profit or loss” could be further specified by requiring institutions to disclose two tax indicators, namely “income tax accrued (current year)” and “income tax paid (current year)”.

### ***Public subsidies received***

The CBCR list ends with the requirement to report “public subsidies received”, as provided in Article 89(1)(f). All national legislations transposed this information.

The term “public subsidy” generally refers to a financial contribution made by a government or a public body to the benefit of the recipient. At Member States level there is no common understanding as to whether this definition should include all forms of “grants”, or “State aid” (such as loans, tax credits, gifts or exemptions), and its interpretation in the context of the country-by-country report was not addressed by the EBA either. Its implementation is also uncertain, with most institutions not specifying the definitions used for public subsidies and not disclosing the amounts of subsidies received by country. In this sense, in order to avoid uncertainty about its meaning, the term “public subsidies received” could be defined to ensure that the subsidies include grants and State aid.

To conclude on this section, it could be considered to improve the consistency of CBCR requirements by aligning the general wording of Article 89(1), where appropriate, to the accounting requirements and to the clearer formulation provided in other relevant pieces of legislation. This would allow addressing some interpretation issues and ensure a harmonised implementation of the requirements by the institutions across the EU.

## **3.2 Assessment of CBCR**

### ***Effectiveness: overall improvement of public trust***

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<sup>19</sup> IAS 12 Income Taxes: <https://www.ifrs.org/issued-standards/list-of-standards/ias-12-income-taxes/>



The objective of CBCR is to regain the trust of citizens in the financial sector. This objective is achieved by:

- increasing transparency regarding the activities of institutions, including profits made, taxes paid, and subsidies received; and
- contributing to foster corporate responsibility towards stakeholders and society<sup>20</sup>.

To this end, the information provided in CBCR plays an important role in improving the reputation of the financial system by enabling all citizens to access a set of key information directly and publicly shared by the institutions themselves.

The overall implementation by institutions of the requirements laid down in Article 89(1) has contributed to making publicly available basic data on the geographical location of the activity of financial institutions and their taxation practices. The introduction of CBCR represents for citizens, taxpayers, and NGOs a useful instrument to increase public awareness in this area and to promote responsible conduct of institutions towards society<sup>21</sup>.

As regards the achievement of the CBCR objective, almost a decade since the end of the financial and debt crises, the confidence in the financial system has generally<sup>22</sup> increased: according to the Edelman trust barometer<sup>23</sup>, global trust in the financial sector in 2021 raised by 8% compared to 2012, reaching 52%. Also according to the Ipsos Global Trustworthiness Monitor<sup>24</sup>, an increase in trustworthiness for banks (20% in 2018 vs 28% in 2021) is registered.

Moreover, the consultation exercise carried out by the external contractor consisting in targeted interviews and other surveys confirms the general consensus around the improved perception of institutions compared to the pre-CBCR times<sup>25</sup>. Banks are confident that the increased transparency resulting from all the disclosure requirements has improved the confidence of citizens in the banking sector. A positive effect is also seen by tax authorities, banking supervisors and NGOs.

However, the exact contribution of the CBCR disclosure requirements to the improved trust in the banking sector remains challenging to determine. After the financial crisis, the EU legislator took initiatives to make the financial and banking sector more resilient. In particular, it strengthened the banking regulatory framework by creating the Single

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<sup>20</sup> See footnote 7

<sup>21</sup> Study on the Adequacy of the Information to be Disclosed under Article 89(1) of the Capital Requirements Directive IV, pp. 67-68 [Company law and corporate governance | European Commission \(europa.eu\)](https://ec.europa.eu/economy_finance/Company-law-and-corporate-governance-2022-01-Global-Trustworthiness-Monitor-2021.pdf)

<sup>22</sup> Subject perhaps to the impact of specific (crisis) events such as the recent collapse of the Silicon Valley Bank in California (US) or the forced rescue of Credit Suisse.

<sup>23</sup> Edelman trust barometer (2021). Trust in Financial services.  
<https://www.edelman.com/sites/g/files/aatuss191/files/2021-04/2021%20Edelman%20Trust%20Barometer%20Trust%20in%20Financial%20Services%20Global%20Report%20website%20version.pdf>

<sup>24</sup> <https://www.ipsos.com/sites/default/files/ct/news/documents/2022-01/Global-Trustworthiness-Monitor-2021.pdf>.

<sup>25</sup> Study on the Adequacy of the Information to be Disclosed under Article 89(1) of the Capital Requirements Directive IV, p. 67 [Company law and corporate governance | European Commission \(europa.eu\)](https://ec.europa.eu/economy_finance/Company-law-and-corporate-governance-2022-01-Global-Trustworthiness-Monitor-2021.pdf)

Supervisory Mechanism for banks of the Eurozone, revising the rules for calculating the capital requirements and setting out a new framework to orderly resolve banks.

Overall, the information referred to in Article 89(1)(a) to (f) is considered adequate for the purposes pursued and there is no need to add new indicators<sup>26</sup>. However, this report also identifies possible adjustments to clarify further the concepts used.

### ***Efficiency: benefits outweighing costs***

With the introduction of CBCR, the reporting institutions had to dedicate some efforts and resources to conform to mandatory requirements. Particularly, in the kick-off phase, institutions had to do one-off investments to develop the new system by e.g.: defining the reporting format, adapting the accounting software to the required information, and training staff to deal with data reporting tasks. The costs associated with CBCR increase in line with a number of factors, such as the size of the reporting institution, the complexity of its organisational structure or the number of different countries covered. The administrative costs also depend on the means of disclosure, with increased efficiency when the country-by-country report is included in the annual report instead of being prepared as a separate document.

Based on the estimations made in the context of the external supporting study<sup>27</sup>, the costs incurred by the institutions subject to the CBCR requirements under Article 89(1) are negligible: expressed in terms of turnover, they are significantly below the one percentage point. Furthermore, their amount decreases after the first year, once the reporting method is put in place<sup>28</sup>. It has also to be noted that, in the absence of the CBCR requirement, many institutions would have incurred most of the administrative costs already e.g. for their business reporting, or reporting to tax authorities pursuant to national laws implementing OECD action BEPS 13.

Overall, the proven positive impact on both institutions and society related to reporting obligations highly outweighs the limited costs necessary to implement CBCR. In light of the very limited administrative costs for credit institutions in relative terms, there is no justification to reduce the list of information to be disclosed under Article 89(1).

### ***Continuous relevance in the light of current and emerging needs***

Eight years after the introduction of mandatory CBCR through the CRD IV, the trust in the financial system has increased. Still, the efforts to restore confidence in the financial system have been slowed down by more recent tax and money laundering scandals such as Offshore

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<sup>26</sup> The supporting study carried out by an external contractor concluded that “there is a need to refine the definitions, rather than adding new indicators to the existing CBCR” (p.98). At the same the study notes that a significant minority of the banks in the sample reported on additional indicators, including additional tax, income statement, balance sheet, and geographical indicators, some of which overlap with the indicators requested by stakeholders (pp. 50-51) [Company law and corporate governance | European Commission \(europa.eu\)](#)

<sup>27</sup> Ibid., p. 63 and Annex IV. Descriptive statistics for Administrative Costs and In-cremental Costs, pp. 126-156 [Company law and corporate governance | European Commission \(europa.eu\)](#)

<sup>28</sup> Ibid., Annex IV. Descriptive statistics for Administrative Costs and Incremental Costs, pp. 126-156 [Company law and corporate governance | European Commission \(europa.eu\)](#)

Leaks (2013), Luxembourg Leaks (2014), Swiss Leaks (2015), Panama Papers (2016), Paradise Papers (2017) and Pandora Papers (2021).

Besides, the above-mentioned Edelman trust barometer indicates that, in 2021, the global trust index has dropped by 4% compared to 2020. Some of the biggest drops in trust happened in European countries like Spain (-9%), Ireland (-7%) and France (-7%), while a slight improvement is registered in Italy and Germany (+1%)<sup>29</sup>.

In this respect, it should be noted that the positive role played by CBCR in improving the reputation of institutions by increasing awareness of their activities takes place within a wider political and legal context aimed at promoting tax transparency<sup>30</sup>. The CRD IV itself provides further transparency measures which can contribute to the restoration of the trust of citizens, such as the disclosure on the governance and remuneration of board members.

While the objectives of the CBCR remain valid, recent challenges have emerged and new priorities have arisen on the EU agenda: in an increasingly globalised, mobile and digital economy, more complex business models and corporate structures facilitate profit shifting. In response, the OECD launched in October 2015 its BEPS (Base Erosion and Profit Shifting) action plan which proposes new standards aimed at reforming the system to ensure that income taxes are paid where the economic activity takes place. In addition, the Commission has implemented several initiatives, such as the Anti-tax Avoidance Package<sup>31</sup>, which includes the Anti-Tax Avoidance Directive (ATAD 1 and 2)<sup>32</sup>, to reduce tax avoidance in the EU. In May 2021, the Commission published an EU Tax Policy Agenda with a number of proposals for business taxation including a new proposal for the annual publication of the effective corporate tax rate of certain large companies with operations in the EU. In order to undermine tax avoidance, the European Parliament and the Council adopted in November 2021 the Public Country-by-Country Reporting (Public CBCR) Directive, introducing reporting rules for very large multinational enterprises and their subsidiaries (with annual revenues above EUR 750 million), that will have to publicly disclose the amount of tax they pay in each EU Member State.

In this changing context, the continuous relevance of a CBCR approach is confirmed<sup>33</sup> by the wider public, namely consumers and citizens, as well as by specific groups of stakeholders, such as:

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<sup>29</sup> <https://www.edelman.com/sites/g/files/aatuss191/files/2021-03/2021%20Edelman%20Trust%20Barometer.pdf> pp. 46-47

<sup>30</sup> Among the major EU initiatives pursuing this overarching goal: the introduction of more stringent capital requirements (Capital Requirements Directive V and Capital Requirements Regulation II), the crisis management framework (Bank recovery and resolution framework, Deposit guarantee schemes), the Banking Union (Single Supervisory Mechanism, Single Resolution Mechanism) and the Communication from the Commission to the European parliament and the Council “Business Taxation for the 21st Century” for ensuring fair and effective taxation ([https://ec.europa.eu/taxation\\_customs/system/files/2021-05/communication\\_on\\_business\\_taxation\\_for\\_the\\_21st\\_century.pdf](https://ec.europa.eu/taxation_customs/system/files/2021-05/communication_on_business_taxation_for_the_21st_century.pdf))

<sup>31</sup> [https://ec.europa.eu/taxation\\_customs/anti-tax-avoidance-package\\_en](https://ec.europa.eu/taxation_customs/anti-tax-avoidance-package_en)

<sup>32</sup> ATAD 1: Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market. ATAD 2 Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 (ATAD) <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016L1164&from=EN>

<sup>33</sup> Study on the Adequacy of the Information to be Disclosed under Article 89(1) of the Capital Requirements Directive IV, p. 69-70 [Company law and corporate governance | European Commission \(europa.eu\)](https://ec.europa.eu/economy_finance/sites/default/files/2021-06/Study_on_the_adequacy_of_the_information_to_be_disclosed_under_Article_89_1_of_the_Capital_Requirements_Directive_IV.pdf)

- trade unions, which emphasise the importance for workers they represent of having information on the tax behaviour of companies they work for;
- small and medium-sized enterprises, which consider public disclosure essential to ensure a level playing field and prevent large firms from gaining an unfair competitive advantage;
- investors, whose decisions might be influenced by information on corporate responsibility;
- developing economies, for which CBCR is a tool to enhance fiscal accountability and avoid abuses by non-democratic countries;
- public authorities at both national and EU level, for which public disclosure is a key instrument to drive policy and decision-making.

***Internal and external coherence of CBCR and growing application of the country-by-country principle***

In the specific context of the CRR/CRD package, Article 89 on CBCR is not the only provision that deals with the mandatory reporting of information to be publicly disclosed by institutions. Other provisions dealing with public disclosure are Article 90 of CRD IV, covering the publication of return on assets in the annual report, and Part Eight of the CRR, specifying a number of information items to be published in the annual financial statement. Nevertheless, neither Article 90 nor Part Eight require country-by-country reporting.

In terms of internal consistency, Article 89 can therefore be considered as a stand-alone provision, with minimal links with other components of the same legislative framework.

The assessment of the external coherence - through looking at the way the CBCR under CRD IV interacts with other pieces of legislation having the same policy objectives - reveals some potential synergies and overlaps.

Following the entry into force of the Investment Firms Regulation<sup>34</sup> and Investment Firms Directive<sup>35</sup> (IFD), only Class 1<sup>36</sup> and Class 1 minus<sup>37</sup> investment firms are required, where appropriate, to comply with CRR and CRD. Class 2 investment firms must comply with the requirements laid down in Article 27 of the IFD itself. The list of information to be disclosed according to this article mirrors the list under Article 89(1), with the only exception of the first requirement (where “geographical location” is replaced with “location of any subsidiaries and branches”).

Close similarities are identified between the CBCR of CRD IV and the newly adopted Public CBCR Directive, in terms of both objectives (increasing corporate transparency and enhancing public scrutiny) and the principle of disclosure (types of information to be

<sup>34</sup> Regulation (EU) 2019/2033 of the European Parliament and of the Council of 27 November 2019 on the prudential requirements of investment firms and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014, OJ L 314, 5.12.2019

<sup>35</sup> Directive (EU) 2019/2034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment firms and amending Directives 2002/87/EC, 2009/65/EC, 2011/61/EU, 2013/36/EU, 2014/59/EU, and 2014/65/EU, OJ L 314, 5.12.2019

<sup>36</sup> Article 62 of IFR, amending Article 4(1) Regulation (EU) 575/2013

<sup>37</sup> Articles 1(2) and (5) of IFR.

reported, country-by-country basis). The Directive was adopted as an answer to the various tax scandals revealed around 2015 and applies to large multinational enterprises (with at least EUR 750 million consolidated revenues). This recent piece of legislation, amending Directive 2013/34, specifies in the new Article 48c(2) in Chapter 10a a list of requirements largely matching the information under Article 89(1) of CRD IV. Still, the information to be disclosed under Chapter 10a is worded in a more detailed manner than the terms used in Article 89 CRD IV, therefore overcoming the interpretational difficulties posed by Article 89. As for the scope, the new Directive focuses on very large undertakings<sup>38</sup>, while Article 89 of CRD IV covers credit institutions, and systemic and large investment firms. For institutions that could fall within the scope of application of both regimes, the new Directive includes a specific provision, namely Article 48b(3), that seeks to avoid a possible double CBCR disclosure. To enhance accessibility and comparability of the information, the amended Accounting Directive requires that the country-by-country report shall be presented using a common template and electronic reporting formats which are machine-readable.

A country-by-country reporting obligation at international level is also laid down by OECD BEPS Action 13<sup>39</sup> (implemented in the EU by Council Directive (EU) 2016/881 as regards mandatory automatic exchange of information in the field of taxation (DAC4)) between tax authorities. However, the information provided under BEPS Action 13 and DAC4 is not required to be made publicly available. DAC4 applies to multinational enterprises (MNEs) located in the EU or to resident MNE group entities in the EU, with total consolidated revenues exceeding EUR 750 million in the previous accounting period. The country-by-country report includes information for MNE group entities in every tax jurisdiction, including indicators like related party revenue, employees, and assets to assess substance activity requirements, and covers wider range of indicators than those laid down in Article 89(1).

The new GRI Tax Standard (GRI 207), which came into effect for reporting from 2021, is the first and only globally applicable - voluntary - public reporting standard for tax transparency. It sets expectations for disclosure of tax payments on a CBCR basis, alongside tax strategy and governance. Some multinational companies are already voluntarily implementing tax disclosure at country level. It applies to any organisation (large or small, private, or public) that determines tax to be a material topic to report on. The requirements for the mandatory disclosure of information (the list of which can be voluntarily integrated by the reporting entity) partially overlaps with those laid down in Article 89 of CRD IV. Given the lack of harmonisation between the two reporting systems, the institutions within the scope of CRD IV deciding to also disclose following the GRI 207 standard bear an additional reporting burden.

Overall, the assessment reveals the general external coherence and the absence of conflicts between the CBCR under the CRD IV and the recently adopted Public CBCR. Both instruments share the same objectives of increasing corporate transparency and enhancing public scrutiny. Some other tools, such as DAC4, aim at combating cross-border tax

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<sup>38</sup> With annual revenues exceeding 750 million

<sup>39</sup> Country-by-Country is a minimum standard requirement of the OECD Base Erosion and Profit Shifting Project. As of 17/10/2020 131 jurisdictions, including EU Member States, are subject to country-by-country reporting requirements.

avoidance. For this purpose, DAC4 has additional indicators sometimes more granular than those set out in Article 89 of CRD IV to achieve those specific objectives.

#### *EU added value of CBCR as a key step towards increased global transparency*

The rationale behind the inclusion of CBCR in the context of the CRD IV was the need to regain the trust of EU citizens following the global financial crisis. In this context, the EU put forward the introduction of mandatory reporting requirements as a tool to foster transparency in the financial system, putting the focus on cross-country activities of the institutions. Eight years after the entry into force of the CBCR requirement, this disclosure obligation has proven to be an important factor for increasing transparency regarding the activities of institutions and therefore regaining the trust of society.

Both national and EU stakeholders consulted by the contractor<sup>40</sup> clearly pointed out that national interventions, in the absence of any country-by-country reporting requirement under Article 89 of CRD IV, would only to a limited extent be able to achieve increased citizen trust in the financial sector. They consider harmonisation at EU level as an advantage, and cross-border comparability as a feature allowing citizens and civil society to analyse and scrutinise the financial sector.

#### **4. CONCLUSIONS**

The assessment of the CBCR provisions laid down in Article 89(1) of the CRD IV shows that the public disclosure of mandatory information is functioning well within its policy context: all listed requirements have proven to restore trust in the financial sector by increasing transparency on the activities of the institutions and strengthening the resilience of the sector.

While the general perception of the financial system by the EU citizens and stakeholders has significantly improved over the last years, trust in the sector is still not at pre-crisis level<sup>41</sup>. Restoring confidence in the financial system, therefore, is still a priority. In addition, CBCR remains relevant for the public scrutiny of tax base erosion and profit shifting. The EU engagement to promote transparency and increase public awareness in this area also needs to be confirmed in the light of new challenges that have more recently arisen. These relate, for instance, to the increasingly complex business models linked to the globalised digital economy.

As concerns the administrative burden, the costs incurred by the reporting entities to comply with CBCR are estimated to be negligible, while the benefits for the wider society significantly outweigh the costs. Moreover, in the absence of the CRD IV CBCR requirements, these administrative costs would have been incurred anyway, for example for their own business reporting, or for the reporting to tax authorities of DAC4.

The provisions under Article 89(1) are coherent with other parts of EU legislation pursuing the objectives of increasing corporate transparency and enhancing public scrutiny, such as Directive (EU) 2021/2101.

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<sup>40</sup> Study on the Adequacy of the Information to be Disclosed under Article 89(1) of the Capital Requirements Directive IV, p. 95 [Company law and corporate governance | European Commission \(europa.eu\)](#)

<sup>41</sup> Ibid., pp. 66-67 [Company law and corporate governance | European Commission \(europa.eu\)](#)

While some room for improvement is identified in this report, neither the consultative activities carried out by the contractor in the preparation of this report nor any other sources reveal an appetite of relevant stakeholders to reopen the provisions at this point in time. The assessment of Article 89(1) of CRD IV reveals that the implementation of CBCR by institutions is overall adequate and fit for purpose. The public disclosure of mandatory requirements remains for citizens, tax authorities and different stakeholders across the EU a key instrument to increase public awareness in this area and contributes to promoting responsible conduct of institutions towards society.