Consultation on the potential economic consequences of country-by-country reporting under Directive 2013/36/EU (Capital Requirements Directive or CRD)

This submission is made on behalf of:

11.11.11; ActionAid International; Action Solidarité Tiers Monde (ASTM); CEE Bankwatch Network; Centre national de coopération au développement (CNCD-11.11.11); Christian Aid; Debt and Development Coalition Ireland; Diakonia; Ekvilib Inštitut; European Network on Debt and Development (Eurodad); Finance Watch; Financial Transparency Coalition (FTC); Finnwatch; Forum Syd; Global Policy Forum; GLOpolis; IBIS; InspirAction; Instytut Globalnej Odpowiedzialności (IGO); Kairos Europe; Kepa - the Finnish NGO Platform; KOO-Coordination office of the Austrian Bishops Conference for Development and Mission; Methodist Tax Justice Network; Oxfam International; Plateforme Paradis Fiscaux et Judiciaires; Publish What You Pay (PWYP); Re:Common; Stichting Onderzoek Multinationale Ondernemingen (SOMO); Tax Justice Network; Tax Justice NL; Tax Justice Network – Norway; Tax Research LLP; Vienna Institute for International Dialogue and Cooperation (VIDC); World Economy, Ecology & Development (WEED).

We are replying as organizations and we agree to this contribution being published under the names we have indicated.

We are submitting our input in this format rather than through the online questionnaire. This is because we find that the impact of disclosing information about profits, tax and subsidies cannot be assessed independently, as the questionnaire suggests.

The purpose of country-by-country reporting
The primary purpose of country-by-country reporting (CBCR) is to increase transparency with a view to identifying risks, including risks of tax avoidance and to some extent evasion. Other risks that can be identified are the risks to investments by shareholders in banks, and – in the case of the finance sector – risks to the wider economy through the activities of the finance sector (such as those that precipitated the global financial crisis). CBCR also enables the public to make an informed judgement about a company’s contribution to the society in which it operates. It can help to flag up corruption risks by shedding light on any special arrangements between companies and governments. It can improve the oversight exercised by authorities. And, most importantly, it can provide valuable information to lawmakers to help them determine whether laws need to be changed in order to close loopholes in tax systems and re-classify some avoidance practices as tax evasion. In order for this to be possible, all the elements covered by Article 89(1) CRD, subparagraphs a)-f) will need to be disclosed.
The core elements of CBCR

The name(s), nature of activities and geographical location are crucial to understanding the basic structure and geographical spread of a company, as well as identifying the different subsidiaries belonging to the company. In some cases, citizens are not even aware that a particular transnational enterprise has activities in their jurisdiction, because the company is using a different name than the familiar brand name.

The turnover and number of employees are key indicators of where the actual economic activities are taking place. This is crucial information for the assessment of whether the profits are being taxed in the jurisdiction where the activity takes place, or are being shifted to low-tax jurisdictions.

The disclosure of profit or loss before taxes will show which jurisdictions the company is reporting its profits in and where it is reporting losses. A pattern often seen in cases of tax avoidance (and in some cases evasion) is that companies report high profits in low-tax jurisdictions where they have low levels of real economic activity, and report losses in the jurisdictions where the economic activity is actually taking place. Therefore, profit/loss data is crucial for identification of tax avoidance and evasion.

The tax payments, together with the public subsidies received, will provide a picture of whether taxes are being avoided or are being paid in the jurisdictions where the economic activity takes place. It will also reveal how much the company actually contributes to society, compared to how much it receives in public financial support. For the banking sector, this question became particularly relevant to the public after the large-scale public bailouts of banks that followed on the heels of the financial crisis.

It should be emphasised that the elements covered by Article 89(1) CRD, subparagraphs a)-f) are the bare minimum for what is needed to identify cases of tax avoidance and evasion. It is our opinion that even more information should be made publically available, including information about wages and other employee benefits, balance sheet totals, and assets under management. We also find that information should be reported on an entity by entity level, in order to provide the full picture needed to provide sufficient levels of transparency.

If only one or a few of the elements covered by Article 89(1) CRD, subparagraphs a)-f) are available, it will not be possible to identify cases of tax avoidance and evasion. Thus the positive economic impacts of public CBCR information mentioned below would not materialise. Therefore, we believe that the economic impacts of disclosing the different elements covered by Article 89(1) CRD, subparagraphs a)-f) should be assessed alongside the assumption that the other elements are disclosed as well. In this submission, we have made this assumption.

General economic impacts

Tax avoidance and evasion are major reasons for fiscal deficits in EU Member States as well as their high borrowing needs. Disclosure of CBCR information is an effective tool for addressing this problem. It has a high potential to increase tax income, reduce fiscal deficits and therefore help EU Member States to keep fiscal deficits within the targets set in the Stability and Growth Pact. It will also mobilise more resources for public investment and therefore boost growth and employment throughout the Union. The EU institutions have a responsibility to create a regulatory framework that enables Member States to comply with
the treaties and pacts. We consider the disclosure of CBCR information to be an essential part of such a framework.

Disclosure of CBCR information will make it more difficult for banks to act as enablers for individuals and corporations seeking to avoid or evade taxation, not least because CBCR information can show which banks have large operations in tax haven jurisdictions. For those banks that cannot provide good justifications for their operations in these jurisdictions the increased transparency will become an incentive for changing their behaviour, or they will face the risk of political intervention and/or reputational damage and loss of market shares. This could in turn reduce the level of tax avoidance and evasion in society as a whole – a problem that costs the EU around 1 trillion Euros every year\(^1\) - as well as reducing the overall size of the offshore economy, estimated to be as big as US$21-32 trillion\(^2\) globally.

The disclosure of CBCR information will also substantially reduce the space for banks themselves to engage in large-scale tax avoidance or evasion without fear of public scrutiny and political intervention. This is likely to increase the overall tax contributions of the banking sector because banks involved in large-scale tax avoidance or evasion will either change their behaviour and increase their tax payments or suffer reputational damage and therefore lose market shares to competitors not involved in tax avoidance and evasion. CBCR will also make it easier for governments, parliamentarians, journalists and society to identify the type of practices that banks engage in for the purposes of tax avoidance and to determine whether those practices should indeed be legal. The results of those assessments should be used by lawmakers to close tax code loopholes that permit avoidance activity which legislatures determine is damaging. In light of this, the general economic impacts could be significant or not, depending on the political will and public pressure brought to bear on lawmakers.

**Impacts on competitiveness**

Banks that only operate in one country are not able to engage in the tax avoidance and evasion “opportunities” that opaque cross-border activities offer. Today, these banks, and other banks that are not engaged in tax avoidance and evasion, are competitively disadvantaged compared to those transnational banks that do engage in such activities. Furthermore, even banks that have not been involved in tax avoidance and evasion will suffer from the public mistrust in banks, which has resulted from the scandals relating to the financial crisis, as well as the many subsequent scandals involving – among other things – tax avoidance and evasion. Disclosure of CBCR information could create a competitive advantage for banks that do pay their fair share of taxes as well as helping to rebuild public confidence in the banking sector. It could also strengthen the ability of smaller national banks to compete with global banks, and therefore help to reach the EU’s objective of “ending too big to fail”.

At the global level, the EU banking sector as a whole could benefit from a competitive advantage, where the new EU CBCR rules could enable them to attract investors and bank clients who value transparency, and the predictability and stability that follows from it.

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\(^1\) Murphy, R (2012). *Closing the European Tax Gap*. FCA

Furthermore, the sector would benefit from the reduced risk of shocks from tax scandals, which are likely to continue to occur if CBCR information documenting large-scale tax avoidance and evasion is kept confidential but occasionally leaked to the media. Most positively, in our view CBCR will compel EU-based banks to consider a range of risks (financial, social and political) more carefully which will ultimately benefit their competitiveness.

**Banks are already disclosing CBCR information**

It is also important to note that many banks already do disclose CBCR information. A report recently published by BankWiser assesses financial transparency and other aspects of the tax practices of the ten largest Dutch consumer banks. It shows that Triodos Bank, one of the ten banks, already publishes income account and balance sheet data for its banking businesses on a country-by-country basis. These data include profit before tax and taxes on profits. ABN AMRO, the third-largest Dutch bank, has already announced that it will publish profit before tax and taxes on profits for the financial year 2014 on a country-by-country basis. Furthermore, as of the end of 2013, four of the largest ten banks have banking operations in the Netherlands only. These banks effectively publish their accounts on a country-by-country basis already, because they are only present in the Netherlands. The conclusion of the report is that five out of the largest ten Dutch consumer banks already publish profits before tax and taxes on profits on a country-by-country basis and a sixth bank has announced it will do so for the current financial year.

The response by British banks to the 2013 Treasury consultation on the implementation of CRDIV did not raise any concerns about the impact of the CBCR disclosures on their competitiveness. Since that consultation, a number of UK banks - RBS, Standard Chartered and Barclays – have already started to comply with the legislation, again without citing competitiveness concerns. In France, disclosure of information on turnover and number of employees has been introduced in the banking sector already this year. No impacts on competitiveness have been felt.

At the global level, Transparency International regularly monitors CBCR by the largest transnational corporations. Their 2012 report assessed 105 corporations including 24 corporations in the financial services sector. In general, the financial sector was one of the poorest performing sectors, ranking well below the extractives and telecommunications sectors. However, some individual banks performed comparatively well. Two EU based banks - Banco Santander and Allianz - ranked joint 6th and 12th respectively in the overall CBCR rankings. Allianz discloses its revenues in all its foreign operations and Banco Santander routinely discloses revenues, pre-tax income and income tax paid by its South American and European subsidiaries. Neither corporation has seen its competitiveness eroded as a result of these disclosures; indeed Banco Santander is widely considered to have been one of the most resilient European banks in the face of the financial and euro crisis.

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1 van Gelder, J.W. and de Wilde, J. (2014). *Case Study: Dutch banks and tax avoidance*.
3 http://blog.transparency.org/2013/03/01/how-well-do-we-know-our-banks/
Impacts on investments
In general, investors will benefit from the increased transparency and subsequent stronger basis for making sound investment decisions. This includes knowledge about where the bank operates, where it has its economic activities, as well as where it generates its profits and pays its taxes. By seeing a better breakdown of the performance of banks, investors will be able to both make more informed choices regarding where they invest their money, as well as improving their ability to hold these banks to account.
For public actors, including development finance institutions, disclosure of CBCR information will also provide information that is vital for ensuring that investments made through financial intermediaries are responsible and in line with the investment criteria and objectives of the investor.
As the financial crisis has illustrated all too clearly, financial opacity increases the instability of the banking sector. Transparency, including CBCR, will help investors to identify risk factors and financial irregularities.
Investors will also benefit from increased stability in the banking sector. Since CBCR will create transparency around risk strategies and offshore investments of the banking sector and reduce the occurrence of large-scale tax avoidance and evasion by banks, investors will not have to fear the risk of future tax scandals, and the potential impacts it can have on a bank’s image, level of tax payments (which might suddenly rise after a tax scandal) and business opportunities. More importantly, a more transparent banking sector means that fewer accountholders will have their pensions and life savings put at risk because of banks hiding their follies in secret offshore subsidiaries. Restoring the public trust in the banking sector will also help create political stability around the sector and therefore reduce the risk of sudden changes to the banking regulation.
For all these reasons, public CBCR will also increase the ability of European banks to attract and maintain investors.

Impacts of the stability of the financial system
As mentioned above, the financial crisis serves as a frightening example of the dangers of opacity in the financial system. Increased levels of transparency, including CBCR information, will help to develop a better understanding of how the financial sector is operating as well as identifying the patterns of ownership. A key problem in the global financial crisis was the complexity of institutional structures, which made the level of exposure to risks unclear. Increased transparency, including CBCR, will help to prevent these problems from occurring in the future.

Commercial confidentiality
We see no reason why the information covered in Article 89(1) CRD should be regarded as commercially confidential.
For banks currently involved in large-scale tax avoidance or evasion, CBCR information will clearly be very sensitive, since such information might be used to reveal their activities. CBCR information might also reveal that certain banks have a very strong presence in certain
tax haven jurisdictions and thus might be involved in enabling tax avoidance or evasion by its customers. However, the desire to dodge taxation or to assist customers in doing so do not qualify as legitimate reasons to keep information about the economic activities, profits and tax matters of the bank confidential.

CBCR information could also be sensitive to banks trying to conceal financial difficulties or other problems. However, as the financial crisis showed, it is not in the interest of society, the banking sector nor its investors to allow individual banks to hide their internal financial problems. It showed us that financial opacity substantially increases the instability of the financial system, and thus individual banks should not be allowed to use commercial confidentiality as an argument for concealing basic information about their business. We should have learned this lesson after Enron, but clearly we did not. Let’s make sure we do so now.

In our opinion commercial confidentiality is not a relevant argument in the discussion about the disclosure of CBCR information. As regards ensuring fair and open competition in the banking sector, increased transparency will only have positive impacts.

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<th>Impacts on specific groups</th>
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<td>Individual transnational banks involved in large-scale tax avoidance or evasion</td>
<td>Relative to current fiscal positions, these banks are likely to be negatively impacted. Disclosure of CBCR will give the public, civil society organisations, journalists, parliamentarians and investors a chance to discover the tax avoidance and evasion practised by the banks. A likely consequence of this is that the bank will have to pay (a higher level of) taxes. However, while this imposes an extra cost on the specific banks, it is a cost they should have been paying anyway and thus it should not be considered as a negative impact. These banks could also suffer a negative impact on their reputation and their ability to attract and maintain investors. However, it can be expected that many of these banks will choose to end their involvement in large-scale tax avoidance and evasion as soon as CBCR information is about to be disclosed, and therefore will move to the category below (“individual transnational banks not involved in large-scale tax avoidance or evasion”).</td>
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<td>Individual transnational banks not involved in large-scale tax avoidance or evasion</td>
<td>These banks are currently suffering from low level of credibility despite the fact that they have not been involved in tax avoidance or evasion themselves. Furthermore, they have to compete with other banks paying significantly lower levels of taxes than they do. Transparency will greatly benefit their competitiveness, both on the European market and globally. In Europe, they will benefit from a level playing field where their competitors cannot get involved in large-scale tax avoidance or evasion. Both in Europe and globally, they will benefit from a strengthened image and credibility when suspicions of tax avoidance and evasion are dismissed.</td>
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<td>Banks that only operate in one country (smaller national banks)</td>
<td>Banks that are not transnational lack the transnational structures needed for large-scale tax avoidance and evasion. They will benefit from disclosure of CBCR since they will not have to compete with banks involved in large-scale tax avoidance or evasion. Furthermore, they will benefit from a more transparent, accountable and stable financial system, as opposed to the current system, which can disproportionately destabilise smaller, less capitalised banks that are less able to absorb significant losses due to international financial instability.</td>
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<tr>
<td>Investors</td>
<td>Increased transparency, including CBCR, will give investors new tools to identify risk factors and financial irregularities, and therefore a better basis for making investment decisions.</td>
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Investors will also benefit from a reduced risk of “tax scandals”, which can otherwise occur when confidential CBCR information documenting large-scale tax avoidance or evasion is leaked to the media. Restored trust in banks will also reduce the risk of sudden political intervention, including sudden changes in banking regulations.

Whether an investor’s immediate financial position will be impacted in the short term depends on whether they are heavily invested in transnational banks involved in large-scale tax avoidance or evasion, but we believe that their long-term interest in more stable financial markets should be the focus. A more stable and transparent financial system also has substantial positive effects on the level of investments, as has been proven by the current economic crisis.

**Ordinary citizens**

As the tax payments of the banking sector increase, the availability of resources in the public sector, and thus the public services, will increase and the tax pressure on citizens will decrease. Since CBCR information will also be a step towards a less risky financial system, citizens will also represent at less risk of suffering the consequences of another financial crisis.

Last but not least, CBCR information will make ordinary citizens able to make more informed choices about which bank’s services they prefer to use.

**Other positive impacts**

Overall, we find that the economic impacts of disclosing CBCR information will be positive. However, we would like to emphasise that there are additional reasons for disclosing CBCR information too.

**Availability of information to tax administrations**

If CBCR information becomes confidential, there is a high probability that it will not reach the tax administrations that need this information in order to be able to do their jobs. During the Organisation for Economic Co-operation and Development (OECD) process on base erosion and profit shifting (OECD BEPS), it has become clear that certain members of the business community are lobbying for restricting CBCR information to the tax administration in the country of the parent company of the transnational enterprise. They argue that this information should then only be shared with other governments through information exchange agreements. Such a system could have strong negative impacts on developing countries, which in many cases lack comprehensive information exchange agreements. Even among those that do have them (for example, through the Multilateral Convention on Mutual Administrative Assistance in Tax Matters) many will lack the resources and technology to request and receive the information through the heavily criticised “upon request system”.

Since developing countries are currently losing more resources due to corporate tax dodging than they receive as official development assistance, they have a strong interest in CBCR information, which can inform them about potential risks of tax avoidance and evasion occurring in their countries. Reducing tax avoidance and evasion in developing countries will free up much needed resources for health care, education and sustainable development in developing countries, and therefore this issue must TAKE high priority. Helping developing countries to mobilise resources domestically is also something the EU has committed to do through numerous international agreements.

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Impacts on democracy and public trust in the banking sector

As stated in the preamble (paragraph 52) of the Capital Requirements Directive: “Increased transparency regarding the activities of institutions, and in particular regarding profits made, taxes paid and subsidies received, is essential for regaining the trust of citizens of the Union in the financial sector. Mandatory reporting in that area can therefore be seen as an important element of the corporate responsibility of institutions towards stakeholders and society.”

Keeping very basic information about the banks operating in our society from members of the public – including civil society, journalists, academia and parliamentarians – will distort the public debate and increase the mistrust towards banks. Disclosure would, on the other hand, be an important step towards increased trust in the banking sector and a healthier financial system.

Key financial data gives citizens, including journalists, parliamentarians, and academics the opportunity to understand the activities of a particular bank in their country and to monitor the appropriateness of their payments to governments. It has become abundantly clear over the past several years is that lawmakers do not have enough information about how companies are using and abusing the international financial system to avoid taxation, and that the task of understanding and analysing the information necessary to inform decisions on taxation by lawmakers is a monumental task. We need all parts of society engaged in this process – from the academics who crunch numbers and identify trends to the journalists who can spot the common threads, to the citizens who should have enough information to hold their lawmakers accountable for appropriately addressing tax avoidance and evasion or not.

Business, including banks, benefits greatly from the common public good and public investments. Paying taxes to the community is thus an essential condition for the social license to operate for any company. Furthermore, greater transparency will help to reduce the potential for corruption. And last but not least, transparency is good for business. It reduces the costs of doing business by increasing economic efficiency and protecting reputations.