

Single Rulebook Q&A

Question ID	2014_1248
Status	Final Q&A
Legal act	Directive 2013/36/EU (CRD)
Topic	Other issues
Article	89
Paragraph	1
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	N/A
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Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	Definition of 'establishment' for the purposes of Country-by-Country reporting - scope of consolidation
Question	What would be considered an 'establishment' for the purposes of country-by-country reporting in Article 89(1) of Directive 2013/36/EU (CRD)? For the purposes of consolidation, should the prudential or the accounting scope of consolidation be applied?
Background on the question	Lack of clarity in the CRD text as to what would be considered an establishment and whether the prudential or the accounting scope of consolidation should be applied.Lack of clarity in the CRD text as to what would be considered an establishment and whether the prudential or the accounting scope of consolidation should be applied.
Final answer	Increased transparency regarding the activities of institutions must be seen as an important element of the corporate responsibility of institutions towards stakeholders and society. Such transparency is considered to be essential for regaining the trust of citizens of the Union in the financial sector. The aim of the country-by-country disclosure requirements under Article 89 is to enhance and strengthen transparency and to achieve a greater level of comparability of available information.

	<p>Against this background, the term 'establishment' in Article 89 (1) should not be interpreted in a way that would restrict disclosure. The term 'establishment' should be read as referring to subsidiaries, branches and other relevant entities through which an institution has a physical presence in a particular country.</p> <p>Pursuant to Article 89 (1), the disclosure must be made "<i>on a consolidated basis</i>". The term "consolidated basis" is a defined term under CRD and CRR [cf. Article 3(1)(44) CRD and Article 4(1)(48) CRR] and refers to a prudential scope of consolidation. However, Member States can prescribe a more extensive scope of consolidation.</p> <p>In any event, institutions should make clear in the disclosure precisely which scope of consolidation has been used and reconcile the published information with the consolidated annual financial statements where applicable.</p> <p><u>DISCLAIMER:</u></p> <p>This question goes beyond matters of consistent and effective application of the regulatory framework. A Directorate General of the Commission (Directorate General for Internal Market and Services) has prepared the answer, albeit that only the Court of Justice of the European Union can provide definitive interpretations of EU legislation. This is an unofficial opinion of that Directorate General, which the European Banking Authority publishes on its behalf. The answers are not binding on the European Commission as an institution. You should be aware that the European Commission could adopt a position different from the one expressed in such Q&As, for instance in infringement proceedings or after a detailed examination of a specific case or on the basis of any new legal or factual elements that may have been brought to its attention.</p>
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