

Question ID	2014_1250
Status	Final Q&A
Legal act	Directive 2013/36/EU (CRD)
Topic	Other issues
Article	89
Paragraph	1, 2
Subparagraph	-
COM Delegated or Implementing Acts/RTS/ITS/GLs/Recommendations	Not applicable
Article/Paragraph	N/A
Date of submission	28/05/2014
Published as Final Q&A	06/06/2014
Disclose name of institution / entity	No
Type of submitter	Competent authority
Subject matter	First time application of country-by-country reporting - interaction between Article 89 paragraphs (1) and (2)
Question	How should the provisions of Article 89 of Directive 2013/36/EU (CRD), and in particular paragraphs (1) and (2) be applied. In addition, what are the implications for institutions whose financial year is not aligned with the calendar year? How do the provisions in paragraphs (1) and (2) interact with the requirement in paragraph (4) according to which the published information shall be audited in accordance with Directive 2006/43/EC.
Background on the question	Article 89, paragraph (1) of the CRD requires that, from 1 January 2015, Member States shall require each institution to disclose annually, specified by Member State and by third country in which it has an establishment, the information set out in points (a) to (f) on a consolidated basis for the financial year. Paragraph (2) goes on to say that notwithstanding paragraph (1), the information in paragraph (1) (a) to (c) shall be disclosed for the first time on 1 July 2014. These 2 paragraphs could give rise to different interpretations from Member States.
Final answer	Disclosures under Article 89 of CRD should relate to the last financial year ending prior to the date of disclosure.

With respect to the first disclosure pursuant to Article 89(2), Member States should ensure that all institutions publish the required information (specified in Article 89(1)(a), (b) and (c)) at the latest on 1 July 2014.

For initial application institutions with a financial year ending shortly before the first disclosure shall use as reference year the last financial year ending before 1 July 2014, except if that financial year ended so close to 1 July 2014 that the accuracy and completeness of the information could not be ensured, in which case the previous financial year may be used. However, in such case the institution must ensure that all following financial years are covered by subsequent disclosures. For example, an institution with a financial year ending on 31 May can use its financial statements as per 31 May 2013 for the first disclosure. In that case, the institution will need to disclose before the end of 2015 the data for the financial years ending 31 May 2014 and 31 May 2015 in accordance with Article 89(4).

Member States should ensure that from 1 January 2015 onwards, institutions make annual and audited disclosures of the information referred to in Article 89(1) (a) to (f).

Member States may choose only to impose the audit requirement on disclosures from 1 January 2015 onwards.

DISCLAIMER:

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.

Link

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