

EXPLANATORY MEMORANDUM TO
THE CAPITAL REQUIREMENTS (COUNTRY-BY-COUNTRY REPORTING)
REGULATIONS 2013

2013 No. 3118

1. This explanatory memorandum has been prepared by the Treasury and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This instrument implements in part 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 (OJ no L176, 27 June 2013, p. 338) (the “capital requirements directive”). Specifically it implements Article 89.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Context

4.1 On 26 June 2013, the European Parliament and Council adopted a package of legislation known as “CRD4” which provides the framework for the authorisation and prudential supervision of banks in the EU. The CRD4 package comprises the capital requirements directive and the capital requirements regulation. The directive must be transposed into UK law by 31 December 2013 and must be applied from 1 January 2014. The regulation applies (with some exceptions) from 1 January 2014.

4.2 The capital requirements directive is being transposed into UK law by means of:

- these Regulations which transpose Article 89 (country-by-country reporting) of the capital requirements directive;
- the Financial Services and Markets Act 2000 (c.8) (“FSMA”);
- the Capital Requirements Regulations 2013; and
- rules made by the Prudential Regulation Authority (“PRA”) and the Financial Conduct Authority (“FCA”).

4.3 The CRD4 package was submitted for scrutiny to the UK Parliament on 12th October 2011. It was cleared by the House of Commons European Scrutiny Committee on the 14th March 2012 and House of Lords European Scrutiny Committee on the 14th June 2012.

5. Territorial Extent and Application

5.1 This instrument applies to all of the United Kingdom.

6. European Convention on Human Rights

6.1 As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

7. Policy background

- *What is being done and why*

7.1 During CRD4/CRR negotiations, the European Parliament proposed to introduce certain country-by-country reporting (CBCR) requirements into the legislation, an amended version of which are contained in Article 89. The provisions require each institution in scope of CRD4 to disclose annually: their name, nature of activities and geographic location; number of employees; and their turnover, on a consolidated basis, by country where they have an establishment. This information must first be published, in part, on 1 July 2014.

7.2 Global systemically important institutions (G-SIIs) are additionally required to disclose to the European Commission on a confidential basis by 1 July 2014 their pre-tax profit or loss, their taxes paid and any public subsidies received. Following this, the Commission will conduct an assessment of the potential negative economic consequences of the public disclosure of such information, and report to the European Council and Parliament by 31 December 2014. Subject to that assessment, all institutions will be required to disclose annually this additional information from 1 January 2015.

7.3 Recital 52 of CRD4 sets out the purpose of the CBCR provisions: “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.”

7.4 In transposing the CBCR provisions in CRD4 the Government has taken an approach which it believes to be the most proportionate and, where possible, has

attempted to ensure that it is consistent with the approach adopted by other Member States and other tax transparency initiatives.

- 7.5 The approach we have taken on the key elements in the provision is detailed in the subsequent paragraphs.
- 7.6 These Regulations will apply to all institutions in scope of CRD4 as limiting the scope of the provisions would be a clear breach of our obligation to properly transpose the Directive and the costs of the disclosure are naturally proportional to the size and complexity of the firm.
- 7.7 In order to achieve a proportionate approach in relation to the basis of consolidation, the Regulations require an accounting consolidation but only of firms within scope of CRD4 (Regulation 2). An accounting consolidation requires institutions to report for all subsidiaries or branches where the institution has a controlling interest.
- 7.8 However, given that many groups will consist primarily of institutions in scope of CRD4, but which may have members which are not within scope, institutions will be permitted to consolidate at a parent level (including the holding company level) if in practice this makes compliance easier (Regulation 4). If this option is chosen it will mean that all of the institutions in the group will be considered to have met the publication requirement.
- 7.9 This approach will provide a meaningful publication in the most proportionate manner by giving institutions some flexibility in their approach to consolidation.
- 7.10 The Regulations define “tax on profit and loss” on the basis of the actual cash figure for corporation tax paid in a financial year. This approach most closely aligns with the transparency objectives of the legislation and will give the most meaningful analysis in terms of “taxes paid” as referred to in recital 52 of CRD4.
- 7.11 The Regulations require that auditing standards are applied to the publications under the ongoing reporting obligation but do not require it for the first publication which must be made by 1 July 2014 as this could result in disproportionate burdens on industry and in many instances will be impracticable.
- 7.12 The Regulations also contain a provision to prevent duplicative publications where the information relating to an institution has already been published in another EEA State for the purposes of complying with Article 89 or has already been published in the UK when another institution (e.g. a parent institution) meets its obligations under the Regulations.

7.13 The Regulations will be enforced by the Prudential Regulation Authority for all institutions authorised by it and the Financial Conduct Authority for all others.

- ***Consolidation***

7.14 These Regulations do not amend existing enactments, so consolidation is not merited.

8. Consultation outcome

8.1 The consultation document “Capital Requirements Directive 4: consultation on country-by-country reporting” was published on 20 September 2013. It set out the Government’s initial approach for implementing the CBCR provisions in CRD4. The consultation ran for four weeks, until 18 October 2013.

8.2 The consultation responses were generally positive but requested further guidance on a number of areas. A full summary of the responses to the consultation and the Government response can be found at <https://www.gov.uk/government/consultations/capital-requirements-directive-4-country-by-country-reporting>.

8.3 The Government considered all of the responses to the consultation and used them to inform the initial drafting of the Regulations and accompanying guidance.

8.4 The draft Regulations and draft guidance were also subject to a further consultation. They were published on 19 November 2013 where the Government sought any final views by 26 November 2013. The draft Regulations and draft guidance are available at <https://www.gov.uk/government/consultations/capital-requirements-directive-4-country-by-country-reporting-draft-legislation-and-draft-guidance>. The responses to the final consultation were broadly positive and industry appreciated the flexibility provided by the Regulations and guidance. However, there were specific points raised in the consultation requesting further clarification on a few issues which we have taken on board.

9. Guidance

9.1 Given the complex nature of the Regulations, the Treasury will publish guidance which will be available on the HM Treasury website ahead of this legislation coming into force, at www.gov.uk/government/publications/capital-requirements-directive-4-country-by-country-reporting-guidance.

10. Impact

- 10.1 We estimate that these Regulations will generate ongoing administrative costs for businesses within scope. One-off costs are estimated as negligible. Annual costs to businesses affected by the measure are estimated to be between £3.0 - £5.0m. The one-off costs include familiarisation with the new requirements and training. The ongoing costs for business take account of the new reporting requirements and include the need to collect the relevant information, carry out the necessary calculations, check, present and report the figures, and provide any additional written commentary.
- 10.2 The Regulations do not impose any regulatory burdens on charities or voluntary bodies.
- 10.3 The impact on the public sector is negligible.
- 10.4 The Government has published a Tax Information and Impact Note detailing the impact of these Regulations at <https://www.gov.uk/government/consultations/capital-requirements-directive-4-country-by-country-reporting>.

11. Regulating small business

- 11.1 CRD4 covers a broad spectrum of firms, ranging from very large multi-national banks to very small investment firms. The Prudential Regulation Authority defined small in relation to their implementation of CRD4 as firms with total assets under £100 million. Using this definition, these Regulations will apply to 1,709 small investment firms.
- 11.2 The costs imposed by these Regulations are naturally proportional to the size of the firm and therefore this will minimise the impact on very small firms.

12. Monitoring & review

- 12.1 The European Commission will conduct a general assessment as regards potential negative economic consequences of the public disclosure of the information required, including the impact on competitiveness, investment and credit availability and the stability of the financial system. The Commission will submit its report to the European Parliament and to the Council by 31 December 2014.
- 12.2 The Treasury will also monitor the practical effects of this instrument to ensure it continues to meet the policy aims.

13. Contact

- 13.1 Ali Uppal at the Treasury Tel: 020 7270 1609 or email: ali.uppal@hmtreasury.gsi.gov.uk can answer any queries regarding the instrument.