Transparency & Accountability in the Financial Sector

A case study of Fair Finance Guide International

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FairFinanceGuide International

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Introduction

By providing capital for all types of financial and economic activities, banks are primary actors and co-responsible for the impact of those activities on many aspects of people's lives. Promotion of sustainability and transparency of the financial sector, in casu banks, is crucial for making companies and their international supply chains more sustainable. Transparency and accountability of banks are therefore a major condition for informing not only governments but also the public, as this facilitates the independent assessment on a range of issues by the public, media, and academics.

Published shortly after the launch of Fair Finance Guide International (FFGI) interactive websites about banks' socio-economic performance in seven countries (Belgium, Brazil, France, Indonesia, Japan, the Netherlands and Sweden[i]), this publication focuses on a number of aspects relating to transparency and accountability and reporting about tax payments in the financial sector, and more specifically banks.

The research findings by FFGI coalitions in the seven countries on transparency and accountability of banks were considered suitable for further deepening of the topic, questioning whether differences between banks relate to differences between countries. To put this into a broader perspective, the coalition's researchers have analysed the existing legislation and public debate in their countries. This has resulted in seven chapters, written by the researcher from the seven coalitions of the FFGI network. Each country describes the existing and upcoming laws and regulations regarding transparency and reporting in the financial sector (first section). The second section highlights the issues and concerns debated in society. The third section analyses the results of the policy assessment regarding the Fair Finance Guide themes Transparency & Accountability and Taxes & Corruption. Finally, the last section presents some good examples shown by banks on these topics.

We have asked a number of experts with different professional backgrounds and from different parts of the world to present us their perspective on transparency and accountability and tax related issue in the financial sector. Their articles can be found between the chapters. We thank each of our guest authors for their excellent contributions.

In the concluding part Imad Sabi (Oxfam Novib / FFGI), Anniek Herder and Petra Schoof (Profundo) review the contributions from the seven FFGI-countries and present a more general picture on transparency in these countries.

Ted van Hees
Coordinator and Chair Fair Finance Guide International

[i] Hyperlinks to all national Fair Finance Guides can be found at the global website www.fairfinanceguide.org.

Chapter 1 Results from Belgium

Written by: Evert Peeters, Frank van Aerschot (Fairfin)

1.1 Government policy

Since the financial crisis, civil society has been lobbying to enhance transparency in the financial sector. One of the issues they most strongly urged for, also at European level, has been country-by-country reporting on tax payments, which would provide an insight in the substance of financial operations in tax havens and hence in potential tax evading behaviour. At the European Union, especially France insisted on drawing EU regulation for this issue.[1] For years though, country-by-country reporting was rejected because of the exorbitant costs and constraints it would place on the private sector. In addition, the European Commission was hesitant about publishing this data.[2] Nevertheless, in 2013 the EU Capital Requirements Directive was put into practice, which requires all financial institutions in EU member states to publish financial information for each country the institution is active in from January 2015 onwards.[3]

Other relevant EU Directives developed in this context but not yet put into practice by all the EU countries are the EU Directive on Non-Financial Reporting (2014/95/EU) and the EU Directive on Administrative Cooperation. The already existing Anti-Money Laundering Directive (AMLD) of 2005 is currently under proposal of amendment, so that information required by it becomes public for authorities and people with a legitimate interest such as journalists.[4] Table 1 provides an overview of the European regulations regarding transparency in the financial sector.

Table 1 Laws and regulations on banking transparency in the EU

Name of law/regulation	Content of law/regulation	Relevant assessment element
EU Directive on Non-Financial Reporting (2014/95EU) [5] *In Belgium, the relevant article is not yet transposed.*	Article 19a of this Directive requires large undertakings, exceeding 500 employees during the financial year, to include in their management report a non-financial statement which includes: - brief description of the undertaking's business model; - description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented; - outcome of those policies; - principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks; - non-financial key performance indicators relevant to the particular business. Where the undertaking does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so.	Transparency & Accountability 1: "*The financial institution describes its Environment and Social Risk Management System and provides insight into how the financial institution ensures that investments meet the conditions set in its policies.*" Transparency & Accountability 11 and 12, about publishing a sustainability report.

Name of law/regulation	Content of law/regulation	Relevant assessment element
	Undertakings in member states shall start to provide the information required for the financial year starting 1 January 2017.	
EU Capital Requirements Directive (Directive 2013/36/EU, also known as CRD IV) [6] *In Belgium, the relevant article has been transposed via a separate administrative order "Belgian Federal Government, Banking Law (April 26, 2014)*[7]*".*	Article 89 of CRD IV specifies that all financial insitutions of European Union member states are required to report the following information on a country-by-country basis, for all countries worldwide where they have an establishment: - name(s), - nature of activities, - turnover, employees (in FTE), - profit or loss before tax, - tax on profit or loss, - and public subsidies received. The first three issues should be applied from July 2014 onwards, while the whole list should be applied from January 2015 onwards.	Taxes & Corruption 1: "*For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments.*"
EU AMLDirective (2005) [8]	Directive developed in 2005 to prevent the use of the financial system for the purpose of money laundering and terrorist financing. It also stipulates that the member states should compel banks and other financial institutions and occupations falling under the Directive to identify their customers and ultimate beneficiaries, i.e. to verify their identity. Institutions should implement adequate and suitable policy outlines and procedures in the areas of customer due diligence, risk assessment, monitoring of business relations, recognising of money laundering and financing of terrorism, reporting suspicious transactions, retaining documentation, internal control, and staff education. The competent authorities of the member states should also effectively verify whether the stipulations of the Directive are adhered to by all institutions and persons falling under the Directive and take the necessary measures to ensure compliance with the Directive, including the possibility to carry out on-site examinations and apply sanctions.[9]	Taxes & Corruption in general
Proposal on extending the EU AMLD (March 2014) [10]	In March 2014 the European Parliament endorsed the creation of public (also: central) registers of beneficial ownership. If the EU's Anti-Money Laundering Directive (AMLD) is revised according to this vote, any company and trust registered in an EU member state will be required to provide information about its beneficial owner including: name, date of birth, nationality, jurisdiction of incorporation, contact details, number and categories of shares, and – if applicable - the proportion of shareholding or control.[11] In December 2014, the EU Parliament and Council agreed on listing the ultimate owners of companies on central registers. However, the deal still needs to	Taxes & Corruption 8: *"Companies publicly report on their beneficial owner or owners including full name, date of birth, nationality, jurisdiction of incorporation, contact details, number and categories of shares, and if applicable the proportion of shareholding or control."*

Name of law/regulation	Content of law/regulation	Relevant assessment element
	be endorsed by EU member states' ambassadors (COREPER) and by Parliament's Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs committees, before being put to a vote by the full Parliament next year (2015).[12]	
EU Directive on Administrative Cooperation (Council Directive 2014/107/EU, also known as DAC2) [13]	This directive specifies that all financial institutions (including banking groups) should be required to identify the ultimate beneficiaries of their deposit and investment accounts. They should report the identity of beneficiaries and financial information (account balance, income credited to the account) to the domestic tax authority. Tax authorities will start exchanging this information in 2017, to address evasion of personal income and wealth taxes via undeclared foreign accounts. Mandatory automatic exchange of information in the field of taxation. Member States shall adopt and publish, by 31 December 2015, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall apply those measures from 1 January 2016.	Taxes & Corruption in general

In Belgium, main regulation with regard to banking transparency since the financial crisis has evolved at two different levels.

With regard to tax transparency, in the first place, new regulation has materialized within the framework of the European Commission's Capital Requirements Directive (CRD IV –July 17, 2013). This directive required banks for the first time to deliver proper country-by-country-reporting. The new Belgian banking law (April 26, 2014), in the second place, has further specified this country-by-country reporting.

With regard to non-financial reporting, in the second place, new regulation stems from the European Commission's Directive on Disclosure of Non-Financial and Diversity Information (6 December 2014), with a focus upon environmental risks, labor and human rights in particular. Untill now, these criteria have not yet been specified further in Belgian banking law or in any other national regulation.

1.2 Current debate

In recent years, public awareness has risen with regard to the complex mechanisms of (legal) tax avoidance within which financial institutions often play a key role. As providers of financial services are instrumental in setting up, in maintaining and in facilitating tax evasion circuits, it is of crucial importance to further enhance banking transparency, in order to minimize potential social risks. These risks do not only relate to fiscal losses, as financial institutions manage to minimize fiscal contributions of profitable enterprises and wealthy individuals. Since tax evasion circuits also enable financial institutions to escape other sorts of (non-fiscal) regulatory oversight, they also constitute a threat to financial stability at large. In recent years, these threats have been discussed in particular with regard to the so-called 'shadow banking' sector, which global size is estimated at a stunning 75,000 billion dollar, and through which regular financial institutions manage to obfuscate both their funding lines and their investment practices.[14]

At the level of the European level, the reality of tax evasion is starting to be confronted, at least partially, with country by country reporting. The CRD IV, however, still contains a few limitations. Most regrettably, European member states (such as Belgium) are left with the responsibility to report upon transparency performance of 'their' financial institutions, within their national jurisdictions. Therefore, reporting with regard to banking transparency will not be fully homogenized throughout the European Union at the short term. Consequently, intra-European comparison will remain a hazardous task. That is why several European NGO's that have specialized in tax avoidance issues (in Belgium: 11.11.11.) demand the European Commission to homogenize country-by-country-reporting soon, at the level of the strictest regulatory frameworks available.[15]

In Belgium the clauses with regard to country-by-country reporting in the CRD IV have been specified further within the new Banking Law (April 26, 2014). Under Belgian law, financial institutions are now required to report all jurisdictions within which they operate, how much revenues they generate within each of these jurisdictions, and how much employees they have engaged in each of them. Alas, however, the Belgian banking law does not require banks to report the names of all entities in third countries (even though this prerequisite is part of the CRD IV). Therefore in practice, Belgian banks are only required to report on the most important entities in third countries and can still continue to obfuscate some of their subsidiaries. Also, the Belgian banking law does not yet require financial institutions to report on taxes paid and subsidies received. Since the latter stipulation requires a revision of existing legislation with regard to the annual reports of financial institutions, Belgian NGO's urge the Belgian legislator to make this legislation with regard to annual reporting compliant with the principles of the CRD IV.[16]

Apart from tax transparency, civil society has also become increasingly vigilant in recent years with regard to external social and ecological effects of lending practices and financial investment decisions by financial institutions. In Belgium, these concerns have materialized most powerfully with regard to 'controversial investments' of big banks, especially with regard to weapons, as big and small NGO's such as Handicap International, Pax Christi and FairFin have campaigned vigorously on this topic. Especially the Belgian legal ban on cluster munition-related investments (in effect since June 9, 2006) is widely considered as the most important legal victory of this coalition of NGO's. In recent years, follow-up campaigns with regard to climate-related financial investments, with regard to 'food speculation' and with regard to the human rights-related impacts of investment practices, have helped to broaden the scope of 'sustainability' concerns with regard to the financial sector.[17] [18]

Simultaneously, and increasingly since the financial crisis, financial institutions have been intensifying their reporting with regard to Corporate Social Responsibility (a concept that dates back from the 1990s and that has increasingly become the common denominator under which financial institutions subsume, categorize and manage the 'reputational risks' that may stem from investment decisions). In this respect, the proliferation of Sustainability Reports, CSR departments and so-called Environmental and Social Risk Management systems can be understood as the industry's main response to the most successful public awareness campaigns of banking-oriented coalitions of NGO's. In order to guarantee maximal real effects of these CSR frameworks, Belgian NGO's strive for the incorporation of this sustainability-related reporting within the general legal framework of annual reporting by financial institutions. While self-regulation may be helpful, only legally binding regulations are able to enforce minimum norms with regard to non-financial reporting for the financial industry as a whole. And whereas this regulation needs to be sufficient stringent, in order to guarantee real progress in investment 'decency', it also needs to be sufficiently straightforward in order to enable small banks in particular to implement new legislation.

Therefore, the European Commission's Directive on Disclosure of Non-Financial and Diversity Information (6 December 2014) is welcomed by Belgian NGO's as a necessary, though insufficient first step towards the amplification of reliable and substantial CSR reporting. As the Directive is developed as an amendment to the previous Accounting Directive (June 26, 2103) that applies to all publicly listed companies, the Commission rightly suggests that transparency with regard to non-financial reporting needs to be subject to the same degree of external verification as all other parts of annual reporting. Also, the Directive rightly tackles CSR reporting from a relatively broad angle, as it considers non-financial reporting to cover 'information on policies, risks and outcomes such as environmental matters, social and employee aspects, respect for human rights, anticorruption and bribery issues, and diversity in their board of directors'.[19]

However, when it comes to legislative detail, these 'risk issues' are elaborated in the Directive at a relatively superficial level. In particular, the Directive does not sufficiently break down the potentially 'marketing-driven' logic that thrives many CSR policies and ESRM systems today. Whereas the Directive encourages companies to align with the UN Global Compact and the OECD Guidelines for Multinational Enterprises, strict regulation for the implementation of the principles inherent to these guidelines is lacking. Also, the Directive 'leaves significant flexibility for companies to disclose relevant information in the way that they consider most useful' – as said in the explanatory notes of the Directive. It is also remarkable that not a single word is dedicated to the presumed effectiveness of non-financial reporting with regard to the preservation of the social and ecological interests of the actual subjects affected by unsustainable business practices. In this regard, the Directive taps into the business logic of managing reputational risk and completely overlooks the potential change in business practices that should be envisaged by sound CSR reporting and policies.[20]

At the Belgian level, law makers have not been able to overcome the shortcomings of the European Directive with regard to non-financial reporting. Even worse: Belgian legislation has not yet made a start with implementing the potentially positive principles of the Directive at all.[21] Whereas several European countries have developed a national legal framework in order to regulate non-financial reporting long before the Commission's Directive (the UK in 2006 - updated in 2013; Sweden in 2007; Spain in 2011; Denmark in 2011 and France in 2012), Belgian parliament has not yet initiated law making process. Therefore, Belgian NGO's (and the Fair Finance Guide in particular) stress for an urgent implementation of the Directive's minimum norms with regard to non-financial reporting. At the same time, we urge for the deepening of non-financial regulation in the tracks of the early legislation with regard to 'controversial' investments in 2006. In particular, we urge law makers to push not only for full transparency with regard to the social and ecological externalities of financial investment practices. We also urge them to push strict exclusion norms with regard to the most harmful sorts of investments (ecologically and socially), at the example of the 2006 ban on cluster munition-related investments.

1.3 Results of the policy assessment

The results of the assessment of the two most relevant themes of the Fair Finance Guide methodology are summarized in Table 2.

Table 2 Policy assessment results Belgium

	Leaders (score =>6)	Followers (score between 4 and 6)	Laggards (score <4)
Transparency & Accountability	Van Lanschot (6.1)	Triodos Bank (5.8) Deutsche Bank (5.4) BNP Paribas (4.7) Argenta (4.1)	ING (3.9) VDK (3.4) KBC (2.3) Belfius (1.3)
Taxes & Corruption	VDK (6.8)	Argenta (5.8) Van Lanschot (5,9)	Triodos Bank (3.1) BNP Paribas (2.7) Belfius (2.3) ING (2.3) KBC (1.9) Deutsche Bank (1.2)

With regard to transparency, BNP Paribas, ING, Deutsche Bank, Van Lanschot, VDK and Triodos Bank disclose an Environmental and Social Risk mechanism which applies to investments. However, there is a large difference in the degree of insight the external reader gets into the decision making process. Van Lanschot's description is the most elaborate and is the only bank with a public list of excluded companies. KBC does have a ESRM mechanism, but it does not refer to investments and Belfius does not have one at all. Triodos Bank, on the other hand, is the only bank which publishes the names of the companies it invests in on its website. All banks have some kind of sustainability report, but not all of them are externally verified or take into account GRI guidelines. None of the banks have an internal grievance mechanism for third party stakeholders.

Country by country reporting has become obligatory in the EU in 2015. Banks in Belgium, but also in the Netherlands, France and Germany (where the head offices of ING, Triodos, Van Lanschot, BNP Paribas and Deutsche Bank are located) are required to do country by country reporting for the annual reporting of 2014. Regarding corruption, all banks except for Van Lanschot have a policy on tackling internal corruption. With the exception of Van Lanschot there is no bank that has a specific policy to prevent corruption at suppliers and subcontractors of companies they invest in.

1.4 Best practices

The assessment learns us that the ratings on taxes and corruption do not necessarily match with those on transparency, as leaders of one theme are among the laggards on the other theme. However, best examples are Triodos Bank and Van Lanschot. Van Lansschot is the only bank publishing a list of excluded companies and Triodos Bank is the only bank which publishes the names of the companies it invests in on its website.

Transparency: Sine Qua Non for Publicly Accountable Finance

Written by: Jan Aart Scholte (University of Gothenburg/University of Warwick)

Financial markets – covering banking, securities, derivatives and insurance industries – are huge in contemporary economy and society. The monetary value of world financial transactions reached 25 times the gross world product in 1995 and grew further to 70 times gross world product in 2007.[22] Turnover on wholesale foreign exchange markets rose still more from US$3.3 trillion per day in 2007 to US$5.3 trillion per day in 2013, some 60 times the value of international trade.[23] Today far more money circulates in financial markets than in the 'real' economy of goods and services.

This vastly expanded financial sector could work for enormous societal betterment. Imagine what the potential capital investment could do to advance climate mitigation and other ecological sustainability; digital access (58 per cent of humanity is still offline); quality education, health and shelter for all; conflict transformation in areas of longstanding violence; and so on. Finance can be – and frequently has been – a force for much improved livelihood.

Yet today's financialised economy has also too often worked against public welfare. For one thing, the period since market liberalization took off in the 1980s has witnessed recurrent financial crises across the planet. This includes a major meltdown across the North Atlantic region in 2007-8. In addition, existing operations of financial markets have promoted an enormous concentration of wealth in few hands, so that the richest 1 per cent of world population now own 48.2 per cent of all assets.[24] At the same time rolling scandals expose a string of rogue financial traders and crooked financial executives. Meanwhile the impacts of finance on environment, peace, social cohesion and democracy go largely unchecked.

The circumstances generating these negative outcomes of contemporary finance are many and complex, of course, but shortfalls in public transparency play a significant part. As the editors of this volume note, without adequate transparency wider society cannot exercise informed and democratic oversight of the financial sector. Thus where transparency is missing, accountability will be lacking also. And where accountability is missing, power (such as that of today's major financial actors) is readily abused. This is why transparency of contemporary finance is so vital.

What Transparency?

'Transparency' is quite a buzzword in contemporary politics and an assumed 'good thing'; yet what does it entail more precisely? What is transparency? What needs to be transparent? What purposes does transparency serve? Who needs to be transparent? To whom is transparency directed? By what mechanisms is transparency achieved? The following paragraphs successively address these questions as they relate to finance today. The overall message is that, while transparency is laudable as a general principle, the specifics of its execution also matter a great deal. For example, in some guises transparency generates only minimal policy adjustments, but in others it can promote far-reaching economic and social transformation.

To begin with, then, what is transparency as a general concept? In a word, transparency entails openness and visibility. It means that actions and circumstances are observable and assessable. In the absence of transparency, people are ignorant of and cannot scrutinize a situation. Without transparency other aspects of accountability (such as consultation, review and redress) cannot be effectively attained. Thus transparency is a sine qua non of accountability.

Beyond this relatively simple foundational principle things get more complicated and contested. For instance, what more exactly needs to be transparent in respect of finance? It is broadly agreed that financial entrepreneurs and companies should be publicly registered and that their performance should be publicly reported in some way. However, disagreements abound concerning the types and amounts of information that should be disclosed about such matters. What should a financial institution reveal about its ownership, assets, clients, organizational structure, decisions, activities, revenues, profits, social impacts, and environmental consequences? What should be the timing of such disclosures: immediate or after certain intervals? What exemptions should be allowed: e.g. for reasons of personal privacy or public safety? In general, the financial industry tends to default towards less transparency, while public-interest advocates default towards demanding more. After all, information is a key source of power.

An important caution might be inserted here, though. Sometimes more disclosure can actually be politically disabling for change agents. Financial institutions and financial regulators may flood their reports and websites with insubstantial information while withholding small amounts of more crucial data. Piles of published documents may reveal far less than confidential board minutes and the CEO's appointments diary. Indeed, a surfeit of disclosure on relatively insignificant matters can distract activist and researcher energies away from key evidence that is kept invisible. Hence the quantity of released material can be less important than its quality.

Important is not only what is made visible, but also for what purpose. What is one trying to achieve with transparency in finance? For most regulators and mainstream economists, transparency is a tool to bring greater efficiency and stability to financial markets. In contrast, for social justice advocates openness and visibility is a way to expose and counter financial practices which enable tax evasion, undue executive remuneration, money laundering, and other morally dubious conduct. For democracy promoters, transparency is an instrument that enables greater public participation and control in financial governance. For environmentalists, transparency is a means to identify and where necessary correct the ecological impacts of financial activities. So while many people want more transparency in financial markets, they want it for different reasons. Indeed, different kinds of transparency will serve different goals and benefit different constituencies. This makes transparency an object of considerable political struggle.

A further core question is who should be transparent in finance. Clearly it is vital to obtain greater openness and visibility on the part of banks and other commercial institutions, as the Fair Finance Guide campaign emphasizes. For all of the purposes just mentioned – stability, equity, democracy and sustainability – it is important that financial market players can be better scrutinized by the wider society that they affect.

However, effective public-interest advocacy on the financial sector also requires transparency on the part of regulatory bodies. This visibility is particularly important since so much governance of finance occurs at sites of which the general public is unaware. National finance ministries and central banks can be substantially closed to external scrutiny. This impenetrability increases the more when these national regulators operate in transgovernmental channels such as the G8 and the G20, the Basel Committee on Banking Supervision, and the Financial Stability Board. In addition, considerable financial governance occurs through poorly visible private authorities such as credit-rating agencies and the International Accounting Standards Board. In short, transparency of the regulators can be as important as transparency of those who are regulated.

In addition, for the integrity of finance politics as a whole, transparency arguably should also be the rule for civil society groups. Commercial associations, labour unions, think tanks, NGOs and social movements can themselves fall short on disclosing who they are, how their policy processes operate, what funds their activities, and so on. Lobbyist registries and initiatives such as the INGO Accountability Charter[25] aim to address these issues. Still, the opacity of some civil society activities can encourage suspicions about their claims to promote public interests.

Next to who is transparent comes the issue of transparency for whom. To what audience(s) is transparency of finance companies, finance regulators and finance campaigners directed? Who is meant to understand and use the disclosed information? Is it for institutional investors, or individual savers, or market regulators, or tax authorities, or campaign activists, or the general public? When released information on finance is steeped in unclarified acronyms, obscure statistics and technical jargon, it is only effectively transparent for narrow circles of specialists. Likewise, disclosures in Chinese or English are useless for people who lack fluency in those languages. Thus if transparency in the area of finance is to be meaningful, it needs to be coupled with a careful communications strategy that transmits the information in comprehensible ways to various audiences.

Then there is the question by what means transparency is achieved in today's financial markets. A central point in this regard – raised repeatedly in other contributions to this collection – is voluntary versus legally binding transparency practices. Measures such as the Equator Principles and the Global Compact, mentioned by Aldo Caliari, fall into the realm of (discretionary) 'corporate social responsibility'. The Sustainable Banking Scorecard described by David Korslund is similarly laudable in principle, but it will only apply voluntarily – and to only two dozen relatively small banks. The OECD Common Reporting Standard for Automatic Tax Information Exchange discussed by John Christensen is likewise noncompulsory. The same optionality applies to the INGO Accountability Charter for that matter. On each of these occasions one has an uncomfortable intuition that transparency by self-regulation is not sufficiently robust.

However, if compulsory law is needed to achieve adequate transparency in today's financial industry, from where can effective binding measures emanate? Uncoordinated statutes from individual nation-states will likely be insufficient, given that so much finance flows in global spaces and offshore jurisdictions. Likewise, directives from regional institutions like the European Union do not have the necessary global reach. Decisions of trans-governmental bodies such as the G8 and G20 and OECD committees can have global scope, but as informal recommendations they currently have no standing in any court of law. Treaty-based formal intergovernmental organizations such as the United Nations can issue legally binding measures, but enforceability is weak, and in any case major players including the US Government are generally unwilling to give global intergovernmental institutions this level of competence. Hence for the moment it is unclear from where a legally binding global regime of transparency for the financial industry could come.

Conclusion

To sum up, these brief reflections underline that transparency is key for adequate governance of finance as one of the largest and most influential sectors in economy and society today. Without better transparency, finance will continue to suffer major instability, injustice, immorality, unsustainability and democratic deficits. However, while transparency may be broadly endorsed as a principle for effective regulation of the financial sector, actual elaboration and execution of the practice is deeply political and contested. So much depends on transparency *of what* and *for what*; *of whom* and *for whom*; *by what means* and with *what result*. To this extent transparency itself is less important than how you do it.

Chapter 2 Results from Brazil

Written by: Lucas Salgado (Setawi)

2.1 Government policy

The following regulations regarding transparency are relevant for the Brazilian financial sector. It is important to highlight that Laws and Regulations specifically directed to state controlled institutions/companies are relevant to two of the banks that we analyse - Banco do Brasil and Caixa Economica Federal. See Table 3 for an overview.

Table 3 Laws and regulations on banking transparency in Brazil

Name of law/regulation	Content of law/regulation	Relevant assessment element
Banking Self Regulation System[ii] - Normativo SARB 003/2008 - Customer services guidelines[26]	The norm provides guidelines to implement customer support services and an Ombudsman channel to answer clients' demands / concerns not solved by other channels. However, this do not includes concerns about the financial institutions involvement in controversial activities of companies it invests in. Channels have as focus the customer relationship, customer complaints and support on products and services.	Transparency & Accountability 15: "*The financial institution has an internal grievance mechanism for stakeholders and social organizations*." (NB. but not sufficient to grant points to banks)
Resolução 3.849, de 25/3/2010 Conselho Monetário Nacional[27]	This resolution demands the implementation of an Ombudsman by financial institutions and other institutions authorized to operate by the Central Bank of Brazil. Article 2.II makes clear that in the resolution's point of view, the ombudsman should have a focus on banks clients: *"guarantee free access for customers and users of financial services to reach the ombudsman through agile and effective channels"*	Transparency & Accountability 15: "*The financial institution has an internal grievance mechanism for stakeholders and social organizations*" (NB. but not sufficient to grant points to banks)
Resolução 4.327, de 25/4/2014 Conselho Monetário Nacional (CMN)[28]	The CMN resolution obliges all entities supervised by Brazilian Central Bank (BCB) to develop a Social and Environmental Responsibility Policy and associated risk management procedures commensurate with the principles of relevance (exposure to E&S risks) and proportionality (nature of products and services). Policies should describe governance, management systems, stakeholder engagement and a database of losses due to socio-environmental damages.	Transparency & Accountability 1: "*The financial institution describes its Environment and Social Risk Management System and provides insight into how the financial institution ensures that investments meet the conditions set in its policies*."
Banking Self-Regulation System[ii] - Normativo SARB 014/2014 - Framework for the creation and implementation of a socio- environmental	Guidelines and basic procedures on social and environmental practices in business and relationship with stakeholders for SARB's signatories. Art 19 and 20 refer to control and transparency mechanisms. Art. 19 - Signatory shall register the data referring to losses arising from	Transparency & Accountability 1: *"The financial institution describes its Environment and Social Risk Management System and provides insight into how the financial institution*

Name of law/regulation	Content of law/regulation	Relevant assessment element
responsibility policy[29]	socioenvironmental issues for a minimum period of 5 (five) years from identification. Sole paragraph – To fulfil the main paragraph, the registration shall include the estimated amount of the loss arising from socioenvironmental issues, the nature of the administrative action/proceeding, and the venue of the proceeding and the subject of the controversy. Art. 20 Signatory shall cooperate with the government, including the public prosecutor, the judiciary and the federal, state and municipal environmental bodies in investigations of a socioenvironmental nature arising from his activities and transactions. To that end, Signatory shall make available the pertinent information. Provided this does not contradict applicable legislation and any contractual obligations, primarily with regard to duties of confidentiality.	*ensures that investments meet the conditions set in its policies."*
Lei 9.613/1998 and complementary laws (Lei 10.701/2003 and Lei 12.683/2012) Presidência da República - Casa Civil -Subchefia para Assuntos Jurídicos[30]	Relates to the crimes of "money laundering" or concealment of assets, rights and values; the prevention of the use of the financial system for illicit activities; Creates the Council for Financial Activities Control (COAF), and other measures/instruments.	Taxes & Corruption 5, 9 & 12 (NB. but all not sufficient to grant points to banks) 5: *"Offering, promising, giving and requiring, either directly or indirectly, bribes and other undue advantages in order to acquire and to maintain assignments and other undue advantages, is unacceptable."* 9: *"Offering, promising, giving and requiring, either directly or indirectly, bribes and other undue advantages in order to acquire and to maintain assignments and other undue advantages, is unacceptable."* 12: "*Companies integrate criteria on taxes and corruption in their procurement and operational policies*."
Circular 3.461, de 24/7/2009 Conselho Monetário Nacional (CMN)[31]	This National Monetary Council (CMN) norm presents the guidelines that Brazilian financial institutions must adopt in order to prevent and counter crimes described on law nº 9.613/1998[32] – money laundering or hiding of property, rights and values.	Taxes & Corruption 8: *"Companies publicly report on their beneficial owner or owners including full name, date of birth, nationality, jurisdiction of incorporation, contact details, number and categories of shares, and if applicable the proportion of shareholding or control."*

Name of law/regulation	Content of law/regulation	Relevant assessment element
		(NB. but not sufficient to grant points to banks)
Banking Self-Regulation System[33] - Normativo SARB 011/2013 – Prevention and Combat to money laundering and terrorism financing[34]	This norm refers to Circular 3.461, de 24/7/2009 of the National Monetary Council. Guidelines established by the Self-regulation System for Banking Activities (SARB) that consolidate international and national best practices on prevention and countering money laundering and terrorist financing to be observed by all of its signatories, in accordance with the standards and to existing control mechanisms. The group of control measures that should be adopted in an organized and integrated way to reach its objectives are: i. Know Your Customer (KYC); ii. Know Your Employee (KYE); iii. Know Your Supplier (KYS); iv. Know Your Partner (KYP); v. Know Your Correspondent; vi. Assessment of new products and services; vii. Operations Monitoring; viii. Communication of Suspicious Transactions; ix. Training; x. Structuring of a prevention of money laundering area.	Taxes & Corruption in general
Lei Nº 12.527/2011 – Lei de acesso a Informação (Access to Information Law) Presidência da República - Casa Civil -Subchefia para Assuntos Jurídicos[35]	This law is relevant only for state controlled banks. It determines that every citizen has the right to access information about: • Institutional data of agencies and entities of the Executive Power; • General data on public programs and actions of public agencies and entities (such as state controlled banks); • Inspections, audits, performance and rendering of accounts held by the entities of internal and external control; • Records of any transfers or transfers of financial resources; • Records of expenditure; • Bidding procedures, including the respective notices and results, as well as all contracts; • Request for Information Forms	Taxes & Corruption 1: *"For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments."* (NB. but not sufficient to grant points to banks, because bank secrecy laws prevents disclosure of customers in many cases.) Transparency & Accountability in general.
Lei 12.846/2013 - Lei Anticorrupção (Anti-corruption Law) Presidência da República - Casa Civil -Subchefia para Assuntos Jurídicos[36]	This law sanctions companies that commit harmful acts against public, national or international administration or equity or violation of commitments made by Brazil.[37] The companies involved in corruption cases, according to this law, might be penalized an amount between 0.1% and 20% of the gross revenues of the preceding	Taxes & Corruption 9: *"Offering, promising, giving and requiring, either directly or indirectly, bribes and other undue advantages in order to acquire and to maintain assignments and other undue advantages, is unacceptable"*

Name of law/regulation	Content of law/regulation	Relevant assessment element
	year.	*(but not sufficient to grant points to banks"* (NB. but not sufficient to grant points to banks)

2.2 Current debate

Since 2000, with the Fiscal Responsibility Law and the creation of the Office of the Inspector General of the Union (CGU), in 2003, the Brazilian Government has been investing in policies and instruments to improve public financial institutions and companies' transparency and control instruments against corruption. In 2005, the year that the "Mensalão" case[ii] became public, the transparency debate heated up, especially related to the public sphere.[38]

Cases like "Mensalão" resulted in public pressure on more transparency, monitoring, and control instruments to combat corruption. The Brazilian government reacted through initiatives that focus on increasing public access to government expenses and general information. The Access to Information Law (enacted in 2011) is one example. To comply with this law, public institutions had to invest in instruments and processes to become more transparent and provide any citizen with any information they would like to require about a certain public institution or company.[39]

Another example is the recent corruption case of Petrobras[iii], sparked by "Operação Lava Jato" from Brazilian Federal Bureau (PF) in March 2014. In this corruption case, the PF discovered that executives of private companies (construction, contractors and others) allegedly paid bribes to Petrobras corporate executives. These, in turn, diverted the money to pay for politicians' election campaigns.[40]

The laws and instruments described above have a significant impact on the banking system, especially on state-controlled banks such as Banco do Brasil and Caixa Econômica Federal. Since these institutions are state owned, they must follow some of the transparency requirements demanded by those laws such as providing information required to citizens and inform that they do not business with companies that were convicted of bribery. However, most of these transparency instruments have a "reactive principle". In other words, citizens only have access to information if they request it.[41]

Another important milestone in the combat to corruption and the pursuit for more transparent processes in state controlled and private companies was the Anti-corruption Law of 2013 (Law no. 12,846/2013). The law determines penalties against corporate entities that engage in corruption with public officials and fraudulent practices in connection to public tenders and government contracts. The law prohibits companies from defrauding public tender processes in any way, gaining an undue advantage or benefit from modifications or manipulations of government contracts, or hindering government's investigation or auditing activities. One of the main results of the law was the enforcement of the National register of inapt and suspended companies (CEIS). This instrument constitutes a list of companies and individuals who have suffered sanctions due to corruption practices, prohibiting them to participate in biddings or establishing contracts with the Public Administration.[42]

[ii] Mensalão" was a vote-buying case of corruption in which the ruling party "Partido dos Trabalhadores" (PT) paid a number of Congressmen R$ 30,000 (around US$12,000 at the time) every month in order to incentivize them to vote for legislation in favor of the party.

[iii] Brazilian state-owned oil and gas company

Since 2007, the Brazilian Bank Federation (FEBRABAN), through its Self-Regulation System (SARB), has also been working on improving different operational practices that include transparency instruments and processes to counter corruption and money laundry. The most relevant norms implemented by FEBRABAN and the signatory banks of the Self-Regulation System are norm *SARB 011/2013 - Prevention and combat to money laundering and terrorism financing* and *SARB 014/2014 - Framework for the creation and implementation of a socioenvironmental responsibility policy.*[43]

The first one resulted in the implementation of important instruments for the combat against illegal operations and transparency processes, such as Know Your Customer (KYC), Know Your Supplier (KYS), Know Your Partner (KYP) and Know Your Employee (KYE).[44]

The second norm includes specific topics on the implementation of a socio-environmental responsibility policy, such as the creation of a database to register the data referring to losses arising from socio-environmental issues for a minimum period of five years after the issue/risk identification. Moreover, signatories commit to cooperate with the government, including the public prosecutor, the judiciary and the federal, state and municipal environmental bodies in investigations of socio-environmental nature arising from their activities and transactions. This norm is a response to Resolution 4327/2015 from the National Monetary Council (CMN), which establishes that all institutions supervised by the Brazilian Central Bank must develop and disclose a Socio-environmental Responsibility Policy, disclose it publicly, and develop and Social and Environmental Risk Management System compatible with their risk exposure and nature of products and services.[45]

The Brazilian Central Bank (BCB) also has an important role in the improvement of banks transparency and especially in the prevention and countering of money laundering. BCB participates in the Council for Financial Activities Control (COAF), an intelligence unit set up by the Ministry of Finance.[46] COAF's[iv] main competencies are: [47]

- Coordinate and propose mechanisms for cooperation and exchange of information that allow fast and effective action to prevent and combat the concealment or disguise of assets, rights and values;
- Receive, examine and identify suspicious or illicit activities;
- Apply disciplinary and administrative penalties to companies linked to sectors that do not have regulatory authority or own oversight;
- Communicate to the competent authorities when found evidences of money laundering or any other crime.

The creation of COAF and the participation of relevant institutions in its board such as BCB, the Brazilian Securities Commission (CVM), and the Superintendence of Private Insurance (SUSEP) pushed banks to improve their processes.[48]

[iv] COAF was created in the scope of Law 9,613 / 98 (as amended by the laws 10701 of 07/09/2003 and 12,683 of 09/07/2012) and organization and structure defined by Decree 2,799 / 98. Furthermore, it is an organ of collective deliberation whose plenary is composed of representatives of the Central Bank of Brazil (BCB), the Brazilian Securities Commission (CVM), the Superintendency of Private Insurance (SUSEP), the Attorney General of the Treasury (PGFN), the Federal Revenue of Brazil (RFB), the Brazilian Intelligence Agency (ABIN), the Federal Police Department (DPF), the Ministry of Foreign Affairs (MFA), the Comptroller General of the Union (CGU), the Ministry of Social Security (MPS) and the Ministry of Justice - Department of Asset Recovery and International Legal Cooperation (DRCI).

Other important initiatives that impact banking transparency processes are from BM&FBOVESPA, the Brazilian stock exchange. One of the key initiatives is “Report or Explain”, which encourages companies to adhere to the practice of reporting progressively to their investors information and results related to environmental, social, and corporate governance (ESG) issues. The main objective is to provide investors and other interested parties quick access to this type of information. At the BM&FBOVESPA’s website, investors and the general public have access to the complete list of companies listed at BM&FBOVESPA that either publish or do not publish sustainability or integrated reports. In this list, companies explain why they do not publish an ESG report or, if they do so, where it is published.[49]

Another BM&FBOVESPA’s initiative provides bank to explain their vision and strategies on ESG is the Corporate Sustainability Index (ISE). ISE is a tool for comparative analysis of the performance of the companies listed on BM&FBOVESPA from the standpoint of corporate sustainability, based on economic efficiency, environmental equilibrium, social justice, and corporate governance. To become part of ISE, companies have to answer a questionnaire on the topics listed above. Companies that join this index have the option to publish the complete questionnaire on BM&FBOVESPA’s website. Bradesco, Banco do Brasil, Itaú, and Santander, all part of FFG Brazil’s research, publish their questionnaires (as well as BicBanco).[50]

In addition to market and government policies, NGOs have been pushing banks and other financial institutions to improve their operational processes, access to information and transparency. Since 2008, the Brazilian Institute for Consumer Rights (IDEC) published the first edition of the Guia dos Bancos Responsáveis, the national forerunner of the current Fair Finance Guide (FFG) Brazil. that the first report by IDEC and its coalition (Amigos da Terra, Contraf-CUT and DIEESE) was based on a questionnaire regarding banks policies and practices on three broad themes – Consumer Rights, Environmental Issues (covering different sectors) and Labour Rights. This project pushed banks to not only improve their policies and practices but also to invest more in processes to become more transparent, like CSR reports and publishing policies on their websites.[51]

As a consumer rights organisation, IDEC has an important role in improving banks’ transparency regarding their relationship with clients, enhancing access to contracts, products and services requirements, obligations, and fees with their annual case studies on Consumer Rights and complementary campaigns.[52]

Amigos da Terra – Brazilian Amazon is another NGO with an important contribution to banks transparency and CSR. The NGO has a long-lasting partnership with institutions that monitor the financial sector, such as BankTrack and Bank Information Center. They also participated in previous versions (2008; 2010 and 2012) of the Brazilian FFG. Its main program, entitled Eco-Finanças, started in 2000 and was instrumental in convincing many Brazilian banks to develop sustainability policies and sign up to the Equator Principles. It has a web portal where visitors can have access to relevant news, articles and publications on Banks and ESG themes. Additionally, it launched BankTrack publications in Brazil, such as Shaping the Future of Sustainable Finance (2005), Mind the Gap (2007) and Close the Gap (2010), all using a methodology similar to today’s FFG.[53]

Transparência Brasil, an independent NGO that aims to combat corruption, has important initiatives related to government transparency, including public institutions and state owned companies. Although the NGO has no specific action on banks, some of its initiatives have an influence on them, for example the project “Às claras” that tracks company donations to election campaigns.[54]

Plataforma BNDES, a coalition of NGOs and social movements that started in 2007 and aims to re-direct the bank's investments, achieved a major change in the transparency of Brazil's leading development bank BNDES. Since 2008 namely, BNDES publishes its list of customers and loans on its website, containing information such as its beneficiary owner(s), loan size, and location of the project. However, claiming bank secrecy law, BNDES still does not disclose other information such as interest rates or environmental/social risk of the loans, despite the fact that loans have a concessional rate.[55]

Since 2014, there is an increasing popular and media pressure on more transparency of public investments, especially from BNDES and other banks such as Banco do Brasil and Caixa Econômica Federal. One emblematic case is Banco do Brasil's credit concession to Val Machiori, a Brazilian socialite. This case has shown the lack of transparency and non-compliance of the bank to its standard procedures and credit policies. In the end, the Banco do Brasil's President at the time, Aldemir Bendine, was removed from office in November 2014.[56]

Since the presidential elections period, from August to October 2014, BNDES again became the major focus in the banking transparency debate. In August 2014, Conectas, a human rights NGO, published a study on the rules and standards of transparency, accountability and socio-environmental impact assessment mechanisms of the bank.[57] In its press release, the NGO expressed that *"the report reveals that the lack of transparency at the bank prevents affected communities and society from monitoring the effectiveness of the tools. BNDES claims it has to ensure its loans do not end up financing private business ventures that violate human rights in Brazil or abroad."*[58] Moreover, one of the researchers that conducted the study concluded that: *"BNDES denies access to a wide range of information on the grounds of banking secrecy, the need for additional data systematization, national security, trade secrecy and the risk of the information affecting the price of securities. All these exceptions are included in Brazil's Access to Information Law. However, the error lies in the bank's overly expansive interpretation of them."* [59]

Even though there are some specific ideological and political factors, the BNDES case symbolizes the situation of banks transparency in Brazil, regardless their capital structure (private or public). What we can conclude is that there is opacity mainly in the social and environmental aspects of financed projects, corporations and equity investments. BNDES and many of the largest private banks claim to have tools for social and environmental risk management and to combat corruption, fraud and tax evasion. Although it is known that these banks have teams of professionals dedicated to ESG risk management, little is disclosed on the actual implementation of policies and their results.

It is necessary to highlight the importance of BNDES for financing long-term investments in Brazil. Private banks usually on-lend BNDES credit facilities for their mid-sized customers. Furthermore, most project finance lending for large infrastructure projects also works as BNDES on-lending. Therefore, more requirements on BNDES transparency and accountability practices and policies may result in a higher pressure on banks researched by FFG to improve their policies as well.

In November 2014, Folha de São Paulo, one of the largest newspapers in Brazil, published that Itaú and Bradesco saved more than R$200 million with operations in Luxembourg. Although the case is characterized as tax avoidance that is not configured as a crime, it gained prominence given the availability of documents that enabled a complete understanding of how banks operate (Luxembourg Leaks case). Both banks were assisted by PWC and operated this tax avoidance system through three financial/fiscal instruments: tax goodwill, hidden contribution and intangible assets. To sum up, banks were able to avoid the payment of tax to Brazil by declaring that they were providing services to themselves through their Luxembourg subsidiaries what resulted in a lower deduction base in Brazil (Brazilian operation profit).[60] Although cases like Bradesco and Itaú are not rare, they usually do not result in penalties or compensation payment. According to the same publication, in the year of 2013 the Brazilian Federal Revenue Office banks and companies were fined a total amount of R$105 billion in taxes allegedly unpaid. However, these values are rarely paid, once banks and companies appeal to the Administrative Tax Appeals Board (Carf), that result in long processes and normally result in acquittal.[61]

The recent presidential veto on adding two new articles of the Budget Law on January 2015 has heated up the debate on banking transparency. The vetoed articles had the objective to give greater transparency to public funds, mainly for state owned banks. One of the vetoes discharged state controlled banks from disclosing detailed statements of loans to governments. The other veto drops the mandatory disclosure of the register of all construction and engineering services in Brazil that are financed by public funds.[62]

In conclusion, even though there were some achievements in the past few years, Brazilian banks and companies still have a low level of transparency as showed by the NGO Transparency International. In its report Transparency in Corporate Reporting: Assessing Emerging Market Multinationals, the NGO showed that, regarding the level of transparency in emerging markets, Brazilian multinationals only performed better than the Chinese. It is imperative that banks encourage greater scope and clarity of the information provided, since the results of the companies are important to different stakeholders that interact with their activities.[63]

2.3 Results of the policy assessment

In order to evaluate the transparency of banks in Brazil, we analyzed the banks' performance in two themes of the Fair Finance Guide policy assessment: Taxes & Corruption and Transparency & Accountability. The results are summarized in Table 4.

Table 4 Policy assessment results Brazil

Theme	Leaders (score =>6)	Followers (score between 4 and 6)	Laggards (score <4)
Transparency & Accountability	-	Itaú (5.9) Santander (5.0) Banco do Brasil (4.5) Bradesco (4.2)	Caixa (3.6) HSBC (2.7)
Taxes & Corruption	-	Santander (4.5)	Caixa (3.7) Banco do Brasil (2.9) Itaú (2.9) Bradesco (2.6) HSBC (1.5)

Banks already have numerous channels to provide credible disclosure. All banks describe satisfactorily their Environmental and Social Risk Management systems. Their ESG-screening to select companies to invest in and their responsible investment policies are mentioned in public documents.

Nevertheless, the low score of banks on the theme of 'Transparency & Accountability' reflects the lack of information provided about the companies, projects and governments in which they invest, even the major ones. Besides, banks publish annual reports, which are not in line with some indicators of GRI Supplement for Financial Services. For example, according to the GRI Index of Banco do Brasil report, it meets the GRI FS6, but external auditors do not assure such statement. The bank, along with Bradesco and HSBC Brasil, does not publish a complete breakdown of outstanding investments to region, size and industry.

It is interesting to note that annual reports of all banks include a clear overview of stakeholders and the results of their consultation, which indicates that they try to engage clients, employees, civil society and governments in activities to decide the materiality of their reports and to influence their behaviour. Nevertheless, their accountability and engagement would be improved if banks disclosed their detailed voting records, which is not made by any of the analysed banks. Moreover, none of the analysed banks have an independent grievance mechanism for social organisations and other stakeholders. In addition, only half of the banks (Banco do Brasil, Itaú, Santander) has an internal grievance mechanism that is not exclusive to bank clients, but is also meant for other stakeholders such as employees, NGOs, civil society and investors.

In the theme Taxes & Corruption, banks have not earned points by reporting revenues, costs, profits and tax payments on a country-by-country basis, since they only report such results for Brazil and selected foreign countries. Itaú, for example, has increased its presence in Latin America in the last years, and therefore should be disclosing detailed information on issues such as revenues, costs, profits and tax payments to governments on a country basis. HSBC is another example of non-transparent practices. The bank does not disclose relevant information on country-by-country either, not even in their global report. Moreover, Banco do Brasil, Bradesco, Caixa and Itaú do not have a clear policy on providing services which help companies to avoid taxes by international corporate structures in other countries. Nevertheless, they do provide an overview of ownership structure, including their subsidiaries and participations.
In 'Taxes & Corruption', the assessment also considered elements regarding the content of investment policies.A bank should be transparent about these policies as well and this is rewarded in the methodology, that uses only publicly available documents, when banks provide sufficient information about the principles used as part of their investment decision making process. The results were not satisfactory. A relevant challenge is to improve policies regarding the companies in which they invest. It would ensure that they invest in companies that comply with tax laws and do not promote corrupt practices.

Santander scored better in 'Taxes & Corruption' due to their international policies. Banco do Brasil was the national bank with highest score once it reports anti-corruption practices in their responses to the Questionnaire of the Corporate Sustainability Index (ISE) of BM&FBOVESPA, the Brazilian stock exchange.

2.4 Best practices

On 'Transparency & Accountability', Itaú presents better policies when compared with national peers. Besides the disclosure of project finance deals and project related corporate finance deals – as required by the Equator Principles – Itaú publishes a breakdown of outstanding investments, detailed by region, size and industry. Besides the disclosure of outstanding investments, detailed by region, size and industry, Itaú publishes the number of companies with which there has been interaction on social and environment topics.

Moreover, Itaú's annual report is in accordance with the GRI Supplement for Financial Services. It includes the number of companies with which there has been interaction on social and environment topics, including the results of this engagement. Another good practice is mentioning its communication channels used to receive feedback from all stakeholders.

Santander present the best practice for 'Taxes and Corruption', due to the adoption of international standards by their head offices. It adopts the OECD Guidelines for Multinational Enterprises which means the bank commits to take immediate action when employees or suppliers are guilty of corruption or tax evasion. In turn, Santander has its own system of risk management to identify and monitor possible corruption cases. By adopting such policies and practices, financial institutions can discourage companies from taking advantage of corruption practices.

Re-Defining Success – Incentives for Cultural Change in Banks

Written by: Angela McLellan (Transparency International)

Banks play a vital role in modern economies and affect the daily lives of millions of people. With nine out of the 20 largest publicly-listed companies being banks, the industry dominates the global economy. As a consequence, poor risk management and integrity lapses by senior management and traders have had an enormous impact beyond the countries where the problems have started, as evidenced by the 2008 financial crisis that led to huge increases in public debt with resultant poverty and unemployment for millions of people worldwide.

Despite enhanced regulation after the 2008 financial crisis, recurrent scandals exposing the collusion of traders to manipulate the foreign exchange rate and the role of banks in money laundering show that corruption and collusion in the banking sector persist. As a consequence, banks have suffered a deep and long-term reputation loss. There is an overall impression that the banking sector is more concerned with short-term profits and excessive risk-taking than with its societal purpose of provision of credit to ensure a stable and sound economy. Banks and also governments have to increase their efforts to address this impression. Banks themselves need to drive cultural change towards incentivizing integrity as the regulatory regime cannot fully change core integrity issues. Governments have to ensure that those responsible are held accountable for their wrongdoing.

Toward a culture of integrity in banks

Transparency International has a few suggestions to promote a culture of integrity in banks. Banks face integrity risks through the conduct of their own staff (e.g. collusion by traders) and through their clients (money-laundering). This article will focus on two elements of a greater culture of integrity: (i) how banks can promote integrity in their incentive system and (ii) on banks' due diligence duties on anti-money laundering.

The first key element of a culture of integrity is the incentive system. As long as financial and other incentives encourage high risk-taking and the costs for engaging in illegal or unethical behaviour remain negligible, no major paradigm-shift in the banking sector will take place. A 2014 research paper asserted that the prevailing culture in the financial sector weakens and undermines honesty and a 2013 survey found that close to one third of financial services professionals (29 per cent) believe they may need to engage in unethical or illegal activity in order to be successful. A quarter of those surveyed (26 per cent) said compensation plans or bonus structures incentivise employees to compromise ethical standards or violate the law. The financial industry is starting to say publicly that a return to "business as usual" is not an option. According to a recent survey of industry executives, financial institutions are paying greater attention to non-financial risks. However, more than 90 per cent of those interviewed admit that a cultural change is still very much work in progress.

Cultural change starts at the top: Senior managers have to demonstrate clearly and unambiguously to middle management and employees that ethical behaviour is expected from them. William Rhodes, a former Citibank executive suggested that banks should establish Board Integrity Committees with explicit responsibilities to monitor corporate ethics and culture. This would strengthen Board level accountability for all aspects of reputational risk. Furthermore, it is important that the compliance function reports directly to the Board and possesses sufficient authority and resources, including staff who are competent to identify risks in the business.

Furthermore, levels and structures of remuneration can incentivise staff towards particular types of behaviour. A large amount of bankers' total compensation is determined by variable payments such as cash bonuses, stock options, pensions and other benefits, which in most cases exceed the base salary.

Until recently, metrics for remuneration and career advancements have largely failed to account for non-financial performances, relying exclusively on quantitative profit targets. According to a 2014 survey of financial services professionals, a quarter of those surveyed said compensation plans or bonus structures incentivize employees to compromise ethical standards or violate the law. Furthermore, according to the same survey, close to one-third of financial services professionals believe they may have to engage in unethical or illegal activity in order to be successful.

Most recently, some banks have reformed their remuneration metrics increasing the weight of non-financial performance criteria. Furthermore, in order to encourage long-term planning, several banks have introduced a deferral of bonuses paid to executives. European, US and other legislators have also recently equipped banks with clawback and malus[v] clauses to protect them from losses caused by employees' conduct failures as well as through legal costs and fines. To determine whether these changes led to the desired results and to establish industry-wide best practices, public reporting on their impact would be key.

In summary, to promote integrity performance reviews should also reward good behaviour and not only short-term gains. Financial and non-financial performance metrics should both have impact on compensation and promotion decisions; when certain behaviours pose a risk to the company's values, this should override assessments of financial performance. In addition, there must be an appropriate balance between long and short-term incentives to give executives and senior managers a personal interest in the firm's longer-term performance. And built into this, there should be the possibility of clawbacks for excessive risk-taking.

Another key element of a culture of integrity in banks is rigorous anti-money laundering procedures. Banks face integrity risks through their clients as they might become complicit in laundering the proceeds of crimes including corruption, tax evasion and organised crime. Therefore, banks are obliged to identify the owner and the legitimate source of the funds before entering into any business relationship. In addition, they have to conduct periodic monitoring of their clients. If they identify suspicious activities, banks are obliged to report them to the relevant national authorities.

There are several customer groups that present increased risks for banks. These include high net-worth individuals, people known for having a dubious reputation or corporate clients with complex or opaque beneficial ownership structures. One high-risk type of customer are so-called Politically Exposed Persons (PEPs) who are people entrusted with high public functions as well as their relatives, business and other close associates. Banks are required to identify potential PEPs, conduct enhanced scrutiny of their funds, monitor their transactions and report supicious activities to the authorities.

Compliance with anti-money laundering rules – especially with regard to PEPs – remains worryingly low. A World Bank report in 2010 found that only 2 per cent out of 124 assessed jurisdictions[vi] were fully compliant with existing standards on PEPs.[64]

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[v] "Malus" provisions allow employers to reduce the amount of deferred, and therefore as yet unpaid, compensation due to an individual, while "clawback" mechanisms permit them to demand reimbursement of compensation that has already been paid to an individual.

[vi] Among OECD countries, data from 2005-2011 reveal a non-compliance rate of 56%, with no country being fully compliant.

There are several measures that would assist banks in complying with their due diligence duties. Firstly, a public register of beneficial ownership information on companies would help banks in performing their due diligence duties. The UK already has relevant legislation in place. Furthermore, the EU has introduced a central register as part of its Anti-Money Laundering Directive which will be accessible to law enforcement and financial institutions as well as civil society organisations and journalists that can prove a "public interest" for their access request.[65] Furthermore, in the case of PEPs it would be effective to reverse the burden of proof requiring them to prove that the source of their funds is legitimate in order to qualify as a client.

To avoid the compliance officer from becoming the scapegoat for a senior management decision, it is also important to ensure that senior management approval is required to establish a business relationship with a PEP (or continuing it with a customer who becomes a PEP). Furthermore, it is effective to appoint one senior management person to oversee PEP regulations and periodically review PEP clients.

The most effective stick?

However, perhaps the most effective stick to changing bankers' behaviour lies outside the industry. Governments need to ensure that there is no impunity for unethical behaviour and that bankers are held accountable for their wrongdoings. While the fines imposed on the industry for misconduct since 2009 currently amount to US$ 232 billion and are expected to rise above US$ 300 billion by 2016, they are clearly not sufficient in achieving the desired effect of changing behaviour. In the end, the biggest incentive for honest behaviour might be the prospect of facing a day in court – or even longer in jail. In the foreign exchange rate manipulation case, JPMorgan Chase, Citigroup, Deutsche Bank, Barclays and UBS have each disclosed that they are under criminal investigation by the US Department of Justice relating to conspiracy to manipulate foreign currency rates. Hopefully this will result in sanctions that act as a deterrent for unethical behaviour.

Chapter 3 Results from France

Written by Alex Naulot (Oxfam France), Michel Riemersma and Petra Schoof (Profundo)

3.1 Government policy

Since the financial crisis, civil society has been lobbying to enhance transparency in the financial sector. One of the issues they most strongly urged for, also at European level, has been country-by-country reporting on tax payments, which would provide an insight in the substance of financial operations in tax havens and hence in potential tax evading behaviour. At the European Union, especially France insisted on drawing EU regulation for this issue.[66] For years though, country-by-country reporting was rejected because of the exorbitant costs and constraints it would place on the private sector. In addition, the European Commission was hesitant about publishing this data.[67] Nevertheless, in 2013 the EU Capital Requirements Directive was put into practice, which requires all financial institutions in EU member states to publish financial information for each country the institution is active in from January 2015 onwards.[68]

Other relevant EU Directives developed in this context but not yet put into practice by all the EU countries are the EU Directive on Non-Financial Reporting (2014/95/EU) and the EU Directive on Administrative Cooperation. The already existing Anti-Money Laundering Directive (AMLD) of 2005 is currently under proposal of amendment, so that information required by it becomes public for authorities and people with a legitimate interest such as journalists.[69] Table 5 provides an overview of the European regulations regarding transparency in the financial sector.

Table 5 Laws and regulations on banking transparency in France[70]

Name of law/regulation	Content of law/regulation	Relevant assessment element
EU Directive on Non-Financial Reporting (2014/95EU) [71] *In France, the relevant article existed earlier in the slightly different separate administrative order "Loi n° 2010-788 du 12 juillet 2010 relative aux obligations de transparence des entreprises en matière sociale et environnementale (Grenelle II)" – see Table 6*	Article 19a of this Directive requires large undertakings, exceeding 500 employees during the financial year, to include in their management report a non-financial statement which includes: - brief description of the undertaking's business model; - description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented; - outcome of those policies; - principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks; - non-financial key performance indicators relevant to the particular business. Where the undertaking	Transparency & Accountability 1: "*The financial institution describes its Environment and Social Risk Management System and provides insight into how the financial institution ensures that investments meet the conditions set in its policies.*" Transparency & Accountability 11 and 12, about publishing a sustainability report.

Name of law/regulation	Content of law/regulation	Relevant assessment element
	does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so. Undertakings in member states shall start to provide the information required for the financial year starting 1 January 2017.	
EU Capital Requirements Directive (Directive 2013/36/EU, also known as CRD IV) [72] *In the France, the relevant article has been transposed via a separate administrative order "LOI n° 2013-672 du 26 juillet 2013 de séparation et de régulation des activités bancaires".*	Article 89 of CRD IV specifies that all financial insitutions of European Union member states are required to report the following information on a country-by-country basis, for all countries worldwide where they have an establishment: - name(s), - nature of activities, - turnover, employees (in FTE), - profit or loss before tax, - tax on profit or loss, - and public subsidies received. The first three issues should be applied from July 2014 onwards, while the whole list should be applied from January 2015 onwards.	Taxes & Corruption 1: "*For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments.*"
EU AMLDirective (2005) [73]	Directive developed in 2005 to prevent the use of the financial system for the purpose of money laundering and terrorist financing. It also stipulates that the member states should compel banks and other financial institutions and occupations falling under the Directive to identify their customers and ultimate beneficiaries, i.e. to verify their identity. Institutions should implement adequate and suitable policy outlines and procedures in the areas of customer due diligence, risk assessment, monitoring of business relations, recognising of money laundering and financing of terrorism, reporting suspicious transactions, retaining documentation, internal control, and staff education. The competent authorities of the member states should also effectively verify whether the stipulations of the Directive are adhered to by all institutions and persons falling under the Directive and take the necessary measures to ensure compliance with the Directive, including the possibility to carry out on-site examinations and apply sanctions.[74]	Taxes & Corruption in general
Proposal on extending the EU AMLD (March 2014) [75]	In March 2014 the European Parliament endorsed the creation of public (also: central) registers of beneficial ownership. If	Taxes & Corruption 8: *"Companies publicly report on their beneficial owner or*

Name of law/regulation	Content of law/regulation	Relevant assessment element
	the EU's Anti-Money Laundering Directive (AMLD) is revised according to this vote, any company and trust registered in an EU member state will be required to provide information about its beneficial owner including: name, date of birth, nationality, jurisdiction of incorporation, contact details, number and categories of shares, and – if applicable - the proportion of shareholding or control.[76] In December 2014, the EU Parliament and Council agreed on listing the ultimate owners of companies on central registers. However, the deal still needs to be endorsed by EU member states' ambassadors (COREPER) and by Parliament's Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs committees, before being put to a vote by the full Parliament next year (2015).[77]	*owners including full name, date of birth, nationality, jurisdiction of incorporation, contact details, number and categories of shares, and if applicable the proportion of shareholding or control."*
EU Directive on Administrative Cooperation (Council Directive 2014/107/EU, also known as DAC2) [78]	This directive specifies that all financial institutions (including banking groups) should be required to identify the ultimate beneficiaries of their deposit and investment accounts. They should report the identity of beneficiaries and financial information (account balance, income credited to the account) to the domestic tax authority. Tax authorities will start exchanging this information in 2017, to address evasion of personal income and wealth taxes via undeclared foreign accounts. Mandatory automatic exchange of information in the field of taxation. Member States shall adopt and publish, by 31 December 2015, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall apply those measures from 1 January 2016.	Taxes & Corruption in general

There are a number of proposals discussed by the French Parliament or EU Parliament and Commission, which are listed in Table 6 below.

Table 6 Upcoming Law & Potential Upcoming Law on banking transparency in France

Name of law/regulation	Content of law/regulation	Relevant assessment element
Projet de loi sur le secret des affaires (Economic Intelligence and Strategic affairs)	Following the rejection of a bill including increasing rights for TNCs to veto "strategic publications" harming their competitiveness by the French National Assembly, French Minister of the Economy E. Macron pledged	Transparency & Accountability 1: "*The financial institution describes its Environment and Social Risk Management*

Name of law/regulation	Content of law/regulation	Relevant assessment element
	to subdue a new bill in the coming months. This bill may be used by TNCs to justify their lack of transparency.	*System and provides insight into how the financial institution ensures that investments meet the conditions set in its policies*." Transparency & Accountability 2: "*The financial institution's Environmental and Social Risk Management System is audited by a third party and the results are published.*"
Loi n° 2010-788 du 12 juillet 2010 relative aux obligations de transparence des entreprises en matière sociale et environnementale (Grenelle II)	According to Article 225, companies of more than 500 employees or more with a turnover higher than €100m, whether listed or not in the stock exchange, shall publicly disclose a non-financial report regarding the social and environmental aspects of their activity and their subsidiaries' activity including in the thematics listed in Article 1. Indicators are to be determined freely by companies. The report can ommit to mention a policy when it is duly justified (comply-or explain rule). The non-financial report shall be reviewed by an independent auditor to verify the information disclosed in the report.	Transparency & Accountability1: "*The financial institution describes its Environment and Social Risk Management System and provides insight into how the financial institution ensures that investments meet the conditions set in its policies."* Transparency & Accountability 2: "*The financial institution's Environmental and Social Risk Management System is audited by a third party and the results are published."*
Draft Proposal for a Directive on Trade Secrets (Draft Proposal 2013/0402/COD of November 2013)	The proposed directive would enable companies to hide information deemed 'strategic' not to harm their competitiveness (safe harbour rule). The main risk is to see companies use this rule to withdraw most of the relevant information of their activities in tax havens or more generally their activities detrimental to human rights and the environment. Moreover, the proposed directive enables companies to sue the person responsible for the leak of strategic information, thus putting whistleblowers at risk. EU Council approved the draft directive in May 2014. Parliamentary debates are currently taking place.	Taxes & Corruption 3: "*Financial institutions do not own subsidiaries nor associates in tax havens, unless the subsidiary or associate has substance and undertakes local economic activities"*.
Draft Proposal for a Directive on Shareholders' rights and Corporate Governance (Draft proposal 2014/0121/COD of December 2014)	The proposed bill specifies that companies shall take measures to disclose more information, more often to stakeholders in order for them to take hold of companies' long-term strategies. Additional measures are aimed at forcing disclosure by institutional investors and asset managers of their engagement policy, investment strategy and potential conflicts of interests. The draft bill is currently under review by	Transparency & Accountability 8: "*The financial institution publishes the number of companies with which there has been interaction on social and environment topics (in line with GRI FS10)*" Transparency & Accountability 9: "*The financial institution publishes*

Name of law/regulation	Content of law/regulation	Relevant assessment element
	both EU Parliament and EU Commission.	*the names of companies with which there has been interaction on social and environment topics, including the results of this engagement*".
Proposition de loi n°2578 du 11 février 2015 sur le Devoir de vigilance des sociétés mères (Due Diligence)	The proposed bill would introduce an obligation of due diligence for Trans National Companies (TNC) as well as a complaint mechanism accessible to NGOs. Sanctions may include financial penalties for negligence and civil liabilities as well as the public diffusion of the decision. Any grievance should be handled under civil jurisdiction as opposed to the first draft (n°1519) that enabled an action in criminal court for major disasters. Moreover the threshold of responsibilities would be higher than expected: French Companies are responsible up from 5.000 employees in parent companies, subsidiaries and subcontractors. The threshold for foreign companies is 10.000 employees. Parliamentary commissions will review the proposed bill in March 2015.	Transparency & Accountability 1: "*The financial institution describes its Environment and Social Risk Management System and provides insight into how the financial institution ensures that investments meet the conditions set in its policies."*
Projet de loi sur la transparence de la vie économique, ou Loi Sapin II (Business Accountability)	French President F. Hollande announced a bill regarding business accountability. According to declarations made to the press, the bill may include dispositions related to corporate governance, minor shareholders, accountability and transparency of lobbying activities. Government wishes to go through the bill before summer 2015.	Taxes & Corruption 11: "*Companies report on their participation to the decision-making processes of international norms and legislation (lobby practices)*."

3.2 Current debate

For over ten years, civil society and especially the French Platform on Tax Havens (Plateforme Paradis Fiscaux et Judiciaires – PPFJ) have been demanding country-by-country reporting by companies.[vii] Demanding this type of reporting could namely meet three goals now forming an obstacle to transparency. First, it could act as a deterrent for companies that improperly and artificially offshore their profits. Secondly, it would allow tax-, as well as regulatory and legal authorities to identify companies most likely to avoid tax. Thirdly, it would allow investors, customers or company employees to more thoroughly measure the risks (geopolitical, legal, financial etc.) to which the group might be exposed.[79]

[vii] The same requirement was introduced at European level in the CRD IV Directive adopted in 2013. But it has yet to be incorporated into domestic law in many countries.

However, the financial sector rejected country-by-country reporting (CBCR) for years, arguing of the important costs and constraints it would place on the private sector. Yet, through the requirements under the new French banking law as adopted in July 2013,[80] France has now proved that it is possible to demand such information from the banks, without significant additional costs and constraints. In 2014, as a first step towards country-by-country reporting, French banks published information on their subsidiaries, turnover and workforce.[81]

At European level, there had long been doubts about whether these data were going to be available or not. The European Commission was hesitant about publishing them and brought in consultancy *PricewaterhouseCoopers* to carry out an impact study. *PricewaterhouseCoopers* recognized that public reporting not only permitted combatting tax avoidance, but could also have positive effects on companies' competitiveness and investments.[82] This recognition was followed up by the Commission which published its report on 2 October 2014.[83] From 2016, all European banks will have to publish this information on the wealth they create and the tax they pay for each country in which they operate.[84]

The information the French banks should publish this year is of course not sufficient for a complete understanding of these banks' behaviour in the field of tax evasion and other transparency issues. Moreover, being the first year to report on this, no standard format for reporting had been developed yet, so that in some cases it can be difficult to compare banks. Also, the lack of regulation on the scope of consolidation makes it easy for banks to 'play' with this data to keep certain issues from being published.[85]

In 2014 the public had access for the first time to a large number of indicators of French banks, including the nature of their activity, their annual revenue and their number of employees, on a country-by-country basis, providing a clearer picture of banks' real activities, especially in tax havens. From 2015 onward, further indicators will have to be disclosed by banks at the EU level, on a country-by-country basis, including their profits, taxes and potential public subsidies. Yet, large scandals involving tax evasion such as *Luxleaks*[86] or *Swissleaks*[87] prove that additional measures need to be adopted, now more than ever, to ensure that financial institutions are accountable to society at large. PPFJ closely monitored banks' first public disclosure and used the data to issue a report about bank activities in tax havens in 2014.[88] The platform is now campaigning to correct the flaws revealed after the first public disclosure, namely to force banks to post the report under an opposable format (web vs pdf), adopt a unique set of definitions for bank activities and push banks to disclose the activity of their entire subsidiaries whether they are consolidated or not.

In 2015, PPFJ will keep monitoring the public disclosure of an extended list of indicators and will campaign for political measures aiming to regulate the French bank presence in tax havens. While the European Bank's CBCR reporting will be released in the last quarter of 2015, European civil society organizations' campaigns should ensure to use this data in order to expose the presence of the European banks in tax havens and, moreover, advocate for the implementation of CBCR at the G20 level. Finally, in France, the platform is also willing to take accountability one step further by advocating for the extension of compulsory public disclosure to all private actors. PPFJ is also asking public authorities to take the lead by forcing companies with public funding to adopt reporting activities.

Besides tax transparency, France took precocious measures to improve companies' CSR policies. As early as 2001 the French Parliament adopted the act on the Nouvelles Régulations Economiques (New Economic Regulations - NRE)[89] forcing listed companies to publicly disclose annually a non-financial report, including the social and environmental impact of their activities. Yet, during the decade, a large number of civil society organizations criticized the NRE not only for the restricted number of companies affected by the disclosing measures but also for the vague criteria of disclosure, the lack of control of the reports content by an independent audit and finally the lack of sanctions when the report was not properly disclosed. In order to foster the reform of the NRE into an ambitious piece of legislation, NGOs and unions decided to gather in the Forum Citoyen pour la RSE (FCRSE) in 2004[90].

Fruitful meetings between CSR stakeholders including the FCRSE, government officials, business organizations and local representatives resulted in the vote of an act known as Grenelle II in July 2010. The bill's major breakthroughs, gathered in article 225, included the extension of compulsory reporting to non-listed companies (except for Ltds, Simplified Joint Stock Companies, General partnerships and Real Estate partnerships), the addition of new criteria in the report based on clearer indicators, the participation of stakeholders – including unions – in the construction of the report and a compulsory audit of the report's content by an independent firm[91].

Although the main French business associations such as MEDEF or AFEP took part in the discussions, they firmly opposed Grenelle II and lobbied extensively for two years to alter the content of the bill - delaying its promulgation[92]. As a result, a certain number of amendments were passed from 2010 to 2011 and drastically reduced the impact of Article 225. According to the provisions of the 2010 Marini amendment, stakeholders were no longer involved in the construction of the report. The 2011 Huyghes amendments created two distinctive lists of disclosure for listed companies and non-listed companies – the latter being significantly shorter than the first one and delayed the implementation of Article 225's provisions for a year. Last but not least, the 2011 Warsmann amendment allowed subsidiary companies not to publish the report whenever their social, environmental and societal impact was included in the parent company's consolidated report – allowing a lack of transparency for the direct impact of subsidiaries' activity in development countries and tax havens[93].

Despite two negative opinions emitted by the Conseil d'Etat (Council of State) successively in May 2011 and during spring 2012, the government discreetly passed the enforcement decree in April 2012[94]. Before the promulgation of the decree, business lobbies obtained to raise the thresholds of implementations to companies posting more than €100m revenue – against €43m originally - and employing 500 persons or more. In June 2012 the FCRSE appealed the decision to enforce the decree before the Conseil d'Etat. The complaint was eventually dismissed in March 2014[95]. The provisions of Grenelle II were not fully functional until the government passed an implementation decree in May 2013 specifying the role of the audit firm in controlling the report for the 2014 fiscal year[96]. It took more than three years for an ambitious bill to turn into a slightly restrictive piece of legislation. Yet the original breakthroughs of Grenelle II inspired the European Union in implementing a similar directive, which was adopted in October 2014 and should be incorporated into French law by 2017.

Although the core provision of this so-called *CSR directive*, namely the issuance of a non-financial report, is already implemented in France, the FCRSE campaigned for the adoption of an ambitious directive to reform Grenelle II through the European Coalition for Corporate Justice (ECCJ), the EU level equivalent of the French platform. After three years of parliamentary debates that were heavily influenced by business lobbies, NGOs described the bill as a missed opportunity[97]. Although the FCRSE hailed the inclusion of a due diligence provision forcing companies to be accountable for the activities of their subsidiaries, suppliers and subcontractors particularly regarding their respect to human rights, the platform criticized the numerous restrictions of the final directive in respect to the draft proposal[98]. The bill originally aimed at providing extra-financial information regarding the activities of 18.000 European companies[99]. Eventually the range of companies was restricted to utility companies, i.e. listed companies, banks and insurance companies, of 500 employees or more and posting annual revenues equal or higher to € 40 million, thus affecting only 6.000 companies across the EU. The bill includes many provisions that were deemed controversial in Grenelle II such as the exemption of subsidiaries from public disclosure when their activities are included in a consolidated report. Other controversial measures include the comply-or-explain provision and the safe harbour provision that enable companies not to disclose information whenever they justify it and particularly when they judge the disclosure harmful to their competitiveness. Finally, as opposed to Grenelle II, the CSR directive does not make it compulsory for companies to audit the content of their report by an independent firm, nor does it set sanctions in case the report is not issued[100].

With the incorporation of the directive into French law by 2017, the FCRSE is campaigning to go one step further and ambitiously reform Grenelle II by lifting some of its controversial measures including the exemption of subsidiaries from public disclosure, the comply-or-explain provision or the safe harbour provision. Moreover, the platform is advocating to make it compulsory for companies' subcontractors and suppliers as well as simplified joint stock companies to publicly disclose a non-financial report. Finally the FCRSE is willing to impose sectorial clear indicators to enable a more transparent comparison.[101]

3.3 Results of the policy assessment

The results of the assessment of the relevant themes of the Fair Finance Guide methodology are summarized in Table 7.

Table 7 Policy assessment results France

	Leaders (score =>6)	Followers (score between 4 and 6)	Laggards (score <4)
Transparency & Accountability		BNP Paribas (4.7)	Credit Agricole (3,3) Societé Generale (3.3) BPCE (2.8) Credit Mutuel (2.3)
Taxes & Corruption			Societé Generale (3.8) BNP Paribas (2.7) Credit Agricole (2.0) BPCE (1.5) Credit Mutuel (1.0)

Assessing the behaviour of banks in transparency and accountability issues, the research showed that all five French banks described their Environmental Social Risk Management System (ESRMS), be it in different degrees. Four of the banks (BNP Paribas, Credit Agricole, Credit Mutuel, Societé Generale) use ESG-screening to select companies to invest in. However, the exact implementation of such responsible investment policies remains unclear. Even less banks use engagement (only Credit Mutuel) or voting (only Credit Mutuel) to influence the companies invested in. None of the banks publish an exclusion list of companies that are excluded from loans and other investments. Three of the five banks, namely BNP Paribas, BPCE and Credit Agricole, have their ESRMS audited by an external party, making it more reliable.

All banks publish a sustainability report in line with the GRI level G4 Sustainability Reporting Guidelines. However, not all issues of these Guidelines are covered by the banks. As such, only two out of five banks (BNP Paribas and Societé Generale) report according to the full Financial Sector Supplement (FSSS) and also only two (BNP Paribas and Credit Mutuel) publish a breakdown of outstanding investments by region, size and industry. Again two out of five banks (BPCE and Credit Agricole) additionally display this data in a cross-table based on the Standard Industrial Organisation. As French law Grenelle II complies French banks to audit their sustainability report by an external party, all of the banks' sustainability reports are verified externally.

Regarding the engagement of banks with companies on social and environmental topics, only BNP Paribas and Societé Generale report on this consultation. None of the banks reports the names of these companies, but three out of five banks (BNP Paribas, Credit Agricole and Societé Generale) do publish the number of companies contacted. Disclosing the names of companies, projects, states or funds invested in is something none of the banks appear to do, not even if such projects are granted more than € 1 million credit. Lastly, none of the banks has an internal grievance mechanism for stakeholders and social organisations, and neither did any bank state they would abide by decisions of an independent grievance mechanism.

Relating to Taxes & Corruption, the research shows that all five French banks already publish part of their financial data on country-by-country basis, as required by the current French law. Although this type of reporting only entails data on subsidiaries, turnover and workforce and is thus less strict than the assessment element, points are given. The reason for this is that the French Bank law complies the banks to report on the wealth they create and the taxes they pay in each country, including in tax havens. As requested by the law, this information should be released in two steps, firstly from December 2014 subsidiaries, turnover (revenues) and number of employees, secondly from January to July 2015 taxes paid, profits and potential subsidies. As such, in their 2013 annual report most banks only included information on revenues and workforce, leaving costs, profits and tax payments to governments unpublished. Furthermore, none of the banks commit publicly to require companies invested in to adhere to country-by country reporting or to integrate any other criteria on taxes and corruption in their procurement and operational policies. Neither do the banks assessed mention whether they ask any information on the beneficial owner or owners of companies invested in.

Offering, promising, giving and requiring, either directly or indirectly, bribes and other undue advantages in order to acquire and to maintain assignments and other undue advantages, is regarded unacceptable by four of the banks, namely BNP Paribas, BPCE, Credit Agricole and Societé Generale. Three banks (BNP Paribas, Credit Agricole and Societé Generale) apply this principle also to the companies they invest in.

Regarding presence in tax havens and the provision of financial services to companies in tax havens, none of the five French banks provided reliable statements on abstaining from having subsidiaries without substance in tax havens, or on abstaining from providing financial services to companies in tax havens. With regard to advising companies to set up international corporate structures with the main purpose to avoid taxes, only Societé Generale provides operates a policy in its Group Code of Conduct that promotes this element.

These findings go in line with research already done by CCFD-Solidaire in 2012, which demonstrated that despite official announcements about banks' withdrawal from these non-transparent territories, the number of subsidiaries of French banks (the only information then available) in such territories did not shrink between 2010 and 2012 but even grew in some cases.[102] Two years later, bolstered by more exhaustive data, the Plateforme Paradis Fiscaux et Judiciaires came to the same conclusion: the presence of French banks in tax havens is still anything but trivial or insignificant, whether you use the Tax Justice Network's list or that of the US Government Accountability Office (GAO).[103]

The proof of this situation can be found in seven key points listed by the Plateforme Paradis Fiscaux et Judiciaires:

1. More than a third of French banks' foreign subsidiaries are in secrecy jurisdictions;
2. 26% of French banks' international business, or a total of € 13.7 billion, is generated in "tax haven" countries;
3. Specialization by French banks in investment solutions, structured finance or asset management in tax havens;
4. Offshore employees are, on average, twice as productive as others;
5. The Grand Duchy is the favourite tax haven of French banks;
6. Explaining offshoring in the Cayman Islands;
7. Tax havens are more attractive than emerging economies.

3.4 Best practices

In Transparency & Accountability, a best practice is provided by BPCE, being the only bank to disclose the names of all current and recently closed project finance deals and project related corporate finance deals, including the information required by the Equator Principles III. This relates to assessment element 5 in Transparency & Accountability.

A best practice in Taxes & Corruption is provided by Societé Generale. As the only bank of five, in their group wide Tax Code of Conduct they clearly state they do not provide assistance or encouragement to clients to breach tax laws and regulations. This complies with assessment element 2 in Taxes & Corruption. However, it must be said that the Plateforme Paradis Fiscaux et Judiciaires research shows that also Societé Generale is active in tax havens.

Transparency in Banking – Delivering a Sustainable Banking Scorecard

Written by: David Korslund (Global Alliance for Banking on Values)

A sustainable real economy meeting the long-term needs of society requires a sustainable financial system. Stakeholders in the financial system should be able to transparently assess the extent to which a bank has a sustainability focused business model as well as the impact of this focus on the bank's financial returns and its risk profile.

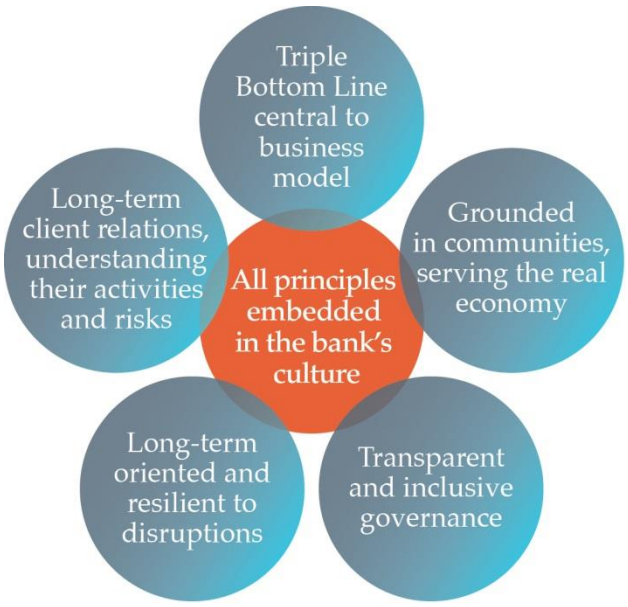
In September 2014, the Global Alliance for Banking on Values committed at the Clinton Global Initiative to create over five years a Sustainable Banking Scorecard that would not only provide banks with a tool for increasing the sustainability focus of their strategies and operating models but also allow stakeholders to make choices among banks. The Sustainable Banking Scorecard, based on the Principles of Sustainable Banking, is a tool for bank self-assessment and improvement and would also allow external stakeholder assessment of a bank's sustainability profile.

What will the Scorecard deliver?

The Scorecard will deliver an industry standard assessment of an institution's sustainability focus. It will provide banks with a tool to improve delivery of a sustainable banking agenda, and will provide transparent and public information to support choices by all stakeholders, especially clients and investors. The Scorecard will allow stakeholders to channel their business activity to those banks most aligned with their values regarding sustainability.

The Global Alliance was founded in 2009 and as of December 2013 had 25 members with nearly $100 billion in assets under management. The members are socially progressive and innovative banks focused on delivering sustainable economic development and environmental improvement throughout the world. Although they operate in many different markets and with a variety of business models, all have at the core of their activities a focus on the Principles of Sustainable Banking.

Figure 1 Characteristics banks Global Alliance



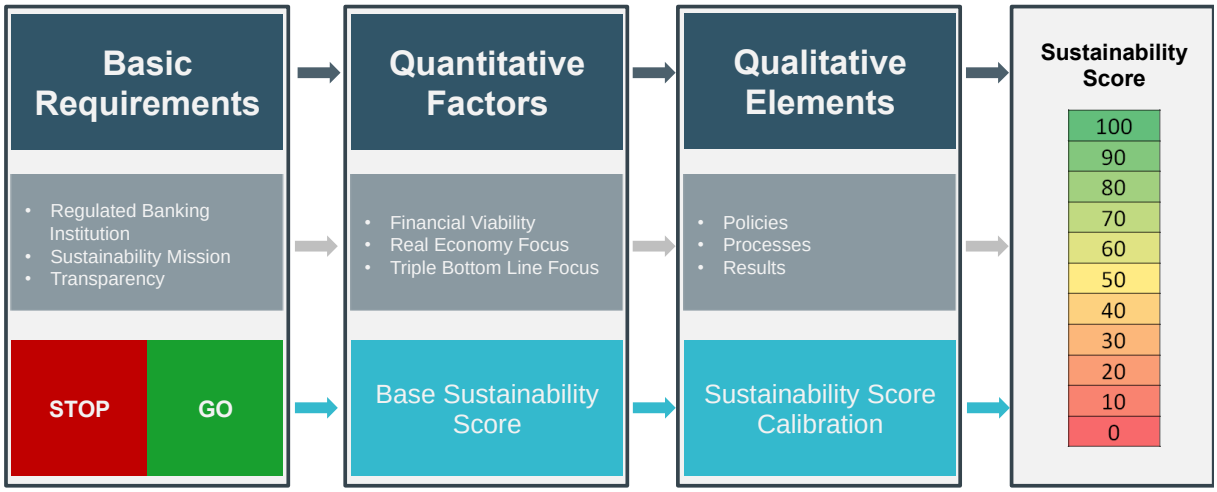
These Principles were developed as part of research undertaken by the Global Alliance and funded in part by the Rockefeller Foundation to look at the capital requirements and returns for sustainability focused banks. This research identified not only these core Principles but also the need for substantial capital to support the growth of these banks. Furthermore the research, initially released in March 2012 and updated most recently in October 2014,[104] provides support for the investment case for sustainability focused banks with higher returns and lower volatility than delivered by the largest banks in the world.

Although all the Principles are important, the triple bottom line principle is critical with its focus on economically and sustainably delivering banking products and services to clients meeting the needs of:

- People – social empowerment
- Planet – environmental regeneration, and
- Prosperity – economic resiliency

The structure of the Scorecard is a holistic approach for assessing a bank's business model for compliance with the Principles. The Scorecard uses a combination of Basic Requirements, Quantitative Factors, and Qualitative Elements to derive a relative Sustainability Score. Members of the Global Alliance have been piloting the Scorecard over the last year and it is expected to move from its current "beta" version to V1.0 in the near future. One member, Triodos, is already including its Scorecard as part of its public reporting.[105]

Figure 2 Scorecard overview



Source: Global Alliance for Banking on Values

For banks, the critical issue relative to their sustainability focus is the extent to which they dedicate their management of money at risk, on and off balance sheet, to the real economy and within that segment to meeting triple bottom line needs. As a result, 65% of the Scorecard's Quantitative Factors focus on these elements.

For most banks current financial accounting and internal management reporting systems do not capture this information. Developing standards and systems for addressing this information gap should be a critical task for the industry with support needed from organisations such as the Global Reporting Initiative and the Sustainability Accounting Standards Board.

For many of the Global Alliance members this effort is facilitated by their historic focus on providing stakeholders with transparent insight into their activities with a focus on sustainability. Many member banks go so far as to provide detailed lists of clients allowing stakeholders to see where money is put to work. Two good examples of this transparency can be seen at Triodos Bank and Alternative Bank Schweiz that provides a complete listing of their loans to all shareholders as part of their annual report.

Increasing the transparency and sustainability of banks will be critical to developing a sustainable real economy. The efforts of the Global Alliance to develop a Sustainable Banking Scorecard should be an important element of moving forward on this critical issue.

Chapter 4 Results from Indonesia

Written by: Victoria Fanggidae (Perkumpulan Prakarsa)

4.1 Government policy

In the wake of Indonesia's *reformasi* era in the early 2000's, the 'good governance' paradigm, which principles are transparency, accountability, participation, rule of law, and so on, became development buzzwords in Indonesia. Good governance had mostly been associated with public sector governance, since Indonesia had just been in transition from a corrupt authoritarian government to a newly democratic government. It is in this era that Indonesia established a number of public institutions to monitor public sector's governance such as Indonesian Ombudsman Commission (established in 2000 and legislated in 2008), Indonesian Corruption Eradication Commission (2002) and legalised Anti Corruption Laws (1999 and 2001) as well as Law on Public Information Openness (2008), among others.

For the financial sector, regulations regarding transparency can mostly be seen in the context of more exposure of Indonesian financial sector towards foreign investments, in which the government sees that better Good Corporate Governance (GCG) of companies in this sector – especially financial reporting transparency - will attract more foreign investments to Indonesia after the crisis. The de-regulation of the industry in 1988 had caused banking industry to grow almost uncontrollably since then. As a result, the banking industry was the one that was hit hardest by the Asian monetary crisis in 1998. Learning from that crisis, Indonesian Central Bank (BI) started to tighten regulations on GCG to disciplining the industry. As for non-financial transparency, most regulations are pertaining to consumer protection, such as transparency in lending rate, benefits, risks and costs of products and services, among others.

This sub-section elaborates on two levels of regulatory frameworks. The first framework concerns state level laws which are pointed out in Table 8. Besides the Banking Law that particularly regulates all banking aspects, other laws described here are mostly related to GCG of private companies in particular. The second framework concerns laws and regulations of financial authorities in Indonesia, such as the Central Bank or Bank Indonesia (until 2012) and the Financial Service Authority, -FSA or OJK (since 2013). These laws and regulations regarding bank's financial transparency have all been issued after the huge banks bail out in early 2000's.

Table 8 Laws and regulations on banking transparency in Indonesia

Name of law/regulation	Content of law/regulation	Relevant assessment element
Law No.10/1998 on Banking (Banking Law)[106]	The Law requires banks to disclose their balance sheets and financial reporton regular basis (quarterly, annually) as per Central Bank's format. This Law also points out the exceptional conditions where bank's secrecy does not apply. In addition, the Law (in the explanation section) also points out the necessity of banks(commercial and shariah) to require *Amdal* report from high risk/large scale company as a consideration when chanelling credit to the company.	Transparency & Accountability (indirectly) 6: "*The financial institution publishes a breakdown of outstanding investments to region, size and industry (in line with GRI FS6*)"; Transparency & Accountability 7: "*The financial institution publishes a breakdown of outstanding investments preferably in a cross table to industry and region. The industry breakdown is sufficiently detailed, for example, based on the main categories (the first two*

Name of law/regulation	Content of law/regulation	Relevant assessment element
		figures) of the Standard Industrial Classification"; Transparency & Accountability 11: *"The financial institution publishes a sustainability report that may contain (a number of) Standard Disclosures of the GRI G4 Sustainability Reporting Guidelines".*These information on investment breakdown should be in a bank's regular financial report, but they are not regulated at such level of details (e.g. banks report outstanding investment according to BI's industrial classification, but not mentioning names of companies nor region based). Taxes and Corruption 1: *"For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments*". However it is only about revenues, cost, profit and tax paid to the Indonesian government that must be reported.
Law No.25/2007 on Capital Investment[107]	The Law requires investors (note: this Law regulates all companies with incl joint-venture, which is the legal entity of many FIs /banks) to apply GCG principles, to be socially responsible, to report the investment activities and respect community lives surrounding the business activities(Article 15). Article 16 stipulates investor working on non-renewable natural resources to allocate environmental recovery cost gradually. Article 33.2 says government will terminate all working contract with investor who conduct tax crime and other illegal financial operations such as mark up of costs to reduce tax payments to government. Note: this Law provides a number of tax waivers for foreign direct investment.	Transparency and Accountability 11 (implicitly): "*The financial institution publishes a sustainability report that may contain (a number of) Standard Disclosures of the GRI G4 Sustainability Reporting Guidelines*"; Transparency & Accountability 12: "*The financial institution publishes a sustainability report that is set up in accordance with the GRI G4 Sustainability Reporting Guidelines, which includes the Financial Services Sector Supplement (FSSS)*" (NB. not at such level of detail). Taxes and Corruption in general.
Law No.40/2007 on Limited Liability Company[108]	The Law regulates allpublic listed companies including FIs. Itrequires companies which business activities relate to natural resources to disclose their social and environmental	Transparency and Accountability 1 (indirectly) : "*The financial institution describes its ESRM System and provides insight into how the financial institution*

Name of law/regulation	Content of law/regulation	Relevant assessment element
	responsibilities in their Annual Report (Article 74). Note: As the implementative regulation of this law, Peraturan Pemerintah (PP – State Act), the government released PP No.47/2012 on Corporate Social Responsibility (CSR) of Limited Liability Company[109], that	*ensures that investments meet the conditions set in its policies*"; Transparency and Accountability 11: "*The financial institution publishes a sustainability report that may contain (a number of) Standard Disclosures of the GRI G4 Sustainability Reporting Guidelines*"; Transparency and Accountability 12: "*The financial institution publishes a sustainability report that is set up in accordance with the GRI G4 Sustainability Reporting Guidelines, which includes the Financial Services Sector Supplement (FSSS)*". (NB. indirectly, because FI does not directly have business related to natural resources)
Law No.8/2010 on Prevention and Eradication of Money Laundering Crime Acts[110]	This Law highlights the role of financial institutions as 'reporter' of illicit financial transactions, where FIs are required to apply the principle of Know Your Customers and take action to prevent suspicious transactions.	Taxes and Corruption in general
Law No. 3/2011 on Fund Transfer[111]	The Law defines financial transactions and requires banks to disclose data for monitoring and audit by the Central Bank over their financial transactions, and that Central Bank can appoint 'other entity' to do the monitoring –while keeping data and information's secrecy (Article 72).	N/A

State laws have been transposed by Indonesia's Financial Authorities into the regulations presented in Table 9.

Table 9 Financial Authorities' regulations on banking transparency in Indonesia

Name of law/regulation	Content of law/regulation	Relevant assessment element
***Surat Edaran BI* or Central Bank Circulation Letter No. 15/28/DPNP regarding asset quality rating of commercial banks[112].**	Article II.1 explains that bank requires its large scale and/or high risk debtor to provide *Amdal* (Environmental Impact Assessment) analysis to ensure the debtor does not harm the environment before giving credit. Also, in assessing credit quality and business prospect of a company, bank should note PROPER results issued by Ministry of Environment.	Transparency and Accountability 1 (indirectly):"*The financial institution describes its ESRM System and provides insight into how the financial institution ensures that investments meet the conditions set in its policies*".
Peraturan Bank Indonesia	The regulation requires banks to	Transparency and Accountability

Name of law/regulation	Content of law/regulation	Relevant assessment element
(PBI) or Central Bank RegulationNo. 8/4/PBI/2006 regarding Good Corporate Governance implementation of commercial banks[113]	adhere to GCG Implementation for commercial banks as stipulated by the Central Bank. Article 2 says that bank's transparency covers the aspect of disclosure of bank's information to stakeholders	3 (implicitly): "*The financial institution publishes the names of companies and governments in which it invests"*. Transparency and Accountability 4: *"The financial institution mentions and describes all companies (on its website) to which it has granted more than €1 million credit"*
***Peraturan Bank Indonesia* (PBI) or Central Bank Regulation No.2/19/PBI/2000 regarding requirements and procedures for written order or permission to access confidential bank's information**[114]	The regulation draws requirements and procedures for related parties, for instance the legal heir of a deceased depositor ortaxation related parties, to pursue written order or permit to disclose bank's secrets.	Taxes and Corruption 1 (implicitly): "*For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments*" (NB. but it only regulates banks operate under Indonesian legal system);
***Peraturan Bank Indonesia* (PBI) or Central Bank Regulation No.3/22/PBI/2001 regarding transparency on bank's financial condition**[115]	The regulation requires banks and banking groups to disclose their financial condition through regular reporting.	Taxes and Corruption 1 (implicitly): "*For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments"* (NB. but it only regulates banks operate under Indonesian legal system); Transparency and Accountability 6 (implicitly): "*The financial institution publishes a breakdown of outstanding investments to region, size and industry (in line with GRI FS6)";* Transparency & Accountability 7: "*The financial institution publishes a breakdown of outstanding investments preferably in a cross table to industry and region. The industry breakdown is sufficiently detailed, for example, based on the main categories (the first two figures) of the Standard Industrial Classification"* (NB. In different level of details, e.g. banks report outstanding investment according to BI's industrial classification but not regional based)
***Peraturan Bank Indonesia* (PBI) or Central Bank**	The regulation requires banks to provide written information in	N/A

Name of law/regulation	Content of law/regulation	Relevant assessment element
Regulation No.7/6/PBI/2005 regarding bank's product information and use of customer personal data[116]	Indonesian, clear (incl. risk) on each bank product, include transparency in lending rate, to improve good governance and encourage healthy competition in banking industry.	
***Peraturan Bank Indonesia* (PBI) or Central Bank Regulation No.14/14/PBI/2012 regarding tranparency and publication of bank's reports**[117]	The regulation requires banks to publish their quantitative and qualitative information, so that public are informed about their financial healthiness and performance. This regulation also requires all banks to have website at the end of 2012.	Taxes and Corruption, implicitly element 1: "*For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments"* (NB. but it only regulates banks operate under Indonesian legal system); Taxes & Corruption 8: "*Companies publicly report on their beneficial owner or owners including full name, date of birth, nationality, jurisdiction of incorporation, contact details, number and categories of shares, and if applicable the proportion of shareholding or control*". Transparency and Accountability 6 (implicitly): "*The financial institution publishes a breakdown of its portfolio by region, size and industry*"; Transparency & Accountability 7: "*The financial institution publishes a breakdown of its portfolio, preferably in a table, by industry and region. The industry breakdown is sufficiently detailed, for example, based on the main categories*" (NB. However, the regulation demands different level of details in the report).
***Peraturan Bank Indonesia* (PBI) or Central Bank Regulation No.14/15/PBI/2012 regarding asset quality rating of commercial banks (previous: 7/2/PBI/2005).**[118]	Article 10: "Credit quality is determined based on the following assessment factors: a). Business prospect…etc", Article 11: "business prospect (point a) covers: a,b,c,d, and e): efforts made by the debtor to preserve environment".	N/A

Name of law/regulation	Content of law/regulation	Relevant assessment element
***Peraturan Bank Indonesia* (PBI) No. 14/18/PBI/2012 regarding the minimum capital adequacy requirement for commercial banks**[119]	This regulation requires banks to provide a minimum level of capital according to risk profile, thereby not only absorbing potential losses stemming from credit risk, market risk and operational risk, but also other risks like liquidity risk and other material risks.	N/A
***Peraturan Bank Indonesia* (PBI) No.14/27/PBI/2012 regarding the implementation of Anti Money Laundering and Combating the Financing of Terrorism Program for Commercial Banks**[120]	"In applying the AML and FTP, the Bank is required to have guidelines for the implementation of AML and FTP that includes written policies and procedures at least include: • requests for information and documents; • Beneficial Owner; • verification of documents; • Simplified CDD; • closure relations and rejection of the transaction; • provision of high-risk areas and PEP; • CDD implementation by third parties; • updating and monitoring; • Cross Border Correspondent Banking; • transfer of funds; • administration of documents; and • reporting to the INTRAC	Taxes and Corruption in general, and in particular element 8: "*Companies publicly report on their beneficial owner or owners including full name, date of birth, nationality, jurisdiction of incorporation, contact details, number and categories of shares, and if applicable the proportion of shareholding or control*".
***Peraturan* OJK or FSA Regulation No. 1/POJK.07/2013 regarding Financial Service's Consumer Protection**[121]	The regulation requires FIs to increase transparency and disclosure of benefits, risks and costs of products and/or services of FIs, and simpler procedure for consumers to file complaints and dispute resolution on product and/or service.	N/A

4.2 Current debate

The following issues are related to banking transparency as being discussed recently in Indonesia.

As a background, Indonesia has a new government in place since October 2014, and the current debates around transparency of banks mostly revolve around the efforts to increase tax revenues for the new government to fund its development policies and programs. The new government promises to build infrastructure for transportation, energy, to ensure food security and so on, wherein Indonesia lags behind, but the state budget to finance those projects is limited. Therefore the government is seeking to boost revenues from taxation, which contributes to more than three fourth of the state budget[122].

Bank confidentiality is everything in relation to information about customers and their deposits. According to the Banking Law, bank confidentiality does not apply for:

a. Tax purposes;
b. Bank account settlement that have been submitted to the Bureau of State Receivables and Auction (BUPLN) / Receivable State Affairs Committee (PUPN);
c. The interests of justice in criminal cases;
d. The interests of justice in a civil case between the bank and its customers;
e. Exchange of information between banks;
f. Request, consent or authority of depositors that is made in writing;
g. Demand of the legal heirs of deceased depositors; and
h. Related to investigation on money laundering.

While Article 41 of the Banking Law stipulates that "For tax purposes, the management of Central Bank at the request of the Minister of Finance is authorized to issue a written order to the bank in order to provide information and show written evidence and any papers regarding the financial situation of certain depositors to the tax authorities", it is difficult to actually execute this because the request must be submitted and approved by a minister, or leaders of the FSA (which is necessary for point a-c above).[123]

Therefore, the Ministry of Finance, through the Directorate General of Taxation demands bigger access to banks' customer accounts, not just for the purpose of criminal cases, but rather to increase the target of income tax revenues, which have always been under target. Indonesia's tax ratio to GDP is considered low compared to its peer economies, at around 12-13%, while other Southeast Asian countries are mostly above 14%, and the developed world's ration reaches 40% or beyond. The current government sets 16% tax ratio during its tenure. The revenues from taxation remain high potential, because tax compliance is also low, and it is estimated that over 50% untapped tax payments is potential, both from personal and corporate income taxes.[124]

For these aforementioned reasons, the Directorate General of Tax issued Regulation No. PER-01/PJ/ 2015 regarding the obligation of banks to report the amount of tax deducted on deposit and saving interests on 26 January 2015. This regulation requires banks to submit a more detailed evidence of tax cuts of the customers' bank accounts, unlike the current practice, where only general evidence of tax cuts must be submitted to tax authority.[125] The consequence is that tax authorities will hence know how many accounts are hold by a customer. This will narrow down the space for an individual to conceal his/her tax payments. However, private sector and banking industry in particular have shown fierce opposition against this regulation, by citing the potential violation of this regulation toward Banking Law provisions on bank secrecy and confidentiality of clients. Banks fear that big customers will be fleeing the country if such regulation is put into effect, as Sigit Permadi, the National Banks Association (Perbanas) said in an interview, "This is about bank secrecy. If bank's secrecy is bothered, it might potentially encourage people to move their money. What we worried is that they flee the money abroad."[126]

OJK as the financial sector authority is also hesitative to support the regulation, because it sees such regulation as a violation of the Banking Law. Mulya Siregar, Deputy Commissioner of Banking Supervision, says that "If it does not violate the Banking Law, it is okay, but if it breaks the Law, it'll be a problem because the bank secrecy of the third party funds has to be maintained, and if the data was requested, what is being asked, the name? What else?".[127] OJK prefers harmonization of the regulation with the Banking Law, meaning the Banking Law must be amended first in the parliament prior to applying the regulation.

In fact, almost all political parties in the Indonesian Parliament also have initiated a proposal to undertake an amendment to the Banking Law, among others on the bank's secrecy clause, and banks' foreign ownership. The plan to amend such clause had been started to be discussed during the 2009-2014 period and is scheduled to be continued by the Parliament in the period of 2014-2019. Specifically, an MP made a statement that they aim to finalize the amendment process in 2015.[128]

In the latest development, due to lack of preparedness of tax officials and the banking industry, as well as reluctance of the OJK and opposition from the business world, -as pointed out by the Indonesian Trade Chamber[129], the 'controversial' regulation is cancelled in March 2015.[130] Nevertheless, many analysts remind that sooner or later, Indonesia, as a member of G-20, should follow G-20 recommendation to end bank's secrecy in each member country by 2018.[131]

Another issue in Indonesia regarding banking transparency involves interest rates for consumers' housing mortgage. Indonesia's relatively high population growth has caused the decent housing issue to becomemore important. According to Indonesian Statistics or BPS (2014),[132] about 12.16% of the Indonesian households still face housing insecurity. While housing can partly be provided by the government and the market, the ever rising level of urbanization is difficult to build along with. Housing development grows only less than half compared to the growth in new households every year. As a result, competition to acquire a house becomes tougher.[133]

Banks, as one of the economy's intermediaries, provide people with housing credit or mortgage. Since the demand for affordable housing is rising, and the supply is much lower, developers and banks have more liberty to 'play' around with the lack of housing available. As such, the KPR scheme (people's housing credit), offered by most banks for people to buy a house in relatively low cost installments, has often been seen by consumers as a solution to have a house. However, what was supposed to be a facility to ease consumers from paying a huge burden, actually became a burden, because the banks that offer such credit tend to be playing around with the interest rate.[134]

Yayasan Lembaga Konsumen Indonesia (YLKI) or the Indonesian Consumer Association, has raised this issue for some years. Consumers are concerned that every time the Central Bank's (BI) interest rate increases, it does not take a long time for the KPR interest rate to follow, while when the BI rate is declining, the rate does not follow accordingly. There is an indication that the KPR only benefits the developers and banks, while consumers are those who lose the most.[135]

The practices still take place although there is a Law on Consumer Protection and OJK Regulation Peraturan OJK or FSA Regulation No. 1/POJK.07/2013. This law requires FIs to increase transparency and to provide disclosure on their benefits, risks and costs of products and/or services, and a simpler procedure for consumers to file complaints and dispute resolution on product and/or service. Also, Bank Indonesia (BI) with its Central Bank Regulation No.7/6/PBI/2005 requires banks to provide written information in Indonesian, clear (incl. risk) on each bank product, include transparency in lending rate. Yet, such practice remains unperformed.[136]

YLKI cited that complaints about KPR interest rates ranked third in the number of complaints it received from total number of complaints about banks. In general, complaints about banks remained on top of the YLKI annual recap of complaints over the years, until 2014.[137]

4.3 Results of the policy assessment

The results of the assessment of the two most relevant themes of the Fair Finance Guide methodology are summarized in Table 10.

Table 10 Policy assessment results Indonesia

Theme	Leaders (score =>6)	Followers (score between 4 and 6)	Laggards (score <4)
Transparency & Accountability	-	Citibank (4.9)	MUFG (3.5) BNI (2.8) Danamon (2.7) HSBC (2.7) BRI (2.2) Mandiri (1.9) OCBC-NISP (1.6) CIMB-Niaga (2.2) BCA (0.3) Panin (0.3)
Taxes &Corruption	-	-	HSBC (1.5) Citibank (2.9) Mandiri (1.5) CIMB-Niaga (1.5) OCBC-NISP (1.5) BNI (1.2) Danamon (1.2) MUFG (0.8) BRI (0.8) Panin (0.8) BCA (0.8)

Source: Responsibank Indonesia, 2015

Regarding Transparency & Accountability, all banks assessed, except Panin and BCA, publish their Sustainability Report that contains (a number of) Standard Disclosures of the GRI G4 Sustainability Reporting Guidelines. The three foreign banks have their Sustainable Reports verified. For national banks, only BNI, CIMB-Niaga and Danamon have their Sustainable Reports verified. In light of compliance to regulation, banks in Indonesia must produce their Annual Report according to FSA regulation. However, banks are not required to have a separated Sustainability Report. A section/chapter on sustainability in their Annual Report is considered sufficient for the reporting requirement. That's why even though BCA and Panin, two of the banks assessed do not have sustainability reports, they do not breach the reporting requirement.

Regarding ESRM (Environment and Social Risk Management) System, BNI, Danamon, CIMB-Niaga, OCBC-NISP, HSBC, Citibank and MUFG, describe their ESRM policies, but at different levels of detail. As such, while HSBC, Citibank and MUFG have quite detailed sector policies and clearly present the scope of such policies, BNI only mentions one specific sector policy -palm oil. Danamon and CIMB-Niaga only mention that they refer to national laws and regulations on specific issues.

It is worth to note that three local banks being BNI, Danamon and CIMB-Niaga refer to PROPER rank[138], a national sustainability ranking for companies/industries whose main businesses impact the environment and communities. PROPER is developed by the Ministry of Environment, and the ranking is developed based on a rather meticulous scientific study and field inspections (e.g. taking samples of companies' pollution level etc). However, the limitation of PROPER is that it covers only a limited number of companies in Indonesia. BNI even states that it will not invest or reconsider its investment in companies that receive a poor rank in PROPER.

HSBC (holding) does not publish the names of companies it invests in, but it publishes loans under Equator Principles III by mandate, category, region, and industrial sector. HSBC Indonesia branch is the only financial institution assessed that mentions companies to which it has granted significant amount of credit during the year. For national banks, the state-owned banks BNI, Mandiri and BRI publish the names of companies they invest in, especially the other state-owned companies as related party transactions - a form of accountability to the government as the main owner. Of the private banks, only BCA publishes the names of companies in which it invests. Citibank (holding) discloses consolidated information on project finance deals and project related corporate finance deals, including the information required by the Equator Principles III in its Annual Report.

All banks provide a breakdown of their loans portfolio based on the Bank Indonesia industrial classification in their financial statements, which is quite detailed. However, Panin, which has the poorest average score in the baseline assessment, provide a less detailed loans portfolio than required by Bank Indonesia. This hence brings the issue of enforcement from financial industry regulator into question.

Relating to Taxes & Corruption, no banks provide information on country-by-country reporting. It is only HSBC that reports tax payments (figures) in each priority growth markets, but not in all countries that they operate. Citibank for instance, states that "the company is subject to the income tax laws of the U.S. and its states and municipalities, and the foreign jurisdictions in which it operates", but only lists 9 major tax jurisdictions in which Citi and its affiliates operate and the earliest tax year subject to examination, with no breakdown figures per country. Similarly, MUFG also states that "the MUFG Group is subject to ongoing tax examinations by the tax authorities of the various jurisdictions in which it operates", but no country-to-country figures are available in its reports. Most national banks only report their tax payments in Indonesia on their financial statements.

A number of banks have branches in 'tax havens' such as Bahamas, Cayman Islands etc, but not clearly reporting their local activities and financial condition. Citibank for instance, reports its activities in Cayman Islands that are mostly philanthropy type of activities, aside of the investments, but there are no reports on other similar branches like in Bahamas or Jersey (Channel Island) for instance. Of the national banks that have operations in Cayman Islands (such as BRI, Mandiri, Panin), only Mandiri reports its Cayman Island branch's expenses, although not the amount of tax paid in that jurisdiction.

Regarding transparency issues in other banking issues, all banks include internal operational policy related to prohibition on offering, promising, giving and requiring, either directly or indirectly, bribes and other undue advantages in order to acquire and to maintain assignments and other undue advantages. This statement usually can be found in their ethical organizational values or Code of Conduct for both national and foreign banks. Almost all national banks have AML policies, mostly due to strict requirements from the government of the US, which impose such policy (strengthened by BI policy accordingly) for banks that have operations related to the US financial institutions and using the US' currency.

Transparent banks are expected to publish their responsible investment and finance policy as part of their ESRMS. Banks such as BNI, HSBC, Citibank and MUFG publish their investment policies about prohibition on corruption, bribery but only HSBC and Citibank require companies to include immediate action that can be taken if employees or suppliers are guilty of corruption or tax evasion in their management system.

None of the banks assessed require the companies they invest in to report their participation related to the decision-making processes of international norms and legislation (lobby practices). Citibank only has a policy applicable to its own lobby activities, not to the companies it invests in.

For Indonesian national banks, because the financial sector authority has clear guidance about reporting beneficial owners, such information about banking group's beneficial owners can be found in their Annual Reports, which include full name, date of birth, nationality, and categories of shares, and the proportion of shareholding or control (or the combination of 1-3 of those information). Yet, none of the banks requires such information from the companies they invest in.

4.4 Best practices

Among the international banking groups, Mitsubishi-UFJ Group (MUFG holding) has set some good practices in transparency. Namely, MUFG provides its voting rights in its subsidiaries or in the companies it merged with, and publishes a proportion of voting interests in all of its subsidiaries globally. MUFG Jakarta Branch also reports on its complete business group structure in Indonesia.

National bank BNI is, although receiving poor scores in various themes/sectors, considered better compared to other national banks in terms of its ESRM policy. BNI publishes its loans portfolio that shows a declining trend over the years in its credit provision for companies that have red or black category (i.e. the poorest level of environemntal standards compliance) in PROPER. For instance, in 2011, BNI provided 602 billion rupiah for companies with a black category, but in 2013, it reduced this to 0. Over the same period, BNI increased credit to companies with a gold category from 0 to 9,448 billion rupiah.

Automatic information exchange: is the G20 set to fail on this?

Written by: John Christensen (Tax Justice Network)

One important aspect of the recent revelations regarding the extensive involvement of the HSBC bank's Swiss arm in tax evasion has not drawn much public comment: the advice that HSBC in Switzerland provided its clients on dodging taxes arose from increased pressure, from both the EU and the USA, for Swiss banks to automatically share client information with tax authorities in other countries. [139] Recognising that tax evading clients could no longer rely on Switzerland's fabled banking secrecy laws, HSBC was recommending new ways for clients to avoid detection.[140] While this illustrates the criminal banking culture at HSBC, it also demonstrates the powerful deterrent effect that automatic tax information exchange (ATIE) has against tax evasion.

Deterrent Effect?

Since 2003 the Tax Justice Network has been calling for ATIE to be adopted as the effective international standard. The alternative standard, devised by the Organisation for Economic Co-operation and Development (OECD) in consultation with tax havens, involves a process called "tax information upon request", which operates on the following lines: using either an existing double tax treaty or a bilateral tax information exchange agreement, country A can request information from the Court of country B, subject to country A providing sufficient evidence to back its claim that one of its citizens is holding undisclosed wealth at a bank in country B.[141] It won't surprise anyone that this system has proven wholly ineffective as a means of detecting tax evaders. Worse, it had no deterrent effect whatsoever, since the likelihood that the authorities of country A would have the necessary evidence to present to the court of country B was low to zero, especially since the courts of most tax havens are seldom willing to cooperate.

The strength of ATIE lies with its deterrent effect. When people are aware that the details of any wealth they hold offshore will be automatically shared with the tax authorities of their home country, they are less likely to be tempted to evade taxes by not declaring the income from that wealth. This deterrent effect is backed by strong evidence from the USA.

For many years we have been told by senior OECD officials that there was no political support for a global standard for ATIE, despite the chronic underperformance of the OECD's "on-request" model. The turning point came in 2012 when Indian Prime Minister Manmohan Singh explicitly requested the G20 countries to adopt ATIE. In April 2013, the G20 Finance Ministers and Central Bank Governors endorsed ATIE as the effective standard for information exchange, and the G8 presidency requested the OECD to prepare recommendations for how to implement ATIE at the global level.

The Common Reporting Standard for ATIE outlined by the OECD in 2014 will not replace the preceding upon-request standard but aims to complement it, while addressing some of its obvious shortcomings. [142] It has been designed to run in parallel with other bilateral or regional arrangements for ATIE, such as the U.S. Foreign Account Tax Compliance Act (FATCA) and the EU Savings Tax Directive (EUSTD). However, while we must welcome the OECD's Common Reporting Standard as a step towards an effective global standard for cross-border cooperation on tackling tax evasion, we have no illusions about this being the final nail in the coffin for secrecy jurisdictions.

Weaknesses

To begin with, unscrupulous individuals will still be able to hide behind opaque legal arrangements, such as shell companies, foundations and trusts, by claiming that their income is derived from business - rather than investments - or by dividing ownership among at least four people. This latter loophole arises because only those owning more than 25 percent of a company will be required to identify themselves as beneficial owners. Many secrecy jurisdictions, the British Virgin Islands (BVI) being a prime example, have no requirement for the identity of the real, warm-blooded owners of companies registered on the islands to identify themselves. This provides an almost impenetrable wall of secrecy for tax evaders to hide behind, and is a key attraction to many of the rich people who use the BVI. It probably didn't surprise anyone when the authorities on the BVI signalled in early 2015 that they had chosen to reject British Prime Minister David Cameron's request for a registry of beneficial ownership. Other secrecy jurisdictions have likewise refused to create public registries of company ownership details, thereby throwing a huge barrier in the way of international cooperation. The British government must now choose between over-riding the BVIs refusal, which it has the power to do, or to backtrack on Cameron's commitment to lead the world in introducing ownership registries.

A further limitation arises because only financial assets are currently covered by the proposed Common Reporting Standard, which excludes real estate, private jets, yachts and works of art (the latter being an increasingly popular asset class for stashing wealth offshore in newly established art freeports in Geneva, London, Luxembourg and Singapore). Inexplicably, safe deposit boxes are also excluded from the standard. To make matters worse, a *de minimis* threshold has been set at US$250,000 which removes any reporting requirement for some accounts opened prior to 2016, allowing tax dodgers plenty of time to rearrange their affairs. What's more, information can only be used to tackle tax evasion, but not to investigate money-laundering or corruption. Previous attempts at strengthening international tax rules have shown that even the tiniest of loopholes are certain to be exploited by tax dodgers and money-launderers.

Regrettably the OECD's proposed Common Reporting Standard as currently formulated does little to meet the needs of low-income developing countries, many of which are particularly vulnerable to tax evasion by their wealthy elites and by multinational companies. These countries will be required to sign up to exactly the same conditions as the far better resourced OECD countries, and will face exhaustive confidentiality requirements which will allow secrecy jurisdictions to opt out of the scheme on the basis that sensitive data need only be exchanged with reciprocal and diligent recipient authorities. In other words, tax evaders using banks and other financial institutions located in secrecy jurisdictions will have nothing to lose sleep over, since host governments will probably refuse to share information with developing countries on the pretext that the latter would be unable to guarantee data security.

Secrecy jurisdictions can also opt out selectively, on a discretionary case-by-case basis, or systematically reject the new reporting standard. Switzerland has already expressed its intention to sign a limited number of bilateral agreements, but only with countries on which the future of the Swiss finance industry depends. The US is also likely to reject the new multilateral framework, either by not signing or not ratifying, and protecting their own interests via the *Foreign Account Tax Compliance Act instead*. Even for countries that do ratify, there are no requirements for member states to publicly justify their refusal to exchange information with specific jurisdictions.

Conclusion

To all intents and purposes the Common Reporting Standard in its current form is a voluntary scheme, with sufficient loopholes and opt-outs to allow secrecy jurisdictions and their clients to continue as before. While the standard is not yet a done deal, without the adoption of a global requirement for public registries of beneficial ownership information, and absent specific measures to provide for the needs of developing countries, there are few grounds for celebration. There remains sufficient time to amend the new standard before it enters into force, but there is little evidence that the G8 leaders have recognized the scale of public anger about tax evasion and are willing to commit to getting it right.

Chapter 5 Results from Japan

Written by: Shigeru Tanaka and Yuki Tanabe (JACSES)

5.1 Government policy

The following regulations regarding transparency are relevant for the Japanese financial sector. See Table 11 for an overview.

Table 11 Laws and regulations on banking transparency in Japan

Name of law/regulation[143]	Content of law/regulation	Relevant assessment element
Banking Act (Act No. 59 of 1981)	Article 21 of this law requires banks to prepare explanatory documents that contain matters specified by Cabinet Office Ordinance as those related to the status of its business and property for the Interim Business Year and such explanatory documents for the entire business year. These documents must be made available at its business offices for public inspection.	
Financial Instruments and Exchange Act (Act No. 25 of 1948) and **Cabinet Office Ordinance on disclosure of specified financial corporations (Ministry of Finance Ordinance 57 of 1998)**	Article 24 of this law requires publicly listed issuers of securities to submit, for each business year, a report stating the trade name of the company, the financial condition of the corporate group to which the company belongs and the company's own financial condition, other material particulars of the company's business, and other particulars specified by Cabinet Office Ordinance as necessary and appropriate in the public interest or for the protection of investors. The Cabinet Office Ordinance specifies the amount of outstanding loans per industry as a necessary component of the annual report mentioned above.	Transparency & Accountability 6: "*The financial institution publishes a breakdown of outstanding investments to region, size and industry (in line with GRI FS6)*"; Transparency & Accountability 7: "*The financial institution publishes a breakdown of outstanding investments preferably in a cross table to industry and region. The industry breakdown is sufficiently detailed, for example, based on the main categories (the first two figures) of the Standard Industrial Classification*".
Act on the Promotion of Business Activities with Environmental Consideration by Specified Corporations, etc, by Facilitating Access to Environmental Information, and Other Measures (Act No. 77 of 2004)	Article 11 of this law requires big businesses (i.e. those not defined under the Small and Medium-sized Enterprise Basic Act of 1963 as "small and medium enterprises") to 'make an effort' to disclose environmental reports and the status of environmental consideration in their business operations. The law does not require companies explicitly to disclose this information.	Transparency & Accountability 11: "*The financial institution publishes a sustainability report that may contain (a number of) Standard Disclosures of the GRI G4 Sustainability Reporting Guidelines*"; Transparency & Accountabilty 12: "*The*

Name of law/regulation[143]	Content of law/regulation	Relevant assessment element
		financial institution publishes a sustainability report that is set up in accordance with the GRI G4 Sustainability Reporting Guidelines, which includes the Financial Services Sector Supplement (FSSS)"; Transparency & Accountability 13: "*The financial institution's sustainability report has been verified externally*".

5.2 Current debate

There is very little debate on increasing transparency among banks in Japan, as it is the cultural norm for banks to protect the privacy of their clients. Banks are rather mandated by their own industrial standards to keep information confidential. Yet, some progresses has been made in recent years.

In 2010, a committee called upon by the Minister of Environment and led by Takejirou Sueyoshi (then special advisor of UNEP Financial Initiative) proposed in its final report that a principle be sought to promote environmental financing. Since then, Takejirou Sueyoshi himself initiated a committee composed of representatives from banks, credit unions, financing cooperatives etc. and in 2011 drafted the *Financial Action Principles for building a Sustainable Society* (also known as the *21st Century Financial Action Principles*). The Principles are constructed of seven non-binding principles. Principle 6 stipulates that financial institutions shall make an effort to disclose their efforts to ensure sustainability. As of March 2014, 193 financial institutions have signed the Principles.The full list of institutions is disclosed on the website of the Ministry of Environment.[144]

On June 14th 2013 the Cabinet addopted the Japan Revitalization Strategy. In the set of strategies, it was mentioned that a set of guiding principles should be drafted to ensure responsible investments by institutional investors, for the purpose of promoting sustainable growth of Japanese businesses. As a response, the Financial Services Agency called a committee to draft the "Principles for a Responsive Institutional Investor" (aka Japanese Stewardship Code). The Principles drafted in February 2014 are constructed of seven non-binding principles, and Principle 6 stipulates that responsible institutional investors shall report to clients and beneficiaries the ways in which the institution fulfills its stewardship responsibilities including the exertion of voting rights.[145]

On August 7th 2014, the Financial Services Agency intiated an Expert Committee for the Formulation of Corporate Governance Code. To this day, the Committee has held eight meetings and drafted a concept paper on the Japanese corporate governance code. The paper has been disclosed for public comment till Jan. 23rd 2015 and will be further discussed by the committee which starts again from March 5th 2015.[146]

The Japanese Communist Party has been continuing an effort to tackle the problem of tax evasion by big businesses. The Party newspaper “Akahata” published on August 25th 2013 a top page article on tax havens and conducted interviews with Mitsubishi UFJ Financial Group, Mizuho Financial Group and Sumitomo Mitsui Financial Group representatives. The interview asked about their involvement in tax evasion and all three have declared that they have branches in the Caymans, but for purposes other than tax evasion.[147]

The Japanese Communist Party also drafted a financial manifesto on November 26th 2014, which stipulates that the party will pursue the problem of tax evasion in accordance with the international debate.[148]

A network of eleven organizations, including NGOs and trade unions and initiated by the NGO Alter Monde Japan, has begun a public debate on financial transaction taxes to stop the flow of capital to tax havens.[149]

A suprapartisan group of parliamentarians have formed the Parliamentary Group on International Solidarity Levy on February 28th 2008, initiated by Liberal Democratic Party (LDP) Parliamentarian Yuji Tsushima. The group, after five study sessions, pressured the Ministry of Foreign Affairs (then headed by Masahiko Komura of the LDP) to join the Leading Group on Solidarity Levies to Fund Development in June 2008. The Ministery followed up by officially stating its intent to join the Leading Group in September 2008. The Japanese government has joined the Leading Group officially from November 2008.[150]

5.3 Results of the policy assessment

The results of the assessment of the two most relevant themes of the Fair Bank Guide methodology are summarized in Table 12.

Table 12 Policy assessment results Japan

	Leaders (score =>6)	Followers (score between 4 and 6)	Laggards (score <4)
Transparency & Accountability	-	Mizuho (4.8)	SMFG (3.9) SMTH (3.7) MUFG (3.5) Resona (2.1)
Taxes & Corruption	-	-	SMTH (1.3) MUFG (0.8) Mizuho (0.8) SMFG (0.8) Resona (0.8)

Regarding Transparency & Accountability, all banks comply with legally required disclosure of basic environmental data. They do this by reporting via the GRI reporting standards. In addition, the three mega banks (Mizuho, MUFG, SMFG) report according to the Financial Services Sector Supplement (FSSS) of the GRI. Furthermore, the three mega banks comply with the Equator Principles.

Mizuho takes the lead in Transparency & Accountability. This in itself is rather rare for Japanese banks, as they usually all act in the same way, ending up with similar policies and practices.

The Transparency & Accountability theme is one of the very few themes/sectors where potentials are very high for Japanese banking groups. This is a very good starting point for Japanese banking groups to start catching up to international standards.

In addition, no bank published an audited sustainability report. However, many banks have sought third party comments on their CSR policy or had a portion of the report commented. MUFG and Resona both have in their published reports, a third party's 'comment'. Mizuho and SMFG have an equivalent to this where they have a third party comment on their overall CSR policy (as opposed to the report). SMTH did not have any third party comments on their CSR Report. This is another element where Japanese banks can easily improve their practices.

None of the banking groups has a published policy to prevent tax evasion, both by the bank itself as by its clients.All assessed Japanese banking groups have signed the Global Compact for their internal operations, thereby stating that corruption and bribery is unacceptable within the bank itself. Sumitomo Mitsui Trust Holdings (SMTH) demands its portfolio companies to also comply with the Global Compact and has dialogues whenever necessary. The overall low scores for Taxes & Corruption has to do with the tendency of Japanese banking groups to value their confidentiality mandate over their transparency mandate.

All assessed banking groups have branches or subsidiaries overseas. However, Mizuho, Resona and SMTH were the only banking groups to disclose a complete overview of its branches and subsidiaries. MUFG and SMFG both have a disclosed list of overseas branches and subsidiaries of corresponding 'banks' but do not have a comprehensive list of the 'banking Group'. A clear list of services is not disclosed in any case.

5.4 Best practices

As scores are not very high to begin with, not many 'best' practices are available. That said, Sumitomo Mitsui Trust Holdings (SMTH) earned a score in a very characteristic way which the other banks should follow. SMTH was the only bank that describes its Environment and Social Risk Management System (ESRMS) and provides insight into how the financial institution ensures that investments meet the conditions set in its policies, for corporate loans, project finance and asset management. The banks that have signed the Equator Principles scored a 0.6, as they described their ESRMS for Project Financing only.

In addition to this, SMTH was the only bank to disclose the number of companies which they have engaged with, although only for their asset management activities. Moreover, SMTH has used engagement activities to influence companies who have been involved in the manufacturing of cluster munitions. This is an exemplary case of engagement activity and its disclosure in Japan.

Country-by-Country Reporting, Fair Tax and Transparency

Written by: Ted van Hees (Fair Finance Guide)

The 2008 financial crisis caused an avalanche of proposals for reform of the financial sector, only a limited number of which have materialised. A major set of the reform proposals aimed at intensifying and enhancing transparency and accountability of banks and other financial institutions. Tax avoidance and tax evasion scandals, including the recent LuxLeaks,[151] have focused the debate even more on the lack of transparency and accountability of transnational banks and companies. This article will concentrate on the way governments are trying to regulate reporting on a country-by-country basis, thus increasing the ability of tax authorities North and South to make the financial industry (and the corporations they lend to and invest in) pay their fair share of tax.

Country-by-Country Reporting

The call for Country-by-Country Reporting (CbCR) has been at the centre of addressing the lack of financial sector transparency and related taxation problems. Since the mid-2000s, broad based European and global civil society networks, including the Tax Justice Network (TJN), Publish What you Pay, Global Witness, Oxfam, CCFD in France, Action Aid, and Christian Aid -working with experts such as Richard Murphy- developed politically feasible and technically sophisticated proposals for CbCR. Support from national and European politicians, such as the French Member of European Parliament (MEP) Eva Joly of the Greens, helped place tax evasion and avoidance, and related transparency problems, higher on the European political agenda. In the aftermath of the 2008 financial crisis, as different tax scandals came to light while austerity measures were being prescribed, political pressures on legislators to act increased, and eventually the G8 and the G20 tabled tax evasion and avoidance in their own discussions as well.

Prior to this turning point, tax and transparency policy and problems were considered to be a technical domain of the OECD, the Paris based club of predominantly rich countries. The OECD's traditional and highly technocratic approach on those matters excluded the voices of developing countries and effectively denied them real influence in the debates on improving regulations on tax and development, including the taxation of Transnational Corporations (TNCs).

OECD and the Arm's Length Principle

The OECD maintains the Arm's Length Principle (ALP) as the basis for taxing TNCs. The OECD's Glossary defines this as a "valuation principle", which "is commonly applied to commercial and financial transactions between related companies. It says that transactions should be valued as if they had been carried out between unrelated parties, each acting in his own best interest"[152].

According to ALP, the tax base is calculated from the comparison of a price of a product (as set by a TNC) with the price of this same product on the free market. Even if we disregard whether free markets do really exist in certain sectors[viii], applying ALP faces another huge problem: if these prices are different from each other, tax authorities should be alerted that the company (TNC) is manipulating the price of the product or of technology delivered to a subsidiary and, thus, by over-pricing or under-pricing of raw materials, half-fabricates or end-products, engages in profit-shifting through transfer (mis)pricing. This practice leads to enormous technocratic, non-manageable, and expensive bureaucratic procedures, which are beyond the capacity of many countries, and make it easy for TNCs to escape payment of taxes in both developed and developing countries, by claiming –for example- that product A is not the same as product B, after making tiny change in the character of the two products subject to comparison. Even more importantly, ALP implies that a parent company and its subsidiaries are legally considered as separate entities, while they in fact belong together.[153]

ALP enables TNCs to shift profits and other sources of income, like royalties or payments for technology, from one jurisdiction to another, thus leading to minimising tax on profits for the whole TNC. In practice, this often involves the use of tax havens with low or no taxation on certain sources of income, including profits.

The obvious first step to address this problem is to consider the mother corporation and its daughters as belonging together, thus as a unit, and to use this unit as the basis for taxing the corporation. Prem Sikka describes how "…even though companies may be under common ownership, control and strategic direction, they were to be taxed as separate entities. Thus a company with 100 subsidiaries will be treated as 100 separate entities for tax purposes.". Sikka adds that "Apple is Apple, no matter where it trades, and all its profits accrue to the same entity. We need to know a company's global profit. This can only be made when a company transacts with the outside world. This means that all intragroup transactions should be ignored for tax purposes because they add little or no value. Such a principle is already enshrined in the law of most countries. Multinational companies are required to publish what accountants call *consolidated accounts*. These treat the entire group of companies as a single economic unit and show its global profits." [154]

It is because of this that we talk about Unitary Taxation (UT) as the major principle for enhancing transparency and accountability of TNCs and also Transnational Banks (TNBs). Raymond Vernon, the author of In the Hurricanes Eye puts it this way: "In the real world profit allocated to each country by a TNC commonly is an artefact of whose size is determined largely by precedent and the debating skills of lawyers and accountants". [155]

Tax where TNCs are economically active!

Tax and transparency scandals, academic, media and CSO research and pressure, have all led politicians in recent years to conclude that we need to radically change the way taxes are calculated. German Chancellor Merkel, French President Hollande and US President Obama, all stated in past years that TNCs should pay taxes in the countries ("jurisdictions") where they are really economically active and where they make their profits, thus outlawing tax jurisdictions with no substance, i.e. with only a symbolic presence of relevant and productive TNC or TNB employees.

[viii] "For example, just 10 corporations control 55% of the global trade in pharmaceuticals; 67% of the trade in seeds and fertilisers and 66% of the global biotechnology industry. So companies are playing creative games to dodge taxes and many developing countries are substituting their own norms. Resolving transfer pricing disputes is costly for both companies and tax authorities."

The implementation of CbCR, and the treatment of TNCs as a Unit and thus adopting Unitary Taxation (UT) instead of the cumbersome application of the Arm's Length Principle, therefore constitute the adequate response. The next step would be to assess in which country or region TNCs and TNBs add value to products and services delivered (profits, technology payments, royalties, copyrighted material etc.) and should pay taxes according to the principle of Formulary Apportionment (FA[ix]).[156]

Regulation of Reporting Country-by-Country

As said before, CbCR is the basis for TNCs and TNBs to start paying taxes where they make their money. In April 2014 the European Parliament passed a Directive which obliges companies with more than five hundred employees to disclose information on environmental, diversity, human rights, anti-corruption and bribery issues. The European Council of Heads of State Ministers adopted this Directive in September 2014, which will require companies to which the Directive applies, to publish reports from 2017 onwards. In other parts of Europe and the world the need for tax transparency made governments decide to adopt CbCR regulation by TNCs. In the Nordic countries, including EU-member states, Denmark, Finland and Sweden, large and/or state-owned companies are obliged to disclose the revenues of companies, profits and taxes (to be) paid. Australia is preparing similar legislation for 2015. Indonesia also adopted a reporting directive on tax transparency.

OECD, BEPS and tax transparency

The G20 requested the OECD to lead on the Base Erosion and Profit Shifting (BEPS) process and to report and finalise its work in 2015. The BEPS Action Plan, which was adopted in September 2014 by the G20 Finance ministers, tries to combine the ALP with elements of unitary taxation. The original 2013 template listed fifteen actions to be implemented in 2014 and 2015, and finally required reporting of aggregated information per country (and thus not per company!) on financial data for revenue, earnings before tax, cash tax, current tax, stated capital and accumulated earnings, number of employees, tangible assets, listing of all group entities per country and business codes for each entity's major activities. The OECD argues however that "the adoption of alternative transfer pricing methods like formulary apportionment would require development of an international consensus on a number of key issues (which countries do not believe to be attainable in the short or medium term)".[157]

The OECD believes that "formulary apportionment could also raise systemic problems which could result in even more damaging problems for countries' revenues". What these problems are, the OECD does not further explain, asserting that "it is believed that it will be most productive to focus on directly addressing the specific issues arising under the current arm's length system".[158] Pascal Saint-Amans, the director of the OECD's Centre for Tax Policy, argues that the OECD proposed template will require TNCs reporting to tax authorities (and not to the general public) on turnover, profits, paid taxes, accrued taxes, number of employees and assets deployed to conduct business activity. He claims that this "will help to stop aggressive tax planning" and "to smell a rat" by shifting your profits to a "zero tax jurisdiction where you have no sales, no employees and no assets".[159] This sounds politically naive and overly optimistic. It also shows that the OECD's first interest is not in transparency for the broader public. Even worse, Saint-Aman says that the confidential treatment of such tax information risks to be challenged and "if this process [of opening up on more transparency] doesn't happen quickly, pressure may well grow to make the information public".[160]

[ix] Allocating profit earned (or loss incurred) by a corporate group to a particular tax jurisdiction in which the corporation or group has a taxable presence.

Country-by Country Reporting by banks

Whereas the EU failed so far to regulate CbCR for TNCs at large, it has been more successful on agreeing on regulation of disclosure of CbCR information of the banking sector. As far as the banking industry is concerned, it was the French government in particular that pressed for EU-regulation of CbCR for the financial sector. The Capital Requirements Directive IV (CRD IV, 2013/36/EU)) adopted in 2013 rules that banks have to report over their 2014 activities (which will be in their annual reports in early 2015) on a country-by-country basis, providing name, nature, of activities, geographical locations, turnover and profit or loss before tax, corporate taxes paid and public subsidies received.[161]

On top of these regulations, and relevant for the project finance and investments from banks and the financial industry, the EU adopted the Accounting Directive (2013/34/EU) in 2013 on new reporting rules for large companies and listed companies in the extractive and forestry industries. This regulation was inspired by the practice of the Extractive Industries Transparency Initiative (EITI), a voluntary tripartite project of some of the leading extractive companies, governments and NGOs that started in 2003. Another major trigger for reporting on a country- and even project basis has been the Dodd-Frank Law in the US.[162] Similar to Dodd-Frank (and different from EITI) the EU Directive requires large extractive and forestry companies to report on a country-by-country and project-by-project basis on royalties, dividends and other sources of income, taxes on income, production and profits. Within two years these rules should be incorporated in domestic legislation to come into force.[163] Applying this principle to subsidiaries and trusts of TNCs and TNBs in tax havens, where they do not have economic substance, will disclose their involvement in tax dodging, both detecting the illegal evasion and morally unacceptable avoidance of tax.

Concluding remarks

CbCR by banks and companies is a necessary, but insufficient, regulation to solve the problem of tax dodging. Legislation is in place in the US and the EU, only for banks and extractive industry and forestry. The categories on which TNCs and TNBs have to report Country-by-Country and Project-by-Project are still limited and do not apply to all types of data necessary for tax regulation.

The next step, in my view, that the EU and US should agree on in the context of the G20 and the OECD, is abandoning the failing and deficient Arms Length Principle, substituting this for the principles of taxing transnational parent companies and banks as one and the same unit (Unitary Taxation). This will enable tax authorities in South and North to raise tax where the TNC and TNB and their subsidiaries are genuinely active economically, and where they earn royalties and interest, sell and trade technology and knowledge and are making their profits. As Sol Pocciotto and Nick Shaxson concluded in a letter to the Financial Times in 2012: “The international tax system in effect provides vast subsidies for multinationals, helping them outcompete local rivals on a factor – tax – that has nothing to do with economic productivity. They free-ride on tax-funded benefits – roads, educated workforces, reliable courts – provided by the countries where they do business, while others pay for those benefits.” [164]

Chapter 6 Results from the Netherlands

Written by: Peter Ras (Oxfam Novib), Michel Riemersma, Petra Schoof (Profundo)

6.1 Government policy

Since the financial crisis, civil society has been lobbying to enhance transparency in the financial sector. One of the issues they most strongly urged for, also at European level, has been country-by-country reporting on tax payments, which would provide an insight in the substance of financial operations in tax havens and hence in potential tax evading behaviour. At the European Union, especially France insisted on drawing EU regulation for this issue.[165] For years though, country-by-country reporting was rejected because of the exorbitant costs and constraints it would place on the private sector. In addition, the European Commission was hesitant about publishing this data.[166] Nevertheless, in 2013 the EU Capital Requirements Directive was put into practice, which requires all financial institutions in EU member states to publish financial information for each country the institution is active in from January 2015 onwards.[167]

Other relevant EU Directives developed in this context but not yet put into practice by all the EU countries are the EU Directive on Non-Financial Reporting (2014/95/EU) and the EU Directive on Administrative Cooperation. The already existing Anti-Money Laundering Directive (AMLD) of 2005 is currently under proposal of amendment, so that information required by it becomes public for authorities and people with a legitimate interest such as journalists.[168] Table 13 provides an overview of the European regulations regarding transparency in the financial sector.

Table 13 Laws and regulations on banking transparency in the EU

Name of law/regulation	Content of law/regulation	Relevant assessment element
EU Directive on Non-Financial Reporting (2014/95EU) [169] *In the Netherlands, the relevant article will be transposed via a separate administrative order expecting companies to cooperate with the existing Transparency Benchmark.*[170]	Article 19a of this Directive requires large undertakings, exceeding 500 employees during the financial year, to include in their management report a non-financial statement which includes: - brief description of the undertaking's business model; - description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented; - outcome of those policies; - principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks; - non-financial key performance indicators relevant to the	Transparency & Accountability 1: "*The financial institution describes its Environment and Social Risk Management System and provides insight into how the financial institution ensures that investments meet the conditions set in its policies.*" Transparency & Accountability 11 and 12, about publishing a sustainability report.

Name of law/regulation	Content of law/regulation	Relevant assessment element
	particular business. Where the undertaking does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so. Undertakings in member states shall start to provide the information required for the financial year starting 1 January 2017.	
EU Capital Requirements Directive (Directive 2013/36/EU, also known as CRD IV) [171] *In the Netherlands, the relevant article has been transposed via a separate administrative order "Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten".*	Article 89 of CRD IV specifies that all financial insitutions of European Union member states are required to report the following information on a country-by-country basis, for all countries worldwide where they have an establishment: - name(s), - nature of activities, - turnover, employees (in FTE), - profit or loss before tax, - tax on profit or loss, - and public subsidies received. The first three issues should be applied from July 2014 onwards, while the whole list should be applied from January 2015 onwards.	Taxes & Corruption 1: "*For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments.*"
EU AMLDirective (2005) [172] *In the Netherlands, the relevant article has been transposed via a separate administrative order "Wet ter voorkoming van Witwassen en Financieren van Terrorisme (WvWFT).*	Directive developed in 2005 to prevent the use of the financial system for the purpose of money laundering and terrorist financing. It also stipulates that the member states should compel banks and other financial institutions and occupations falling under the Directive to identify their customers and ultimate beneficiaries, i.e. to verify their identity. Institutions should implement adequate and suitable policy outlines and procedures in the areas of customer due diligence, risk assessment, monitoring of business relations, recognising of money laundering and financing of terrorism, reporting suspicious transactions, retaining documentation, internal control, and staff education. The competent authorities of the member states should also effectively verify whether the stipulations of the Directive are adhered to by all institutions and persons falling under the Directive and take the necessary measures to ensure	Taxes & Corruption in general

Name of law/regulation	Content of law/regulation	Relevant assessment element
	compliance with the Directive, including the possibility to carry out on-site examinations and apply sanctions.[173]	
Proposal on extending the EU AMLD (March 2014) [174]	In March 2014 the European Parliament endorsed the creation of public (also: central) registers of beneficial ownership. If the EU's Anti-Money Laundering Directive (AMLD) is revised according to this vote, any company and trust registered in an EU member state will be required to provide information about its beneficial owner including: name, date of birth, nationality, jurisdiction of incorporation, contact details, number and categories of shares, and – if applicable - the proportion of shareholding or control.[175] In December 2014, the EU Parliament and Council agreed on listing the ultimate owners of companies on central registers. However, the deal still needs to be endorsed by EU member states' ambassadors (COREPER) and by Parliament's Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs committees, before being put to a vote by the full Parliament next year (2015).[176]	Taxes & Corruption 8: *"Companies publicly report on their beneficial owner or owners including full name, date of birth, nationality, jurisdiction of incorporation, contact details, number and categories of shares, and if applicable the proportion of shareholding or control."*
EU Directive on Administrative Cooperation (Council Directive 2014/107/EU, also known as DAC2) [177] *In the Netherlands the relevant article is not yet transposed.*[178]	This directive specifies that all financial institutions (including banking groups) should be required to identify the ultimate beneficiaries of their deposit and investment accounts. They should report the identity of beneficiaries and financial information (account balance, income credited to the account) to the domestic tax authority. Tax authorities will start exchanging this information in 2017, to address evasion of personal income and wealth taxes via undeclared foreign accounts. Mandatory automatic exchange of information in the field of taxation. Member States shall adopt and publish, by 31 December 2015, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall apply those measures from 1 January 2016.	Taxes & Corruption in general

Except for the EU Directive on Administrative Cooperation and the EU Directive on Non-Financial Reporting, the Dutch government has transposed the Directives presented in this table to Dutch laws and regulations. An overview of the applicable and relevant regulation on transparency in the financial sector can be found in Table 14.

Table 14 Laws and regulations on banking transparency in the Netherlands

Name of law/regulation	Content of law/regulation	Relevant assessment element
Rapportagevoorschriften betalingsbalansrapportages 2003 (Reporting Directives on Balances) [179]	Requires banks to submit financial reports and regulates what they shall report on. Requires that bank operations are conducted in a way so that the corporate structure, business relations and position of the bank can be overviewed.	Transparency & Accountability in general
Wet toezicht financiële verslaggeving (Law on Financial Reporting Supervising) [180]	Requires publicly listed companies to report on their financial situation.	Transparency & Accountability in general
Besluit uitvoering publicatieverplichtingen richtlijn kapitaalvereisten (Act on reporting requirements Directive Capital requirements) [181]	Requires banks to publish information as required by EU Capital Requirements Directive.	Taxes & Corruption 1: "*For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments.*"
Wet ter voorkoming van Witwassen en Financieren van Terrorisme (WvWFT, –Anti-Money Laundering and Financing of Terrorism Law) [182]	"The WvWFT implements the EU's Third Anti-Money Laundering Directive in Dutch national law and subsumes the pre-existing Wet identificatie bij dienstverlening or Wid [Identification (Provision of Services) Act] and the Wet melding ongebruikelijke transacties or 'Wet MOT' [Disclosure of Unusual Transactions (Services) Act]".[183] Requires banks to take a risk-based approach in client assessment of money laundering and terrorist financing. Banks have a duty to notify authorities in case of suspicious transactions.	Taxes & Corruption in general
Letter of the Minister of Finance, Toekomst financiële sector nr. 3 (Future of the financial sector no. 3) [184]	Banks should report how they observe the *Code Banken*, a code of conduct expecting banks to incorporate its long term strategy and goals in risk and sustainability policies of banks, in their annual reports. The *Code Banken* will be transposed in an administrative order and applied by banks from 1 January 2010 onwards.	Transparency & Accountability in general

Dutch regulation regarding reporting is mainly focusing on the supervision of financial risks and governance of banks. Laws and regulation about non-financial reporting, are not yet established in the Netherlands. The next section presents the debate and recent developments in society, amongst NGOs, politics and financial institution about this topic.

6.2 Current debate

In the Netherlands, transparency is considered part of a companies' Corporate Social Responsibility (CSR). This is showcased by, amongst others, the annual 'Transparency Benchmark' published by the Dutch Ministry of Economic Affairs. This is a research among Dutch companies, including the financial sector, comparing the transparency in the CSR reports of companies. The Benchmark does not include concrete activities of companies on CSR or results regarding CSR, it looks at how companies report about it. In 2014, thirty Dutch financial institutions, including banks, have participated in the 2014 edition, and scored above average.[185] However the Transparency Benchmark focuses on the own operations of financial institutions and does not assess criteria regarding the core business of financial institutions - their investments.

For companies with more than 500 employees, including stock listed companies as well as other public-interest entities, European legislation has adopted a law in April 2014 which obligates such companies to include non-financial reporting (NFR). This law also obligates companies to report on their due diligence processes and has a compulsory character. Within two years from now, the Netherlands will also have to implement this legislation, meaning that among 100 Dutch companies will fall under its scope.[186] The Dutch 'MVO platform' (CSR Platform), a coalition of NGOs, is a strong advocate of implementation of this legislation in the Netherlands and therefore commits to enhancing NFR into the already in the Netherlands existing Transparency Benchmark.[187]

In line with this process, several organizations have encouraged Dutch banks and other financial institutions to increase transparency regarding its investment policies, its investments and a number of other issues, all taken into account in the policy assessment of the Eerlijke Bankwijzer (Fair Bank Guide) and a Case Study on Transparency and Accountability in 2011. The update of this case study in 2013 showed that, although some smaller banks became more transparent in recent years, most banks still lack transparency on their investments, lobby activities, tax payments and company structure.[188] Also the organisation SOMO campaigned for more transparency on lobby activities of financial institutions and published a report about that in December 2013.[189]

In March 2014, The Dutch Fair Bank Guide, in cooperation with EY, organized a 'learning meeting about banks and transparency', facilitated by the Dutch Ministry of Finance. Forty representatives from seven banks, the Dutch banks' branch organization NVB, four auditors, supervisors DNB and AFM, three ministries, a research organization and several NGOs attended the meeting. Four sub-sessions made concrete suggestions on four topics: KPIs and materiality, transparency about the impact of active ownership (engagement, voting etc), transparency about assets and about loans. The Fair Bank Guide and EY strive for a covenant or statement with banks on transparency.[190]

In June 2014, the Fair Bank Guide joined a stakeholder meeting with the NVB and did specific suggestions to include more transparency in NVB's final version of its Social Statute.
Late 2014, the Dutch Banking Association (NVB) renewed its 'Code Banken' (Code of Banks), including a Social Statute.

The Dutch Code of Conduct for Banks[191] was introduced in 2010 and includes principles comparable with the Dutch Corporate Governance Code for companies on the stock exchange. Although the Code is a form of self-regulation, it is enshrined in Dutch legislation. By law, Dutch banks have to report how they observe the Code in their annual reports. [192] The Code states that banks have to formulate a mission, strategy and goals, relevant for the long-term, and these have to be incorporated in risk-policies of banks and policies for sustainability and CSR. The NVB did not only publish a new 'Code of Banks' but also a 'Maatschappelijk Statuut' (Social Statute)[193] and 'Gedragsregels' (Course of Behaviour)[194], which includes a bankers oath[195] mandatory for all bankers. In the oath, the interests of the society are explicitly included. All three documents were published after some extensive public consultations in 2014, as a result of the very negative opinions of many Dutch citizens about banks in recent years.

In September 2014, the Dutch parliament organized a public 'Hoorzitting Ronde Tafel Gesprek Duurzaam Bankieren' (Public Hearing Round Table Sustainable Banking', including speakers from several banks, Dutch Fair Bank Guide, scientists etc. Several speakers, including those from the Dutch Association of Investors for Sustainable Development (VBDO), SOMO and Fair Bank Guide, stressed the importance of more transparency about amongst others bank's investments, tax payments, and both own and financed greenhouse gas emissions.

The public hearing was followed by a debate in the parliament about 'Bankieren: Duurzaam, Dienstbaar en Divers' (sustainable, compliant and diverse banking).[196] In the debate, both the governing PvdA (Labour Party) and the opposition party D66 (Democrats 1966) stressed the importance of greater transparency on investments of banks. Regarding tax payments of banks, Labour also asked for full country-by-country reporting. Another opposition party, SP (Socialist Party), published an 'Initiatiefnota' (initiative note), with the main message that bank clients with savings have the right to know how banks invest their money. [197]

The Minister of Finance, Dijsselbloem, reacted that "more and more NGOs and research organizations ask banks for more transparency, for example on tax payments, and I think that's very good. (…) I consider transparency in the financial sector as very relevant. The pressure for more transparency will further increase". The minister also gave support for the efforts of Dutch Minister of Foreign Trade and Development Cooperation Ploumen, to promote a covenant regarding Dutch banks and CSR within two years. There has to be a covenant in 2016 ultimately, if possible earlier. The Minister of Finance also stated that he is willing to implement legislation regarding CSR in the banking sector, if banks refuse to sign a covenant in 2016 at last.[198]

In November 2014, EY published its report *The Path Forward 2.0*, where European and Dutch financial institutions were benchmarked and compared from a sustainability perspective. EY encourages financial institutions to adopt integrated reporting, and concludes that "The Dutch organizations outperform their European counterparts in terms of the relative number of integrated reports, the outlook paragraph and the materiality disclosure. However, they perform less well in terms of the number of organisations reporting on their sustainability performance, disclosure of business models, explanation of the CR strategy and disclosure of the value creation process. Since these topics are key for Integrated Reporting the Dutch organisations can learn from the approaches and disclosures of the European institutions." In addition, EY stated: 'However, the connectivity between business model, strategy and value creation process is largely absent in the current reporting. (…) The survey results show that the majority of reporting organisations do not have a sound performance framework (including appropriate financial and non-financial KPIs) in place. A key area of improvement is to develop such a framework and appropriate performance metrics (KPIs), related to the significant and relevant impact areas for the financials. More specifically, it is necessary to strengthen the cohesion between current KPIs disclosed and the future strategy, objectives and targets of the business, in relation to its business model and resources available.'[199]

In January 2015, after some delays, the NVB invited the Dutch Fair Bank Guide and two other stakeholders for a preparatory meeting on how to continue the dialogue between banks and stakeholders about transparency, following up on the meeting organised by Fair Bank Guide in March 2014. Furthermore, as a first step that serves as a guidance for a larger stakeholder meeting later in 2015, NVB has published a vision document on 'Accountability and Transparency in the Dutch banking sector' in January 2015.[200] The stakeholder meeting has taken place on 22 April 2015, and during that meeting, NVB has announced it will publish a formal follow up paper on transparency in the financial sector in September 2015.

6.3 Results of the policy assessment

The results of the assessment of the two most relevant themes of the Fair Finance Guide methodology are summarized in Table 15.

Table 15 Policy assessment results the Netherlands

	Leaders (score =>6)	**Followers (score between 4 and 6)**	**Laggards (score <4)**
Transparency & Accountability	ASN Bank (8.1) Van Lanschot (6.1)	Triodos Bank (5.8) ABN Amro (5.5) NIBC (5.2) SNS Reaal (5.7) Rabobank (4.6)	ING (3.9) Aegon (3.6) Delta Lloyd (2.4)
Taxes & Corruption	ASN Bank (9.3) SNS Reaal (6.9) NIBC (6.2)	Van Lanschot (5.9) ABN Amro (5.4) Aegon (4.6)	Triodos Bank (3.1) ING (2.3) Rabobank (2.9) Delta Lloyd (2.3)

It is interesting to note that all ten banks now report through GRI, including indicators from the Financial Services Sector Disclosure. Also, all banks describe their so-called Environmental and Social Risk Management System (ESRMS), including investment policies, and publish a responsible investment report. However, not all policies and reports are equally detailed. Some banks clearly present the investment process and the related risk management activities. Other banks (Aegon and Rabobank) do not include detailed investment principles, making it more difficult to hold them accountable for their investments.

Most banks do not disclose names of companies in their portfolio. However, Triodos and ASN Bank publish the names of companies granted a loan. This provides customers detailed insights in what is being done with their savings. Further, banks publish information on stakeholder dialogues with civil society more often than information on engagement with investee companies and clients. ABN Amro, Aegon, ASN Bank, NIBC and Van Lanschot publish the number of companies with which there has been interaction on social and environment topics (GRI indicator FS10) and SNS Reaal, Triodos Bank and Van Lanschot also publish at least the names of a part of these companies. Most financial institutions, namely Aegon, ASN Bank, Delta Lloyd, ING, SNS Reaal and Triodos Bank, publish their full and detailed voting record, while the rest publishes summaries of their votes cast.

Country-by-country reporting has been on the agenda of various NGOs since a couple of years, but it is only since 2014 that the Netherlands, has adopted legislation, based on an EU Directive on this issue. In 2013, not all banks have reported tax payments to governments on each country they are active in. Most banks published tax payments per region rather than per country or only included information regarding revenues. From 2014 onwards it is expected that all Dutch banks publish country-by-country on their revenues, cost, profits and tax payments.[x]

Transparent banks are expected to publish their responsible investment and finance policy as part of their ESRMS. Regarding the theme Taxes and Corruption, all banks have policies to prevent corruption and bribery, both within their own organisation and in companies invested in. Further, seven out of ten banks (Aegon, ASN Bank, ING, NIBC, SNS Reaal, Triodos Bank and Van Lanschot) expect companies to maintain management systems with which immediate action can be taken if employees or suppliers are guilty of corruption or tax evasion.

Finally, while banks ask for information on the beneficial owner or owners of companies (including full name, date of birth, nationality, jurisdiction of incorporation, contact details, number and categories of shares, and if applicable the proportion of shareholding or control) as part of their obligations regarding Anti-Money Laundering legislation, they do not require companies to publicly report about it.

6.4 Best practices

ASN Bank and Triodos Bank, are the only two, out of ten banks, publishing the names of both companies and governments they invest in. By providing the names of companies and governments invested in, banks can be held accountable when their investments do not abide the policy they set for responsible investment. The amount of money invested in companies can further provide insight in the severity of investments in possible sensitive sectors and issues by the bank. Banks that choose not to publish the names of companies they finance or invest in, could as an alternative provide detailed overviews of their portfolios, including a breakdown to sectors and regions. A good example of such tables can be seen in the annual report of NIBC. This pivot table shows a breakdown in six regions and eleven sectors.

Other financial institutions, Aegon, Delta Lloyd, SNS Reaal and Van Lanschot, choose to publish lists of companies that are excluded from investment and financing. Often these lists include only weapon producing companies, but in the case of SNS Reaal this also entails other types of companies and the reason the companies were excluded.

Banks providing insight in engagement and voting activities can further enhance accountability regarding their sustainable investment policies. Although all banks but Delta Lloyd, explain in their policies and risk management tools that they use engagement to influence the companies invested in, not all banks report transparent about it. Only SNS Reaal and Triodos Bank publish the names of companies with which there has been interaction on social and environmental topics, including the results of that engagement. In relation to that, Triodos Bank, Aegon and ING, whose final score on Transparency & Accountability is rather low but on this specific topic clearly a frontrunner, have published both their full voting record and a summary of their voting activities in an annual report.

[x] The research and analysis of this study is based on Annual Reports 2013. At that time banks were not obliged, by law, to report country-by-country on tax payments. As they are expected to do so in their Annual Reports 2014, they have all received the score for Taxes & Corruption element 1 (For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments) beforehand.

Triodos Bank and Van Lanschot both provide a complete overview of its structure of ownership, including all its subsidiaries and participations, including those in tax havens. Both reported country-by-country on tax payments to governments, already in 2013. Additionally, Van Lanschot has a clear policy document concerning fiscally improper behaviour, in which it declares that it does not provide financial services to companies in tax havens, unless these companies have substance and undertake local economic activities and does not advise companies to set up international corporate structures with the main purpose to avoid taxes.

Improvements in 2014

This research is based on reporting year 2013, as this report was written in the first quarter of 2015. A number of banks, but certainly not all, have released their new annual reports, sustainability or CSR reports and GRI Tables about 2014 during April 2015. These reports sometimes include improvements related to transparency. Although Fair Finance Guide would like to use the most recent information possible for its research and would like to applaud banks that have made improvements, it was deemed impossible to use the latest reports available, because of the scope of this research, the importance of a fair comparison, and for practical reasons.

In 2014, Rabobank added a more extensive part about sustainable investment and engagement with companies to its annual report. Rabobank also published a sustainable agenda towards 2020 and it reported about the percentage of companies that do and do not (yet, or temporary) meet its sustainable policy. ING for the first time produced an integrated report. SNS Reaal, which has made two separate annual reports, one for SNS Bank and one for Vivat Verzekeringen, added a strategic value model that shows how SNS Bank operates regarding non-financial values and assets. Triodos Bank states that it is working on determining whether companies invested in apply country-by-country reporting on tax payments through a questionnaire. ASN Bank improved its reports on voting behaviour by making them more elaborate.

Transparency of banks' environmental, social and human rights - the case of the United States

Written by: Aldo Caliari (Center of Concern / Righting Finance)

The financial regulation reform law passed in 2010 by the US Congress, better known as Dodd-Frank, has been characterized as the biggest overhaul since the 1930s[201]. Yet, in spite of the unquestionable role that the opacity of financial markets played in the recent financial crisis, transparency requirements for the banking sector are still very much driven by the goals of financial stability and prevention of systemic risk.

This explains why regulations fail to address transparency on environmental, social, or human rights concerns affecting the activities of the banking sector. In fact, some of the regulations that best address such concerns are part of the old body of laws that regulates securities disclosures.

Securities regulation and the issue of "materiality"

Banks, like any listed company, are subject to securities disclosure regulation, stipulated in regulations S-K[202] and S-X[203]. Information must be disclosed at the initial public issuing of securities, at the point of their registration, at quarterly and annual periodic intervals, as part of proxy solicitation disclosures for the annual meeting, and at the occurrence of extraordinary events such as tender offer, merger, or sale of the business. The issues that companies are required to disclose are description of business, legal proceedings, management's discussion and analysis of financial condition and results of operations, disclosure controls and procedures and risk factors.

However, advocates for transparency regarding environmental, social and human rights risks had to contend with the requirement that only information that is "material" to the users of the reports must be disclosed. Thus, a central, and ongoing, debate has to do with the materiality of such risks. Initially the concept was narrowly conceived by the Securities Exchange Commission (SEC)[xi] as only involving "financial" materiality.[204]

Some of the evolving considerations about materiality have slowly permeated SEC's rule-making. Although the SEC initially considered environmental issues non-material, as lobbying by environmental and social activists intensified, it issued a regulation in 1973 addressing certain aspects of environmental compliance, stipulating that they were part of the information that companies needed to report on.[205] Certain rules mandating disclosure of corporate board compositions and executive compensations were issued by the SEC without relying on any theory of economic materiality, and with the purpose of increasing "the corporation's accountability to society by encouraging the board to be more active and independent in monitoring management's actions with respect to compliance with the law."[206] More recently, the SEC issued guidance on climate change-related disclosures. In the background to its decision the SEC refers to "increasing calls for climate-related disclosures by shareholders of public companies. This is reflected in the several petitions for interpretive advice submitted by large institutional investors and other investor groups."[207]

[xi] The SEC defines its mission as "to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation".

Partly relying on such evolution of SEC regulations, the argument that environmental, social and human rights concerns are material seems to be gaining ground.[208] In some cases, this is driven by research that shows that compliance with environmental and social standards enhances financial performance .[209] Others go further and consider that compliance is necessary regardless of such financial impact. They argue that especially when institutions present themselves in ways that cater to segments of the investing community that demand a given level of social or environmental performance, disclosure of compliance and performance in such areas becomes unavoidably material to such investors.[210]

Shareholder resolutions

Another lever for transparency envisioned in the legal regime is the use of shareholder resolutions. Shareholders can demand disclosures during the proxy solicitation process by seeking support for a shareholders' resolution. If they meet certain procedural and substantive requirements, they can place the item on the proxy statement for the annual meeting. Then it must get majority support in the proxy solicitation process.

The eligibility threshold has made the corporate proxy accessible to a wide range of corporate stakeholders who are not professional investors: any shareholder holding at least $2,000 worth of stock in the company for at least one year as of the date of submission may file a proposal, limited to 500 words. A proposal must receive at least a 3% vote the first year, a 6% vote the second year, and a 10% vote in each subsequent year to be resubmitted. These thresholds, which have been revisited from time to time, have helped to ensure that social and environmental issues that may not have wide support among investors have an opportunity to remain on the proxy and build support over time.[211]

A drawback of shareholder resolutions is that a company that does not want to include a certain shareholder resolution in the proxy statement can still resort to a number of permissible grounds, laid out in the regulation (SEC Rule 14a-8, subsection i), to request a no-action letter from the SEC staff. If the SEC grants the no-action request. then it will not enforce action against the company for failing to include such resolutions. One common justification for exclusion is the determination that the proposal deals with matters relating to the company's ordinary business operations.

The SEC's decisions on these no-action requests are usually one-sentence long, without a rationale. Nevertheless, the exchange of correspondence with the company on the matter becomes, in itself, a matter of public record.

When the shareholder resolution is included in the proxy statement, the company's board of directors often provides a "statement in opposition" to also appear therein, which oftentimes has been the first time the company has made any substantive remarks about the subject matter of the proposal. In a sense, therefore, the mere filing of a proposal results in some form of report from the company. The proponent is also, normally, given time at the annual meeting to make a brief speech in support of the proposal. Although most investors will have voted their proxies by the time of the annual meeting, this is a unique opportunity to address the board of directors and senior management in person. Some proponents of shareholder resolutions have used the opportunity to bring affected stakeholders to such meeting, too, providing an opportunity for dialogue between them and management absent otherwise.

Under securities regulation, banks can also be liable for disclosures they make on social or environmental issues, even if not legally mandated, to the extent that such statements are deceiving or misleading. A demanding number of requirements has to be proved, though, for succeeding in a legal action against a company in such situations.

Particular transparency concerns raised by banks' physical commodity businesses

Reporting of environmental and social risks is also under debate currently in the context of regulations for banks engaged in dealings with physical commodities. Although initially banks were only allowed to carry out non-banking activities "closely related to banking," over time, this separation gradually eroded and regulations expanded the scope of permissible banking and "closely related to banking" activities.[212]

The Gramm-Leach-Bliley Act of 1999 essentially enabled financial holding companies to carry out certain non-financial activities through three important authorities. Firstly, there is a "merchant banking" exception, which allows banks to make passive private equity investments of any size in any commercial company. Secondly, a bank may directly engage in any non-financial activities, if the Federal Reserve determines such activities are "complementary" to a financial activity. Thirdly, the legislation grandfathered entities that become subject to the Bank Holding Company Act after the Gramm-Leach-Bliley enactment to continue "activities related to the trading, sale, or investment in commodities and underlying physical properties," if that company "lawfully was engaged, directly or indirectly, in any of such activities as of September 30, 1997, in the United States."[213]

Since the enactment of that law, banks have relied on all of those three authorities to significantly increase their activities involving physical commodity trading and some securities firms that engaged in substantial physical commodity activities were acquired by or became BHCs.[214]

The system of reporting, however, did not move in tandem with the expanded engagement of banks in physical commodity businesses. Banks traditionally report assets, revenues, profits, and other financial information for the entire business segment, of which commodities trading is only a part. In fact, the commodities figures reported by banks aggregate both commodity derivatives and physical commodities, leaving in obscurity how much belongs to each category. An obvious concern that the opacity of banks' engagement in physical commodity businesses raises is how it puts them in a position to profit from informational advantages, and even the potential risks of market price manipulation given their simultaneous involvement in trading commodity derivatives.

But the direct involvement in running physical commodity operations will also logically represent a wider potential source of environmental, social and human rights damage, from which banks are shielded by current reporting requirements.

The Fed is currently revising the relevant regulation for banks' engagement in physical commodity businesses, but it is unlikely that the resulting revision will be so definitively exclusive (if at all) of existing permissions so as to satisfactorily conclude the debate on the transparency of such operations.

Conclusion

Given the limitations of regulatory requirements to disclose environmental, social and human rights risks, it is not surprising that disclosure boils down to a patchwork of voluntary initiatives that are highly uneven and discretional.

This can be exemplified with the behavior of the largest banks, such as Bank of America, JP Morgan, Citibank and Goldman Sachs. These banks do not refrain from making claims of their sensitivity to environmental and social risks. In the best cases, however, they have relatively vague policies on environmental and/or social risks the implementation of which is audited internally.

Those banks subscribe to some voluntary initiatives, such as the Global Compact, Principles for Responsible Investment and the Equator Principles.[xii] Nonetheless, in addition to the lax monitoring of such initiatives, some of them are of a best-endeavor nature (e.g., subscribing companies are only required to show they are committed to implementation, not necessarily implementing them already) and of limited coverage to bank operations.

A coming opportunity to improve bank transparency on environmental, social and human rights risks in the US may be in the expressed commitment to developing a National Action Plan on business and human rights which is expected to cover "ways in which the U.S. government can promote and encourage established norms of responsible business conduct with respect, but not limited to, human rights, labor rights, land tenure, anti-corruption, and transparency."[215] Furthermore, the government professed intention to create a National Action Plan in which the Guiding Principles on Business and Human Rights will be a core part, but whose "aperture is wider," and has stated openness to the possibility that some issues identified in the NAP will be best addressed through legislative action.

[xii] Of the 79 Equator Principles Banks, five are from the US: Bank of America, Citigroup, Ex-Im Bank, JP Morgan, and the Wells Fargo Bank.

Chapter 7 Results from Sweden

Written by: Jakob König (Sveriges Konsumenter)

7.1 Government policy

Since the financial crisis, civil society has been lobbying to enhance transparency in the financial sector. One of the issues they most strongly urged for has been country-by-country reporting, which would provide an insight in the substance of financial operations in tax havens and hence in potential tax evading behaviour.[216] At the European Union, especially France insisted on drawing EU regulation for this issue.[217] For years though, country-by-country reporting was rejected because of the exorbitant costs and constraints it would place on the private sector. In addition, the European Commission was hesitant about publishing this data.[218] Nevertheless, in 2013 the EU Capital Requirements Directive was put into practice, which requires all financial institutions in EU member states to publish financial information for each country the institution is active in from January 2015 onwards.[219]

Other relevant EU Directives developed in this context but not yet put into practice by the EU countries are the EU Directive on Non-Financial Reporting (2014/95/EU) and the EU Directive on Administrative Cooperation. The already existing Anti-Money Laundering Directive (AMLD) of 2005 is currently under proposal of amendment, so that information required by it becomes public for authorities and people with a legitimate interest such as journalists.[220] Table 16 provides an overview of the European regulations regarding transparency in the financial sector."

Table 16 Laws and regulations on banking transparency in the EU

Name of law/regulation	Content of law/regulation	Relevant assessment element
EU Directive on Non-Financial Reporting (2014/95EU)[221].	Article 19a of this Directive requires large undertakings, exceeding 500 employees during the financial year, to include in their management report a non-financial statement which includes: - brief description of the undertaking's business model; - description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented; - outcome of those policies; - principal risks related to those matters linked to the undertaking's operations including, where relevant and proportionate, its business relationships, products or services which are likely to cause adverse impacts in those areas, and how the undertaking manages those risks;	Taxes & Corruption 1: "*For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments.*" Transparency & Accountability 11 and 12, about publishing a susatinability report

Name of law/regulation	Content of law/regulation	Relevant assessment element
	- non-financial key performance indicators relevant to the particular business. Where the undertaking does not pursue policies in relation to one or more of those matters, the non-financial statement shall provide a clear and reasoned explanation for not doing so. Undertakings in member states shall start to provide the information required for the financial year starting 1 January 2017.	
The EU Capital Requirements Directive (2013/36/EU of 26 June 2013, also known as CRD IV) *In Sweden, the relevant article has been transposed via a separate administrative order* "Regulatory Code FFFS 2008:25"[222]	Article 89 of CRD IV specifies that all insitutions of Union member states are required to report the following information on a country-by-country basis, for all countries worldwide where they have an establishment: - name(s), - nature of activities, - turnover, employees (in FTE), - profit or loss before tax, - tax on profit or loss, - and public subsidies received. - The first three issues should be applied from July 2014 onwards, while the whole list should be applied from January 2015 onwards.	Taxes & Corruption 1: "*For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments.*"
EU AMLDirective (2005)[223] *In Sweden, the relevant article has been transposed via a separate order "Act 2009:63 on the Measures to Prevent Money Laundering and Terrorist Financing" – "Lag 2009:62 om åtgärder mot penningtvätt och finansiering av terrorism*".[224]	Directive developed in 2005 to prevent the use of the financial system for the purpose of money laundering and terrorist financing. It also stipulates that the member states should compel banks and other financial institutions and occupations falling under the Directive to identify their customers and ultimate beneficiaries, i.e. to verify their identity. Institutions should implement adequate and suitable policy outlines and procedures in the areas of customer due diligence, risk assessment, monitoring of business relations, recognising of money laundering and financing of terrorism,	Taxes & Corruption 8: *"Companies publicly report on their beneficial owner or owners including full name, date of birth, nationality, jurisdiction of incorporation, contact details, number and categories of shares, and if applicable the proportion of shareholding or control."*

Name of law/regulation	Content of law/regulation	Relevant assessment element
	reporting suspicious transactions, retaining documentation, internal control, and staff education. The competent authorities of the member states should also effectively verify whether the stipulations of the Directive are adhered to by all institutions and persons falling under the Directive and take the necessary measures to ensure compliance with the Directive, including the possibility to carry out on-site examinations and apply sanctions.[225]	
Proposal on extending the EU AMLD (March 2014)[226]	In March 2014 the European Parliament endorsed the creation of public (also: central) registers of beneficial ownership. If the EU's Anti-Money Laundering Directive (AMLD) is revised according to this vote, any company and trust registered in an EU member state will be required to provide information about its beneficial owner including: name, date of birth, nationality, jurisdiction of incorporation, contact details, number and categories of shares, and – if applicable - the proportion of shareholding or control.[227] In December 2014, the EU Parliament and Council agreed on listing the ultimate owners of companies on central registers. However, the deal still needs to be endorsed by EU member states' ambassadors (COREPER) and by Parliament's Economic and Monetary Affairs and Civil Liberties, Justice and Home Affairs committees, before being put to a vote by the full Parliament next year (2015).[228]	Taxes & Corruption 8: *"Companies publicly report on their beneficial owner or owners including full name, date of birth, nationality, jurisdiction of incorporation, contact details, number and categories of shares, and if applicable the proportion of shareholding or control."*
EU Directive on Administrative Cooperation (Council Directive 2014/107/EU of 9 December 2014, also known as DAC2)[229]	This directive specifies that all financial institutions (including banking groups) should be required to identify the ultimate beneficiaries of their deposit and investment accounts. They should report the identity of beneficiaries and financial information (account balance, income credited to the account)	Taxes & Corruption in general

Name of law/regulation	Content of law/regulation	Relevant assessment element
	to the domestic tax authority. Tax authorities will start exchanging this information in 2017, to address evasion of personal income and wealth taxes via undeclared foreign accounts. Mandatory automatic exchange of information in the field of taxation. Member States shall adopt and publish, by 31 December 2015, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall apply those measures from 1 January 2016.	

Except for the EU Directive on Administrative Cooperation and the EU Directive on Non-Financial Reporting, the Swedish government has transposed the Directives presented in this table to Swedish laws and regulations.The Swedish regulation regarding transparency and reporting is mainly focusing on the supervision of financial risks and governance of banks. Banks are required to report financial data to the Swedish Financial Supervisory Authority regularly. Banks must also submit an annual report to authorities with information about the operations, risks and other financial information. The content is regulated by a specific regulatory code for financial institutions: FFFS 2014:14.[230] The European capital requirement directive requires Swedish banks to report country-by-country on their tax payments, profits, costs and revenues. In 2014 the report must only be submitted to the EU Commission, but from 2015 onwards it must be publicly available. An overview of the applicable and relevant regulation on transparency in the financial sector can be found in Table 17.

Table 17 Laws and regulations on banking transparency in Sweden

Name of law/regulation	Content of law/regulation	Relevant assessment element
Swedish law on bank and financial operations [Lag (2004:297) om bank- och finansieringsrörelse].[231]	Requires that bank operations are conducted in a way that the corporate structure, business relations and position of the bank can be overviewed.	Transparency & Accountability 1: "*The financial institution describes its Environment and Social Risk Management System and provides insight into how the financial institution ensures that investments meet the conditions set in its policies."*
Swedish law on financial reporting by credit institutions (1995:1559) and the Swedish Financial Supervisory Authority's regulatory code [FFFS (2014:14) Finansinspektionens föreskrifter om rapportering av kvartals- och årsbokslutsuppgifter].[232]	Requires that banks submit financial reports and regulates what they shall report on.	Taxes & Corruption 1: "*For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments.*" Transparency & Accountability 1: "*The financial institution describes its Environment and Social Risk Management System and provides insight into how the*

Name of law/regulation	Content of law/regulation	Relevant assessment element
		financial institution ensures that investments meet the conditions set in its policies."

7.2 Current debate

For many years there has been an increasing debate in Sweden about the lack of transparency in the financial sector. The attention has especially been on three topics:

- misleading information about ethical considerations by mutual funds;
- poor transparency in engagement processes; and
- lack of disclosure of the carbon footprint from investments.

The debate on banks' social responsibility has for a long time focused on the issue of controversial investments in mutual funds. NGO's and consumer organisations have repeatedly criticized banks and pension funds for not living up to their policy commitments. In 2011 the industry organisation Sweden's Sustainable Investment Forum (SWESIF) made an effort to improve the disclosure of ethical considerations by mutual funds by creating a template for this information. As of today 150 mutual funds use the template.[233] The Fair Finance Guide argues that the information is too general and leaves room for gaps in expectations.

Linked to this is the lack of transparency in engagment processess of banks and other investors. Engagement (trying to convince companies to act responsibly through dialogue) has, for many years, been the main approach to responsible investments in Sweden. Engagement is also generally recognized by Swedish NGO's as a responsible measure, but they often criticise banks for not disclosing information about the process. The dialogues are often very secretive and can go on for years without any visible progress to outsiders. The poor transparency has halted many discussions about specific controversial cases when banks keep referring to dialogues behind closed doors. Some banks now report on their engagement in annual reports, but still only anectodal examples.

In January 2015 the new Swedish Minister of Financial Markets initiated a public investigation on how to improve the disclosure of sustainability information to consumers within asset management. The investigation will also assess if a mandatory annual progress report is necessary. Recommendations will be published in December 2015.[234]

Another current debate is the reporting of the carbon footprint of investments. The debate intensified after a report in 2013 by WWF which had calculated the financed emissions by the Swedish public pension funds.[235] As a response the former Swedish Minister of Financial Markets urged the public pension funds and other institutional investors to measure and report on their financed emissions.[236]

In 2014 one of the seven public pension funds announced that it will start reporting on their financed emissions in 2015. The new Minister of Financial Markets has also stated that he is considering imposing mandatory reporting of financed emissions by all the public pension funds.[237] In a 2015 study SwedWatch concluded that none of the Swedish banks performed any comprehensive measurement and target-setting with regards to their mutual funds' carbon footprint.[238] In March 2015 Swedbank was the first bank to publish a report with carbon footprint data for all their own-managed mutual funds.[239]

7.3 Results of the policy assessment

The results of the assessment of the two most relevant themes of the Fair Finance Guide methodology are summarized in Table 18.

Table 18 Policy assessment results Sweden

	Leaders (score =>6)	Followers (score between 4 and 6)	Laggards (score <4)
Transparency & Accountability		Swedbank (4.7) SEB (4.4)	Nordea (2.9) Handelsbanken (2.5) Danske Bank (2.4) SkandiaBanken (2.1) Länsförsäkringar (2.0)
Taxes & Corruption		SkandiaBanken (5.5) Länsförsäkringar (4.4)	SEB (3.8) Handelsbanken (3.5) Danske Bank (3.1) Nordea (2.7) Swedbank (2.4)

All seven banks provide general descriptions of their Environmental and Social Risk Management Systems (ESRMS), but it can sometimes be difficult to follow the process from policy to practice. None of the banks state that the ESRMS is audited by a third party.

Several banks divide the reporting into two sections: Responsible Investments and Responsible Lending. The investment principles are usually quite general, often referring to general statements on social responsibility. Often references to international standards are made, especially to the OECD Guidelines and the UN Global Compact.

All seven banks state that they screen investments, especially within asset management. Some banks also screen corporate credits that exceed a certain monetary threshold. Both engagement and voting is used to influence companies where banks hold equity investments, and several of the banks publish a list of companies that are “black-listed” from investments due to complicity in violations.

None of the banks publish a complete list of the names of companies and governments that they invest in. In Sweden this is only done by the alternative bank, Ekobanken, which is not included in the study. A few of the banks publish the holdings of their mutual funds, but there never is a complete list. None of the banks publish the names of companies that are granted credits.

In order to inform the public banks could, as an alternative to publishing names of companies invested in, publish a breakdown of outstanding investments to region, size and industry (in line with GRI FS6). This is done by SEB and Swedbank, but none of the banks does it on a detailed industry level.

Five out of seven banks (Handelsbanken, Länsförsäkringar, Nordea, SEB and Swedbank) publish the number of companies that have been engaged with on ESG issues the latest year. Only Swedbank publishes a more extensive list of the company names and the respective topics that the engagement concerned. The content and results are however reported anecdotally.

All seven banks publish a CSR report. The reports are externally verfied but the level of assurance varies. Five of the seven banks (Danske Bank, Länsförsäkringar, SEB, Skandiabanken, Swedbank) report according to the GRI G4 Sustainability Reporting Guidelines, which includes the Financial Services Sector Supplement (FSSS). Several banks also publish a separate report on responsible investment.

In these sustainability reports, none of the banks report in detail on their stakeholder dialogues with civil society organisations. At best a few examples of general topics that have been discussed are mentioned. Only SEB has a grievance mechanism that is communicated to be open for external stakeholders and social organiations.

Regarding Taxes & Corruption, all seven banks report on revenues, costs and profits in their major markets, but the remaining countries are grouped together. All banks except Handelsbanken report country-specific taxes paid for the major markets. Handelsbanken only reports on tax payments on a group level. The two banks with the highest scores, SkandiaBanken and Länsförsäkringar operate only in one or two countries.

All seven banks list their subsidiaries, but the lists are not complete as they only cover the “major undertakings” of the subsidiaries. Some banks list their worldwide branches as well. Several of the banks have branches in Luxemburg, which is considered a tax haven. Nordea also mentions a branch in Isle of Man, another tax haven. None of the banks has a clear policy against providing financial services to companies in tax havens. SEB and Handelsbanken have policies against participation in transactions to avoid taxes.

Transparent banks are expected to publish their responsible investment and finance policy as part of their risk management system. All seven banks have policies against corruption and bribery within their own organisation. They also apply the principle on their investments, at least by their assset management divisions, normally by requiring companies to comply with OECD Guidelines for Multinational Enterprises and/or UN Global Compact which supports the principle. None of the banks require that companies report country-by-country on tax payments.

7.4 Best practices

Examples of best practice in transparency can be found at SEB which publishes several sector-specific policies where specific references are made to a number of named international standards. The policies also make clear that they apply to all the banks’ investments and business relationships.[240]

Swedbank is leading with regard to reporting on engagement processes and voting. The bank publishes regularly an extensive list of both the company names and the specific topics that the bank has engaged in and discloses its full voting record.[241] The bank also publishes a quarterly newsletter which includes updates on some of the current processes and issues.[242] Swedbank is also the first bank to publish carbon emissions data for all of their own-managed mutual funds.[243]

Chapter 8 Conclusions

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8.1 Debates about financial transparency

While the chapters contributed by the seven FFG coalitions seek to highlight national debates on banks and financial transparency, wherein lies their richness, it is possible to discern a number of common features that appear in different forms in all those national contexts. First is the debate around the merits and the limitations of voluntary reporting by the financial industry, and what kind of regulatory, that is obligatory, disclosure and reporting should be required of financial institutions when voluntary reporting is insufficient. A second feature is centered on banks' roles in possible facilitation of tax avoidance and evasion, an issue that captured the headlines earlier this year with the publication of the HSBC files.

As processes such as the OECD and G20-led Base Erosion and Profit Shifting Project (BEPS) and the European Commission CRD IV Directive seek to tackle tax abuse, bringing country-by-country reporting obligations, transparency within the financial sector as related to tax secrecy advances significantly, but needs to be carefully followed and monitored in practice, in order to ensure the long-fought for breakthrough in this regard. A third common feature is that civil society activism and campaigning has been and continues to be a driving force for increased transparency of banks and the corporate sector as a whole, for more substantive and meaningful democratic oversight of the financial sector. The country chapters give different examples of civil society campaigns and their concrete achievements, offering a snapshot of what the *Economist* described as "the growing sophistication of NGOs" in the sphere of transparency. [244]

In Sweden, high consumer awareness is reflected in greater public attention to the ethical and sustainability responsibilities of companies and financial institutions. The response to the launch of the first Fair Finance Guide assessment of Swedish bank policies testifies to this. In Sweden, Consumer Affairs and Financial Markets each merit a cabinet post (which are combined in the same Minister in the current left-of-center ruling coalition), a clear indication of the status of both sectors in the political arena. Debates on the transparency of the financial sector in Sweden also revolve around choices between different degrees of voluntary, industry-led standards and reporting, versus mandatory reporting and tighter regulation, as the way forward to achieve higher levels of transparency by the financial sector, including pension funds. After giving what is seen as sufficient time to the financial sector to respond to specific public demands and expectations on ethical standards and more transparency on engagement processes, the tendency is to consider mandatory reporting whenever the sector's pace is seen as too slow or its disclosures too superficial, partial, or uninformative.

A similar tendency is also clearly seen in the Netherlands, where two Ministers (Finance, and Trade and Development Cooperation) have pledged to work toward a covenant on sustainability in the Dutch banking sector, following intensive efforts by civil society groups, led by the Fair Finance Guide coalition. A covenant, by definition, is a formal agreement of legal validity between different parties specifying commitments and prohibitions. The two Ministers would like such a sustainability covenant to be the result of negotiated and agreed talks between different stakeholders, including civil society. If no such contract is reached through dialogue, they hint, the one option that remains for them is regulation through legislation. This option is hinted it rather than strongly promoted, in what can be construed as a message to the financial sector: better be in control of transparency processes through further responsiveness and opening up rather than come under attack and face enforcement.

Dialogue in the Netherlands between civil society and the financial sector on transparency is quite advanced and could be a model for other countries. The Netherlands chapter in this publication describes the progress from the first case study on transparency published by the Fair Finance Guide in 2013 to a Ministry of Finance-intermediated learning meeting involving the Dutch Banking Association and the FFG coalition in 2014, to subsequent of Parliamentary debates and further deliberations between bank representatives and civil society. What will all this lead to? And what could the covenant called for by the two Ministers look like, and what gains would it represent in terms of more democratic oversight of the activities and responsibilities of the financial sector? All this is yet to be seen.

For all the positives that the Dutch case presents, in terms of the potentials and opportunities of well-intentioned dialogue between civil society, government, and the banking sector, the Netherlands does not fare too well in the intensive efforts to combat tax abuse, and some of its banks are implicated in this conduit role it plays to tax havens. This contradiction between the clear commitment of the Dutch political level to heightened transparency of the financial sectors, and its acceptance of and reluctance to annul the conditions which allow the Netherlands to play a tax evasion facilitating role, brings into sharp focus the role of banks in facilitating tax abuse, which the EU Directive on country-by-country reporting is aimed at combating. The chapters from France, Belgium, Sweden, and the Netherlands, the four European FFG members, all agree on the significance of the EU CRD IV Directive, which was passed in 2013, in insuring more transparency and the disclosure of more financial data by banks in the EU-member states. The link between combating tax abuse and increased bank transparency is also highlighted in the contributions by John Christensen on automatic information exchange and Ted van Hees on country-by-country reporting (CbCR).

The four European FFG chapters underline the opportunities that translating the European Directive into national laws present for campaigners on transparency. They also warn of missed opportunities, resistance by the financial sector, and laxity in enforcement. The translation of the European Directive to compliant national laws, as the chapter on Belgium points out, is not automatic and instant but gradual and could have significant gaps. The Belgian and French contributions also decry the absence of standardized reporting set by the EU as per the CRD IV Directive, which they stress is crucial. The contribution from France, the country which has been at the forefront of demanding banks to submit to CbCR, emphasizes that despite the progress signified by CRD IV, endless scandals involving banks in tax evasion underline that “additional measures need to be adopted, now more than ever, to ensure that financial institutions are accountable to society at large”.

The French FFG contribution also raises the questions of *what* information? and *for whom*? While previously unavailable country-by-country information on what banks do, including in tax havens, their annual revenue, and the number of their employees in each jurisdiction, became public in 2014, this was far from complete. All banks domiciled in EU member states are required to disclose further country-by-country data on their profits, the tax they pay, and potential public subsidies they receive in 2015, which requires extensive analysis to judge the substantive consequences of the CRD IV Directive and how the loopholes can be closed and the opportunities expanded. FFG coalitions will take this challenge on and intend to report on the implications and consequences of the CbCR of banks in their countries.

CbCR is also of significance to countries outside the European Union. All non-OECD G20 countries, which include Brazil and Indonesia, committed to the BEPS Action Plan and participate on an equal footing with OECD countries. The OECD/G20 recommends that the first CbC Reports be required to be filed for MNE fiscal years beginning on or after 1 January 2016.

The debate on banks and financial transparency in Indonesia is dominated by bank secrecy as related to tax (non)payment by wealthy individuals and businesses. The chapter on Indonesia describes how the drive by tax authorities to effectively end the use of bank secrecy laws, which have hitherto enabled tax avoidance and evasion, is forcing public discussion and scrutiny of banks' transparency responsibilities. Indonesian banks are required by law to collect tax due on the interest earned by their clients. To date, they reported on those tax payments in a lump sum, rather than report details of tax payments for each of their clients, which the new tax regulation requires. Banks are resisting the tax regulation and are clinging to their interpretation of bank secrecy laws. The mood in this regard is perhaps captured by an op-ed piece in the *Jakarta Post*, written by two officials of the Finance Ministry: "This is certainly a bad time for Indonesia to start being a tax haven country. We are clearly out of date internationally in doing so. The G20 Summit even declared that since five years ago 'the era of banking secrecy is over'".[245]

As to sustainability reporting by banks, the launch of the *Roadmap to Sustainable Finance* by the Indonesia Financial Services Authority (OJK) at the end of 2014 has the stated aim of increasing the oversight and coordination of sustainable finance implementation. The *Roadmap* requires financial institutions to adopt risk management policies for the social and environmental aspects of their activities and to publish annual sustainability reports in which they assess how they balance pro-growth, pro-jobs, pro-poor, and pro-environment in all their activities. This provides an important opportunity for civil society and other stakeholders to further the agenda of sustainable finance and responsible banking, and to ensure that reporting by financial institutions reflects this drive.

Japan, where the financial sector is not best known for volunteering transparency, is also witnessing different challenges to banks on their possible role in tax abuses. As an OECD country, Japan is also subject to the CbCR stipulations of BEPS. The government and the financial sector in Japan are both involved in processes to produce "non-binding" (voluntary) principles on sustainability, which recalls debates elsewhere centering on voluntary versus mandatory measures.

Brazil, a powerhouse in Latin America, is very much subsumed by internal debates on transparency in the country, especially as the noise surrounding the Petrobras corruption scandal, with links to the ruling PT Party, rises to fever pitch. The scandal strengthens voices calling for increased transparency and stronger institutions, building on already existing laws and transparency instruments in Brazil, most notably the 2000 Fiscal Responsibility Law and the 2011 Access to Information Law. While appreciating the value of those laws and instruments, The Brazil chapter also pinpoints their limitations. Most of the transparency instruments "have a reactive principle", Brazil scores only better than China in *Transparency International*'s comparison of emerging market multinationals[246], and earlier this year the President vetoed two articles in the Budget Law that would have increased the transparency of public funds, including state-owned banks.

One important question that is additionally raised by the Brazil contribution is the extent to which voluntary self-reporting by banks on the social and environmental impacts of their investments and loans provides reliable and significant data on meeting international standards. The Brazilian Bank Federation has its own *Self-Regulation System* (SARB) since 2007, which developed a framework in 2014 for the development and implementation of a socio-environmental responsibility policy by its members. The Brazilian Stock Exchange developed a questionnaire-based *Corporate Sustainability Index* (ISE) which is now in its tenth year, with a portfolio composed of 40 companies drawn from 19 sectors, including some of Brazil's largest banks. 34 of the companies covered in this year's *ISE* have authorized the publication of their questionnaires (as compared to 22 last year), which the ISE hailed as a "significant increase" in companies' transparency. How far do those self-reporting mechanisms go and do they show a tendency toward higher transparency and stricter adherence to international standards and norms? The chapter on Brazil in this publication concludes that for Brazilian banks, those that are state-owned as well as private ones, "there is opacity, mainly on the social and environmental aspects of financed projects, corporations and equity investments".

The Belgium chapter tackles those very same questions regarding voluntary versus regulatory by welcoming the European Commission's Directive on Disclosure of Non-Financial and Diversity Information, issued at the end of 2014, which expands the scope of non-financial reporting and emphasizes external verification (but does not make it compulsory). "Self-regulation may be helpful, but only legally binding regulations are able to enforce minimum norms with regards to non-financial reporting for the financial industry as a whole", is the conclusion from the FFG in Belgium. In France, which may very well have provided the inspiration for this European Commission Directive, civil society has been driving efforts to bring about legislation on non-financial reporting since 2004, through the *Forum Citoyen pour la Responsabilité Sociale des Entreprises*. The chapter from France is instructive regarding the dynamics and set-backs of such legislative efforts, especially as detailed provisions and requirements are worked out. It is also of interest in seeing how national legislation and European Commission Directives interact, where advanced national laws can help shape and give body to European directives, and where they can be strengthened by them.

8.2 Results policy assessment

Consumers and citizens are keen to know what consequences business activities can have for their life and which risks they are exposed to. Companies should therefore be fully transparent, allowing individuals to inform themselves. Moreover, companies should be prepared to be accountable for their activities and to listen to the expectations and concerns of other stakeholders. Besides transparency and accountability being a moral duty, it can also offer companies advantages like trust, early prevention resistance and decreased corruption practices.

These principles are similar for financial institutions. Moreover, contrary to other companies, through their investments and financing activities, financial institutions play an important role in virtually all economic industries. To this effect, financial institutions not only have to inform the public about their own activities, but they also have to be transparent to the greatest extent possible about the companies, projects and governments in which they invest. Therefore Fair Finance Guide investigates to which extent financial institutions report about their activities.

This publication describes and analyses the results of the Transparency & Accountability assessment of financial institutions researched by the seven coalitions that are part of the Fair Finance Guide network. The research is based on reporting year 2013, as this report was written in the first quarter of 2015 and based on the results of the policy assessments done in the second half year of 2014[xiii]. A number of banks, but certainly not all, have released their new annual reports about 2014 during April 2015. These annual reports sometimes include improvements related to transparency. Although FFGI would like to use the most recent information possible for its research and would like to applaud banks that have made improvements, it was deemed impossible to use the latest reports available, because of the scope of this research, the importance of a fair comparison, and for practical reasons.

The results of the assessment by all countries regarding the theme Transparency & Accountability are summarized in Table 19.

Table 19 Policy assessment results Transparency & Accountability

Country	Leaders (score =>6)	Followers (score between 4 and 6)	Laggards (score <4)
Belgium	Van Lanschot (6.1)	Triodos Bank (5.8) Deutsche Bank (5.4) BNP Paribas (4.7) Argenta (4.1)	ING (3.9) VDK (3.4) KBC (2.3) Belfius (1.3)
Brazil		Itaú (5.9) Santander (5.0) Banco do Brasil (4.5) Bradesco (4.2)	Caixa (3.6) HSBC (2.7)
France		BNP Paribas (4.7)	Credit Agricole (3.3) Societé Generale (3.3) BPCE (2.8) Credit Mutuel (2.3)
Indonesia	Citibank (6.8)		MUFG (3.5) BNI (2.8) Danamon (2.8) HSBC (2.7) BRI (2.2) CIMB-Niaga (2.2) Mandiri (1.9) OCBC-NISP (1.9) BCA (0.3) Panin (0.3)
Japan		Mizuho (4.8)	SMFG (3.9) SMTH (3.7) MUFG (3.5) Resona (2.1)
The Netherlands	ASN Bank (8.1) Van Lanschot (6.1)	Triodos Bank (5.8) SNS Reaal (5.7) ABN Amro (5.5) NIBC (5.2) Rabobank (4.6)	ING (3.9) Aegon (3.6) Delta Lloyd (2.4)

[xiii] Full policy assessments are done by six of the seven coalitions within the network. The Netherlands, which was the forerunner of Fair Finance Guide International, will start using the international methodology for its update in September 2015. For the purpose of this research it has analysed the bank's policies and annual reports on the theme Transparency & Accountability and Taxes and Corruption.

Country	Leaders (score =>6)	Followers (score between 4 and 6)	Laggards (score <4)
Sweden		Swedbank (4.7) SEB (4.4)	Nordea (2.9) Handelsbanken (2.5) Danske Bank (2.4) SkandiaBanken (2.1) Länsförsäkringar (2.0)

8.2.1 Policies and risk management

Transparent banks are expected to publish their responsible investment and finance policy as part of their so-called Environmental Social Risk Management System (ESRMS). Besides the principles banks base their investment decisions on, banks may describe how they ensure that investments meet the conditions set in its policies (assessment element 1 of Transparency and Accountability). In Brazil, France, the Netherlands and Sweden all banks describe their ESRMS, albeit in different degrees of detail. In Indonesia and Belgium only some of the banks publish their ESRMS (respectively seven out of eleven and six out of nine). In Japan, SMTH describes ESRMS for most of all operations, and MUFG, Mizuho and SMFG describe ESRMS for project finance operations. In none of the countries all banks had their ESRMSs audited by a third party (assessment element 2). As such, in cases where an ESRMS exists but where no external audit is conducted, the designated operationalisation of such an ESRMS may be less reliable.

Fair Finance Guide expects financial institutions to report on their non-financial indicators and activities through a report annually. Financial institutions could integrate this with their financial statements or write a separate CSR or Sustainability Report. The publication of Sustainability Reports could follow the reporting guidelines of GRI and its Financial Services Sector Supplement (FSSS, as requested in assessment element 11) or even write it in accordance with the G4 Framework (element 12). All countries found that banks report about CSR, but not all do that in accordance with the GRI G4 guidelines and verify the results. Only in the Netherlands all banks assessed comply to element 12 and, except for one Dutch bank, all of these reports have also been verified externally. In Japan and France the GRI G4 but not necessarily all of the indicators from the FSSS is followed in Sustainability Reports (respectively by three out of six and by two out of five banks). External verification occurred in France at all but one of the banks, while in Japan this occurred at none of the banks.

In Brazil all banks published sustainability reports in line with GRI G4 and only one out of six reports was not verified externally and in Sweden five out of seven banks followed the GRI4 and FSSS in their Sustainability Reports and all were verified externally. Among Indonesian banks only two out of eleven published their Sustainability Report according to GRI4 but neither of these two additionally did so in line with FSSS. In Belgium all banks publish a sustainability report, albeit with varying degrees of detail. Only some of them are set up in accordance with GRI G4 guidelines and also some are verified externally.

An important issue to notice is that in several cases, Sustainability Reports mention that the report has been verified externally, but not to which extent this has happened. Moreover, when reading the accountants assurance statement, the verification often only appears to apply to certain parts and not to all of the report. This is misleading information and may harm the reliability of the report.

8.2.2 Disclosure on investments

Disclosing names of companies and governments invested in (element 3 of the theme Transparency and Accountability) is an issue not many banks have set into practice yet, although it can provide valuable insight in sensitive sectors and fields the bank might be active in. In Brazil banks are required to publish this information through a website of the Securities and Exchange Commission (CVM). In France and Japan none of the banks provide this information, while in Belgium, Indonesia, The Netherlands and Sweden a sparse two or three of all banks in those countries do so. The same applies for mentioning and describing all companies to which a bank has granted more than €1 million credit (element 4), although this time none of the Brazilian banks provide this information, together with France, Japan and Sweden. Both Belgium and the Netherlands assess Triodos Bank, which discloses the names of all companies that have received a loan. ASN Bank, assessed by the Netherlands does the same.

Fair Finance Guide also ask banks to disclose the names of all current and recently closed project finance deals and project related corporate finance deals (element 5). This is slightly different from the requirements of the Equator Principles (EP), an initiative often adopted by the banks assessed. The EP require an overview of the deals and a breakdown according to the results of the risk analysis, but not the names of the projects. Therefore, banks often report according to the EP's, but none of them also mention the names of the projects.

If banks do not wish to publish the names of the companies, governments and projects they invest in or finance, they could give more detailed information about their portfolio as an alternative. Assessment elements 6 and 7 therefore look at the investment breakdown in the annual reports. About half of the banks give a visual presentation of financial activities by region, size and/or industry (element 6). In Japan all banks comply to this. In Belgium, Indonesia and the Netherlands a majority of the banks complies and in Brazil half of the banks. In France two out of five comply though in Sweden only two out of seven provide the information as required. When banks are asked to provide even more detailed information, preferably in the form of a cross-table, less positive results come out. Although in Belgium and Japan, all banks comply to this request, in Indonesia, the Netherlands and France only half or less than half of the countries do so, while in Brazil only one and in Sweden none of the banks provide the information requested in a cross-table.

8.2.3 Reporting on engagement and voting

Another issue through which banks could enhance their level of transparency is by publishing the names and number of companies the bank had interactions with on social and environmental topics, including the results of that engagement. This is assessed through assessment element 8 and 9. The results indicate that it is easier for banks to provide the number of these companies than their names. Banks consider their dialogues with companies as confidential. Banks argue that publishing names of companies they engage with will negatively impact the results. As such, banks in Brazil, France and Japan do not provide names at all while in Belgium and Indonesia only one out of eight and one out of eleven provide names of companies engaged with. In Sweden and the Netherlands, two out of seven and two out of ten banks do so. We have also seen banks only reporting the results of a dialogue that is finalised or giving a few examples of engagement.

Regarding the publication of the number of companies engaged with, the Netherlands, Sweden and France do quite a good job with half of their banks complying to this request. Respectively eight out of ten, five out of seven and four out six banks publish the number of companies engaged in, including the results of the engagement. In Belgium three out of eight banks and in Brazil two out of six banks publish this number, but Indonesia and Japan all only found one bank publishing the number of companies engaged in. Most often this information is only provided about the companies the banks invest in, not the ones they grant loans to.

To what extent banks try to engage companies on social and environmental issues can also be derived from their voting behaviour. Fair Finance Guide therefore also experts financial institutions to report about the results of that activity, resulting in assessment element 10. It assesses whether banks publish a summary of their voting behaviour. Especially for this research we have also checked which banks publish their full voting record. Scores from banks of the countries assessed vary. As such, in Belgium, Japan and the Netherlands the majority of banks assessed report about their voting behaviour, while in Indonesia, and Sweden only one and in Brazil none of the banks report on it. In France, only one out of five banks publishes its full voting record and another one publishes a summary of their voting record.

8.2.4 Stakeholder dialogue

Besides publishing their engagement with companies, banks could enhance their level of transparency further by reporting on their consultation with civil society organisations and other stakeholders. This is hence requested through assessment element 14. In over half of the countries (Brazil, Belgium, Japan and the Netherlands), a majority of the banks publish this information. In Brazil and Belgium respectively five out of six banks and six out of eight banks publish this information, while in Japan and the Netherlands respectively three out of five and seven out of ten banks do so. In Indonesia and France a minority of the banks report on their consultation with civil society organisations and other stakeholders. In Sweden, banks are often not granted scores for this element because their report lacks information on this dialogue. Either the stakeholders are not described or the topics and results of the dialogue are left out.

In order to accommodate local communities and other stakeholders that may be affected by a company the bank invests in, it is important that banks introduce an internal grievances procedure for those affected and for civil society organisations that defend wider social and environmental interests. Additionally, banks may thereafter abide by the decision of an independent grievance mechanism for those stakeholders. Assessment elements 15 and 16 reflect upon these issues. Regrettably, an independent grievance mechanism is absent in all financial sectors of the countries involved in this study, and many banks even lack an internal grievance mechanism. In Sweden only one out of seven banks has established a grievance mechanism. Among Brazilian, Indonesian and Dutch banks though, the grievance mechanism for external stakeholders is slightly more usual. Often these banks invite external stakeholders to use the customer’s helpdesk to send their questions and complaints.

8.2.5 Reporting on tax related issues

The theme Taxes & Corruption is considered relevant for this publication as well. A banks' transparency level can be sought in the extent to which they report their revenues, costs, profit and tax payments to governments country-by-country. For each society tax revenues are essential to finance public provisions. A fair system of taxation contributes more to the development of a society than other revenues. As companies benefit from the public provisions in the countries where they operate they have the responsibility to pay tax in every country and to be open about it. Yet, a lot of internationally operating financial institutions, companies and rich private clients benefit from international differences in tax percentages and loop holes in national tax legislation to significantly reduce their overall tax burden. These activities, also called aggressive tax planning, are done using, amongst others, shell companies in tax havens. A lot of international financial institutions have branches in tax havens to help their clients and to limit their own tax payments. This type of behaviour is contrary to Corporate Social Responsibility principles. One can expect from responsibly operating financial institutions that they do not deliberately assist clients in avoiding taxes and that they do not avoid taxes themselves.

In order to provide insight in plausible relocation of revenues to tax havens or to avoid or evade tax payments a financial institution should report its tax payments country-by-country. Fair Finance Guide furthermore questions whether financial institutions provide a complete overview of its structure of ownership, including all its subsidiaries and participations. It observes if financial institutions make clear which services their subsidiaries and participations offer in tax havens. This theme also looks at the investment and finance policies of financial institutions regarding disclosure of taxes, ownership information, anti-corruption policy and participation in lobby-activities. However, the analysis in this section focuses on the elements relevant for transparency and accountability.

The results of the assessment by all countries regarding the theme Taxes & Corruption are summarized in Table 20.

Table 20 Policy assessment results Taxes & Corruption

Country	Leaders (score =>6)	Followers (score between 4 and 6)	Laggards (score <4)
Belgium	VDK (6.8)	Van Lanschot (5.9) Argenta (5.8)	Triodos Bank (3.1) BNP Paribas (2.7) Belfius (2.3) ING (2.3) KBC (1.9) Deutsche Bank (1.2)
Brazil		Santander (4.5)	Caixa (3.7) Banco do Brasil (2.9) Itaú (2.9) Bradesco (2.6) HSBC (1.5)
France			Societé Generale (3.8) BNP Paribas (2.7) Credit Agricole (2.0) BPCE (1.5) Credit Mutuel (1.0)
Indonesia			Citibank (3.5) CIMB-Niaga (1.5) Danamon (1.5) HSBC (1.5)

Country	Leaders (score =>6)	Followers (score between 4 and 6)	Laggards (score <4)
			Mandiri (1.5) CBC-NISP (1.5) BNI (1.2) MUFG (0.8) BCA (0.8) BRI (0.8) Panin (0.8)
Japan			SMTH (1.3) MUFG (0.8) Mizuho (0.8) SMFG (0.8) Resona (0.8)
The Netherlands	ASN Bank (9.3) SNS Reaal (6.9) NIBC (6.2)	Van Lanschot (5.9) ABN Amro (5.4) Aegon (4.6)	Triodos Bank (3.1) ING (2.3) Rabobank (2.9) Delta Lloyd (2.3)
Sweden		SkandiaBanken (5.5) Länsförsäkringar (4.4)	SEB (3.8) Handelsbanken (3.5) Danske Bank (3.1) Nordea (2.7) Swedbank (2.4)

Through EU Capital Requirements Directive EU countries have been obliged to implement legislation on the country-by-country reporting of tax payments, but this has not come into effect in all countries yet. In France and the Netherlands, financial institutions are expected to report country-by-country from 1 January 2014.[xiv] In Belgium and Sweden the Directive will come to effect from 2016 onwards. Hence, not all European banks had fully integrated this data in their publications and scores still vary. Some Belgian and Swedish banks do report country-by-country but not on all topics expected or not on all countries operated in. Banks often report the most important countries and combine the information of other countries in regions, which is of course less specific and transparent.

Four out of six Brazilian banks apply country-by-country reporting. Notably, these are all European banks active in Brazil which plausibly explains this finding as the reports studied are group financial statements. In Indonesia five out of eleven banks (Mandiri, CIMB-Niaga, Danamon, OCBC NISP, and HSBC) apply country-by-country reporting. In Japan none of the banks report country-by-country.

[xiv] The research and analysis of this study is based on Annual Reports 2013. At that time French and Dutch banks were not yet obliged, by law, to report country-by-country on tax payments, but are expected to do so in their Annual Reports 2014, they have all received the score for Taxes & Corruption element 1 ("For each country in which the financial institution operates, it reports country-by-country on its revenues, costs, profit and tax payments to governments") beforehand.

Transparent banks are expected to publish their responsible investment and finance policy as part of their environmental and social risk management system. Having policies with regard to tax havens can result in points through assessment elements four and five of Taxes and Corruption. Banks are hence requested to provide the public with a policy statement in which they state they do not own subsidiaries in tax havens unless these have substance, and that they will not provide financial services to companies that reside in tax havens, unless they have substance. Preferably, in order to support such statements, banks may additionally inform the public on their structure of ownership and on the exact services they offer in tax havens. Countries in which none of the banks state they do not own subsidiaries in tax havens unless these have substance are France, Indonesia and Japan. In Belgium, the Netherlands and Sweden only a minority of the banks have a policy statement on their activities in tax havens.

While we observe some banks with statements about tax planning and activities in tax havens, banks hardly pay attention to this topic in their investment and finance policies. In Belgium hence only one bank has a policy for companies on tax issues and in the Netherlands three out of ten banks has such a policy.

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