



TEXTS ADOPTED

P8_TA(2019)0309

Disclosure of income tax information by certain undertakings and branches *I**

European Parliament legislative resolution of 27 March 2019 on the proposal for a directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (COM(2016)0198 – C8-0146/2016 – 2016/0107(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2016)0198),
- having regard to Article 294(2) and Article 50(1) of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C8-0146/2016),
- having regard to the opinion of the Committee on Legal Affairs on the proposed legal basis,
- having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
- having regard to the reasoned opinions submitted within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Irish Houses of the Oireachtas and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
- having regard to the opinion of the European Economic and Social Committee of 21 September 2016¹,
- having regard to the OECD Action Plan on Base Erosion and Profit Shifting (BEPS),
- having regard to Rules 59 and 39 of its Rules of Procedure,
- having regard to the joint deliberations of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs under Rule 55 of the Rules of Procedure,

¹ OJ C 487, 28.12.2016, p. 62.

- having regard to the report of the Committee on Economic and Monetary Affairs and the Committee on Legal Affairs and the opinion of the Committee on Development (A8-0227/2017),
1. Adopts its position at first reading hereinafter set out²;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

² This position corresponds to the amendments adopted on 4 July 2017 (Texts adopted, P8_TA(2017)0284).

P8_TC1-COD(2016)0107

Position of the European Parliament adopted at first reading on 27 March 2019 with a view to the adoption of Directive (EU) .../... of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 487, 28.12.2016, p. 62.

² Position of the European Parliament of 27 March 2019.

Whereas:

- (-1) *Equality of tax treatment for all, and in particular for all undertakings, is a sine qua non for the single market. A coordinated and harmonised approach to the implementation of national tax systems is vital for the proper functioning of the single market, and would contribute to preventing tax avoidance and profit shifting. [Am. 1]***
- (-1a) *Tax avoidance and tax evasion, along with profit-shifting schemes, have deprived governments and populations of the resources necessary to, among other things, ensure that there is universal free access to public education and health services and state social services, and have deprived states of the possibility of ensuring a supply of affordable housing and public transport, and of building infrastructure that is essential in order to achieve social development and economic growth. In short, such schemes have been a factor of injustice, inequality and economic, social and territorial divergences. [Am. 2]***
- (-1b) *A fair and effective corporate tax system should respond to the urgent need for a progressive and fair global tax policy, promote the redistribution of wealth and combat inequalities. [Am. 3]***

- (1) ***Transparency is essential for the smooth functioning of the Single Market.*** In recent years, the challenge posed by corporate income tax avoidance has increased considerably and has become a major focus of concern within the Union and globally. The European Council in its conclusions of 18 December 2014 acknowledged the urgent need to advance efforts in the fight against tax avoidance both at global and Union level. The Commission in its communications entitled ‘Commission Work Programme 2016 - No time for business as usual’³ and ‘Commission Work Programme 2015 - A New Start’⁴ identified as a priority the need to move to a system whereby the country in which profits are generated is also the country of taxation. The Commission also identified as a priority the need to respond to ~~our~~ ~~societies~~² ***European citizens’ call for fairness and tax transparency and the need to act as a reference model for other countries. It is essential that transparency takes into account reciprocity between competitors.*** [Am. 4]

³ COM(2015)0610 of 27 October 2015.

⁴ COM(2014)0910 of 16 December 2014.

- (2) The European Parliament in its resolution of 16 December 2015 on bringing transparency, coordination and convergence to corporate tax policies in the Union⁵ acknowledged that increased transparency, *cooperation and convergence* in the area of corporate taxation *policy in the Union* can improve tax collection, make the work of tax authorities more efficient, and *support policy-makers in assessing the current taxation system to develop future legislation*, ensure increased public trust and confidence in tax systems and governments *and improve investment decision-making based on more accurate risk profiles of companies*. [Am. 5]
- (2a) *Public country-by-country reporting is an efficient and appropriate tool to increase transparency in relation to the activities of multinational enterprises, and to enable the public to assess the impact of those activities on the real economy. It will also improve shareholders' ability to properly evaluate the risks taken by companies, lead to investment strategies based on accurate information and enhance the ability of decision-makers to assess the efficiency and the impact of national legislations*. [Am. 6]

⁵ 2015/2010(INL)

- (2b) ***Country-by-country reporting will also have a positive impact on employees' rights to information and consultation as provided for in Directive 2002/14/EC and, by increasing knowledge on companies' activities, on the quality of engaged dialogue within companies. [Am. 7]***
- (3) Following the European Council conclusions of 22 May 2013, a review clause was introduced in Directive 2013/34/EU of the European Parliament and of the Council⁶ requiring the Commission to consider the possibility of introducing an obligation on large undertakings of additional industry sectors to produce, on an annual basis, a country-by-country reporting taking into account the developments in the Organisation for Economic Cooperation and Development (OECD) and the results of related European initiatives.

⁶ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).

- (4) Calling for a globally fair and modern international tax system in November 2015, the G20 endorsed the OECD ‘Action Plan on Base Erosion and Profit Shifting’ (BEPS) which aimed at providing governments with clear international solutions to address the gaps and mismatches in existing rules which allow corporate profits to shift to locations of no or low taxation, where no real value creation may take place. In particular, BEPS Action 13 introduces a country-by-country reporting by certain multinational undertakings to national tax authorities on a confidential basis. On 27 January 2016, the Commission adopted the ‘Anti-Tax Avoidance Package’. One of the objectives of that package is to transpose into Union law, the BEPS Action 13 by amending Council Directive 2011/16/EU⁷. ***However, taxing profits where the value is created requires a more comprehensive approach to country-by-country reporting that is based on public reporting.*** [Am. 8]
- (4a) ***The International Accounting Standards Board (IASB) should upgrade the relevant International Financial Reporting Standards (IFRS) and the International Accounting Standards (IAS) to ease the introduction of public country-by-country reporting requirements.*** [Am. 9]

⁷

Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

- (4b) *Public country-by-country reporting has already been established in the Union for the banking sector by Directive 2013/36/EU as well as for the extractive and logging industry by Directive 2013/34/EU. [Am. 10]*
- (4c) *The Union has demonstrated by an unprecedented introduction of public country-by-country reporting that it has become a global leader in the fight against tax avoidance. [Am. 11]*
- (4d) *Since the fight against tax evasion, tax avoidance and aggressive tax planning can only be successful with joint action on international level, it is imperative that the Union, while continuing to be a global leader in this struggle, coordinate its actions with international actors, for instance within the OECD framework. Unilateral actions, even if very ambitious, do not have a real chance of being successful, and, in addition, such actions put at risk the competitiveness of European companies and harm the Union's investment climate. [Am. 12]*

(4e) More transparency in financial disclosure results in a win-win situation as tax administrations will be more efficient, civil society more involved, employees better informed, and investors less risk-averse. In addition, undertakings will benefit from better relations with stakeholders, resulting in more stability, along with easier access to finance due to a clearer risk profile and an enhanced reputation. [Am. 13]

- (5) ***In addition to the increased transparency created by country-by-country reporting to national tax authorities***, enhanced public scrutiny of corporate income taxes borne by multinational undertakings carrying out activities in the Union is an essential element ***to promote corporate accountability, and*** to further foster corporate ***social*** responsibility, to contribute to the welfare through taxes, to promote fairer tax competition within the Union through a better informed public debate, and to restore public trust in the fairness of the national tax systems. Such public scrutiny can be achieved by means of a report on income tax information, irrespective of where the ultimate parent undertaking of the multinational group is established. ***Public scrutiny, however, has to be conducted without harming the investment climate in the Union or the competitiveness of Union companies, especially SMEs as defined in this Directive and mid-cap companies as defined in Regulation (EU) 2015/1017⁸, which should be excluded from the reporting obligation established under this Directive.*** [Am. 14]

⁸ ***Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).***

(5a) *The Commission has defined corporate social responsibility (CSR) as the responsibility of enterprises for their impact on society. CSR should be company led. Public authorities can play a supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation. Companies can become socially responsible either by following the law or by integrating social, environmental, ethical, consumer or human rights concerns into their business strategy and operations, or both. [Am. 15]*

- (6) The public should be able to scrutinise all the activities of a group when the group has certain establishments within *and outside* the Union. For groups which carry out activities within the Union only through subsidiary undertakings or branches, subsidiaries and branches should publish and make accessible the report of the ultimate parent undertaking. However for reasons of proportionality and effectiveness, the obligation to publish and make accessible the report should be limited to medium-sized or large subsidiaries established in the Union, or branches of a comparable size opened in a Member State. The scope of Directive 2013/34/EU should therefore be extended accordingly to branches opened in a Member State by an undertaking which is established outside the Union.
- Groups with establishments within the Union should comply with the Union principles of tax good governance. Multinational undertakings are operating worldwide and their corporate behaviour has a substantial impact on developing countries. Providing their citizens access to corporate country-by-country information would allow them and tax administrations in their countries to monitor, assess and hold those companies to account. By making the information public for each tax jurisdiction where the multinational undertaking is operating, the Union would increase its policy coherence for development and limit potential tax avoidance schemes in countries where domestic resources mobilization has been identified as a key component of the Union development policy. [Am. 16]*

- (7) In order to avoid double reporting for the banking sector, ultimate parent undertakings which are subject to Directive 2013/36/EU of the European Parliament and of the Council⁹ and which include in their report prepared in accordance with Article 89 of Directive 2013/36/EU all its activities and all the activities of its affiliated undertakings included in the consolidated financial statements, including activities not subject to the provisions of Chapter 2 of Title 1 of Part Three of Regulation (EU) No 575/2013 of the European Parliament and of the Council¹⁰, should be exempted from the reporting requirements set out in this Directive.

⁹ Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

¹⁰ Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

- (8) The report on income tax information should provide information concerning all the activities of an undertaking or of all the affiliated undertakings of a group controlled by an ultimate parent undertaking. The information should ~~be based on~~ **take into account** the reporting specifications of BEPS' Action 13 and should be limited to what is necessary to enable effective public scrutiny, in order to ensure that disclosure does not give rise to disproportionate risks or disadvantages, ***in terms of competitiveness or misinterpretation for the undertakings concerned***. The report should also include a brief description of the nature of the activities. Such description might be based on the categorisation provided for in table 2 of the Annex III of Chapter V of the OECD "Transfer Pricing Guidelines on Documentation". The report should include an overall narrative providing explanations, ***including*** in case of material discrepancies at group level between the amounts of taxes accrued and the amounts of taxes paid, taking into account corresponding amounts concerning previous financial years. **[Am. 17]**

(9) In order to ensure a level of detail that enables citizens to better assess the contribution of multinational undertakings to welfare in each ~~Member State~~ ***jurisdiction in which they operate, both within and outside the Union, without harming the undertakings' competitiveness***, the information should be broken down by ~~Member State~~. Moreover, information concerning the operations of multinational enterprises should also be shown with a high level of detail as regards certain tax jurisdictions which pose particular challenges. For all other third country operations, the information should be given in an ~~aggregate number~~ ***jurisdiction. Reports on income tax information can only be meaningfully understood and used if information is presented in a disaggregated fashion for each tax jurisdiction.*** [Am. 18]

(9a) ***When the information to be disclosed could be considered commercially sensitive information by the undertaking, the latter should be able to request authorisation from the competent authority where it is established not to disclose the full extent of information. In cases in which the national competent authority is not a tax authority, the competent tax authority should be involved in the decision.*** [Am. 82]

- (10) In order to strengthen responsibility vis-à-vis third parties and to ensure appropriate governance, the members of the administrative, management and supervisory bodies of the ultimate parent undertaking which is established within the Union and which has the obligation to draw up, publish and make accessible the report on income tax information, should be collectively responsible for ensuring the compliance with these reporting obligations. Given that members of the administrative, management and supervisory bodies of the subsidiaries which are established within the Union and which are controlled by an ultimate parent undertaking established outside the Union or the person(s) in charge of carrying out the disclosures formalities for the branch may have limited knowledge of the content of the report on income tax information prepared by the ultimate parent undertaking, their responsibility to publish and make accessible the report on income tax information should be limited.

(11) To ensure that cases of non-compliance are disclosed to the public, statutory auditor(s) or audit firm(s) should check whether the report on income tax information has been submitted and presented in accordance with the requirements of this Directive and made accessible on the relevant undertaking's website or on the website of an affiliated undertaking, ***and that publicly-disclosed information is in line with the audited financial information for the undertaking within the time limits provided for in this Directive.***

[Am. 19]

(11a) Cases of infringements by undertakings and branches of the requirements on reporting on income tax information, giving rise to penalties by Member States, under Directive 2013/34/EU, should be reported in a public registry managed by the Commission. Those penalties could include, inter alia, administrative fines or exclusions from public calls for tenders and from the awarding of funding from the Union's structural funds.

[Am. 20]

- (12) This Directive aims to enhance transparency and public scrutiny on corporate income tax by adapting the existing legal framework concerning the obligations imposed on companies and firms in respect of the publication of reports, for the protection of the interests of members and others, within the meaning of Article 50(2)(g) TFEU. As the Court of Justice held, in particular, in Case C-97/96 *Verband deutscher Daihatsu-Händler*¹¹, Article 50(2)(g) TFEU refers to the need to protect the interests of "others" generally, without distinguishing or excluding any categories falling within the ambit of that term. Moreover, the objective of attaining freedom of establishment, which is assigned in very broad terms to the institutions by Article 50(1) TFEU, cannot be circumscribed by the provisions of Article 50(2) TFEU. Given that this Directive does not concern the harmonisation of taxes but only obligations to publish reports on income tax information, Article 50(1) TFEU constitutes the appropriate legal basis.

¹¹ Judgement of the Court of Justice of 4 December 1997, C-97/96 *Verband deutscher Daihatsu-Händler* ECLI:EU:C:1997:581

(13) — In order to determine certain tax jurisdictions for which a high level of detail should be shown, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of drawing up a common Union list of these tax jurisdictions. This list should be drawn up on the basis of certain criteria, identified on the basis of Annex 1 of the Communication from the Commission to the European Parliament and Council on an External Strategy for Effective Taxation (COM(2016)0024). It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making as approved by the European Parliament, the Council and the Commission and pending formal signature. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

[Am. 21]

- (13a) *In order to ensure uniform conditions for the implementation of Article 48b(1), (3), (4) and (6) and Article 48c(5) of Directive 2013/34/EU, implementing powers should also be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council¹².*
[Am. 22]
- (14) Since the objective of this Directive cannot be sufficiently achieved by the Member States but can rather, by reason of its effect, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. *Union action is thus justified in order to address the cross-border dimension where there is aggressive tax planning or transfer pricing arrangements. This initiative responds to the concerns expressed by the interested parties about the need to tackle distortions in the single market without compromising Union competitiveness. It should not cause undue administrative burden on companies, generate further tax conflicts or pose the risk of double taxation.* In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective, *at least with regard to greater transparency.* [Am. 23]

¹² *Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).*

- (15) ***Overall, within the framework of this Directive, the extent of the information disclosed is proportionate to the objectives of increasing public transparency and public scrutiny.***
This Directive ~~respects~~ ***is therefore considered to respect*** the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. [Am. 24]
- (16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹³, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments, ***for example in the form of a comparative chart.*** With regard to this Directive, the legislator considers the transmission of such documents to be justified ***to achieve the objective of this Directive and to avoid potential omissions and inconsistencies regarding implementation by the Member States under their national legislation.*** [Am. 25]
- (17) Directive 2013/34/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

¹³ OJ C 369, 17.12.2011, p. 14.

Article 1
Amendments to Directive 2013/34/EU

Directive 2013/34/EU is amended as follows:

(1) in Article 1, the following paragraph 1a is inserted:

‘1a. The coordination measures prescribed by Articles 2, 48a to 48g and 51 shall also apply to the laws, regulations and administrative provisions of the Member States relating to branches opened in a Member State by an undertaking which is not governed by the law of a Member State but which is of a legal form comparable with the types of undertakings listed in Annex I.’;

- (2) the following Chapter 10a is inserted:

‘Chapter 10a
Report on Income tax information

Article 48a

Definitions relating to reporting on income tax information

For the purposes of this Chapter, the following definitions shall apply:

- (1) ‘ultimate parent undertaking’ means an undertaking which draws up the consolidated financial statements of the largest body of undertakings;
- (2) ‘consolidated financial statements’ means the financial statements prepared by a parent undertaking of a group in which the assets, liabilities, equity, income and expenses are presented as those of a single economic entity;
- (3) ‘tax jurisdiction’ means a State as well as a non-State jurisdiction which has fiscal autonomy in respect of corporate income tax.

Article 48b

Undertakings and branches required to report on income tax information

1. Member States shall require ultimate parent undertakings governed by their national laws and having a consolidated net turnover *of or* exceeding EUR 750 000 000 as well as undertakings governed by their national laws that are not affiliated undertakings and having a net turnover *of or* exceeding EUR 750 000 000 to draw up and ~~publish~~ ***make publicly available free of charge*** a report on income tax information on an annual basis. [Am. 26]

The report on income tax information shall be ***published in a common template available free of charge in an open data format and*** made accessible to the public on the website of the undertaking on the date of its publication ***in at least one of the official languages of the Union. On the same date, the undertaking shall also file the report in a public registry managed by the Commission.***

Member States shall not apply the rules set out in this paragraph where such undertakings are established only within the territory of a single Member State and in no other tax jurisdiction. [Am. 27]

2. Member States shall not apply the rules set out in paragraph 1 of this Article to ultimate parent undertakings where such undertakings or their affiliated undertakings are subject to Article 89 of Directive 2013/36/EU of the European Parliament and of the Council* and encompass, in a country-by-country report, information on all the activities of all the affiliated undertakings included in the consolidated financial statement of those ultimate parent undertakings.

3. Member States shall require ~~the medium-sized and large~~ subsidiary undertakings referred to in Article 3(3) and (4) which are governed by their national laws and controlled by an ultimate parent undertaking which *on its balance sheet in a financial year* has a consolidated net turnover *of or* exceeding EUR 750 000 000 and which is not governed by the law of a Member State, to publish the report on income tax information of that ultimate parent undertaking on an annual basis. [Am. 28]

The report on income tax information shall be *published in a common template available free of charge in an open data format and* made accessible to the public on the date of its publication on the website of the subsidiary undertaking or on the website of an affiliated undertaking *in at least one of the official languages of the Union. On the same date, the undertaking shall also file the report in a public registry managed by the Commission.* [Am. 29]

4. Member States shall require branches which are opened in their territories by an undertaking which is not governed by the law of a Member State to publish ***and make publicly available free of charge*** on an annual basis the report on income tax information of the ultimate parent undertaking referred to in point (a) of paragraph 5 of this Article. [Am. 30]

The report on income tax information shall be ***published in a common template available in an open data format and*** made accessible to the public on the date of its publication on the website of the branch or on the website of an affiliated undertaking ***in at least one of the official languages of the Union. On the same date, the undertaking shall also file the report in a public registry managed by the Commission.*** [Am. 31]

Member States shall apply the first subparagraph of this paragraph only to branches which have net turnover exceeding net turnover threshold defined by the law of each Member State pursuant to Article 3(2).

5. Member States shall apply the rules set out in paragraph 4 only to a branch where the following criteria are met:
- (a) the undertaking which opened the branch is either an affiliated undertaking of a group which is controlled by an ultimate parent undertaking not governed by the law of a Member State and which *on its balance sheet* has a consolidated net turnover *of or* exceeding EUR 750 000 000, or an undertaking that is not an affiliated and which has a net turnover *of or* exceeding EUR 750 000 000;
[Am. 32]
 - (b) the ultimate parent undertaking referred to in point (a) does not have a medium-sized or large subsidiary undertaking as referred to in paragraph 3 *already subject to the reporting obligations*. **[Am. 33]**

6. Member States shall not apply the rules set out in paragraphs 3 and 4 of this Article where a report on income tax information drawn up in accordance with Article 48c is made accessible to the public on the website of the ultimate parent undertaking not governed by the law of a Member State within a reasonable period of time, which shall not exceed 12 months after the balance sheet date and where the report identifies the name and registered office of the single subsidiary undertaking or the single branch governed by the law of a Member State which has published the report in accordance with Article 48d(1).
7. Member State shall require subsidiaries or branches not subject to the provisions of paragraphs 3 and 4 to publish and make accessible the report on income tax information where such subsidiaries or branches have been established for the purpose of avoiding the reporting requirements set out in this Chapter.
- 7a. ***For Member States which have not adopted the euro, the amount in national currency equivalent to the amount set out in paragraphs 1, 3 and 5 shall be obtained by applying the exchange rate published in the Official Journal of the European Union and that is effective as of the date of the entry into force of this Chapter. [Am. 34]***

Article 48c

Content of the report on income tax information

1. The report on income tax information shall include information relating to all the activities of the undertaking and the ultimate parent undertaking, including activities of all affiliated undertakings consolidated in the financial statement in respect of the relevant financial year.
2. The information referred to in paragraph 1 shall ***be presented in a common template and*** shall comprise the following, ***broken down by tax jurisdiction***: [Am. 35]
 - (a) ***the name of the ultimate undertaking and, where applicable, the list of all its subsidiaries***, a brief description of the nature of ~~the~~ ***their*** activities ***and their respective geographical location***; [Am. 36]
 - (b) the number of employees ***on a full-time equivalent basis***; [Am. 37]
 - (ba) ***fixed assets other than cash or cash equivalents***; [Am. 38]

- (c) the amount of the net turnover, ~~which includes~~ ***including a distinction between*** the turnover made with related parties ***and the turnover made with unrelated parties***; [Am. 39]
- (d) the amount of profit or loss before income tax;
- (e) the amount of income tax accrued (current year) which is the current tax expense recognised on taxable profits or losses of the financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction;
- (f) the amount of income tax paid which is the amount of income tax paid during the relevant financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction;
- (g) the amount of accumulated earnings;
- (ga) stated capital***; [Am. 40]

(gb) details of public subsidies received and any donations made to politicians, political organisations or political foundations; [Am. 65]

(gc) whether undertakings, subsidiaries or branches benefit from preferential tax treatment, from a patent box or equivalent regimes. [Am. 41]

For the purposes of point (e) of the first subparagraph the current tax expense shall relate only to the activities of an undertaking in the current financial year and shall not include deferred taxes or provisions for uncertain tax liabilities.

3. The report shall present the information referred to in paragraph 2 separately for each Member State. Where a Member State comprises several tax jurisdictions, the information shall be ~~combined at Member State level~~ ***presented separately for each tax jurisdiction.*** [Am. 42]

The report shall also present the information referred to in paragraph 2 of this Article separately for each tax jurisdiction which, ~~at the end of the previous financial year, is listed in the common~~ ***outside the*** Union list of certain tax jurisdictions drawn up pursuant to Article 48g, ~~unless the report explicitly confirms, subject to the responsibility referred to in Article 48e below, that the affiliated undertakings of a group governed by the laws of such tax jurisdiction do not engage directly in transactions with any affiliated undertaking of the same group governed by the laws of any Member State.~~ [Am. 43]

- ~~— The report shall present the information referred to in paragraph 2 on an aggregated basis for other tax jurisdictions.~~ [Am. 44]

In order to protect commercially sensitive information and to ensure fair competition, Member States may allow one or more specific items of information listed in this Article to be temporarily omitted from the report as regards activities in one or more specific tax jurisdictions when they are of a nature such that their disclosure would be seriously prejudicial to the commercial position of the undertakings referred to in Article 48b(1) and Article 48b(3) to which it relates. The omission shall not prevent a fair and balanced understanding of the tax position of the undertaking. The omission shall be indicated in the report together with a duly justified explanation for each tax jurisdiction as to why this is the case and with a reference to the tax jurisdiction or tax jurisdictions concerned.

[Am. 83]

Member States shall make such omissions subject to prior authorisation of the national competent authority. The undertaking shall seek each year a new authorisation from the competent authority, which will take a decision on the basis of a new assessment of the situation. Where the information omitted no longer complies with the requirement laid down in subparagraph 3a, it shall immediately be made publicly available. As from the end of the non-disclosure period, the undertaking shall also retroactively disclose, in the form of an arithmetic average, the information required under this Article for the preceding years covered by the non-disclosure period. [Am. 69/rev]

Members States shall notify the Commission of the granting of such a temporary derogation and shall transmit to it, in a confidential manner, the omitted information together with a detailed explanation for the derogation granted. Every year, the Commission shall publish on its website the notifications received from Member States and the explanations provided in accordance with subparagraph 3a. [Am. 47]

The Commission shall verify that the requirement laid down in subparagraph 3a is duly respected, and shall monitor the use of such a temporary derogation authorised by national authorities. [Am. 48]

If the Commission concludes, after having carried out its assessment of the information received pursuant to subparagraph 3c, that the requirement laid down in subparagraph 3a is not fulfilled, the undertaking concerned shall immediately make the information publicly available. As from the end of the non-disclosure period, the undertaking shall also retroactively disclose, in the form of an arithmetic average, the information required under this Article for the preceding years covered by the non-disclosure period. [Am. 70/rev]

The Commission shall, by means of a delegated act, adopt guidelines to assist Member States defining cases where the publication of information shall be considered seriously prejudicial to the commercial position of the undertakings to which it relates. [Am. 50]

The information shall be attributed to each relevant tax jurisdiction on the basis of the existence of a fixed place of business or of a permanent business activity which, arising from the activities of the group, can give rise to income tax liability in that tax jurisdiction.

Where the activities of several affiliated undertakings can give rise to a tax liability within a single tax jurisdiction, the information attributed to that tax jurisdiction shall represent the sum of the information relating to such activities of each affiliated undertaking and their branches in that tax jurisdiction.

Information on any particular activity shall not be attributed simultaneously to more than one tax jurisdiction.

4. The report shall include at group level an overall narrative providing explanations on material discrepancies between the amounts disclosed pursuant to points (e) and (f) of paragraph 2, if any, taking into account if appropriate corresponding amounts concerning previous financial years.

5. The report on income tax information shall be published *in a common template available free of charge in an open data format* and made accessible *to the public on the date of its publication* on the website *of the subsidiary undertaking or on the website of an affiliated undertaking* in at least one of the official languages of the Union. *On the same date, the undertaking shall also file the report in a public registry managed by the Commission.* [Am. 51]
6. The currency used in the report on income tax information shall be the currency in which the consolidated financial statements are presented. Member States shall not require this report to be published in a different currency than the currency used in the financial statements.

7. Where Member States have not adopted the euro, the threshold referred to in Article 48b(1) shall be converted into the national currency by applying the exchange rate as at ... [date of the entry in force of this Directive] published in the Official Journal of the European Union and by increasing or decreasing it by not more than 5 % in order to produce a round sum in the national currencies.

The thresholds referred to in Article 48b(3) and (4) shall be converted to an equivalent amount in the national currency of any relevant third countries by applying the exchange rate as at ... [date of the entry in force of this Directive], rounded off to the nearest thousand.

Article 48d

Publication and Accessibility

1. The report on income tax information shall be published as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC, together with documents referred to in Article 30(1) of this Directive and where relevant, with the accounting documents referred to in Article 9 of Council Directive 89/666/EEC**.
2. The report referred to in Article 48b(1), (3), (4) and (6) shall remain accessible on the website for a minimum of five consecutive years.

Article 48e

Responsibility for drawing up, publishing and making accessible the report on income tax information

1. ***To strengthen accountability towards third parties and ensure appropriate governance***, Member States shall ensure that the members of the administrative, management and supervisory bodies of the ultimate parent undertaking referred to in Article 48b(1), acting within the competences assigned to them under national law, have collective responsibility for ensuring that the report on income tax information is drawn up, published and made accessible in accordance with Articles 48b, 48c and 48d. **[Am. 52]**

2. Member States shall ensure that the members of the administrative, management and supervisory bodies of the subsidiary undertakings referred to in Article 48b(3) of this Directive and the person(s) designated to carry out the disclosure formalities provided for in Article 13 of Directive 89/666/EEC for the branch referred to in Article 48b(4) of this Directive, acting within the competences assigned to them by national law, have collective responsibility for ensuring that, to the best of their knowledge and ability, the report on income tax information is drawn up, published and made accessible in accordance with Articles 48b, 48c and 48d.

Article 48f

Independent check

Member States shall ensure that, where the financial statements of an affiliated undertaking are audited by one or more statutory auditor(s) or audit firm(s) pursuant to Article 34(1), the statutory auditor(s) or audit firm(s) also check whether the report on income tax information has been provided and made accessible in accordance with Articles 48b, 48c and 48d. The statutory auditor(s) or audit firm(s) shall indicate in the audit report if the report on income tax information has not been provided or made accessible in accordance with those Articles.

Article 48g

Common Union list of certain tax jurisdictions

The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in relation to drawing up a common Union list of certain tax jurisdictions. That list shall be based on the assessment of the tax jurisdictions, which do not comply with the following criteria:

- (1) — Transparency and exchange of information, including information exchange on request and Automatic Exchange of Information of financial account information;
- (2) — Fair tax competition;
- (3) — Standards set up by the G20 and/or the OECD;
- (4) — Other relevant standards, including international standards set up by the Financial Action Task Force.

The Commission shall regularly review the list and, where appropriate, amend it to take account of new circumstances. [Am. 53]

Article 48h

Commencement date for reporting on income tax information

Member States shall ensure that laws, regulations and administrative provisions transposing Articles 48a to 48f apply, at the latest, from the commencement date of the first financial year starting on or after ...*[two years after the entry into force of this Directive]*.

Article 48i

Report

The Commission shall report on the compliance with and the impact of the reporting obligations set out in Articles 48a to 48f. The report shall include an evaluation of whether the report on income tax information delivers appropriate and proportionate results, ***and shall assess the costs and benefits of lowering the consolidated net turnover threshold beyond which undertakings and branches are required to report on income tax information. The report shall, in addition, evaluate any necessity to take further complementary measures,*** taking into account the need to ensure a sufficient level of transparency and the need ~~for~~ ***to preserve and ensure*** a competitive environment for undertakings ***and private investment.*** [Am. 54]

The report shall be submitted to the European Parliament and to the Council by ...[*six years after the entry into force of this Directive*].

* Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

** Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (OJ L 395, 30.12.1989, p. 36).'

(2a) *the following article is inserted:*

‘Article 48ia

No later than 4 years after the adoption of this Directive and taking into account the situation at OECD level, the Commission shall review, assess and report on the provisions of this Chapter, in particular as regards:

- *undertakings and branches required to report on income tax information, particularly whether it would be appropriate to enlarge the scope of this Chapter to include large undertakings as defined in Article 3(4) and large groups as defined in Article 3(7) of this Directive;*
- *the content of the report on income tax information as provided for in Article 48c;*
- *the temporary derogation provided for in subparagraphs 3a to 3f of Article 48c(3).*

The Commission shall submit the report to the European Parliament and to the Council, together with a legislative proposal, if appropriate.’ [Am. 55]

(2b) the following article is inserted:

'Article 48ib

Common template for the report

The Commission shall, by means of implementing acts, lay down the common template to which Article 48b(1), (3), (4) and (6) and Article 48c(5) refer. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 50(2).' [Am. 56]

(3) Article 49 is amended as follows:

(a) Paragraphs 2 and 3 are replaced by the following

- ‘2. The power to adopt delegated acts referred to in Article 1(2), Article 3(13), Article 46(2) and Article 48g shall be conferred on the Commission for an indeterminate period of time from the date referred to in Article 54.
3. The delegation of power referred to in Article 1(2), Article 3(13), Article 46(2) and Article 48g may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.’

(b) The following paragraph 3a is inserted:

‘3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement *of 13 April 2016* on Better Law-Making*, *taking particular account of the provisions of the Treaties and the Charter of Fundamental Rights of the European Union.* [Am. 57]

* *OJ L 123, 12.5.2016, p. 1.*’

(c) Paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Article 1(2), Article 3(13) Article 46(2) or Article 48g shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.’

(3a) in Article 51, paragraph 1 is replaced by the following:

‘Member States shall ~~provide for~~ **lay down rules on** penalties applicable to infringements of the national provisions adopted in accordance with this Directive and shall take all the measures necessary to ensure that ~~those penalties are enforced~~ **they are implemented**. The penalties provided for shall be effective, proportionate and dissuasive.

Member States shall at least provide for administrative measures and penalties for the infringement by undertakings of national provisions adopted in accordance with this Directive.

Member States shall notify the Commission of those provisions at the latest by ... [one year after entry into force of this Directive] and shall notify it without delay of any subsequent amendment affecting the provisions.

By ... [three years after the entry into force of this Directive] the Commission shall compile a list of the measures and penalties laid down by each Member State in accordance with this Directive.’ [Am. 58]

Article 2
Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by ... [*one year after the entry into force of this Directive*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 4

Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President