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COVER NOTE

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To:	Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union
No. Cion doc.:	COM(2021) 617 final
Subject:	COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the position of the Council on the adoption of a Directive of the European Parliament and the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches

Delegations will find attached document COM(2021) 617 final.

Encl.: COM(2021) 617 final



Brussels, 1.10.2021
COM(2021) 617 final

2016/0107 (COD)

**COMMUNICATION FROM THE COMMISSION
TO THE EUROPEAN PARLIAMENT**

pursuant to Article 294(6) of the Treaty on the Functioning of the European Union

concerning the

**position of the Council on the adoption of a Directive of the European Parliament and
the Council amending Directive 2013/34/EU as regards disclosure of income tax
information by certain undertakings and branches**

(Text with EEA relevance)

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1. BACKGROUND

Date of transmission of the proposal to the European Parliament and to the Council (document COM(2016)0198 – 2016/0107(COD)):	13 April 2016
Date of the opinion of the European Economic and Social Committee:	29 September 2016
Date of the position of the European Parliament, first reading:	27 March 2019
Date of transmission of the amended proposal:	N/A
Date of adoption of the position of the Council:	28 September 2021

2. OBJECTIVE OF THE PROPOSAL FROM THE COMMISSION

The proposal amends the Accounting Directive (Directive 2013/34/EU). It aims at enhancing transparency and public scrutiny on corporate income tax paid by multinational enterprise groups (consisting of their ultimate parent undertaking, subsidiaries and branches) and standalone multinational enterprises, hereafter referred to altogether as “MNE”, carrying out activities in the Union. This should foster greater corporate responsibility and transparency, promote a better informed public debate and help citizens in the Union regaining trust in the fairness of national tax systems.

3. COMMENTS ON THE POSITION OF THE COUNCIL

The position of the Council reflects the political agreement reached between the European Parliament and the Council on 1 June 2021. The Commission supports this agreement. The main points of this agreement include the following:

Scope

As regards the scope of application, the political agreement introduces several changes compared to the initial Commission proposal:

- It sets out that the reporting obligation applies only when companies exceeded the revenue threshold for two consecutive years (while Commission proposed one year). Symmetrically, the reporting obligation would cease to apply only when revenues have been below the threshold for two consecutive years;
- It specifies the meaning of ‘revenues’ depending on the applicable accounting framework, for the purpose of determining whether an undertaking should report;
- It includes in the scope of application standalone undertakings that are multinational but not part of any group;
- It excludes from the scope of application groups that are not multinational.

The scope of the political agreement retains the Commission proposal to impose the reporting on MNEs with consolidated revenues exceeding EUR 750 million. The exemption for credit institutions applying their specific country-by-country reporting regime is also retained.

Safeguard clause

In order to ensure that no disclosure of information is seriously prejudicial to the commercial position of an undertaking, a safeguard clause is introduced, allowing MNEs to omit the disclosure of commercially sensitive information for a period of five years.

Information to be published, geographical aggregation

Beyond the information which the Commission proposed to include in the reporting, the political agreement requires additional contextual information such as the name of the ultimate parent undertaking or the standalone undertaking, the financial year concerned, the currency used, and the list of subsidiaries established in the Union and in non-cooperative jurisdictions for tax purposes of an ultimate parent undertaking falling within the scope, thus adding to the transparency.

In terms of geographical presentation of that information, the political agreement remains substantially similar to the Commission proposal, including where it introduces reliance on the list of jurisdictions drawn up by the Council in relation to non-cooperative jurisdictions for tax purposes (relevant annexes of ECOFIN conclusions) instead of a list drawn up by delegated act as proposed by the Commission.

The political agreement introduces a right for undertakings to comply in part with reporting instructions laid down in Council Directive 2011/16/EU, thus reducing compliance costs for undertakings.

Taking into account parents’ control over their subsidiaries and branches, the political agreement implements an obligation for any large subsidiary or branch in the EU, to request their ultimate parent in a third country to provide all information necessary to enable them to meet their obligations, in case the parent does not already publish a suitable country-by-country reporting. Where not all the required information is provided by the parent, the subsidiary or branch in the EU would have to draw up, publish and make accessible the report on income tax information, containing all information in its possession, obtained or acquired,

and a statement indicating that the ultimate parent entity or the standalone undertaking has not made the necessary information available.

Common template, electronic reporting

With a view to facilitate the digital use of this reporting, the political agreement introduces a common template and machine-readable formats, to be established at a later stage by implementing acts.

The political agreement allows Member States to enable access to the reporting on the website(s) of their national register(s) as long as it is available free of charge to any third party located within the Union, thus relieving undertakings from the duty to make it available on their own web site.

Auditors' role

The political agreement further specifies the role of statutory auditors, who should state annually whether an undertaking was required to publish a report on income tax information, and if so, whether that report was published.

Implementation by the Member States

The political agreement offers a period of maximum eighteen months after the entry into force to implement the directive at national level, which is slightly longer than the Commission proposal.

Review clause

Adding to the Commission proposal, the political agreement specifies a number of items to be reviewed and reported on by the Commission, on the basis of a period of four years after the transposition date set out in the Directive.

4. CONCLUSION

The Commission supports the results of the inter-institutional negotiations and can therefore accept the Council's position at first reading.