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NOTE

From:	Presidency
To:	Delegations
No. prev. doc.:	10525/17
Subject:	Proposal for Directive of the European Parliament and the Couuncil amending Directive 2013/34/EU as regards disclousure of income tax information by certain undertakings and branches (CBCR) *- Presidency compromise proposal*

Delegations will find in the Annex a Presidency compromise text following the Working Party meetings on 20 September and 11 October 2017, as well as delegations' comments.

Delegations are informed that changes compared to the Commission proposal (doc 7949/16) are in **bold/underlined** and ~~strikethrough~~.
The changes compared to doc. 10525/17 + COR1 are also additionally in grey shaded.

It is understood that all delegations have a general scrutiny reservation.

FR, SE and UK entered a parliamentary scrutiny.

ANNEX

2016/0107 (COD)

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

(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 Committee[1],
Acting in accordance with the ordinary legislative procedure,

[1] OJ C , , p. .

Whereas:

(1) ~~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'[2] and 'Commission Work Programme 2015 - A New Start'[3] ~~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' call for fairness and tax transparency.

(2) ~~The European Parliament in its resolution of 16 December 2015 on bringing transparency, coordination and convergence to corporate tax policies in the Union[4] acknowledged that increased transparency in the area of corporate taxation can improve tax collection, make the work of tax authorities more efficient and ensure increased public trust and confidence in tax systems and governments.~~

In parallel with the work undertaken by the Council to fight corporate income tax avoidance, it is necessary to enhance public scrutiny of corporate income taxes borne by multinational undertakings carrying out activities in the Union, as this is an essential element to further foster corporate responsibility to contribute to the welfare of our societies, to promote a better informed public debate and to regain the trust of citizens of the Union 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.

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[2] COM(2015) 610 final of 27 October 2015.

[3] COM(2014) 910 final of 16 December 2014.

[4] ~~2015/2010(INL)~~

(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 Council[5] 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 report~~ing~~ taking into account the developments in the Organisation for Economic Cooperation and Development (OECD) and the results of related European initiatives.

~~(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/EU[6].~~

~~(5) Enhanced public scrutiny of corporate income taxes borne by multinational undertakings carrying out activities in the Union is an essential element to further foster corporate 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.~~

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[5] 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).

~~[6] 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).~~

(6) The public should be able to scrutinise all the activities of a group when the group has certain establishments within the Union. For groups which carry out activities within the Union only through subsidiary undertakings or branches, **operating** subsidiaries and branches should publish and make accessible the report of the ultimate parent undertaking **to the extent that the requested information is available to the subsidiary or branch. If the requested information is not available the subsidiary or branch should explain in the report the reasons of this omission.** 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, **and still operating,** in a Member State by an undertaking which is established outside the Union **and which has a legal form which is comparable to the types of undertakings listed in Annex I of Directive 2013/34/EU**.

(6a) Multinational groups, and where relevant, certain ~~non-affiliated~~ standalone undertakings, should provide the public with a report on income tax information when they exceed a certain size over a period of the last two consecutive financial years, depending on the consolidated revenue of the group or the revenue of the ~~non-affiliated~~ standalone undertaking. ~~Having regard to Article 2(12) of Directive 2013/34/EU, non-affiliated undertakings are intended to be stand-alone entities which are not part of a group.~~ Given the wide array of ~~accounting~~ financial reporting frameworks with which financial statements may comply, in order to determine the scope of application, such revenue should be defined as ~~the~~ net turnover for undertakings governed by the law of a Member State and following national financial reporting framework of a Member State ~~or „revenue“ as defined in paragraph 2 of Article 48a for other undertakings~~. Article 43(2)(c) of Directive 86/635/EEC and Article 66(2) of Directive 91/674/EEC provide definitions as to the determination of the net turnover of a credit institution or of an insurance undertaking, respectively. For other undertakings, the revenue should be assessed in accordance with the financial reporting framework on the basis of which these financial statements are prepared. It should be noted that "revenue" has different definition for purposes of content of the report.

(6b) **At the same time it is stressed that, as concluded by the G20 and the OECD, country-by-country reports will be helpful for high-level transfer pricing risk assessment purposes only. The information in the Country-by-Country Report on its own does not constitute conclusive evidence that transfer prices are or are not appropriate and that information should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and comparability analysis.**

(7) In order to avoid double reporting for the banking sector, ultimate parent undertakings **and** ~~**non-affiliated**~~ **standalone undertakings** which are subject to Directive 2013/36/EU of the European Parliament and of the Council[7] and which include in their report prepared in accordance with Article 89 of Directive 2013/36/EU all its activities and**, where appropriate,** 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 Council[8], should be exempted from the reporting requirements set out in this Directive.

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7 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)

8 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~~ **consolidated** by an ultimate parent undertaking **or, depending on the circumstances, concerning all the activities of a ~~non-affiliated~~ standalone undertaking**. The information should be ~~based on the reporting specifications of BEPS' Action 13 and~~ 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 **for undertakings. For this reason, the list of required information is exhaustive. The report should be made accessible within 12 months after the balance sheet date. Any shorter periods for the publication of financial statements should not apply with regard to the report on income tax information. The provisions of Chapter 10a of this Directive do not affect the provisions regarding annual financial statements and consolidated financial statements.** ~~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".~~

(8a) In order to avoid administrative burden, when preparing a report on income tax information in compliance with this Directive, undertakings should be entitled to prepare the information on the basis of the reporting specifications laid down in Annex III, Section III, parts B and C of Council Directive 2011/16/EU as amended. For this reason, the report should specify the reporting framework used. The report ~~should~~ **might in addition** include an overall narrative providing explanations 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.

(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, 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 **third country** tax jurisdictions which pose particular challenges. For all other third country operations, the information should be given in an aggregate number, **unless the undertaking wishes to present more detailed information.**

(9a) It is recognised that publicly disclosing data to be included in report on income tax information could in certain cases be seriously prejudicial to commercial position of an undertaking, since it would make it possible for competitors not subjected to similar transparency to draw significant conclusions about its current activities. Therefore, undertakings should have a possibility to defer disclosing certain information for a limited number of years, provided they clearly disclose the deferral and give a reasoned explanation for it in the report.

To be read in conjunction with Article 48c (3a).

(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 **or ~~non-affiliated~~ standalone undertakings** which ~~is~~ **are** established within the Union and which ~~has~~ **have** 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 **or may have limited ability to obtain such information or report from their ultimate parent undertaking,** their responsibility to publish and make accessible the report on income tax information should be limited. **In case this information or report is not provided, the subsidiary undertakings should publish and make accessible a statement as to why the report on income tax information could not be published and made accessible.**

(11) To ensure **public awareness on the scope of and on compliance with ~~of~~ the reporting obligations ~~by the relevant undertakings,~~** ~~that cases of non-compliance are disclosed to the public,~~ **Member States might require that** statutory auditor(s) or audit firm(s) **~~should~~ state** whether **an undertaking is required to draw up a ~~the~~** report on income tax information **~~has been submitted and presented published, or not, 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, or on the website of the register, within the time limits established by this Directive. A statutory auditor or audit firm should fulfil the requirements set out in Article 48f of this Directive to the extent of the information provided by the undertaking governed by the law of a Member State and to the extent of the information being readily available to the statutory auditor or audit firm.~~**

(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[9], 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.

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

(12a) To ensure the full functioning of the internal market and a level playing field between the European Union and third-country multinational enterprises, the Commission should continue to explore possibilities of increasing fairness and tax transparency. ~~consider issuing recommendations on how to ensure that global dis-aggregation may be achieved particularly in international fora.~~

~~(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) 24 final). 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.~~

(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. 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.

(15) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

(16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents[10], 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. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

(17) Directive 2013/34/EU should therefore be amended accordingly,

HAVE ADOPTED THIS DIRECTIVE:

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 48~~e~~**e** and 51 shall also apply to the laws, regulations and administrative provisions of the Member States relating to branches opened **and still operated** ~~**ing**~~ 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.~~'~~ **Article 2 shall apply to these branches to the extent that Articles 48a to 48e and 51 are applicable to such branches'**;

[10] OJ C 369, 17.12.2011, p. 14.

(2) the following Chapter 10a is inserted:

'Chapter 10a

Report on Income tax information

Article 48a

Definitions relating to reporting on income tax information

1. 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.

(4) 'standalone undertaking' means an undertaking which is not part of any group within the meaning of Article 2 paragraph 11.

2. For the purposes of Article 48b, the following definition shall apply:

'revenue'has the same meaning as:

(1) the 'net turnover', for undertakings governed by the law of a Member State, and not applying international accounting standards adopted on the basis of Regulation (EC) No 1606/2002, or

(2) the 'revenue' as defined by or within the meaning of the financial reporting framework on the basis of which financial statements are prepared, for other undertakings.

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 **which on their balance sheet date exceeded for each of the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in their consolidated financial statements** ~~and having a consolidated net turnover exceeding EUR 750 000 000 as well as undertakings governed by their national laws that are not affiliated undertakings and having a net turnover exceeding EUR 750 000 000~~ to draw up**,** ~~and~~ publish **and make accessible** a report on income tax information **as regards the later of the last two consecutive financial years.** ~~on an annual basis.~~

Member States shall require undertakings governed by their national laws that are ~~not affiliated~~ standalone undertakings and which on their balance sheet date exceeded for each of the last two consecutive financial years a total revenue of EUR 750 000 000 as reflected in their annual financial statements to draw up, publish and make accessible a report on income tax information as regards the later of the last two consecutive financial years.

~~The report on income tax information shall be made accessible to the public on the website of the undertaking on the date of its publication.~~

1a. Member States shall not apply the rules set out in paragraph 1 to ~~non-affiliated~~ standalone undertakings, ultimate parent undertakings and their affiliated undertakings where such undertakings, including their branches, ~~are established~~ have a legal presence or a fixed place of business or a permanent business activity only within the territory of one single Member State and in no other tax jurisdiction.

2. Member States shall not apply the rules set out in paragraph 1 of this Article to ~~non-affiliated~~ **standalone undertakings and** ultimate parent undertakings where such undertakings or their affiliated undertakings **disclose a report in accordance with** ~~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~~ **that** report, information on **all their activities and** 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) **that** ~~which~~ are governed by their national laws and controlled by an ultimate parent undertaking which **on its balance sheet date exceeded for each of the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in its consolidated financial statements** ~~has a consolidated net turnover exceeding EUR 750 000 000~~ and which is not governed by the law of a Member State, to publish **and make accessible** ~~the~~ **a** report on income tax information of that ultimate parent undertaking ~~on an annual basis~~ **as regards the later of the last two consecutive financial years, to the extent that ~~the~~ this information or report is available to the subsidiary undertaking. When this information or report is not available, the subsidiary undertaking shall request its ultimate parent undertaking not governed by the law of a Member State to provide it with all information required to enable it to meet its obligation.**

In case this information or report is not provided, the subsidiary undertakings shall publish and make accessible a statement as to why the report on income tax information could not be published and made accessible.

3a. If ~~such~~ a subsidiary undertaking that was required to publish a statement as referred to in paragraph 3 subparagraph 2 exceeds the threshold set out in paragraph 1 for each of the last two consecutive financial years, it shall also draw up, publish and make accessible its own report on income tax information as provided for under paragraph 1 and 1a.

~~The report on income tax information shall be 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.~~

4. Member States shall require branches ~~which are~~ opened in their territories **and still operated** by an undertaking which is not governed by the law of a Member State to publish **and make accessible** ~~on an annual basis the~~ **a** report on income tax information of the ultimate parent undertaking **or the ~~non-affiliated~~ standalone undertaking** referred to in point (a) of **this** paragraph ~~5 of this Article~~ **as regards the later of the last two consecutive financial years, to the extent that ~~the~~ this information or report is available to the person(s) designated to carry out the disclosure formalilities referred to in Article 48e(2). When ~~the~~ this information or report is not available, such person(s) shall request the ultimate parent undertaking not governed by the law of a Member State or the ~~non-affiliated~~ standalone undertaking referred to in point (a) of this paragraph to provide all information required to meet their obligations. In case ~~the~~ this information or report is not provided, the branches shall publish and make accessible a statement as to why the report on income tax information could not be published and made accessible** ~~report shall contain an explanation as to why this is the case.~~

~~The report on income tax information shall be 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.~~

Member States shall **not** apply the first subparagraph of this paragraph ~~only~~ to branches which ~~have~~ net turnover **did not** exceed~~ing~~ **at least for each of the last two consecutive financial years the** 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 **this** paragraph ~~4 only~~ to a branch **only** where the following criteria are met:

(a) the undertaking **that** ~~which~~ opened **and still operates** the branch is either an affiliated undertaking of a group ~~which is controlled by an~~ **whose** ultimate parent undertaking **is** not governed by the law of a Member State and which **on its balance sheet date exceeded for each of the last two consecutive financial years a total consolidated revenue of** EUR 750 000 000 **as reflected in its consolidated financial statements** ~~has a consolidated net turnover exceeding~~ or an undertaking that is not an affiliated undertaking and which ~~has a net turnover exceeding~~ **on its balance sheet date exceeded for each of the last two consecutive financial years a total revenue of** EUR 750 000 000 **as reflected in its financial statements**; **and**

(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.

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~~ **consistently with** Article 48c **and:**

(a) is made accessible**:**

(i) to the public on the website of the ultimate parent undertaking **not governed by the law of a Member State or of the ~~non-affiliated~~ standalone undertaking** not governed by the law of a Member State**;**

(ii) in at least one of the official languages of the Union;

(iii) within ~~a reasonable period of time, which shall not exceed~~ 12 months after the balance sheet date **of the financial year for which the report is drawn up;** and

(b) ~~where the report~~ identifies the name and the registered office of ~~the~~ **a** single subsidiary undertaking or **the name and the address of ~~the~~ a** single branch governed by the law of a Member State which has published ~~the~~ **a** report in accordance with Article 48d(1).

7. **Without prejudice to paragraph 1a of this Article,** Member State**s** ~~shall~~ **may** require subsidiaries **and** ~~or~~ branches ~~**not subject to the provisions of paragraphs 3 and 4 governed by the law of that Member State and being controlled by one ultimate parent undertaking**~~ to **draw up,** publish and make accessible ~~the~~ **a** report on income tax information where **the sum of their revenues as reflected on their financial statements exceeds EUR 750 000 000 for each of the last two consecutive financial years and where no report on income tax information has been drawn up, published and made accessible as required by this Article.** ~~such subsidiaries or branches have been established for the purpose of avoiding the reporting requirements set out in this Chapter.~~

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 **~~non-affiliated~~ standalone** undertaking **~~and~~ or** the ultimate parent undertaking, including ~~activities~~ **those** 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 as follows** ~~comprise the following~~:

(-a) the name of the ultimate parent undertaking or the ~~non-affiliated~~ standalone undertaking, financial year concerned and the currency used;

(a) a brief description of the nature of the activities;

(b) the number of employees **which is the average number of employees during the financial year**;

(c) the **revenues which are:** ~~amount of the net turnover, which includes the turnover made with related parties;~~

(i) the sum of the net turnover, other operating income, income from participating interests, excluding dividends received from affiliated undertakings, income from other investments and loans forming part of the fixed assets, other interest receivable and similar income as listed in Annexes V and VI of this Directive, or

(ii) the income as defined by or within the meaning of the financial reporting framework on the basis of which financial statements are prepared excluding value adjustments and dividends received from affiliated undertakings;

(d) the amount of profit or loss before income tax;

(e) the amount of income tax accrued **~~in the~~** ~~(current year)~~**~~,~~** **during the relevant financial 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 **on cash basis** 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; and

(g) the amount of accumulated earnings **at the end of the relevant financial year**.

For the purposes of point (c) of the first subparagraph the revenues shall include transactions with related parties.

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.

For the purposes of point (f) of the first subparagraph taxes paid shall include witholding taxes paid by other undertakings with respect to payments to undertakings and branches within a group.

For the purposes of point (g) of the first subparagraph the accumulated earnings shall mean the sum of the profits of past financial years and the relevant financial year not decided for distribution. ~~profit brought forward which was not decided for distribution to members as of the end of the relevant financial year and the profit for that financial year which was not distributed.~~ With regard to branches, accumulated earnings shall be reported by the undertaking which opened a branch.

2a. Member States shall permit the information listed in paragraph 2 to correspond to the reporting specifications referred to in Annex III, Section III, Parts B and C of Directive 2011/16/EU.

3. The report shall present the information referred to in paragraph 2 **or 2a** separately for each Member State. Where a Member State comprises several tax jurisdictions, the information shall be combined at Member State level.

The report shall also present the information referred to in paragraph 2 **or 2a** of this Article separately for each tax jurisdiction which, at the end of the previous financial year, is listed in the ~~common~~ **E**U ~~nion~~ list of **non-cooperative jurisdictions for tax purposes**[11] ~~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.

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[11] **List adopted by the Council on** [*lawyer-linguists: please add the reference*].
The precise language of this footnote shall be adapted when the list is adopted by the Council.
List as referred to in the Conclusions of the Council of the European Union of 25 May 2016 and 8 November 2016.

The report shall present the information referred to in paragraph 2 **or 2a** on an aggregated basis for other tax jurisdictions.

The information shall be attributed to each relevant tax jurisdiction on the basis of ~~the~~ **a legal presence,** the existence of a fixed place of business or of a permanent business activity which, arising from the activities of the group **or** ~~non-affiliated~~ **standalone undertaking**, 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.

3a. ~~Member States may allow certain~~ **Information otherwise required to be disclosed by paragraphs 2 and 3 of this Article** ~~to~~ **may be omitted when its** ~~nature is such that it~~ **disclosure would be seriously prejudicial to the commercial position of the undertakings to which it relates**~~, including when only a single affiliated undertaking operates in a tax jurisdiction which is not listed in the EU list of non-cooperative jurisdictions for tax purposes~~**. Any such omission shall be** ~~subject to prior administrative or judicial authorisation for a period of one year, which may be renewed, and~~ **disclosed in the report together with reasoned explanation regarding its causes.**
Any information thus omitted shall be made public in a later report on income tax information within no more than four years from the date of its original omission.
Information pertaining to tax jurisdictions listed in the EU list of non-cooperative jurisdictions for tax purposes may never be omitted. ~~The report shall include a detailed account of the basis for any exemption granted under this paragraph~~**.**

4. The report ~~shall~~ **may** include**, where applicable** 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 and made accessible on the website in at least one of the official languages of the Union.~~

6. The currency used in the report on income tax information shall be the currency in which the consolidated financial statements **of the ultimate parent undertaking or the annual financial statements of the ~~non-affiliated~~ standalone undertaking** are presented. Member States shall not require this report to be published in a different currency than the currency used in the financial statements.
However, in the case mentioned in the second subparagraph of Article 48b(3), the subsidiary undertaking shall publish the report in the currency in which it publishes its annual financial statements.

7. Where Member States have not adopted the euro, the threshold referred to in Article 48b(1) ~~shall~~ **may** be converted into the national currency**.** ~~by~~ **Such conversion must** apply~~ing~~ the exchange rate as at *[Publications Office- set the date = the date of the entry in force of this Directive]* published in the Official Journal of the European Union and ~~by~~ **may increase** ~~increasing~~ or **decrease the thresholds** ~~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 *[Publications Office - set the date = the date of the entry in force of this Directive]*, rounded off to the nearest thousand.

8. The report shall specify whether it was prepared in accordance with paragraph 2 or 2a of this Article.

Article 48d

Publication and Accessibility

1. The report on income tax information **or the statement mentioned in Article 48b** shall be published **within 12 months after the balance sheet date of the financial year for which the report is drawn up** 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~~ **in accordance with** Article **7** ~~9~~ of Council Directive 89/666/EEC.

1a. The report or the statement published in accordance with paragraph 1 shall be made accessible to the public within 12 months after the balance sheet date of the financial year for which the report is drawn up:

(a) on the website of the undertaking when Article 48b(1) applies, or

(b) on the website of the subsidiary undertaking or on the website of an affiliated undertaking when Article 48b(3) applies, or

(c) on the website of the branch or on the website of the undertaking which opened the branch or on the website of an affiliated undertaking when Article 48b(4) applies.

1b. Member States may exempt undertakings ~~to apply~~ from applying the rules set out in paragraph 1a of this Article where the report published in accordance with paragraph 1 is simultaneously made accessible to the public on the website of the register referred to in Article 3(1) of Directive 2009/101/EC, free of charge to any third party located within the Union. The website of the undertakings and branches as referred to in paragraph 1a shall contain information on the exemption and the reference to the website of the relevant register.

2. The report referred to in Article 48b(1), (3), (4) and (6) shall remain accessible on the **relevant** 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. Member States shall ensure that the members of the administrative, management and supervisory bodies of the ultimate parent undertaking **or the ~~non-affiliated~~ standalone undertakings** referred to in Article 48b(1), **or the subsidiary undertaking exceeding for each of the last two consecutive financial years EUR 750 000 000 of total consolidated revenue as referred to in Article 48b(3a),** 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.

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 **consistently with Article 48c**, **is** published and made accessible in accordance with Article~~s 48b, 48c and~~ 48d.

Article 48f

~~Independent check~~ **Statement by statutory auditor**

Member States **may require** ~~**shall ensure**~~ that, where the financial statements of an ~~affiliated~~ undertaking **governed by the law of a Member State** ~~**referred to in Article 48b(1), (3) and (6)(b)**~~ are **required to be** 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~~ **state(s) in the** ~~**next**~~ **audit report** ~~**after publication or, if applicable after the expiration of the time limit for publication**~~ whether**, the undertaking is required to draw up a report on income tax information in accordance with Article 48b.**

~~**as of the date of the audit report, the a report on income tax information has been provided and made accessible in accordance with referred to in Articles 48b, 48c and 48d has been published. 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 and made accessible or not, in accordance with those Articles 48b and 48d.**~~]

~~*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.~~

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 *[Publications Office- set the date = one year after the transposition deadline]*.

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, taking into account the need to ensure a sufficient level of transparency and the need for a competitive environment for undertakings.

The report shall be submitted to the European Parliament and to the Council by [*Publications Office- set the date = five years after the transposition date of this Directive*].'

(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)~~,~~ **and** 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)~~,~~ **and** 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 on Better Law-Making of **13 April 2016** [12][~~*date*~~].'

(c) Paragraph 5 is replaced by the following:

'5. A delegated act adopted pursuant to Article 1(2), Article 3(13)~~,~~ **and** Article 46(2) ~~and 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.'

[12] OJ L 123, p. 1.

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by *[Publications Office - set the date = ~~one~~ **two** year**s** after entry into force]* 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 Strasbourg,

For the European Parliament
The President

For the Council
The President