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#### NOTE

From:	General Secretariat of the Council
To:	Delegations
Subject:	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 (CBCR) - Presidency compromise text

Delegations will find in Annex II a Presidency compromise text in view of the Working Party on Company Law on 17 November 2016.

It is based on the discussions of the Company Law Working Party of 28 April, 23 May, 22 June, 13 July, 19 September 2016, and 24 October 2016, and on the delegations' written comments.

Delegations are informed that changes compared to the Commission Proposal (doc. 7949/16) are indicated in **bold/underlined** and deletions are marked with ~~strikethrough~~.

Delegations will find in Annex I an explanatory note on the main elements of the compromise text.

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

DK, FR, LT, SE entered a parliamentary scrutiny reservation.

## **Explanatory Note General Statement**

### **General Statement**

The Presidency has prepared a new compromise text of the proposed Directive following the discussions at the Working Party meetings and the contributions received from delegations.

It is the view of the Presidency that the current text addresses most of the key questions raised by delegations while preserving the aim of the proposal, namely increased transparency and public scrutiny.

The approach chosen by the Presidency is to clarify the text and the terminology for reporting purposes as requested by many delegations. It leaves the text unchanged where it already provides a solution addressing different and divergent views of the Member States, thus avoiding changes without sufficient grounds at this stage.

### **Preamble**

Recitals have been changed in light of the discussion at the Working Party meeting.

### **Text of the Directive**

#### **Introduction**

Drafting changes on the content of the report on income tax information are aimed at avoiding some confusion on the meaning of certain concepts and wording that derive from the Directive 2011/16/EU (DAC 4) in relation to the existing concepts and wording of the Accounting Directive.

In light of delegations' comments, provisions concerning publication on the website are now included in the new paragraph 1a of Article 48d.

#### **Article 48a**

In Article 48a (2) a new definition is provided for the purpose of defining the scope of the reporting requirement. This definition is taking into account various definitions of the term "revenue" in the financial reporting frameworks on the basis of which financial statements of undertakings, including undertakings which are not governed by the law of a Member State, are prepared.

#### **Article 48b**

Changes were made in order to better specify the timeframe of the reporting requirements. It is clarified that when ultimate parent undertaking exceeds the size criterion (revenue of EUR 750m) in year 1 and 2, a CBCR report on year 2 should be published and made accessible in year 3.

The drafting changes in the new subparagraph were made in order to distinguish the EU group from the non-affiliated undertakings. Furthermore, a rule on cross-border aspect for undertakings governed by the laws of a Member State was included to respond to a requirement of some delegations.

Paragraphs 4 and 5 concerning the branches have been merged for the purposes of clarity as requested by some delegations. A two-year period regime used when defining the medium-sized and large subsidiary undertakings was added, in order to align the requirements of branches with the requirements of other subsidiary undertakings from non-EU groups.

#### **Article 48c**

Definitions and the additional text in paragraph 2 were added for the purposes of the report on income tax information. Furthermore, it is clarified that the list of information is an exhaustive list. Revenues are defined using two alternatives depending on the financial reporting framework applied: (c) (i) include items stated in Annexes V and VI of the Accounting Directive, excluding value adjustments and dividends received from the affiliated undertakings; (c) (ii) based on definitions from the financial reporting framework, in order to facilitate the understanding of revenues for undertakings not applying the Accounting Directive.

DAC 4 report limited to information stated in Article 48c (2) is designed as an option for undertakings in the new paragraph 2a.

Following delegations' suggestions a safeguard clause is introduced in the new paragraph 3a, also, the possibility to use the threshold in euro is introduced for Member States that have not adopted the euro.

#### **Article 48d**

In response to delegations' requests that the time period for publication should be prolonged and take into account the time limit for the DAC 4 report, changes have been introduced.

#### **Article 48f, Article 1a**

Based on the change of the time period in Article 48d (1), it is clarified that in situations where the financial statements are required to be audited, the statutory auditor(s) or the audit firm(s) will state in the next audit report whether the report on income tax information has been published and made accessible. The title of the Article as well as the audit report defined in Article 28 of Directive 2006/43/EC are amended accordingly.

#### **Article 48g**

Taking into account concerns of majority of the delegations, the delegated act is replaced by an implementing act, while in the same time it will be specified in Recitals that due regards will be given to the list adopted by the Council in accordance with the Council conclusions on an external taxation strategy and measures against tax treaty abuse of 25 May 2016 in adopting the implementing acts. In this respect ongoing work within the Code of Conduct Working Party will be further examined.

#### **Final provisions**

As suggested by many delegations, the transposition period in Article 2 is set to be 24 months.

## **Concluding remarks**

Remaining changes in the text of the Directive are of technical nature or for the purposes of clarity in particular with regard to non-affiliated undertakings

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<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure,

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<sup>1</sup> 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’ and ‘Commission Work Programme 2015 - A New Start’ 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 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.
- (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 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.

- (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~~ 25 May 2016, the Council adopted Directive 2016/881 on mandatory automatic exchange of information in the field of taxation, which transposes into Union law, the BEPS Action 13 ~~by amending Council Directive 2011/16/EU~~.
- (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.
- (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, 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. 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.



- (6a) Multinational groups, and where relevant, non-affiliated 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 undertaking. Given the wide array of accounting frameworks with which financial statements may comply, such revenue should be defined as the net turnover for undertakings falling within the scope of this Directive. 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.**
- (7) In order to avoid double reporting for the banking sector, ultimate parent undertakings **and non-affiliated undertakings** which are subject to Directive 2013/36/EU of the European Parliament and of the Council 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 , should be exempted from the reporting requirements set out in this Directive.

(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 undertaking**. The information should be based on 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 **for undertakings. For this reason, the list of information is exhaustive**. 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. 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 tax jurisdictions which pose particular challenges. For all other third country operations, the information should be given in an aggregate number.

- (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 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 from their ultimate parent undertaking**, their responsibility to publish and make accessible the report on income tax information should be limited.
- (11) **To ensure public awareness on the compliance of the reporting obligations by the relevant undertakings**, ~~To ensure that cases of non-compliance are disclosed to the public,~~ statutory auditor(s) or audit firm(s) should ~~check~~ **state** whether the report on income tax information has been ~~submitted and presented~~ **published** 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, **within the time limits established by this Directive**.

- (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*, 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.
- (13) **The European Council, in its conclusions of 25 May 2016, agreed on the establishment by the Council of an EU list of non-cooperative jurisdictions and invited the Code of Conduct Group to start work on an EU list of non-cooperative jurisdictions by September 2016. Subsequently, and in order to ensure uniform conditions for the implementation of Article 48c (3) of this Directive, implementing powers should be conferred upon the Commission. Those powers should be exercised in accordance with 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 the control by Member States of the Commission's exercise of implementing powers<sup>2</sup>. In adopting and in reviewing the implementing acts, the Council should ensure that the list is identical to the one adopted by the Code of Conduct Group in order to ensure consistency between the lists.**

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<sup>2</sup> **OJ L 55, 28.2.2011, p. 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, 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,

*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

**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.

**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**  
**(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 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 latest financial year.** ~~on an annual basis.~~

**Member States shall require undertakings governed by their national laws that are not affiliated undertakings and which on their balance sheet date exceeded for 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 latest financial year.**

~~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 undertakings, ultimate parent undertakings and their affiliated undertakings where such undertakings operate 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 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~~<sup>3</sup> 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 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 **as regards the latest financial year, to the extent that the information is available to the subsidiary undertaking. When the information is not available, the subsidiary undertaking shall request its ultimate parent udertaking not governed by the law of a Member State to provide it with all information required to enable it to meet its obligation.** ~~on an annual basis.~~

<sup>3</sup> 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).



~~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 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 undertaking** referred to in point (a) of **this** paragraph **as regards the latest financial year.** ~~5 of this Article.~~

~~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** exceeding **at least for 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 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 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 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 **or of the non-affiliated 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 single subsidiary undertaking or **the name and the address of** the single branch governed by the law of a Member State which has published ~~the a~~ report in accordance with Article 48d(1).
7. Member States shall require subsidiaries **and** ~~or~~ branches not subject to the provisions of paragraphs 3 and 4 to publish and make accessible ~~the a~~ 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.

#### *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** 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 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)~~, 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.

**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 withholding 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 profit brought forward which was not decided for distribution to members as of the end of the relevant financial year. 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 specify whether it was prepared in accordance with paragraph 2 or 2a.**

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.

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 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.

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

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 **or non-affiliated 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 information required to be disclosed by paragraphs 2 and 3 of this Article to be omitted when its nature is such that it 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 common Union list of certain tax jurisdictions drawn up pursuant to Article 48g. Any such omission shall be disclosed in the report.**

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 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.
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** applying 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** ~~decreasing it~~ **the thresholds** 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.

*Article 48d*

Publication and Accessibility

1. The report on income tax information 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<sup>4</sup>.
  - 1a. The report 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 an affiliated undertaking when Article 48b(4) applies.**
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.

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<sup>4</sup> 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).

## *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 undertakings** 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.
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 Articles ~~48b, 48c and~~ 48d.



*Article 48f*

Independent check **statement**

Member States 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 after the expiration of the time limit for publication** whether, **as of the date of the audit report**, the 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 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. The Commission shall be empowered to adopt implementing acts identifying tax jurisdictions which do not comply with the criteria referred to in paragraph 2 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 50(2).**
- 2. The assessment of the tax jurisdictions shall be based on the non-compliance of certain tax jurisdictions with at least the following criteria:**
  - (1) Tax transparency criteria;** ~~Transparency and exchange of information, including information exchange on request and Automatic Exchange of Information of financial account information~~

- (2) Fair **taxation** ~~tax competition~~;
- (3) ~~Standards set up by the G20 and/or the OECD~~ **Implementing of anti - BEPS measures.**
- (4) ~~Other relevant standards, including international standards set up by the Financial Action Task Force.~~

**3.** The Commission shall regularly review the list **implementing acts referred to in paragraph 1** and, where appropriate, amend ~~it~~ **them** 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 [date].’

(c) Paragraph 5 is replaced by the following:

‘5. A delegated act adopted pursuant to Article 1(2), Article 3(13) **or** 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.’

## Article 1a

### Amendment of Directive 2006/43/EC as regards the audit report

**Directive 2006/43/EC is amended as follows:**

**Point (h) is added in paragraph 2 of Article 28:**

**"(h) where applicable, provide the statement referred to in Article 48f of Directive 2013/34/EU<sup>5</sup>."**

## 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** years 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.

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<sup>5</sup> **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.**

*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*

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