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**NOTE**

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From: Presidency  
To: Permanent Representatives Committee/Council  
Subject: Draft Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation  
- Political agreement

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**I. INTRODUCTION**

1. Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union<sup>1</sup> (the Pillar Two Directive) broadly reflects, with certain adaptations required by EU law, the model rules, agreed at the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (‘the Inclusive Framework’), on a reform of the international rules on the taxation of the profits of the largest multinational enterprises.

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<sup>1</sup> OJ L 328, 22.12.2022, p. 1–58 ELI: <http://data.europa.eu/eli/dir/2022/2523/oj>.

2. Minimum effective taxation, which constitutes ‘Pillar Two’, is based on two main rules (‘GloBE rules’) – the income inclusion rule (IIR) and the undertaxed payment rule (UTPR) – which are intended to ensure that the profits made by multinational groups with a turnover of at least EUR 750 million are taxed at an effective rate of at least 15 %. The Pillar Two Directive is designed to ensure that large multinational enterprises groups (MNEs) pay a minimum level of tax on the income arising in each jurisdiction where they operate. Entities within the scope of the rules must calculate their effective tax rate for each jurisdiction where they operate and pay a top-up tax for the difference between their effective tax rate per jurisdiction and the 15% minimum tax rate. Article 44 of the Pillar Two Directive sets out an obligation to file the top-up tax information return (TTIR). TTIR is to be filed using a standardised template.
3. For this system to function effectively, it is also necessary to ensure that tax authorities receive and automatically exchange relevant tax information. For these purposes, the OECD has developed a standard template (GloBE Information Return or GIR) that the filing entities of large multinational enterprise groups should be required to use to fulfil their filing obligations. Accordingly, same as the Pillar Two rules, GIR should be transposed into EU law, in order to facilitate the exchange of information between the Member States.

4. Against this background, the proposal for a Council Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC9) was issued by the European Commission on 28 October 2024<sup>2</sup>.
5. The key objective of this legislative proposal is to put into operation the provisions of the Pillar Two Directive (Article 44 in particular), which foresees that the first reporting on top-up tax information from multinational enterprise groups and large-scale domestic groups will need to take place by 30 June 2026. This objective will be achieved by the following:
  - a) setting out the standard form of the TTIR that the filing entities of the large multinational enterprise groups (that are in scope of the Pillar Two rules) would be requested to submit, and
  - b) supplementing Directive 2011/16/EU with provisions laying down a framework to facilitate the exchange of TTIR between the tax authorities of Member States.
6. DAC9, once adopted by the Council, would have to be rather quickly transposed into national law by all Member States, to avoid gaps in tax reporting. Therefore, the timeline for completion of these negotiations remains tight.
7. The opinion of the European Parliament on this legislative proposal was adopted on 12 February 2025.<sup>3</sup> The opinion of the European Economic and Social Committee is pending.

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<sup>2</sup> Doc. ST 15004/24 + ADD1.

<sup>3</sup> P10\_TA(2025)0013 (see also doc. ST 5822/25).

## II. STATE OF PLAY

8. The Polish Presidency has prioritised work on this file and has invited Member States to conclude the necessary preparatory work in time for the meeting of ECOFIN Council in March 2025. So far, during the Polish Presidency term, four meetings of the Working Party on Tax Questions (WPTQ) have taken place (9 and 24 January, 17 February, and a WPTQ (High Level) meeting on 26 February 2025).
9. Following the meeting of the WPTQ (High Level) on 26 February 2025, the Presidency made further adjustments, agreed during that meeting, to the draft Directive (amendments to Recital 7 and Article 27d(4) (changing the date to 1 December 2026)). The latest Presidency compromise text, which reflects these amendments, is set out in doc. ST 6503/25.
10. The Presidency is of the view that this compromise text should now strike the right balance and address the concerns raised by the delegations. This text should be a good basis to finalise these negotiations, and any further modifications may result in the reduction of the existing level of support by delegations of Member States. Therefore, the Presidency expects that all delegations should be in a position to lift any remaining reservations, accept the latest compromise text, and that the key issue set out in part III of this note will be resolved.

### III. KEY ISSUE:

*Updates to TTIR: Commission delegated act or a Council implementing act  
(Articles 26a, 26b and recital 18)*

11. The key open issue in these negotiations is to find an agreement on the method to be used for updating the standard form of the TTIR (Section IV of the Annex VII to DAC), so that it remains aligned with the forthcoming updates of the standardised GloBE Information Return (GIR) laid down in the OECD/G20 Inclusive Framework agreement on base erosion and profit shifting (BEPS)).
12. Besides the possibility of amending the Annex through a Council Directive (under the special legislative procedure), two key options have emerged:
  - a) either the powers to update the standard form of the TTIR are delegated to the Commission (this option was part of the Commission legislative proposal for DAC9); or
  - b) the standard form of the TTIR is adopted by way of the Council implementing act.
13. At the WPTQ (High Level) meeting on 26 February 2025, the majority of Member States could support delegating powers for updating TTIR to the Commission. However, some Member States continued to oppose this solution and required that the standard form of the TTIR is adopted by way of the Council implementing act, and that this method should also be used to quickly update TTIR, once such need arises on the basis of any new agreed developments of the GIR.

14. At this stage, in the compromise text of the draft Directive, the Presidency maintains that powers to update TTIR would remain conferred on the Commission. Nevertheless, should all Member States choose to agree that implementing powers are delegated to the Council, then the compromise text would have to be revised by including the amendments set out in the Annex to this note. The main adjustment would be deletion of Section IV of Annex VII, which contains the standard form of the TTIR, from the Directive.
15. The Presidency hopes that this key open issue will be resolved in a spirit of compromise, and all Member States could agree on one of the two options (delegation of powers either to the Commission or to the Council).

#### **IV. WAY FORWARD**

16. Against this background, the Committee of the Permanent Representatives is invited to:
- a) resolve the remaining open issue and confirm its agreement on the compromise text;
  - b) suggest that the Council, at its forthcoming meeting, reaches the political agreement on the text of the draft Directive amending Directive 2011/16/EU on administrative cooperation in the field of taxation (DAC9), with a view to adopting the Directive, subject to legal-linguistic revision.
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**TTIR updates through Council implementing acts**

As referred in the Presidency's note, should all delegations accept the solution that TTIR has to be adopted by way of a Council implementing act, then the following adjustments would have to be made to the Presidency compromise text:

**1. Recital 18 would be replaced by the following:**

- (18) Given that this Directive operationalises the filing obligations as laid down in Council Directive (EU) 2022/2523 and establishes the subsequent obligation to exchange the Top-up tax information return between tax authorities, and given that the determination of the Top-up tax information return template is crucial to ensure that Member States perform an appropriate risk assessment and evaluate the correctness of a constituent entity's tax liability under Directive (EU) 2022/2523, which has an impact on budgetary policies as well as on the fiscal sovereignty of Member States, it is important that implementing powers are conferred on the Council to define the standard template for MNE group in order to comply with the filing obligations as laid down in Council Directive (EU) 2022/2523. It should be therefore for the Council, on a proposal from the Commission, to define the standard template and to subsequently update it in order to keep it aligned with the form developed by the OECD/G20 IF on BEPS.

**2. Article 26a and Article 26b would be replaced by the following:**

*Article 26a*

*Standard template*

1. The Council, acting unanimously on a proposal from the Commission, shall adopt implementing acts to define the standard template to be used by the filing constituent entity of an MNE group to fulfil the filing obligations pursuant to Article 44 of Directive (EU) 2022/2523.
2. Without prejudice to Directive (EU) 2022/2523, that standard template shall be aligned with the standardised GloBE Information Return laid down in the OECD/G20 Inclusive Framework agreement on base erosion and profit shifting (BEPS) and with any update of that Framework).

*Article 26b*

*Informing the European Parliament*

The European Parliament shall be informed by the Council of the adoption of implementing acts.

**3. As a consequence, a number of other provisions of the compromise text would require technical adjustment, due to removal of the template of the Top-up tax information return (Section IV of Annex VII) from the text of the Directive. In particular:**

- a) Recital 6;
- b) Recital 15;
- c) Recital 16;
- d) Recital 17;

- e) Recital 18;
  - f) Recital 19 (deletion of the bracketed text: “(i.e. set out in Section IV of Annex VII to this Directive)”);
  - g) DAC9 Article 1, point (1): (adjustment of DAC Article 3, point (9), second subparagraph);
  - h) DAC9 Article 1, point (3): (DAC Article 8ae);
  - i) DAC9 Article 1, point (8): (the proposed Article 21(9) of DAC - deletion of the empowerment to the Commission);
  - j) DAC9 Article 1, point (11): (DAC Article 26a);
  - k) DAC9 Article 1, point (12): (DAC Article 26b);
  - l) DAC9 Article 2;
  - m) DAC9 Annex VII, Section I and III and deletion of Section IV.
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