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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Position of the Council at First Reading with view to the adoption of
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

DIRECTIVE (EU) 2021/...
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

amending Directive 2013/34/EU
as regards disclosure of income tax information by certain undertakings and branches

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

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

Acting in accordance with the ordinary legislative procedure²,

¹ OJ C 487, 28.12.2016, p. 62.

² Position of the European Parliament of 27 March 2019 (OJ C 108, 26.3.2021, p. 623) and position of the Council at first reading of ... (not yet published in the Official Journal)]. Position of the European Parliament of ... (not yet published in the Official Journal).

Whereas:

- (1) Transparency is essential for the smooth functioning of the internal market. The Commission, in its communications of 27 October 2015 entitled ‘Commission Work Programme 2016 – No time for business as usual’ and of 16 December 2014 entitled ‘Commission Work Programme 2015 – A New Start’, identified as a priority the need to respond to the call of citizens of the Union for fairness and transparency and the need for the Union to act as a global reference model. It is essential that the efforts to achieve greater transparency take into account reciprocity between competitors.

- (2) In its resolution of 26 March 2019¹, the European Parliament stressed the need for ambitious public country-by-country reporting as a tool for increasing corporate transparency and enhancing public scrutiny. 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, in order to further foster corporate transparency and responsibility, thereby contributing to the welfare of our societies. Providing for such scrutiny is also necessary to promote a better informed public debate regarding, in particular, the level of tax compliance of certain multinational undertakings active in the Union and the impact of tax compliance on the real economy. The setting of common rules on corporate income tax transparency would also serve the general economic interest by providing for equivalent safeguards throughout the Union for the protection of investors, creditors and other third parties generally, and thus contribute to regaining the trust of citizens of the Union in the fairness of 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.

¹ OJ C 108, 26.3.2021, p. 8.

- (3) Public country-by-country reporting is an efficient and appropriate tool for increasing transparency in relation to the activities of multinational undertakings and for enabling the public to assess the impact of those activities on the real economy. It also improves shareholders' ability to evaluate properly the risks taken by undertakings, leads to investment strategies being based on accurate information and enhances the ability of decision-makers to assess the efficiency and the impact of national legislation. Public scrutiny should be conducted without harming the investment climate in the Union or the competitiveness of Union undertakings, including small and medium-sized undertakings as provided for in Directive 2013/34/EU of the European Parliament and of the Council¹.
- (4) Public country-by-country reporting is also likely to have a positive impact on employees' rights to information and consultation as provided for in Directive 2002/14/EC of the European Parliament and of the Council² and, by increasing knowledge of undertakings' activities, on the quality of the dialogue that takes place within undertakings.

¹ 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).

² Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community (OJ L 80, 23.3.2002, p. 29).

- (5) Following the European Council conclusions of 22 May 2013, a review clause was introduced in Directive 2013/34/EU. That review clause required the Commission to consider the possibility of introducing an obligation on large undertakings in additional industry sectors to produce a country-by-country report on an annual basis, taking into account the developments in the Organisation for Economic Cooperation and Development (OECD) and the results of related European initiatives.
- (6) The Union has already introduced public country-by-country reporting for the banking sector with Directive 2013/36/EU of the European Parliament and of the Council¹, as well as for the extractive and logging industry with Directive 2013/34/EU.
- (7) By introducing public country-by-country reporting with this Directive, the Union becomes a global leader in the promotion of financial and corporate transparency.
- (8) More transparency in financial disclosure will be advantageous for all, since civil society will become more involved, employees will be better informed and investors less risk-averse. In addition, undertakings will benefit from better relations with stakeholders, which will lead to greater stability, along with easier access to finance due to a clearer risk profile and an enhanced reputation.

¹ 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

- (9) In its communication of 25 October 2011 entitled ‘A renewed EU strategy 2011-14 for Corporate Social Responsibility’, the Commission defined corporate social responsibility as the responsibility of enterprises for their impact on society. Corporate social responsibility should be company led. Public authorities can play a supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation. Undertakings can go beyond compliance with the law and become socially responsible by integrating further social, environmental, ethical, consumer or human rights concerns into their business strategy and operations.

- (10) The public should be able to scrutinise all the activities of a group of undertakings if the group has certain types of entities established within the Union. For groups which carry out activities within the Union only through subsidiary undertakings or branches, those subsidiary undertakings and branches should publish and make accessible the report of the ultimate parent undertaking. If that information or report is not available or the ultimate parent undertaking does not provide the subsidiary undertakings or branches with all the required information, the subsidiary undertakings and branches should draw up, publish and make accessible a report on income tax information containing all information in their possession, obtained or acquired, and a statement indicating that their ultimate parent undertaking did not make the necessary information available. However, for reasons of proportionality and effectiveness, the obligation to publish and make accessible the report on income tax information should be limited to medium-sized and large subsidiary undertakings established in the Union and to branches of a comparable size opened in the Union. 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 and which has a legal form which is comparable with the types of undertakings listed in Annex I to Directive 2013/34/EU. Branches that have been closed as referred to in Article 37, point (k), of Directive (EU) 2017/1132 of the European Parliament and of the Council¹ should no longer be subject to the reporting obligations set out in this Directive.

¹ Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).

(11) Multinational groups, and where relevant, certain standalone undertakings, should provide the public with a report on income tax information where they exceed a certain size, in terms of the amount of revenue, over a period of two consecutive financial years, depending on the consolidated revenue of the group or the revenue of the standalone undertaking. By way of symmetry, such obligation should cease to apply where those revenues cease to exceed the relevant amount over a period of two consecutive financial years. In such cases, the multinational group or the standalone undertaking should remain subject to the obligation to report on the first financial year subsequent to the last financial year when its revenues exceeded the relevant amount. Such multinational group or standalone undertaking should become subject to the reporting obligation again when its revenues again exceed the relevant amount over a period of two consecutive financial years. Given the wide array of financial reporting frameworks with which financial statements may comply, for the purposes of determining the scope of application, for undertakings governed by the law of a Member State, ‘revenue’ should have the same meaning as ‘net turnover’, and should be understood in line with the national financial reporting framework of that Member State. Article 43(2), point (c), of Council Directive 86/635/EEC¹ and Article 66(2) of Council Directive 91/674/EEC² provide definitions for the determination of the net turnover of a credit institution or of an insurance undertaking, respectively. For other undertakings, revenue should be assessed in accordance with the financial reporting framework on the basis of which their financial statements are prepared. However, for the purposes of the content of the report on income tax information, a different definition of revenue should apply.

¹ Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions (OJ L 372, 31.12.1986, p. 1).

² Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7).

- (12) In order to avoid double reporting for the banking sector, ultimate parent undertakings and standalone undertakings which are subject to Directive 2013/36/EU and which include in their report prepared in accordance with Article 89 of that Directive all of their activities and, where appropriate, all the activities of their affiliated undertakings included in their consolidated financial statements, including activities not subject to the provisions of Part Three, Title 1, Chapter 2, of Regulation (EU) No 575/2013 of the European Parliament and of the Council¹, should be exempted from the reporting requirements set out in this Directive.

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

- (13) The report on income tax information should include, where applicable, a list of all the subsidiary undertakings, in respect of the relevant financial year, established in the Union or in tax jurisdictions included in Annex I and, where applicable, in Annex II to the relevant version of the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes. In order to avoid creating an administrative burden, the ultimate parent undertaking should be able to rely on the list of subsidiary undertakings included in the consolidated financial statements of the ultimate parent undertaking. The report on income tax information should also provide information concerning all the activities of all the affiliated undertakings of the group consolidated in the financial statements of the ultimate parent undertaking or, depending on the circumstances, concerning all the activities of the standalone undertaking. The information should be limited to what is necessary to make effective public scrutiny possible, in order to ensure that disclosure does not give rise to disproportionate risks or disadvantages for undertakings in terms of competitiveness or of misinterpretations regarding the undertakings concerned. The report on income tax information should be made accessible no later than 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 introduced by this Directive do not affect the provisions of Directive 2013/34/EU regarding annual financial statements and consolidated financial statements.

- (14) In order to avoid creating an administrative burden, undertakings should be entitled to present the information on the basis of the reporting instructions laid down in Annex III, Section III, parts B and C, to Council Directive 2011/16/EU¹ when preparing a report on income tax information in compliance with this Directive. The report on income tax information should specify which reporting framework was used. The report on income tax information might in addition include an overall narrative providing explanations in the event of there being 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.
- (15) It is important to ensure that data are comparable. To that end, implementing powers should be conferred on the Commission to lay down a common template and electronic reporting formats, which should be machine-readable, for the presentation of the report on income tax information pursuant to this Directive. In laying down that template and those reporting formats, the Commission should have regard to progress made in the area of digitisation and accessibility of information published by undertakings, especially as regards the development of the European single access point as proposed in its communication of 24 September 2020 entitled ‘A Capital Markets Union for people and businesses – new action plan’. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council².

¹ 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).

² Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission’s exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

- (16) To ensure that a sufficient level of detail exists to enable citizens to better assess the contribution of multinational undertakings to the welfare of society in each Member State, the information should be broken down by Member State. Moreover, information concerning the operations of multinational undertakings 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 on an aggregate basis, unless the undertaking wishes to present more detailed information.
- (17) For certain tax jurisdictions, a high level of detail should be shown. The report on income tax information should always disclose information separately for each jurisdiction which is included in the Annexes to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes¹⁺, and their subsequent updates which are specifically approved twice a year, customarily in February and October, and published in series C of the *Official Journal of the European Union*. Annex I to those Council conclusions presents the ‘EU list of non-cooperative jurisdictions for tax purposes’, while Annex II presents the ‘State of play of the cooperation with the EU with respect to commitments taken by cooperative jurisdictions to implement tax good governance principles’. For Annex I, the jurisdictions that should be considered are those that were listed on 1 March of the financial year for which the report on income tax information is to be drawn up. For Annex II, the jurisdictions that should be considered are those that were mentioned in that Annex on 1 March of the financial year for which the report on income tax information is to be drawn up and on 1 March of the preceding financial year.

¹ See Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes and the Annexes thereto (OJ C 66, 26.2.2021, p. 40), and their subsequent updates.

⁺ OJ: please insert title and OJ reference to the latest version published.

- (18) Immediate disclosure of the data to be included in the report on income tax information could, in certain cases, be seriously prejudicial to the commercial position of an undertaking. Therefore, Member States should have the possibility of allowing undertakings to defer the disclosure of specific items of information for a limited number of years, provided they clearly disclose the existence of the deferral, give a reasoned explanation for it in the report and document the basis for the reasoning. The information undertakings omit should be disclosed in a later report. Information pertaining to tax jurisdictions included in Annexes I and II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes should never be omitted.

- (19) To strengthen corporate transparency and responsibility vis-à-vis investors, creditors, other third parties and the general public, and to ensure appropriate governance, the members of the administrative, management and supervisory bodies of the ultimate parent undertaking or standalone undertaking which is established within the Union and which has the obligation to draw up, publish and make accessible the report on income tax information should be collectively responsible for ensuring compliance with the reporting obligations under this Directive. Given that members of the administrative, management and supervisory bodies of the subsidiary undertakings which are established within the Union and which are controlled by an ultimate parent undertaking established outside the Union, or the person or persons in charge of carrying out the disclosure formalities for the branch, might have limited knowledge of the content of the report on income tax information prepared by the ultimate parent undertaking or might have a limited ability to obtain such information or such a report from the ultimate parent undertaking, the responsibility of those members or those persons should encompass ensuring, to the best of their knowledge and ability, that the report on income tax information of the ultimate parent undertaking or standalone undertaking has been drawn up and made public in a manner that is consistent with this Directive, or that the subsidiary undertaking or branch has drawn up, published and made accessible all the information in its possession, obtained or acquired, in accordance with this Directive. Where the information or report is incomplete, the responsibility of those members or those persons should extend to publishing a statement indicating that the ultimate parent undertaking or the standalone undertaking did not make the necessary information available.

- (20) To ensure that the public is aware of the scope of, and of compliance with, the reporting obligations introduced into Directive 2013/34/EU by this Directive, Member States should require that statutory auditors and audit firms state whether an undertaking was required to publish a report on income tax information, and if so, whether that report was published.
- (21) The obligations on Member States to provide for penalties and take all the measures necessary to ensure that those penalties are enforced pursuant to Directive 2013/34/EU apply to infringements of the national provisions as regards the disclosure of income tax information by certain undertakings and branches adopted pursuant to this Directive.

- (22) This Directive aims to enhance corporate transparency and the transparency and public scrutiny of corporate income tax information 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), point (g), of the Treaty on the Functioning of the European Union (TFEU). As the Court of Justice held, in particular, in Case C-97/96 *Verband deutscher Daihatsu-Händler*¹, Article 50(2), point (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. Thus, the term ‘others’ is broader than investors and creditors, and extends to other interested third parties, including competitors and the general public. 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 only concerns obligations to publish reports on income tax information, and does not concern the harmonisation of taxes, Article 50(1) TFEU constitutes the appropriate legal basis.
- (23) To ensure the full functioning of the internal market and a level playing field for Union and third-country multinational undertakings, the Commission should continue to explore possibilities for increasing fairness and tax transparency. In particular, the Commission should examine, within the framework of the review clause, whether, inter alia, full disaggregation would enhance the effectiveness of this Directive.

¹ Judgement of the Court of Justice of 4 December 1997, C-97/96 *Verband deutscher Daihatsu-Händler* ECLI:EU:C:1997:581

- (24) 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.
- (25) This Directive responds to the concerns expressed by interested parties about the need to tackle distortions in the internal market without compromising Union competitiveness. It should not cause an undue administrative burden for undertakings. Overall, within the framework of this Directive, the extent of the information to be disclosed is proportionate to the objectives of increasing corporate transparency and public scrutiny. This Directive respects therefore the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (26) 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.
- (27) 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 is inserted:

- ‘1a. The coordination measures prescribed by Articles 48a to 48e and Article 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. Article 2 shall apply in respect of those branches to the extent that Articles 48a to 48e and Article 51 are applicable to such branches.’;

(2) after Article 48, the following Chapter 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 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 or non-State jurisdiction which has fiscal autonomy in respect of corporate income tax;
 - (4) “standalone undertaking” means an undertaking which is not part of a group as defined in Article 2, point (11).

2. For the purposes of Article 48b of this Directive, “revenue” has the same meaning as:
 - (a) “net turnover”, for undertakings governed by the law of a Member State that do not apply international accounting standards adopted on the basis of Regulation (EC) No 1606/2002; or
 - (b) “revenue” as defined by or within the meaning of the financial reporting framework on the basis of which the 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, where the consolidated revenue on their balance sheet date exceeded for each of the last two consecutive financial years a total of EUR 750 000 000, as reflected in their consolidated financial statements, to draw up, publish and make accessible a report on income tax information as regards the latter of those two consecutive financial years.

Member States shall provide for an ultimate parent undertaking to no longer be subject to the reporting obligations set out in the first subparagraph where the total consolidated revenue on its balance sheet date falls below EUR 750 000 000 for each of the last two consecutive financial years as reflected in its consolidated financial statements.

Member States shall require standalone undertakings governed by their national laws, where the revenue on their balance sheet date exceeded for each of the last two consecutive financial years a total 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 latter of those two consecutive financial years.

Member States shall provide for a standalone undertaking to no longer be subject to the reporting obligations set out in the third subparagraph where the total revenue on its balance sheet date falls below EUR 750 000 000 for each of the last two consecutive financial years as reflected in its financial statements.

2. Member States shall provide that the rule set out in paragraph 1 does not apply to standalone undertakings or ultimate parent undertakings and their affiliated undertakings where such undertakings, including their branches, are established, or have their fixed places of business or permanent business activity, within the territory of a single Member State and no other tax jurisdiction.
3. Member States shall provide that the rule set out in paragraph 1 of this Article does not apply to standalone undertakings and ultimate parent undertakings where such undertakings or their affiliated undertakings disclose a report in accordance with Article 89 of Directive 2013/36/EU of the European Parliament and of the Council* that encompasses information on all of their activities and, in the case of ultimate parent undertakings, on all the activities of all the affiliated undertakings included in the consolidated financial statements.

4. Member States shall require medium-sized and large subsidiary undertakings as referred to in Article 3(3) and (4) that are governed by their national laws and controlled by an ultimate parent undertaking that is not governed by the law of a Member State, where the consolidated revenue on its balance sheet date exceeded for each of the last two consecutive financial years a total of EUR 750 000 000, as reflected in its consolidated financial statements, to publish and make accessible a report on income tax information concerning that ultimate parent undertaking as regards the latter of those two consecutive financial years.

Where that information or report is not available, the subsidiary undertaking shall request its ultimate parent undertaking to provide it with all information required to enable it to meet its obligations under the first subparagraph. If the ultimate parent undertaking does not provide all the required information, the subsidiary undertaking shall draw up, publish and make accessible a report on income tax information containing all information in its possession, obtained or acquired, and a statement indicating that its ultimate parent undertaking did not make the necessary information available.

Member States shall provide for medium-sized and large subsidiary undertakings to no longer be subject to the reporting obligations set out in this paragraph where the total consolidated revenue of the ultimate parent undertaking on its balance sheet date falls below EUR 750 000 000 for each of the last two consecutive financial years as reflected in its consolidated financial statements.

5. Member States shall require branches opened in their territories by undertakings that are not governed by the law of a Member State to publish and make accessible a report on income tax information concerning the ultimate parent undertaking or the standalone undertaking referred to in the sixth subparagraph, point (a), as regards the latter of the last two consecutive financial years.

Where that information or report is not available, the person or persons designated to carry out the disclosure formalities referred to in Article 48e(2) shall request the ultimate parent undertaking or the standalone undertaking referred to in the sixth subparagraph, point (a), to provide them with all information necessary to enable them to meet their obligations.

In the event that not all the required information is provided, the branch shall draw up, publish and make accessible a report on income tax information, containing all information in its possession, obtained or acquired, and a statement indicating that the ultimate parent undertaking or the standalone undertaking did not make the necessary information available.

Member States shall provide for the reporting obligations set out in this paragraph to apply only to branches which have a net turnover that exceeded the threshold as transposed pursuant to Article 3(2) for each of the last two consecutive financial years.

Member States shall provide for a branch subject to the reporting obligations under this paragraph to no longer be subject to those obligations where its net turnover falls below the threshold as transposed pursuant to Article 3(2) for each of the last two consecutive financial years.

Member States shall provide that the rules set out in this paragraph apply to a branch only where the following criteria are met:

- (a) the undertaking that opened the branch is either an affiliated undertaking of a group whose ultimate parent undertaking is not governed by the law of a Member State and the consolidated revenue of which on its balance sheet date exceeded for each of the last two consecutive financial years a total of EUR 750 000 000, as reflected in its consolidated financial statements, or a standalone undertaking, the revenue of which on its balance sheet date exceeded for each of the last two consecutive financial years a total of EUR 750 000 000 as reflected in its financial statements; and
- (b) the ultimate parent undertaking referred to in point (a) of this subparagraph does not have a medium-sized or large subsidiary undertaking as referred to in paragraph 4.

Member States shall provide for a branch to no longer be subject to the reporting obligations set out in this paragraph where the criterion provided for in point (a) ceases to be met for two consecutive financial years.

6. Member States shall not apply the rules set out in paragraphs 4 and 5 of this Article where a report on income tax information is drawn up by an ultimate parent undertaking or standalone undertaking that is not governed by the law of a Member State, in a manner that is consistent with Article 48c, and meets the following criteria:
- (a) it is made accessible to the public, free of charge and in an electronic reporting format which is machine-readable:
 - (i) on the website of that ultimate parent undertaking or of that standalone undertaking;
 - (ii) in at least one of the official languages of the Union;
 - (iii) no later than 12 months after the balance sheet date of the financial year for which the report is drawn up; and
 - (b) it identifies the name and the registered office of a single subsidiary undertaking, or the name and the address of a single branch governed by the law of a Member State, which has published a report in accordance with Article 48d(1).

7. Member States shall require subsidiary undertakings or branches not subject to the provisions of paragraphs 4 and 5 of this Article to publish and make accessible a report on income tax information where such subsidiary undertakings or branches serve no other objective than to circumvent 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 required under Article 48b shall include information relating to all the activities of the standalone undertaking or ultimate parent undertaking, including those of all affiliated undertakings consolidated in the financial statements in respect of the relevant financial year.
2. The information referred to in paragraph 1 shall consist of:
 - (a) the name of the ultimate parent undertaking or the standalone undertaking, the financial year concerned, the currency used for the presentation of the report and, where applicable, a list of all subsidiary undertakings consolidated in the financial statements of the ultimate parent undertaking, in respect of the relevant financial year, established in the Union or in tax jurisdictions included in Annexes I and II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes;

- (b) a brief description of the nature of their activities;
- (c) the number of employees on a full-time equivalent basis;
- (d) revenues, which are to be calculated as:
 - (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 to this Directive; or
 - (ii) the income as defined by the financial reporting framework on the basis of which the financial statements are prepared, excluding value adjustments and dividends received from affiliated undertakings;
- (e) the amount of profit or loss before income tax;
- (f) the amount of income tax accrued during the relevant financial year, which is to be calculated as the current tax expense recognised on taxable profits or losses of the financial year by undertakings and branches in the relevant tax jurisdiction;

- (g) the amount of income tax paid on a cash basis, which is to be calculated as the amount of income tax paid during the relevant financial year by undertakings and branches in the relevant tax jurisdiction; and
- (h) the amount of accumulated earnings at the end of the relevant financial year.

For the purposes of point (d), the revenues shall include transactions with related parties.

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

For the purposes of point (g), 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 (h), the accumulated earnings shall mean the sum of the profits from past financial years and the relevant financial year, the distribution of which has not yet been decided upon. With regard to branches, accumulated earnings shall be those of the undertaking which opened the branch.

3. Member States shall permit the information listed in paragraph 2 of this Article to be reported on the basis of the reporting instructions referred to in Annex III, Section III, Parts B and C, to Council Directive 2011/16/EU**.

4. The information referred to in paragraphs 2 and 3 of this Article shall be presented using a common template and electronic reporting formats which are machine-readable. The Commission shall, by means of implementing acts, lay down that common template and those electronic reporting formats. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 50(2).
5. The report on income tax information shall present the information referred to in paragraph 2 or 3 separately for each Member State. Where a Member State comprises several tax jurisdictions, the information shall be aggregated at Member State level.

The report on income tax information shall also present the information referred to in paragraph 2 or 3 of this Article separately for each tax jurisdiction which, on 1 March of the financial year for which the report is to be drawn up, is listed in Annex I to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, and shall provide such information separately for each tax jurisdiction which, on 1 March of the financial year for which the report is to be drawn up and on 1 March of the preceding financial year, was mentioned in Annex II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes.

The report on income tax information shall present also the information referred to in paragraph 2 or 3 on an aggregated basis for other tax jurisdictions.

The information shall be attributed to each relevant tax jurisdiction on the basis of establishment, the existence of a fixed place of business or of a permanent business activity which, given the activities of the group or standalone undertaking, can be subject to income tax in that tax jurisdiction.

Where the activities of several affiliated undertakings can be subject to income tax 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.

6. Member States may allow for one or more specific items of information otherwise required to be disclosed in accordance with paragraph 2 or 3 to be temporarily omitted from the report where their disclosure would be seriously prejudicial to the commercial position of the undertakings to which the report relates. Any omission shall be clearly indicated in the report together with a duly reasoned explanation regarding the reasons therefor.

Member States shall ensure that all information omitted pursuant to the first subparagraph is made public in a later report on income tax information, within no more than five years of the date of its original omission.

Member States shall ensure that information pertaining to tax jurisdictions included in Annexes I and II to the Council conclusions on the revised EU list of non-cooperative jurisdictions for tax purposes, as referred to in paragraph 5 of this Article, may never be omitted.

7. The report on income tax information may include, where applicable at group level, an overall narrative providing explanations for any material discrepancies between the amounts disclosed pursuant to paragraph 2, points (f) and (g), taking into account, if appropriate, corresponding amounts concerning previous financial years.
8. 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 standalone undertaking are presented.

Member States shall not require this report to be published in a currency other than the currency used in the financial statements.

However, in the case mentioned in the second subparagraph of Article 48b(4), the currency used in the report on income tax information shall be the currency in which the subsidiary undertaking publishes its annual financial statements.

9. Member States that have not adopted the euro may convert the threshold of EUR 750 000 000 into their national currency. In making that conversion, those Member States shall apply the exchange rate as at ... [the date of the entry in force of this amending Directive] published in the *Official Journal of the European Union*. Those Member States may increase or decrease the thresholds by up to 5 % in order to produce a round sum in the national currencies.

The thresholds referred to in Article 48b(4) and (5) shall be converted to an equivalent amount in the national currency of any relevant third countries by applying the exchange rate as at ... [the date of the entry in force of this amending Directive], rounded off to the nearest thousand.

10. The report on income tax information shall specify whether it was prepared in accordance with paragraph 2 or 3 of this Article.

Article 48d

Publication and accessibility

1. The report on income tax information and the statement mentioned in Article 48b of this Directive shall be published within 12 months of the balance sheet date of the financial year for which the report is drawn up as provided for by each Member State in accordance with Articles 14 to 28 of Directive (EU) 2017/1132 of the European Parliament and of the Council*** and, where relevant, in accordance with Article 36 of Directive (EU) 2017/1132.
2. Member States shall ensure that the report on income tax information and the statement published by the undertakings in accordance with paragraph 1 of this Article are made accessible to the public in at least one of the official languages of the Union, free of charge, no later than 12 months after the balance sheet date of the financial year for which the report is drawn up, on the website of:
 - (a) the undertaking, where Article 48b(1) applies;
 - (b) the subsidiary undertaking or an affiliated undertaking, where Article 48b(4) applies; or
 - (c) the branch or the undertaking which opened the branch, or an affiliated undertaking, where Article 48b(5) applies.

3. Member States may exempt undertakings from applying the rules set out in paragraph 2 of this Article where the report on income tax information published in accordance with paragraph 1 of this Article is simultaneously made accessible to the public in an electronic reporting format which is machine-readable, on the website of the register referred to in Article 16 of Directive (EU) 2017/1132, and free of charge to any third party located within the Union. The website of the undertakings and branches, as referred to in paragraph 2 of this Article, shall contain information on that exemption and a reference to the website of the relevant register.
4. The report referred to in Article 48b(1), (4), (5), (6) and (7) and, where applicable, the statement referred to in paragraphs 4 and 5 of that Article, 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 provide that the members of the administrative, management and supervisory bodies of the ultimate parent undertakings or the standalone 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 provide that the members of the administrative, management and supervisory bodies of the subsidiary undertakings referred to in Article 48b(4) of this Directive and the person or persons designated to carry out the disclosure formalities provided for in Article 41 of Directive (EU) 2017/1132 for the branches referred to in Article 48b(5) of this Directive, acting within the competences assigned to them by national law, have collective responsibility for ensuring, to the best of their knowledge and ability, that the report on income tax information is drawn up in a manner that is consistent with or in accordance with, as relevant, Articles 48b and 48c, and that it is published and made accessible in accordance with Article 48d.

Article 48f

Statement by statutory auditor

Member States shall require that, where the financial statements of an undertaking governed by the law of a Member State are required to be audited by one or more statutory auditors or audit firms, the audit report shall state whether, for the financial year preceding the financial year for which the financial statements under audit were prepared, the undertaking was required under Article 48b to publish a report on income tax information and, if so, whether the report was published in accordance with Article 48d.

Article 48g

Commencement date for reporting on income tax information

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

Article 48h

Review clause

By ... [five years and six months after date of entry into force of this amending Directive], the Commission shall submit a report on compliance with, and the impact of, the reporting obligations set out in Articles 48a to 48f and, taking into account the situation at OECD level, the need to ensure that there is a sufficient level of transparency and the need to preserve and ensure a competitive environment for undertakings and private investment, it shall review and assess, in particular, whether it would be appropriate to extend the obligation to report on income tax information set out in Article 48b to large undertakings and large groups, as defined in Article 3(4) and (7) respectively, and to extend the content of the report on income tax information set out in Article 48c to include additional items. In that report, the Commission shall also assess the impact that presenting the tax information on an aggregated basis for third-country tax jurisdictions as provided for in Article 48c(5) and the temporary omission of information provided for in Article 48c(6) has on the effectiveness of this Directive.

The Commission shall submit the report to the European Parliament and to the Council, together, where appropriate, with a legislative proposal.

* 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, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

** 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).

*** Directive (EU) 2017/1132 of the European Parliament and of the Council of 14 June 2017 relating to certain aspects of company law (OJ L 169, 30.6.2017, p. 46).’;

(3) in Article 49, the following paragraph is inserted:

‘3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making*.

* OJ L 123, 12.5.2016, 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 ...[18 months after the date of entry into force of this amending Directive]. They shall immediately communicate the text of those provisions to the Commission.

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

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

Article 3
Entry into force

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

Article 4
Addressees

This Directive is addressed to the Member States.

Done at ...,

For the European Parliament
The President

For the Council
The President
