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### OUTCOME OF PROCEEDINGS

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From: General Secretariat of the Council

To: Delegations

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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  
*- Outcome of proceedings: final compromise text*

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Delegations will find in the [Annex](#) the compromise text on the above mentioned Proposal for a Directive agreed by the Permanent Representatives Committee on 9 June 2021, following the third trilogue on 1 June 2021.

**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<sup>2</sup>,

Whereas:

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<sup>1</sup> OJ C 487, 28.12.2016, p. 62.

<sup>2</sup> Position of the European Parliament of 27 March 2019.

- (1) Transparency is essential for the smooth functioning of the Single Market. The Commission in its communications entitled ‘Commission Work Programme 2016 - No time for business as usual’<sup>3</sup> and ‘Commission Work Programme 2015 - A New Start’<sup>4</sup> identified as a priority the need to respond to European citizens’ call for fairness and transparency and to act as a reference model for other countries. It is essential that transparency takes into account reciprocity between competitors.
- (2) The European Parliament has stressed the need for an ambitious public country-by-country reporting as a means of increasing corporate transparency and enhancing public scrutiny<sup>5</sup>. In parallel with the work undertaken by the Council to fight corporate income tax avoidance, it is necessary to enhance public scrutiny of corporate income taxes borne by multinational undertakings carrying out activities in the Union, as this is an essential element to further foster corporate 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 this on the real economy. The setting of common rules on corporate income tax transparency will 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 the national tax systems. Such public scrutiny can be achieved by means of a report on income tax information, irrespective of where the ultimate parent undertaking of the multinational group is established.

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<sup>3</sup> COM(2015)0610 of 27 October 2015.

<sup>4</sup> COM(2014)0910 of 16 December 2014.

<sup>5</sup> European Parliament resolution of 26 March 2019 on financial crimes, tax evasion and tax avoidance ([2018/2121\(INI\)](#)).

(2a) Public country-by-country reporting is an efficient and appropriate tool to increase transparency in relation to the activities of multinational undertaking, and to enable the public to assess the impact of those activities on the real economy. It will also improve shareholders' ability to properly evaluate the risks taken by undertakings, lead to investment strategies based on accurate information and enhance the ability of decision-makers to assess the efficiency and the impact of national legislations.

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 (SMEs) as defined in this Directive.

(2b) Country-by-country reporting would also likely 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 Council<sup>6</sup> and, by increasing knowledge on undertakings' activities, on the quality of engaged dialogue within undertakings.

(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<sup>7</sup> 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.

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<sup>6</sup> 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 - Joint declaration of the European Parliament, the Council and the Commission on employee representation (OJ L 80, 23.3.2002, p. 29–34).

<sup>7</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 (OJ L 182, 29.6.2013, p. 19).

- (4b) Public country-by-country reporting has already been established in the Union for the banking sector by Directive 2013/36/EU of the European Parliament and of the Council<sup>8</sup> as well as for the extractive and logging industry by Directive 2013/34/EU.
- (4c) The Union has demonstrated by an unprecedented introduction of public country-by-country reporting that it has become a global leader in the promotion of financial and corporate transparency.
- (4e) More transparency in financial disclosure results in advantages for all since civil society becomes more involved, employees are better informed and investors less risk-averse. In addition, undertakings will benefit from better relations with stakeholders, which leads to more stability, along with easier access to finance due to a clearer risk profile and an enhanced reputation.
- (5a) The Commission has defined corporate social responsibility (CSR) as the responsibility of enterprises for their impact on society. CSR should be company led. Public authorities can play a supporting role through a smart mix of voluntary policy measures and, where necessary, complementary regulation. Companies 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.

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<sup>8</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. 338–436).

- (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 and, if that information or report is not available or the ultimate parent undertaking does not provide them with all the required information, the subsidiaries and branches should publish a report on income tax information containing all information in their possession and a statement indicating that their ultimate parent undertaking has not made the necessary information available. When all the required information is not provided by the ultimate parent undertaking, the report on income tax information drawn up by the subsidiary undertaking or the branch should contain all information in its possession, acquired or obtained. 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 and which has a legal form which is comparable to the types of undertakings listed in Annex I of Directive 2013/34/EU. Branches that have been closed within the meaning of Article 37 k) of Directive (EU) 2017/1132 of the European Parliament and of the Council<sup>9</sup> will no longer be subject to the reporting obligations set out in Article 48b(4) of this Directive.

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<sup>9</sup> 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. 46–12).

(6a) Multinational groups, and where relevant, certain standalone undertakings, should provide the public with a report on income tax information when they exceed a certain size over a period of the last two consecutive financial years, depending on the consolidated revenue of the group or the revenue of the standalone undertaking. Symmetrically, such obligation should cease to apply when revenues cease to exceed that size over a period of two consecutive financial years. In this case, the multinational group or the standalone undertaking should still be subject to an obligation to report on the first financial year subsequent to the last financial year when it exceeded the size. Such multinational group or standalone undertaking should become subject again to the reporting obligations when its size exceeded again that size over a period of two consecutive financial years. Given the wide array of financial reporting frameworks with which financial statements may comply, in order to determine the scope of application, such revenue should be defined as net turnover for undertakings governed by the law of a Member State and following national financial reporting framework of a Member State. Article 43(2)(c) of Council Directive 86/635/EEC<sup>10</sup> and Article 66(2) of Council Directive 91/674/EEC<sup>11</sup> provide definitions as to the determination of the net turnover of a credit institution or of an insurance undertaking, respectively. For other undertakings, the revenue should be assessed in accordance with the financial reporting framework on the basis of which these financial statements are prepared. It should be noted that "revenue" has a different definition for purposes of content of the report.

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<sup>10</sup> 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. 1–17).

<sup>11</sup> 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).

- (7) 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 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<sup>12</sup> 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, 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 of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes. In order to avoid administrative burden, the list of subsidiary undertakings should contain those included in the consolidated financial statement 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 a group consolidated by an ultimate parent undertaking or, depending on the circumstances, concerning all the activities of a standalone undertaking. The information 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 in terms of competitiveness or misinterpretations for the undertakings concerned. The report 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 of Chapter 10a of this Directive do not affect the provisions regarding annual financial statements and consolidated financial statements.

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<sup>12</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1–337)

- (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<sup>13</sup> as amended. For this reason, the report should specify the reporting framework used. The report 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.
- (8b) It is important to ensure the comparability of data. To that purpose, the Commission should have implementing powers to lay down a common template and electronic reporting formats which are machine-readable. In this endeavour, the Commission should have regard to progress made in the area of digitisation and accessibility of information published by undertakings, especially as regards to the development of the European Single Access Point (ESAP) as proposed in its communication ‘A Capital Markets Union for people and businesses - new action plan’<sup>14</sup>.
- (9) In order to ensure a level of detail that enables citizens to better assess the contribution of multinational undertakings to welfare in each Member State, the information should be broken down by Member State. Moreover, information concerning the operations of multinational enterprises should also be shown with a high level of detail as regards certain third country tax jurisdictions which pose particular challenges. For all other third country operations, the information should be given in an aggregate number, unless the undertaking wishes to present more detailed information.

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<sup>13</sup> 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. 1–12).

<sup>14</sup> COM(2020) 590 final.

- (9a) Immediate disclosure of 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 might allow undertakings to defer the disclosure of items of information for a limited number of years, provided they clearly disclose the deferral and give a reasoned explanation for it in the report and document the basis for the reasoning. The information omitted should be disclosed in a later report. Information pertaining to tax jurisdictions included in Annex I and Annex II of Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes should never be omitted.
- (10) In order 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 the 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 the compliance with these reporting obligations. Given that members of the administrative, management and supervisory bodies of the subsidiaries which are established within the Union and which are controlled by an ultimate parent undertaking established outside the Union or the person(s) in charge of carrying out the disclosures formalities for the branch may have limited knowledge of the content of the report on income tax information prepared by the ultimate parent undertaking or may have limited ability to obtain such information or report from their ultimate parent undertaking, their responsibility should encompass ensuring that, to the best of their knowledge and ability, the report on income tax information of its ultimate parent undertaking has been drawn up and made public consistently with this directive or that the subsidiary or branch has drawn up and made public all the information in its possession, obtained or acquired. In case the information or report is incomplete, their responsibility should include the publication of a statement indicating that the ultimate parent undertaking has not made the necessary information available.

- (11) To ensure public awareness on the scope of and on compliance with the reporting obligations, Member States should require that statutory auditor(s) or audit firm(s) state whether an undertaking was required to draw up a report on income tax information, and if so, whether this report was published.
- (11(-a)) In order to determine certain tax jurisdictions for which a high level of detail should be shown, the report on income tax information should always disclose the information separately for each jurisdiction which is included in the Annexes of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes<sup>15</sup>, and their subsequent updates which are specifically approved twice a year, customarily in February and October, and published in the Official Journal. Annex I regards the EU list of non-cooperative jurisdictions for tax purposes while Annex II concerns 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 considered must have been listed on the first of March of the financial year for which the report should be drawn up. For Annex II, the jurisdictions considered must have been mentioned on the first of March of the financial year for which the report should be drawn up for two years consecutively.
- (11a) 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.

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<sup>15</sup> 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](#)) [*OJ: please check the latest version published*], and their subsequent updates.

- (12) This Directive aims to enhance corporate transparency and transparency and public scrutiny on 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)(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*<sup>16</sup>, Article 50(2)(g) of the 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 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.
- (12a) To ensure the full functioning of the internal market and a level playing field between the European Union and third-country multinational enterprises, the Commission should continue to explore possibilities of increasing fairness and tax transparency, 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.

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<sup>16</sup> Judgement of the Court of Justice of 4 December 1997, C-97/96 *Verband deutscher Daihatsu-Händler* ECLI:EU:C:1997:581

- (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. This initiative responds to the concerns expressed by the interested parties about the need to tackle distortions in the single market without compromising Union competitiveness. It should not cause undue administrative burden on companies. 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, at least with regard to greater transparency.
- (15) Overall, within the framework of this Directive, the extent of the information disclosed is proportionate to the objectives of increasing public 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.
- (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,

HAVE ADOPTED THIS DIRECTIVE:

*Article 1*

Amendments to Directive 2013/34/EU

Directive 2013/34/EU is amended as follows:

(1) in Article 1, the following paragraph 1a is inserted:

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

(2) the following Chapter 10a is inserted:

‘Chapter 10a

Report on Income tax information

*Article 48a*

Definitions relating to reporting on income tax information

1. For the purposes of this Chapter, the following definitions shall apply:

(1) ‘ultimate parent undertaking’ means an undertaking which draws up the consolidated financial statements of the largest body of undertakings;

- (2) ‘consolidated financial statements’ means the financial statements prepared by a parent undertaking of a group in which the assets, liabilities, equity, income and expenses are presented as those of a single economic entity;
  - (3) ‘tax jurisdiction’ means a State as well as a non-State jurisdiction which has fiscal autonomy in respect of corporate income tax.
  - (4) ‘standalone undertaking’ means an undertaking which is not part of any group within the meaning of Article 2 paragraph 11.
2. For the purposes of Article 48b, the following definition shall apply: ‘revenue’ has the same meaning as:
- (1) the ‘net turnover’, for undertakings governed by the law of a Member State, and not applying international accounting standards adopted on the basis of Regulation (EC) No 1606/2002, or
  - (2) the ‘revenue’ as defined by or within the meaning of the financial reporting framework on the basis of which financial statements are prepared, for other undertakings.

*Article 48b*

Undertakings and branches required to report on income tax information

1. Member States shall require ultimate parent undertakings governed by their national laws which on their balance sheet date exceeded for each of the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in their consolidated financial statements to draw up, publish and make accessible a report on income tax information as regards the later of the last 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 when the total consolidated revenue on its balance sheet date falls below EUR 750 000 000 for each of the two consecutive last financial years as reflected in the consolidated financial statements.

Member States shall require undertakings governed by their national laws that are standalone undertakings and which on their balance sheet date exceeded for each of the last two consecutive financial years a total revenue of EUR 750 000 000 as reflected in their annual financial statements to draw up, publish and make accessible a report on income tax information as regards the later of the last two consecutive financial years.

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

- 1a. Member States shall not apply the rule set out in paragraph 1 of this Article to a standalone undertaking or an ultimate parent undertaking and its affiliated undertaking 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.
2. Member States shall not apply the rule set out in paragraph 1 of this Article 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 and encompass, in 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 are governed by their national laws and controlled by an ultimate parent undertaking which on its balance sheet date exceeded for each of the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in its consolidated financial statements and which is not governed by the law of a Member State, to publish and make accessible a report on income tax information of that ultimate parent undertaking as regards the later of the last two consecutive financial years.

When this information or report is not available, the subsidiary undertaking shall request its ultimate parent undertaking not governed by the law of a Member State to provide it with all information required to enable it to meet its obligation.

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

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

4. Member States shall require branches opened in their territories by an undertaking which is not governed by the law of a Member State to publish and make accessible a report on income tax information of the ultimate parent undertaking or the standalone undertaking referred to in point (a) of this paragraph as regards the later of the last two consecutive financial years.

When this information or report is not available, the person(s) designated to carry out the disclosure formalities referred to in Article 48e(2) shall request the ultimate parent undertaking not governed by the law of a Member State or the standalone undertaking referred to in point (a) of this paragraph to provide them with all information required to enable them to meet their obligations.

In case all the required information is not provided, the branch shall draw up, publish and make accessible the report on income tax information, containing all information in its possession, obtained or acquired, and a statement indicating that the ultimate parent undertaking or the standalone undertaking has not made 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 for each of the last two consecutive years the net turnover threshold as transposed pursuant to Article 3(2).

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

Member States shall apply the rules set out in this paragraph 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 which on its balance sheet date exceeded for each of the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in its consolidated financial statements or a standalone undertaking which on its balance sheet date exceeded for each of the last two consecutive financial years a total revenue of EUR 750 000 000 as reflected in its financial statements; and

- (b) the ultimate parent undertaking referred to in point (a) does not have a medium-sized or large subsidiary undertaking as referred to in paragraph 3.

Member States shall provide for a branch to no longer be subject to the reporting obligations set out in this paragraph when 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 3 and 4 of this Article where a report on income tax information is drawn up by the ultimate parent undertaking not governed by the law of a Member State consistently with Article 48c and meets the following criteria:
  - (a) is made accessible to the public, free of charge and in an electronic reporting format which is machine readable:
    - (i) on the website of the ultimate parent undertaking not governed by the law of a Member State or of the standalone undertaking not governed by the law of a Member State;
    - (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) 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 subsidiaries or branches not subject to the provisions of paragraphs 3 and 4 to publish and make accessible the report on income tax information where such subsidiaries or branches serve no other objective except 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 standalone undertaking, or of the ultimate parent undertaking, including 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:
  - (-a) the name of the ultimate parent undertaking or the standalone undertaking, financial year concerned, the currency used and, where applicable, a list of all its subsidiary undertakings consolidated in the financial statement of the ultimate parent undertaking, in respect of the relevant financial year, established in the Union or in tax jurisdictions included in Annex I and Annex II of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes ;
  - (a) a brief description of the nature of their activities;
  - (b) the number of employees on a full-time equivalent basis;
  - (c) the revenues which are:
    - (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 during the relevant financial year which is the current tax expense recognised on taxable profits or losses of the financial year by undertakings and branches 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 in the relevant tax jurisdiction; and
- (g) the amount of accumulated earnings at the end of the relevant financial year.

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

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

For the purposes of point (f) of the first subparagraph taxes paid shall include 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 profits of past financial years and the relevant financial year not decided for distribution. 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.

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

The report shall also present the information referred to in paragraph 2 or 2a of this Article separately for each tax jurisdiction which, on the first of March of the financial year for which the report shall be drawn up, is listed in Annex I of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes, and for each tax jurisdiction which, on the 1 March of the financial year for which the report shall be drawn up, has been mentioned in Annex II of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes, for two years consecutively.

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

The information shall be attributed to each relevant tax jurisdiction on the basis of establishment, the existence of a fixed place of business or of a permanent business activity which, arising from 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.

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

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

Member States shall ensure that information pertaining to tax jurisdictions included in Annex I and Annex II of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes as referred to in paragraph 3 may never be omitted.

4. The report 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.
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 standalone undertaking are presented. Member States shall not require this report to be published in a different currency than the currency used in the financial statements.

However, in the case mentioned in the third subparagraph of Article 48b(3), the currency used in the report shall be the currency in which the subsidiary undertaking publishes its annual financial statements.

7. Where Member States have not adopted the euro, the threshold of EUR 750.000.000 may be converted into the national currency. Such conversion must apply 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 may increase or decrease 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.

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

#### *Article 48d*

##### Publication and Accessibility

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

- (b) on the website of the subsidiary undertaking or on the website of an affiliated undertaking when Article 48b(3) applies, or
  - (c) on the website of the branch or on the website of the undertaking which opened the branch or on the website of an affiliated undertaking when Article 48b(4) applies.
- 1b. Member States may exempt undertakings from applying the rules set out in paragraph 1a of this Article where the report published in accordance with paragraph 1 is simultaneously made accessible to the public 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, free of charge to any third party located within the Union. The website of the undertakings and branches as referred to in paragraph 1a shall contain information on the exemption and the reference to the website of the relevant register.
2. The report referred to in Article 48b(1), (3), (4), (6) and (7) and, where applicable, the statement referred to in Article 48b(3) and (4), shall remain accessible on the relevant website for a minimum of five consecutive years.

#### *Article 48e*

#### Responsibility for drawing up, publishing and making accessible the report on income tax information

1. Member States shall ensure that the members of the administrative, management and supervisory bodies of the ultimate parent undertaking or the 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 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 41 of Directive (EU) 2017/1132 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 in a manner that is consistent with or in accordance with, as appropriate, Article 48c, and 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 auditor(s) or audit firm(s), the statutory auditor(s) or audit firm(s) shall state in the audit report whether, for the financial year preceding the financial year for which the statements under audit were prepared, the undertaking was required by Article 48b to draw up a report on income tax information and, if so, whether the report was published in accordance with Article 48d.

#### *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*

### Review clause

By [OJ: please add date: 4 years after date of transposition of this Directive] the Commission shall submit a report on the compliance with and the impact of the reporting obligations set out in Articles 48a to 48f and, particularly, taking into account the situation at OECD level, the need to ensure 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 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 Article 3(7), respectively, of this Directive, and to extend the content of the report on income tax information set out in Article 48c to include additional items. The Commission shall also assess the impact that presenting the tax information on an aggregated basis for third tax jurisdictions as provided for in Article 48c(3) and the temporary omission of information provided for in Article 48c(3a) has on the effectiveness of the Directive.

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

(3) Article 49 is amended as follows:

(b) The following paragraph 3a is inserted:

‘3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016<sup>10</sup>.’

<sup>10</sup> *OJL 123, p. 1.*

## *Article 2*

### Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [*Publications Office - set the date = eighteen months after entry into force*] at the latest. They shall forthwith communicate to the Commission the text of those provisions.

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

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

## *Article 3*

### Entry into force

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

## *Article 4*

### Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

*For the European Parliament*

*The President*

*For the Council*

*The President*