



Brussels, 29 September 2021
(OR. en)

Interinstitutional File:
2016/0107(COD)

9722/1/21
REV 1 ADD 1

DRS 32
COMPET 476
ECOFIN 594
FISC 99
CODEC 882
PARLNAT 169

STATEMENT OF THE COUNCIL'S REASONS

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
– Statement of the Council's reasons
– Adopted by the Council on 28 September 2021

I. INTRODUCTION

1. On 12 April 2016, the Commission presented the above-mentioned proposal for a Directive¹ to the European Parliament and the Council.
2. The European Economic and Social Committee adopted its opinion on 21 September 2016².
3. The European Parliament adopted its first-reading position on 27 March 2019³.
4. The Presidency was granted a negotiating mandate⁴ on 3rd March 2021. Overall three trilogues took place.
5. On 17 June 2021 the Chairs of the Committees on Economic and Monetary Affairs (ECON) and on Legal Affairs (JURI) addressed a letter to the Presidency indicating that, should the Council transmit formally to the Parliament its position in the form that it was presented in the Annex to that letter, they would recommend to the Parliament's Plenary that the Council's position be approved without amendment in the Parliament's second reading.

II. OBJECTIVE

The Directive requires that certain multinational undertakings disclose publicly in a specific report the income tax they pay, together with other relevant information. Multinational undertakings with revenue of more than EUR 750m will need to comply with these additional transparency requirements. For the first time, also non-European multinational companies doing business in the EU will be affected, through their subsidiaries and branches by the same reporting obligations as EU multinational undertakings.

¹ Doc. 7949/16
² Doc. 12641/16
³ P8_TA(2019)0309
⁴ Doc. 6399/21

The proposal complements undertakings' current financial reporting obligations under Directive No 2013/34/EU (the Accounting Directive) and does not interfere with these requirements in relation to their financial statements, for example as regards the publication of their annual accounts.

This proposal does not modify the rules already in place on non-financial reporting and sectoral CBCR for both the banking sector and the extractive and logging industries. However, it introduces an exemption to avoid double reporting for the banking sector, which is already subject to stringent public reporting rules in the EU banking legislation.

III. ANALYSIS OF THE COUNCIL'S POSITION AT FIRST READING

A. General

The Parliament and the Council conducted negotiations with the aim of concluding an early second-reading agreement on the basis of a Council first-reading position that the Parliament could approve as such. The text of the Council's first-reading position fully reflects the compromise reached between the co-legislators.

B. Key issues

During the negotiations, the co-legislators were able to reach a compromise at the beginning of June 2021. The main points of the compromise reached with the Parliament include:

- **Aggregation/disaggregation of the reporting information:** Disaggregation is established only (i) for EU Member States, (ii) for tax jurisdictions of third countries in Annex I of the Council conclusions on the EU list of non-cooperative jurisdictions for tax purposes, and (iii) for tax jurisdictions of third countries mentioned in Annex II of the same set of Council conclusions for the last consecutive two years.

- **Safeguard clause:** The co-legislators agreed to keep the duration of the safeguard period to 5 years.
- **Information to be published:** This issue was agreed on the basis of the Council's revised mandate.
- **Common template, electronic reporting format and publication of information:** This issue was agreed on the basis of the Council's revised mandate.
- **Review clause:** The co-legislators agreed that the Commission will provide a report 4 years after the transposition date.
- **Statement by statutory auditor:** The co-legislators agreed that the audit can only perform a factual check of publication of the report, and not on its content.
- **Transposition period:** A transposition period of 18 months has been established.

IV. CONCLUSION

The Council's position fully reflects the compromise reached in the negotiations between the European Parliament and the Council, facilitated by the Commission. This compromise is confirmed by the letter that the Chairs of the Committees on Economic and Monetary Affairs (ECON) and on Legal Affairs (JURI) addressed to the Chairman of the Permanent Representatives Committee on 17 June 2021. In this letter the ECON and JURI Chairs indicated that they will recommend to the members of the ECON and JURI Committees, and subsequently to the Plenary, that they approve the Council's position at first reading without amendments at the European Parliament's second reading, subject to verification by the lawyer-linguists of both Institutions.