

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 Committee¹²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) In recent years, the challenge posed by corporate income tax avoidance has increased considerably and has become a major focus of concern within the Union. In its conclusions of 18 December 2014, the European Council acknowledged the urgent need to advance efforts in the fight against tax avoidance both at global and Union level. In its communications entitled 'Commission Work Programme 2016 - No time for business as usual'¹³ and 'Commission Work Programme 2015 - A New Start'¹⁴, the Commission identified as a priority the need to move to a system on the basis of which the country where profits are generated is also the country of taxation and to respond to European civil society call for fairness and tax transparency.
- (2) In its resolutions of 16 December 2015 on 'Bringing transparency, coordination and convergence to corporate tax policies in the Union'¹⁵ the European Parliament acknowledged that increased transparency in the area of corporate taxation can improve tax collection, make the work of tax authorities more efficient and ensure an increase in public trust and confidence in tax systems and governments. 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 Council¹⁶ requiring to consider the possibility of introducing an obligation for large undertakings to produce, on an annual basis, a country-by-country report on, as a minimum, profits made, taxes

¹² OJ C [...], [...], p. [...].

¹³ COM(2015) 610 final of 27 October 2015.

¹⁴ COM(2014) 910 final of 16 December 2014.

¹⁵ 2015/2010(INL)

¹⁶ 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).

paid and public subsidies received, taking into account the developments in the OECD and the results of related European initiatives.

- (3) Calling for a globally fair and modern international tax system, the G20 endorsed in November 2015 the OECD 'Action Plan on Base Erosion and Profit Shifting' (BEPS) which aimed to provide governments with clear international solutions to address the gaps and mismatches in existing rules which allow corporate profits to shift to low or no-tax locations, where no real value creation takes place. In particular, BEPS Action 13 contains features of country-by-country reporting by certain multinational undertakings to national tax authorities on a confidential basis. On 27 January 2016, the Commission adopted the 'Anti-Tax Avoidance Package' (ATAP). One of the objectives of that package is to transpose into Union law, the BEPS Action 13 through a revision of the Council Directive 2011/16/EU¹⁷.
- (4) Enhanced public scrutiny on corporate income taxes borne by the multinational undertakings with activities in the Union is necessary to further foster corporate responsibility in order to contribute to the civil society's welfare through taxes, to promote fairer tax competition within the Union through a better informed democratic debate and to restore public trust in the fairness of the national tax systems. Such public scrutiny should be achieved by means of a report on income tax information, regardless where the ultimate parent undertaking of the multinational group is established. The public should be able to scrutinise all the activities of a group when this group has certain establishments in the Union. For groups which carry out activities only through medium-sized and large subsidiary undertakings or branches, the latter should publish and make accessible the report of the ultimate parent undertaking.
- (5) Ultimate parent undertakings which are credit institutions or investment firms subject to Directive 2013/36/EU of the European Parliament and of the Council¹⁸ and which comply with the obligations of Article 89 of Directive 2013/36/EU on country-by-country reporting on all their activities should be exempted from the reporting obligations, if this report encompasses all their activities, comprising activities not included in the provisions of Chapter 2 of Regulation (EU) No 575/2013 of the European Parliament and of the Council¹⁹.
- (6) The report should provide information regarding all the activities of an undertaking or of all the affiliated undertakings of a group controlled by an ultimate parent undertaking. The information should be based on the reporting specifications of BEPS Action 13 and limited to what is necessary to enable effective public scrutiny, the disclosure of which does not entail disproportionate risks or drawbacks.
- (7) In order to strengthen responsibility vis-à-vis third parties and to ensure appropriate governance over these tax matters, the members of the administrative, management and supervisory bodies of the ultimate parent undertaking established within the Union, which has the obligation to draw up, publish and make accessible the report on

¹⁷ 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).

¹⁸ 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).

¹⁹ 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).

income tax information, should be collectively responsible for the compliance of the reporting obligations. Where this Directive imposes only an obligation to publish and to make accessible the report on income tax information to medium-sized and large subsidiaries or branches established within the Union, controlled by an ultimate parent undertaking established outside the Union, the responsibility of the members of the administrative, management and supervisory bodies or of the legal representative should be reduced, given that they may have limited knowledge of the content of the report on income tax information prepared by the ultimate parent undertaking.

- (8) In order to disclose to the public, cases of non-compliance it is necessary to require the statutory audits or audit firms of undertakings governed by the law of a Member State to check compliance with the requirements of providing and making accessible the report on income tax information on the undertaking's website.
- (9) Since the objective of this Directive, namely to enhance transparency and public scrutiny on corporate income tax, 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.
- (10) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.
- (11) In accordance with the Joint Political Declaration of Member States and the Commission of 28 September 2011 on explanatory documents²⁰, 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.
- (12) 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 2, 48a to 48g and 51 shall also apply to the laws, regulations and administrative provisions of the Member States relating to branches opened in a Member State by an undertaking which is not governed by the law of a Member State but which is of a legal form comparable with the types of undertakings listed in Annex I';

- (2) the following Chapter 10a is inserted:

²⁰ OJ C 369, 17.12.2011, p. 14.

‘Chapter 10a

Report on Income tax information

Article 48a

Definitions relating to reporting on income tax information

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.

Article 48b

Undertakings required to report on income tax information

1. Member States shall require both ultimate parent undertakings governed by their national laws and having a consolidated net turnover exceeding EUR 750 000 000 as well as undertakings governed by their national laws that are not affiliated undertakings and having a net turnover exceeding EUR 750 000 000 to draw up and publish a report on income tax information on an annual basis.

The report on income tax information shall be made easily accessible to the public on the website of the undertaking on the date of its publication. Member States shall not apply the rules set out in paragraph 1 to credit institutions or investment firms where the credit institutions or investment firms disclose a country-by-country report relating to the activities of all the affiliated undertakings included in the consolidated financial statement of those institutions or firms, in accordance with Article 89 of Directive 2013/36/EU of the European Parliament and of the Council*.

2. Member States shall require medium-sized and large subsidiary undertakings governed by their national laws and controlled by an ultimate parent undertaking which has a consolidated net turnover exceeding EUR 750 000 000 and which is not governed by the law of a Member State, to publish the report on income tax information of the ultimate parent undertaking on an annual basis.

The report on income tax information shall be made easily accessible to the public on the website of the subsidiary undertaking on the date of its publication.

3. Member States shall require branches opened in their territory by an undertaking which is not governed by the law of a Member State to publish the report on income tax information of the ultimate parent undertaking referred to in point (b) on an annual basis.

The report on income tax information shall be made easily accessible to the public on the website of the branch on the date of its publication.

Member States shall only apply the rules set out in the first subparagraph to a branch where the following criteria are met:

- (a) the branch is opened by an undertaking not governed by the law of a Member State and which on its balance sheet date exceeds the limits of at least two of the three criteria set out in Article 3(2);
 - (b) the undertaking referred to in point (a) is either an affiliated undertaking of a group controlled by an ultimate parent undertaking not governed by the law of a Member State and which has a consolidated net turnover exceeding EUR 750 000 000 or it is an undertaking which has a net turnover exceeding EUR 750 000 000 that is not an affiliated undertaking;
 - (c) the ultimate parent undertaking referred to in point (b) does not have a medium-sized or large subsidiary undertaking as referred to in paragraph 3.
4. Member States shall not apply the rules set out in paragraphs 3 and 4 of this Article where a report on income tax information drawn up in accordance with Article 48c is made easily accessible to the public on the website of the ultimate parent undertaking not governed by the law of a Member State within a reasonable period of time, which shall not exceed 12 months after the balance sheet date and where the report identifies the single subsidiary undertaking or the single branch governed by the law of a Member State which has published the report in accordance with Article 48d(1).

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 undertaking and the ultimate parent undertaking, including activities of all affiliated undertakings reported in the consolidated financial statement in respect of the relevant financial year.
2. The information referred to in paragraph 1 shall comprise the following:
 - (a) a brief description of the nature of the activities;
 - (b) the number of employees;
 - (c) the amount of the net turnover, including the turnover made with related parties;
 - (d) the amount of profit or loss before tax;
 - (e) the amount of income tax accrued (current year) which is the current tax expense recognised on taxable profits or losses of the financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction;
 - (f) the amount of income tax paid which is the amount of income tax paid during the relevant financial year by undertakings and branches resident for tax purposes in the relevant tax jurisdiction.

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.

3. The report shall present the information referred to in paragraph 2 for each Member State for tax jurisdictions within the Union, and on an aggregated basis for tax jurisdictions outside the Union.

The information shall be attributed to each relevant tax jurisdiction on the basis of the existence of a fixed place of business or of a permanent business activity which, arising from the activities of the group, can give rise to income tax liability in that tax jurisdiction.

Where the activities of several affiliated undertaking can give rise to tax liability within a single tax jurisdiction, the information attributed to that tax jurisdiction shall represent the sum of the information relating to such activities of each affiliated undertaking and their branches in that tax jurisdiction.

Information on any particular activity shall not be attributed simultaneously to more than one tax jurisdiction.

4. The report on income tax information shall be published in at least one of the official languages of the Union.
5. The currency used in the report shall be the currency in which the consolidated financial statements are presented. Member States shall not require the reports to be published in a different currency to the currency used in the financial statements.
6. Where Member States have not adopted the euro, the threshold referred to in Article 48b(1) shall be converted into the national currency by applying the exchange rate as at *[OJ set the date = the date of the entry in force of this Directive]* published in the *Official Journal of the European Union* and by increasing or decreasing it by not more than 5 % in order to produce 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 *[OJ set the date = the date of the entry in force of this Directive]*, rounded off to the nearest thousand.

Article 48d

Publication

1. The report on income tax information shall be published as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC, together with documents referred to in Article 30(1) of this Directive and where relevant, with the accounting documents referred to in Article 9 of Council Directive 89/666/EEC**.
2. The report referred to in Article 48b(1), (3), (4), and (5) shall remain accessible on the website for a minimum of five consecutive years.

Article 48e

Responsibility for drawing up and publishing 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 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 and published in accordance with Article 48b.
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 persons who are authorized to represent the company which opened a 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 and published in accordance with Article 48b

Article 48f

Independent check

Member States shall ensure that, where the financial statements of an affiliated undertaking are audited by one or more statutory auditor(s) or audit firm(s) pursuant to Article 34(1), the statutory auditor(s) or audit firm(s) also check whether the report on income tax information has been provided and made accessible in accordance with Articles 48b and 48c. The statutory auditor(s) or audit firm(s) shall mention in the audit report where the report has neither been provided and nor made accessible in accordance with those Articles.

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 financial year starting on or after [XXX].

Article 48h

Review

The Commission shall review and report on the implementation and effectiveness of Articles 48a to 48g, in particular as regards the scope of, and compliance with, the reporting obligations. The report shall be submitted to the European Parliament and to the Council by XXX [*five years after the transposition date of this Directive*].

* 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).

** Eleventh Council Directive 89/666/EEC of 21 December 1989 concerning disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State (OJ L 395, 30.12.1989, p. 36).¹

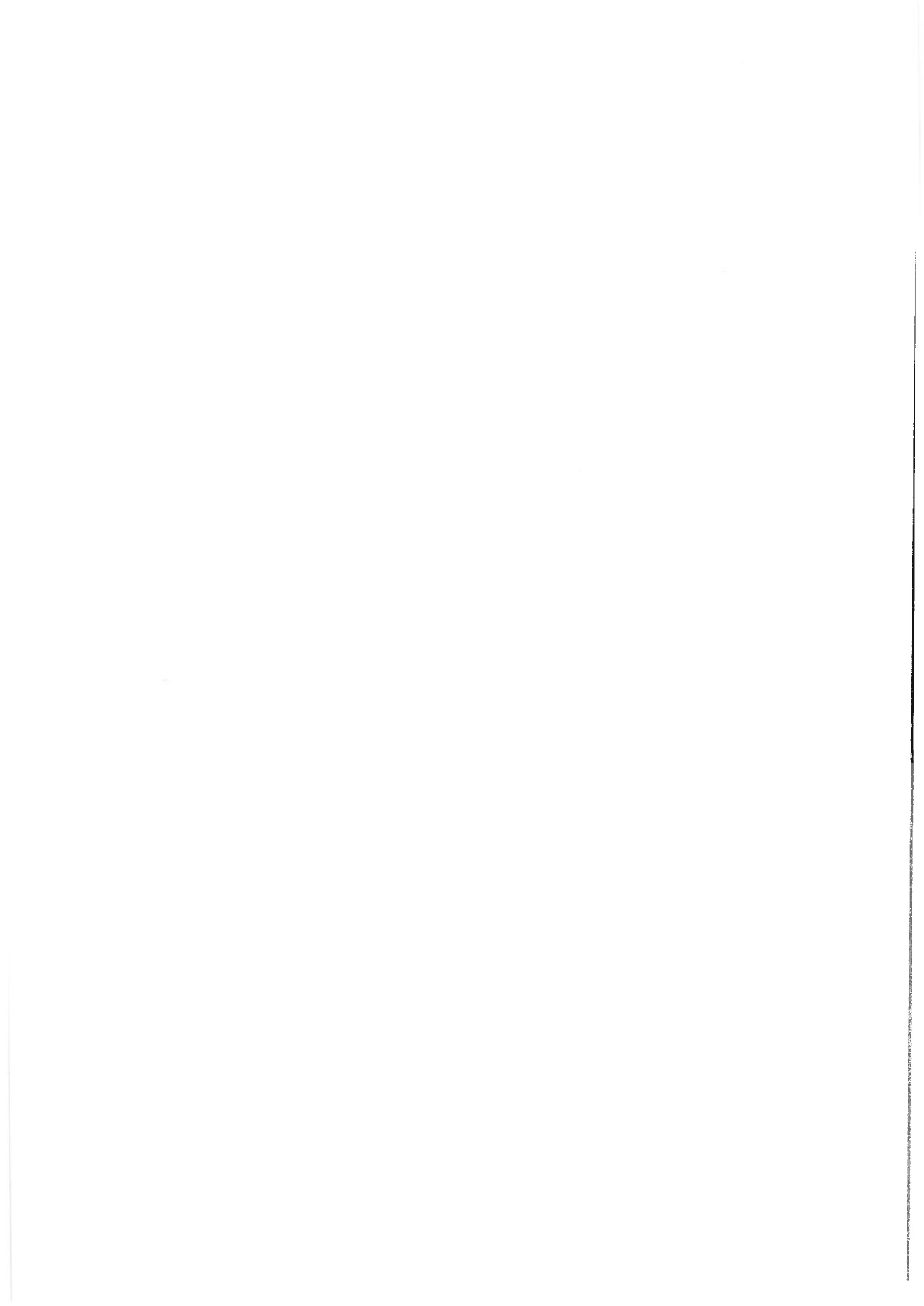
Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [XXX] 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.



EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• **Reasons for and objectives of the proposal**

An environment of complex tax rules and fiscal secrecy has allowed some Multinational Enterprises (MNEs)¹ to exploit non-transparently loopholes and mismatches in the tax system. According to a European Parliament study², it is estimated that countries in the EU lose EUR 50-70 billion each year to tax avoidance by firms. Recent reports have disclosed the low amount of taxes paid by certain multinationals.

Unlike small and medium-sized companies (SMEs) or individual taxpayers, Multinational Enterprise (MNE) Groups are capable of exploiting loopholes in domestic and international tax laws that enable them to shift profits from one country to the next in order to reduce their tax bill.

This work has been undertaken to reflect the Commission's overall objective of ensuring that the country in which a business' profits are generated is also the country of taxation³.

Public scrutiny has been identified as a way to encourage companies and Member States to respond to these issues. By promoting greater disclosure of tax-related information, the initiative seeks to 1) geographically align corporate income taxes with actual economic activity; 2) foster corporate responsibility to contribute to welfare through taxes, and 3) promote fairer tax competition in the EU through an informed democratic debate on how to remedy market and regulatory shortcomings.

• **Consistency with existing policy provisions in the policy area**

In the wake of the endorsement by the G20 of the Action Plan designed by the OECD to fight base erosion and profit shifting (hereafter, BEPS), the Commission's Anti-Tax Avoidance Package (ATAP) tabled in January 2016 included a country-by-country reporting requirement for very large multinational enterprises⁴. Thus far however, this is for tax authorities and will not be disclosed to the public.

The present legislation proposes requiring the same enterprises to disclose publicly some of the information submitted to tax authorities, both reporting having complementary purposes. The CBCR requirement in the ATAP is a tool that will assist tax authorities in orienting their tax audits and will therefore ensure compliance. The current proposal will go beyond compliance and foster responsible tax policies, on the part of both companies and Member States.

Moreover, the present initiative responds to a large extent to the review clause on the extension of the public CBCR to all industry sectors⁵. Additional contextual disclosure assisting the analysis of the geographical breakdown of payments to governments is retained for all sectors with this initiative. It takes into account developments in the OECD and the results of related European initiatives.

¹ Referred to in the legal text as undertakings.

² [http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU\(2015\)558773](http://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_STU(2015)558773)

³ See A New Start for Europe: Political Guidelines for the next European Commission - July 2014

⁴ Commission Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

⁵ Accounting Directive 2013/34/EU, Article 48

This proposal complements companies' financial and non-financial reporting.

- **Consistency with other Union policies**

This proposal responds to calls by the European Parliament⁶ to introduce a country-by-country reporting on corporate income tax. By fostering corporate responsibility to contribute to welfare through taxes, it also contributes to the EU strategy for Corporate Social Responsibility⁷.

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

- **Legal basis**

Article 50, paragraph 1, and paragraph 2, sub-paragraph (g) of the TFEU has been determined to be an appropriate legal base.

- **Subsidiarity (for non-exclusive competence)**

The EU action is justified on the grounds of subsidiarity in order to coordinate the approach necessitated by the cross-border dimension generally witnessed with tax planning and transfer pricing arrangements.

- **Proportionality**

This initiative builds largely on the international consensus developed by the G20 in terms of scope and content. It strikes the right balance between benefits derived through public transparency on the one hand and the need for a strong and robust EU economy. As such, it does not go beyond what is necessary to achieve the objectives.

- **Choice of the instrument**

Having regard to the strong connection of the initiative with corporate reporting, including the non-financial reporting, an amendment of the Accounting Directive has been retained.

3. RESULTS OF EX-POST EVALUATIONS, STAKEHOLDER CONSULTATIONS AND IMPACT ASSESSMENTS

- **Ex-post evaluations/fitness checks of existing legislation**

This proposal introduces a CBCR which is new for most of the industry sectors. Similar reporting have been introduced recently for the banking, logging and extractive sectors. Building on the CBCR published by banks since 2015, it appears that civil society sees CBCR as a useful tool for assessing the alignment of profits with the location of actual business activity. Banks report that the first year of public CBCR entailed no noticeable effect in terms of tax planning, investment or strategies.

- **Stakeholder consultations**

The Commission services consulted widely the opinions of stakeholders between June and December 2015. The latter garnered the views of over four hundred respondents representing firms, industry associations, NGOs, citizens and think tanks. In addition, ad hoc exchanges,

⁶ (2015/2010(INL) and 2015/2066(INI)

⁷ Communication From The Commission To The European Parliament, The Council, The European Economic And Social Committee And The Committee Of The Region - A renewed EU strategy 2011-14 for Corporate Social Responsibility, 25.11.2011

meetings and a high level roundtable⁸ allowed the Commission to get a thorough understanding of the challenges at stake, including the benefits of and risks associated with transparency in the area of corporate income tax. All inputs received during the consultation have been carefully considered and taken into account. None have been discarded or neglected, but due to the wide array of views voiced by different stakeholders, the policy options explored in the Impact Assessment may not reflect the views of all parties.

- **Collection and use of expertise**

The Commission services debated certain aspects of tax transparency with the Platform for Tax Good Governance at a meeting on 24 September 2015⁹. In addition, a study commissioned to PwC¹⁰ in 2014 was also considered.

- **Impact assessment**

The proposal is supported by an impact assessment ([link executive summary](#)) and received a positive opinion of the Regulatory Scrutiny Board ([link opinion of the Board](#)). This initiative corresponds to the preferred option identified in the impact assessment.

Different policy options have been considered including voluntary schemes. The preferred option is designed as a Public CBCR on worldwide operations broken down by EU Member State and aggregated for non-EU operations. This requirement would apply to all EU and non-EU multinational enterprises with a consolidated turnover above EUR 750 million and a medium or large sized subsidiary/branch in the EU. The type of information to be disclosed includes income tax paid and accrued as well as contextual information.

Significant societal benefits and some positive economic impacts are expected from the preferred option. This initiative will indeed respond to the increased demand for transparency regarding the tax affairs of MNE groups. It could also contribute to increasing public trust in the fairness of the tax systems. Through a more informed democratic debate, the initiative should contribute to promoting fairer tax competition in the EU.

In terms of economic impact, the preferred option infers no significant administrative burden as very large MNE groups will soon have to submit a more comprehensive CBCR to tax authorities when the ATAP is implemented. With this initiative all very large MNEs with activities in the EU will have the same disclosure requirement whether they are established in the EU or in a third-country. The competitiveness of EU companies will therefore not be significantly affected. The risk of generating further tax conflicts and double taxation with a CBCR that any tax authority can freely use will be limited as tax information will be broken down only within the EU where more efficient dispute resolution mechanisms are in place and where this information is already accessible in business registers.

- **Regulatory fitness and simplification**

This proposal proposes no new obligations on micro or small undertakings in the EU.

The EU medium-sized and large subsidiaries of a non-EU MNE, or alternatively certain of its branches in the EU, will have new obligations and responsibilities. These MNEs will have the ability to bear only marginal compliance costs by entrusting one entity in the EU.

⁸ Roundtable where Commissioners Dombrovskis, Hill and Moscovici met with an array of stakeholders (1 October 2015)

⁹ European Commission, [Platform for Tax Good Governance](#)

¹⁰ Study "[General assessment of potential economic consequences of country-by-country reporting under CRD IV](#)", PwC, 2014

Digitalised reports facilitate access and processing by any party (civil society, tax authorities, investors...). For this reason, a publication on the companies' web site is required. No particular format or language is imposed.

- **Fundamental rights**

Overall, the extent of contextual and other information in a CBCR as envisaged is proportionate to the objectives of enhancing public transparency and scrutiny. Reporting builds on information generally published in the financial statements of most of a group's components, at least in the EU.

4. BUDGETARY IMPLICATIONS

There are no budgetary implications of the initiative.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the implementation of the policy in cooperation with Member States. In order to be effective, this should be done on the basis of three years of effective reporting, that is five years after the transposition date of this Directive.

The evaluation will examine whether the anticipated objectives have been met and assess possible major impacts on companies, third countries, and democratic debate. The evaluation will also consider international developments.

- **Explanatory documents**

In order to fulfil the objective of this proposal, it is important to avoid loopholes and mismatches between Member States legislations, which could allow some multinational enterprises to escape current reporting requirements and hinder proper public scrutiny. In addition, CBCR is a relatively new concept that requires a technically sound implementation.

Explanatory documents are therefore necessary to allow effective verification of complete and correct transposition. There are no measures which will be less burdensome for allowing efficient verification.

The above view justifies that Member States accompany the notification of their transposition measures with explanatory documents, in the form of e.g. a correlation table.

- **Detailed explanation of the specific provisions of the proposal**

Scope

To ensure an appropriate balancing of reporting burden, only MNE Groups with a total consolidated group revenue equal to or greater than EUR 750 million will be required to prepare the country-by-country report. This is no different to the threshold retained for the BEPS and ATAP initiatives. According to the OECD, the report will be filed by MNE groups controlling approximately 90 % of corporate revenues whereas only 10-15% of those would be required to submit a CBCR.

As regards any MNE established in a third country, the obligation would impinge on its subsidiaries or branches in the EU. That is, unless the enterprise makes the report publicly accessible and indicates which subsidiary or the branch in the EU has filed with a business register, those subsidiaries or branches will be responsible for the publication. Size criteria have been introduced to avoid any new obligation on micro or small structures which do not

exceed 50 employees, and/or, depending on the country of incorporation, EUR 8 to 12 million turnover and / or EUR 4 to 6 million total balance sheet.

Banking groups and groups with banking activities

A number of credit institutions and investment firms established in the EU will be subject to this proposal when they are the ultimate parent undertaking of a very large group. They are offered the choice of either (i) publishing two CBCR: one on the banking activities of the group that are subject to prudential supervision, pursuant to Article 89 of the Capital Requirement Directive¹¹ (CRD), and one pursuant to this proposal encompassing all the activities of the group; or (ii) publishing only one CBCR in accordance with the CRD, so long as it encompasses all the activities of the group, banking and non-banking. This exemption is not offered to ultimate parent undertakings that are not established in the EU since by construct, only a limited portion of the activities of the group is expected to be reported in CBCR published pursuant to the CRD.

In addition, certain ultimate parent undertakings that are not credit institutions or investment firms may control banking activities. These will in any event publish a CBCR in compliance with this proposal encompassing all the activities of the group.

Content

With the CBCR, MNEs will provide a comprehensive view of their activities in each Member State. As a point of comparison and for the sake of completeness, the same information will be given on an aggregated basis as regards the activities of the group outside the EU. The aggregation will significantly alleviate potential negative impacts for those multinational enterprises. Where more than one entity of a group will be involved in a given country, the CBCR will present the sum of the information relating to each entity in that country.

Only the information that is necessary and sufficient to meet the stated objectives of this initiative will be disclosed, namely: the nature of the activities, the number of persons employed, the net turnover made, the profit made before tax, the amount of income tax due to tax authorities in the country as a result of the profit made in the current year, and the actual payments made to the country's treasury during that year. As turnover with related parties can represent a powerful indication of profit shifting, the turnover to be disclosed is the total turnover made with third parties and with related parties.

Publication

The consolidated report on income tax information will be published in a business register with the objective of ensuring certainty and availability over time. Moreover, as the objective of this initiative is to enable public scrutiny, those reports will also be made publicly accessible on companies' websites, that is easily available and searchable on the Internet for the general public. To allow for comparisons over time, reports will remain accessible for at least five consecutive years on the websites.

Enforcement

Enforcement of this initiative will be ensured with a combination of provisions. There will be collective responsibility of the administrative, management and supervisory bodies for these reports. In the case of a branch, that responsibility will be borne by persons representing the company in the EU. The statutory auditor of any local subsidiary in charge will have to verify whether the CBCR has been provided and made accessible on the Internet. Finally, Article 51

¹¹ [Directive 2013/36/EU](#) on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms

of Directive 2013/34/EU will apply, ensuring that infringements will be sanctioned by effective, proportionate and dissuasive penalties for MNEs or their subsidiaries or branches.