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**Interinstitutional files:
2016/0107 (COD)**

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WORKING PAPER

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WORKING DOCUMENT

From:	Presidency
To:	Working Party on Company Law (CBCR)
N° prev. doc.:	ST 10525/17 + COR1
N° Cion doc.:	ST 7949/16 + ADD 1 + ADD 2
Subject:	Estonian Presidency Non-paper for Working Party on Company Law (CBCR) and Amendments adopted by the European Parliament on 4 July 2017 on the 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 (COM(2016)0198 – C8-0146/2016 – 2016/0107(COD))

Delegations will find in Annex I the Estonian Presidency Non-paper for Working Party on 20th of September 2017 , and in Annex II the above mentioned amendments, adopted by the European Parliament.



WORKING DOCUMENT #1

Public CbCR

Working Party on Company Law (experts)

FROM: Presidency

PRESIDENCY NON-PAPER

for Working Party on 20th of September 2017

July 2017

Dear Colleagues,

The first meeting of the Working Party of Company Law (expert level) dealing with the proposal for public Country-by-Country Reporting (CbCR) under the Estonian Presidency is scheduled for **Wednesday, 20th of September, 2017** (invitation with precise details is forthcoming).

On 4th of July 2017, the European Parliament approved, in first reading, the proposed Directive on public CbCR and adopted a number of amendments (see Annex II) on the original proposal from the Commission.

Considering these amendments, the Presidency seeks further guidance from the Member States on a limited number of issues as outlined in the Annex I.

In addition, any comments on Maltese compromise text (st10525/17) are welcome.

We look forward to productive cooperation.

Best regards,

Mr Taivo Põrk (Chair)



Ms Mirel Vaidlo (Deputy Chair)



I. Level of geographical detail in the report

Amendment No 43 adopted by the EP would require the information within the report to be presented separately for each tax jurisdiction outside the Union, rather than in aggregated form for all except non-cooperative tax jurisdictions.

Since this alteration, which would substantially change the overall balance of the proposal, has nevertheless received strong backing from the EP where it appears to be considered critical to avoid putting European companies at a disadvantage, the Presidency considers it prudent to once more consult the views of the Member States regarding potential disaggregation of all third-country data.

II. Safe-harbor clause

Amendment No 83 adopted by the EP introduces a safe-harbor clause to the proposal that is broadly similar to the one included in the latest Maltese compromise text in that both would grant undertakings an opportunity to seek renewable exemption from Member States in order to omit commercially sensitive information from the report. While the Presidency recalls that the current wording represents a difficult compromise, it has been drawn to our attention that such a regime could prove to be rather burdensome for undertakings, who may need to seek such exemptions from a number of different Member States in parallel. It is also feared that absence (and difficulty of providing) a clear set of guidelines required to assess commercial sensitivity of information is almost guaranteed to lead to very uneven application of the directive.

We would therefore propose a different possible solution for the consideration of Member States: deleting the safe harbor clause while extending the deadline of publication of the report in Article 48d **from 12 months** after the balance sheet date **to 24 months**. After 24 months the report would have to be published in full, without omissions. This might somewhat ease the concern over revealing commercially sensitive information while still providing transparency sought by the public.

III. Statement by statutory auditor

Several Member States have previously expressed concern that statement of statutory auditor as currently foreseen in Article 48f is of limited practical value. Should the deadline of publication of the report be extended as proposed above, statutory auditors could, instead of verifying whether or not a report on income tax information **has been published**, state whether or not the undertaking will be **required to publish** this report in the following year. This way, they would at least clearly establish whether or not their client falls under the scope of the Directive as per Article 48b.

The Presidency would welcome opinions of Member States on these issues, either proffered during the meeting or in form of written submissions.



TEXTS ADOPTED

Provisional edition

P8_TA-PROV(2017)0284

**Disclosure of income tax information by certain undertakings and branches
***I**

Amendments adopted by the European Parliament on 4 July 2017 on the 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 (COM(2016)0198 – C8-0146/2016 – 2016/0107(COD))¹

(Ordinary legislative procedure: first reading)

Amendment 1

**Proposal for a directive
Recital -1 (new)**

Text proposed by the Commission

Amendment

(-1) Equality of tax treatment for all, and in particular for all undertakings, is a sine qua non for the single market. A coordinated and harmonised approach to the implementation of national tax systems is vital for the proper functioning of the single market, and would contribute to preventing tax avoidance and profit shifting.

Amendment 2

**Proposal for a directive
Recital -1 a (new)**

¹ The matter was referred back for interinstitutional negotiations to the committees responsible, pursuant to Rule 59(4), fourth subparagraph (A8-0227/2017).

Text proposed by the Commission

Amendment

(-1a) Tax avoidance and tax evasion, along with profit-shifting schemes, have deprived governments and populations of the resources necessary to, among other things, ensure that there is universal free access to public education and health services and state social services, and have deprived states of the possibility of ensuring a supply of affordable housing and public transport, and of building infrastructure that is essential in order to achieve social development and economic growth. In short, such schemes have been a factor of injustice, inequality and economic, social and territorial divergences.

Amendment 3

Proposal for a directive Recital -1 b (new)

Text proposed by the Commission

Amendment

(-1b) A fair and effective corporate tax system should respond to the urgent need for a progressive and fair global tax policy, promote the redistribution of wealth and combat inequalities.

Amendment 4

Proposal for a directive Recital 1

Text proposed by the Commission

Amendment

(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 and globally. The European Council in its conclusions of 18 December 2014 acknowledged the urgent need to advance efforts in the fight against tax avoidance

(1) ***Transparency is essential for the smooth functioning of the Single Market.*** 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 and globally. The European Council in its conclusions of 18 December 2014

both at global and Union level. The Commission in its communications entitled ‘Commission Work Programme 2016 - No time for business as usual’¹⁶ and ‘Commission Work Programme 2015 - A New Start’¹⁷ identified as a priority the need to move to a system whereby the country in which profits are generated is also the country of taxation. The Commission also identified as a priority the need to respond to *our societies*’ call for *fairness and tax* transparency.

¹⁶ COM(2015) 610 final of 27 October 2015.

¹⁷ COM(2014) 910 final of 16 December 2014.

acknowledged the urgent need to advance efforts in the fight against tax avoidance both at global and Union level. The Commission in its communications entitled ‘Commission Work Programme 2016 - No time for business as usual’¹⁶ and ‘Commission Work Programme 2015 - A New Start’¹⁷ identified as a priority the need to move to a system whereby the country in which profits are generated is also the country of taxation. The Commission also identified as a priority the need to respond to *European citizens*’ call for transparency *and the need to act as a reference model for other countries. It is essential that transparency takes into account reciprocity between competitors.*

¹⁶ COM(2015) 610 final of 27 October 2015.

¹⁷ COM(2014) 910 final of 16 December 2014.

Amendment 5

Proposal for a directive Recital 2

Text proposed by the Commission

(2) The European Parliament in its resolution of 16 December 2015 on bringing transparency, coordination and convergence to corporate tax policies in the Union¹⁸ acknowledged that increased transparency in the area of corporate taxation can improve tax collection, make the work of tax authorities more efficient *and* ensure increased public trust and confidence in tax systems and governments.

Amendment

(2) The European Parliament in its resolution of 16 December 2015 on bringing transparency, coordination and convergence to corporate tax policies in the Union¹⁸ acknowledged that increased transparency, *cooperation and convergence* in the area of corporate taxation *policy in the Union* can improve tax collection, make the work of tax authorities more efficient, *support policy-makers in assessing the current taxation system to develop future legislation*, ensure increased public trust and confidence in tax systems and governments *and improve investment decision-making based on more accurate risk profiles of companies.*

¹⁸ 2015/2010(INL).

¹⁸ 2015/2010(INL).

Amendment 6

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) Public country-by-country reporting is an efficient and appropriate tool to increase transparency in relation to the activities of multinational enterprises, 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 companies, 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.

Amendment 7

Proposal for a directive Recital 2 b (new)

Text proposed by the Commission

Amendment

(2b) Country-by-country reporting will also have a positive impact on employees' rights to information and consultation as provided for in Directive 2002/14/EC and, by increasing knowledge on companies' activities, on the quality of engaged dialogue within companies.

Amendment 8

Proposal for a directive Recital 4

Text proposed by the Commission

Amendment

(4) Calling for a globally fair and

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modern international tax system in November 2015, the G20 endorsed the OECD 'Action Plan on Base Erosion and Profit Shifting' (BEPS) which aimed at providing governments with clear international solutions to address the gaps and mismatches in existing rules which allow corporate profits to shift to locations of no or low taxation, where no real value creation may take place. In particular, BEPS Action 13 introduces a 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'. One of the objectives of that package is to transpose into Union law, the BEPS Action 13 by amending Council Directive 2011/16/EU²⁰.

modern international tax system in November 2015, the G20 endorsed the OECD 'Action Plan on Base Erosion and Profit Shifting' (BEPS) which aimed at providing governments with clear international solutions to address the gaps and mismatches in existing rules which allow corporate profits to shift to locations of no or low taxation, where no real value creation may take place. In particular, BEPS Action 13 introduces a 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'. One of the objectives of that package is to transpose into Union law, the BEPS Action 13 by amending Council Directive 2011/16/EU²⁰. ***However, taxing profits where the value is created requires a more comprehensive approach to country-by-country reporting that is based on public reporting.***

²⁰ 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).

²⁰ 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).

Amendment 9

Proposal for a directive Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) The International Accounting Standards Board (IASB) should upgrade the relevant International Financial Reporting Standards (IFRS) and the International Accounting Standards (IAS) to ease the introduction of public country-by-country reporting requirements.

Amendment 10

Proposal for a directive Recital 4 b (new)

Text proposed by the Commission

Amendment

(4b) Public country-by-country reporting has already been established in the Union for the banking sector by Directive 2013/36/EU as well as for the extractive and logging industry by Directive 2013/34/EU.

Amendment 11

Proposal for a directive Recital 4 c (new)

Text proposed by the Commission

Amendment

(4c) The Union has demonstrated by an unprecedented introduction of public country-by-country reporting that it has become a global leader in the fight against tax avoidance.

Amendment 12

Proposal for a directive Recital 4 d (new)

Text proposed by the Commission

Amendment

(4d) Since the fight against tax evasion, tax avoidance and aggressive tax planning can only be successful with joint action on international level, it is imperative that the Union, while continuing to be a global leader in this struggle, coordinate its actions with international actors, for instance within the OECD framework. Unilateral actions, even if very ambitious, do not have a real chance of being successful, and, in addition, such actions put at risk the competitiveness of European companies and harm the Union's investment climate.

Amendment 13

Proposal for a directive Recital 4 e (new)

Text proposed by the Commission

Amendment

(4e) More transparency in financial disclosure results in a win-win situation as tax administrations will be more efficient, civil society more involved, employees better informed, and investors less risk-averse. In addition, undertakings will benefit from better relations with stakeholders, resulting in more stability, along with easier access to finance due to a clearer risk profile and an enhanced reputation.

Amendment 14

Proposal for a directive Recital 5

Text proposed by the Commission

Amendment

(5) *Enhanced* public scrutiny of corporate income taxes borne by multinational undertakings carrying out activities in the Union is an essential element to further foster corporate responsibility, to contribute to the welfare through taxes, to promote fairer tax competition within the Union through a better informed public debate and to restore public trust 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.

(5) *In addition to the increased transparency created by country-by-country reporting to national tax authorities, enhanced* public scrutiny of corporate income taxes borne by multinational undertakings carrying out activities in the Union is an essential element *to promote corporate accountability, and* to further foster corporate *social* responsibility, to contribute to the welfare through taxes, to promote fairer tax competition within the Union through a better informed public debate, and to restore public trust 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. *Public scrutiny, however, has to be conducted without harming the investment climate in the Union or the*

competitiveness of Union companies, especially SMEs as defined in this Directive and mid-cap companies as defined in Regulation (EU) 2015/1017^{1a}, which should be excluded from the reporting obligation established under this Directive.

^{1a} Regulation (EU) 2015/1017 of the European Parliament and of the Council of 25 June 2015 on the European Fund for Strategic Investments, the European Investment Advisory Hub and the European Investment Project Portal and amending Regulations (EU) No 1291/2013 and (EU) No 1316/2013 — the European Fund for Strategic Investments (OJ L 169, 1.7.2015, p. 1).

Amendment 15

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(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 become socially responsible either by following the law or by integrating social, environmental, ethical, consumer or human rights concerns into their business strategy and operations, or both.

Amendment 16

Proposal for a directive Recital 6

Text proposed by the Commission

(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. 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.*

Amendment

(6) The public should be able to scrutinise all the activities of a group when the group has certain establishments within *and outside* the Union. *Groups with establishments within the Union should comply with the Union principles of tax good governance. Multinational undertakings are operating worldwide and their corporate behaviour has a substantial impact on developing countries. Providing their citizens access to corporate country-by-country information would allow them and tax administrations in their countries to monitor, assess and hold those companies to account. By making the information public for each tax jurisdiction where the multinational undertaking is operating, the Union would increase its policy coherence for development and limit potential tax avoidance schemes in countries where domestic resources mobilization has been identified as a key component of the Union development policy.*

Amendment 17

Proposal for a directive
Recital 8

Text proposed by the Commission

(8) The report on income tax information should provide information concerning 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 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. The report should also

Amendment

(8) The report on income tax information should provide information concerning all the activities of an undertaking or of all the affiliated undertakings of a group controlled by an ultimate parent undertaking. The information should *take into account* the reporting specifications of BEPS' Action 13 and 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, *in terms of*

include a brief description of the nature of the activities. Such description might be based on the categorisation provided for in table 2 of the Annex III of Chapter V of the OECD “Transfer Pricing Guidelines on Documentation”. The report should 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.

competitiveness or misinterpretation for the undertakings concerned. The report should also include a brief description of the nature of the activities. Such description might be based on the categorisation provided for in table 2 of the Annex III of Chapter V of the OECD “Transfer Pricing Guidelines on Documentation”. The report should include an overall narrative providing explanations, ***including*** 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.

Amendment 18

Proposal for a directive Recital 9

Text proposed by the Commission

(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 tax jurisdictions which pose particular challenges. For all other third country operations, the information should be given in an aggregate number.***

Amendment

(9) In order to ensure a level of detail that enables citizens to better assess the contribution of multinational undertakings to welfare in each ***jurisdiction in which they operate, both within and outside the Union, without harming the undertakings’ competitiveness***, the information should be broken down by ***jurisdiction. Reports on income tax information can only be meaningfully understood and used if information is presented in a disaggregated fashion for each tax jurisdiction.***

Amendment 82

Proposal for a directive Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) When the information to be

disclosed could be considered commercially sensitive information by the undertaking, the latter should be able to request authorisation from the competent authority where it is established not to disclose the full extent of information. In cases in which the national competent authority is not a tax authority, the competent tax authority should be involved in the decision.

Amendment 19

Proposal for a directive Recital 11

Text proposed by the Commission

(11) To ensure that cases of non-compliance are disclosed to the public, statutory auditor(s) or audit firm(s) should check whether the report on income tax information has been submitted and presented in accordance with the requirements of this Directive and made accessible on the relevant undertaking's website or on the website of an affiliated undertaking.

Amendment

(11) To ensure that cases of non-compliance are disclosed to the public, statutory auditor(s) or audit firm(s) should check whether the report on income tax information has been submitted and presented in accordance with the requirements of this Directive and made accessible on the relevant undertaking's website or on the website of an affiliated undertaking, *and that publicly-disclosed information is in line with the audited financial information for the undertaking within the time limits provided for in this Directive.*

Amendment 20

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Cases of infringements by undertakings and branches of the requirements on reporting on income tax information, giving rise to penalties by Member States, under Directive 2013/34/EU, should be reported in a public registry managed by the Commission. Those penalties could

include, inter alia, administrative fines or exclusions from public calls for tenders and from the awarding of funding from the Union's structural funds.

Amendment 21

Proposal for a directive Recital 13

Text proposed by the Commission

Amendment

(13) In order to determine certain tax jurisdictions for which a high level of detail should be shown, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission in respect of drawing up a common Union list of these tax jurisdictions. This list should be drawn up on the basis of certain criteria, identified on the basis of Annex 1 of the Communication from the Commission to the European Parliament and Council on an External Strategy for Effective Taxation (COM(2016) 24 final). It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making as approved by the European Parliament, the Council and the Commission and pending formal signature. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

deleted

Amendment 22

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) In order to ensure uniform conditions for the implementation of Article 48b(1), (3), (4) and (6) and Article 48c(5) of Directive 2013/34/EU, implementing powers should also be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council^{1a}.

^{1a} **Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).**

Amendment 23

Proposal for a directive Recital 14

Text proposed by the Commission

Amendment

(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. 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.

(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. **Union action is thus justified in order to address the cross-border dimension where there is aggressive tax planning or transfer pricing arrangements. 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, generate further tax conflicts or pose the risk of double taxation. 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.*

Amendment 24

Proposal for a directive Recital 15

Text proposed by the Commission

(15) This Directive *respects* the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

Amendment

(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 *is therefore considered to respect* the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.

Amendment 25

Proposal for a directive Recital 16

Text proposed by the Commission

(16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents²⁴, 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

Amendment

(16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents²⁴, 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, *for example in the form of a comparative chart.* With

transmission of such documents to be justified.

²⁴ OJ C 369, 17.12.2011, p. 14.

regard to this Directive, the legislator considers the transmission of such documents to be justified *to achieve the objective of this Directive and to avoid potential omissions and inconsistencies regarding implementation by the Member States under their national legislation.*

²⁴ OJ C 369, 17.12.2011, p. 14.

Amendment 26

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48b – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States shall require 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.

Amendment

Member States shall require ultimate parent undertakings governed by their national laws and having a consolidated turnover ***of or*** exceeding EUR 750 000 000 as well as undertakings governed by their national laws that are not affiliated undertakings and having a net turnover ***of or*** exceeding EUR 750 000 000 to draw up and ***make publicly available free of charge*** a report on income tax information on an annual basis.

Amendment 27

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48b – paragraph 1 – subparagraph 2

Text proposed by the Commission

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

Amendment

The report on income tax information shall be ***published in a common template available free of charge in an open data format and*** made accessible to the public on the website of the undertaking on the date of its publication ***in at least one of the official languages of the Union. On the***

same date, the undertaking shall also file the report in a public registry managed by the Commission.

Member States shall not apply the rules set out in this paragraph where such undertakings are established only within the territory of a single Member State and in no other tax jurisdiction.

Amendment 28

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48b – paragraph 3 – subparagraph 1

Text proposed by the Commission

Member States shall require ***the medium-sized and large*** subsidiary undertakings ***referred to in Article 3(3) and (4)*** which are 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 that ultimate parent undertaking on an annual basis.

Amendment

Member States shall require subsidiary undertakings which are governed by their national laws and controlled by an ultimate parent undertaking which ***on its balance sheet in a financial year*** has a consolidated net turnover ***of or*** 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 that ultimate parent undertaking on an annual basis.

Amendment 29

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48b – paragraph 3 – subparagraph 2

Text proposed by the Commission

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

Amendment

The report on income tax information shall be ***published in a common template available free of charge in an open data format and*** made accessible to the public on the date of its publication on the website of the subsidiary undertaking or on the website of an affiliated undertaking ***in at least one of the official languages of the Union. On the same date, the undertaking***

shall also file the report in a public registry managed by the Commission.

Amendment 30

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48b – paragraph 4 – subparagraph 1

Text proposed by the Commission

Member States shall require branches which are opened in their territories by an undertaking which is not governed by the law of a Member State to publish on an annual basis the report on income tax information of the ultimate parent undertaking referred to in point (a) of paragraph 5 of this Article.

Amendment

Member States shall require branches which are opened in their territories by an undertaking which is not governed by the law of a Member State to publish ***and make publicly available free of charge*** on an annual basis the report on income tax information of the ultimate parent undertaking referred to in point (a) of paragraph 5 of this Article.

Amendment 31

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48b – paragraph 4 – subparagraph 2

Text proposed by the Commission

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

Amendment

The report on income tax information shall be ***published in a common template available in an open data format and*** made accessible to the public on the date of its publication on the website of the branch or on the website of an affiliated undertaking ***in at least one of the official languages of the Union. On the same date, the undertaking shall also file the report in a public registry managed by the Commission.***

Amendment 32

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48b – paragraph 5 – point a

Text proposed by the Commission

(a) the undertaking which opened the branch is either an affiliated undertaking of a group which is 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 an undertaking that is not an affiliated and which has a net turnover exceeding EUR 750 000 000;

Amendment

(a) the undertaking which opened the branch is either an affiliated undertaking of a group which is controlled by an ultimate parent undertaking not governed by the law of a Member State and which ***on its balance sheet*** has a consolidated net turnover ***of or*** exceeding EUR 750 000 000, or an undertaking that is not an affiliated and which has a net turnover ***of or*** exceeding EUR 750 000 000;

Amendment 33

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48b – paragraph 5 – point b

Text proposed by the Commission

(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.

Amendment

(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 ***already subject to the reporting obligations.***

Amendment 34

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48b – paragraph 7 a (new)

Text proposed by the Commission

Amendment

7a. For Member States which have not adopted the euro, the amount in national currency equivalent to the amount set out in paragraphs 1, 3 and 5 shall be obtained by applying the exchange rate published in the Official Journal of the European Union and that is effective as of the date of the entry into force of this Chapter.

Amendment 35

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 2 – introductory part

Text proposed by the Commission

2. The information referred to in paragraph 1 shall comprise the following:

Amendment

2. The information referred to in paragraph 1 shall ***be presented in a common template and*** shall comprise the following, ***broken down by tax jurisdiction***:

Amendment 36

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 2 – point a

Text proposed by the Commission

(a) a brief description of the nature of ***the*** activities;

Amendment

(a) ***the name of the ultimate undertaking and, where applicable, the list of all its subsidiaries***, a brief description of the nature of ***their*** activities ***and their respective geographical location***;

Amendment 37

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 2 – point b

Text proposed by the Commission

(b) the number of employees;

Amendment

(b) the number of employees ***on a full-time equivalent basis***;

Amendment 38

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU
Article 48c – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) fixed assets other than cash or cash equivalents;

Amendment 39

Proposal for a directive
Article 1 – paragraph 1 – point 2
Directive 2013/34/EU
Article 48c – paragraph 2 – point c

Text proposed by the Commission

Amendment

(c) the amount of the net turnover,
which includes the turnover made with
related parties;

(c) the amount of the net turnover,
including a distinction between the
turnover made with related parties ***and the***
turnover made with unrelated parties;

Amendment 40

Proposal for a directive
Article 1 – paragraph 1 – point 2
Directive 2013/34/EU
Article 48c – paragraph 2 – point g a (new)

Text proposed by the Commission

Amendment

(ga) stated capital;

Amendment 65

Proposal for a directive
Article 1 – paragraph 1 – point 2
Directive 2013/34/EU
Article 48c – paragraph 2 – point g b (new)

Text proposed by the Commission

Amendment

***(gb) details of public subsidies received
and any donations made to politicians,
political organisations or political
foundations;***

Amendment 41

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 2 – point g c (new)

Text proposed by the Commission

Amendment

(gc) whether undertakings, subsidiaries or branches benefit from preferential tax treatment, from a patent box or equivalent regimes.

Amendment 42

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 3 – subparagraph 1

Text proposed by the Commission

Amendment

The report shall present the information referred to in paragraph 2 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 present the information referred to in paragraph 2 separately for each Member State. Where a Member State comprises several tax jurisdictions, the information shall be ***presented separately for each tax jurisdiction***.

Amendment 43

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 3 – subparagraph 2

Text proposed by the Commission

Amendment

The report shall also present the information referred to in paragraph 2 of this Article separately for each tax jurisdiction ***which, at the end of the previous financial year, is listed in the***

The report shall also present the information referred to in paragraph 2 of this Article separately for each tax jurisdiction ***outside the*** Union.

common Union list of certain tax jurisdictions drawn up pursuant to Article 48g, unless the report explicitly confirms, subject to the responsibility referred to in Article 48e below, that the affiliated undertakings of a group governed by the laws of such tax jurisdiction do not engage directly in transactions with any affiliated undertaking of the same group governed by the laws of any Member State.

Amendment 44

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 3 – subparagraph 3

Text proposed by the Commission

Amendment

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

deleted

Amendment 83

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 3 – subparagraph 3 a (new)

Text proposed by the Commission

Amendment

In order to protect commercially sensitive information and to ensure fair competition, Member States may allow one or more specific items of information listed in this Article to be temporarily omitted from the report as regards activities in one or more specific tax jurisdictions when they are of a nature such that their disclosure would be seriously prejudicial to the commercial position of the undertakings referred to in

Article 48b(1) and Article 48b(3) to which it relates. The omission shall not prevent a fair and balanced understanding of the tax position of the undertaking. The omission shall be indicated in the report together with a duly justified explanation for each tax jurisdiction as to why this is the case and with a reference to the tax jurisdiction or tax jurisdictions concerned.

Amendment 69/rev

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 3 – subparagraph 3 b (new)

Text proposed by the Commission

Amendment

Member States shall make such omissions subject to prior authorisation of the national competent authority. The undertaking shall seek each year a new authorisation from the competent authority, which will take a decision on the basis of a new assessment of the situation. Where the information omitted no longer complies with the requirement laid down in subparagraph 3a, it shall immediately be made publicly available. As from the end of the non-disclosure period, the undertaking shall also retroactively disclose, in the form of an arithmetic average, the information required under this Article for the preceding years covered by the non-disclosure period.

Amendment 47

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 3 – subparagraph 3 c (new)

Text proposed by the Commission

Amendment

Members States shall notify the Commission of the granting of such a temporary derogation and shall transmit to it, in a confidential manner, the omitted information together with a detailed explanation for the derogation granted. Every year, the Commission shall publish on its website the notifications received from Member States and the explanations provided in accordance with subparagraph 3a.

Amendment 48

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 3 – subparagraph 3 d (new)

Text proposed by the Commission

Amendment

The Commission shall verify that the requirement laid down in subparagraph 3a is duly respected, and shall monitor the use of such a temporary derogation authorised by national authorities.

Amendment 70/rev

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 3 – subparagraph 3 e (new)

Text proposed by the Commission

Amendment

If the Commission concludes, after having carried out its assessment of the information received pursuant to subparagraph 3c, that the requirement laid down in subparagraph 3a is not fulfilled, the undertaking concerned shall immediately make the information publicly available. As from the end of the non-disclosure period, the undertaking

shall also retroactively disclose, in the form of an arithmetic average, the information required under this Article for the preceding years covered by the non-disclosure period.

Amendment 50

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 3 – subparagraph 3 f (new)

Text proposed by the Commission

Amendment

The Commission shall, by means of a delegated act, adopt guidelines to assist Member States defining cases where the publication of information shall be considered seriously prejudicial to the commercial position of the undertakings to which it relates.

Amendment 51

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48c – paragraph 5

Text proposed by the Commission

Amendment

5. The report on income tax information shall be published and made accessible on the website in at least one of the official languages of the Union.

5. The report on income tax information shall be published *in a common template available free of charge in an open data format* and made accessible *to the public on the date of its publication* on the website *of the subsidiary undertaking or on the website of an affiliated undertaking* in at least one of the official languages of the Union. *On the same date, the undertaking shall also file the report in a public registry managed by the Commission.*

Amendment 52

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48e – paragraph 1

Text proposed by the Commission

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, published and made accessible in accordance with Articles 48b, 48c and 48d.

Amendment

1. ***To strengthen accountability towards third parties and ensure appropriate governance***, 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, published and made accessible in accordance with Articles 48b, 48c and 48d.

Amendment 53

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48g

Text proposed by the Commission

Article 48g

Common Union list of certain tax jurisdictions

The Commission shall be empowered to adopt delegated acts in accordance with Article 49 in relation to drawing up a common Union list of certain tax jurisdictions. That list shall be based on the assessment of the tax jurisdictions, which do not comply with the following criteria:

(1) Transparency and exchange of information, including information exchange on request and Automatic Exchange of Information of financial account information;

Amendment

deleted

- (2) *Fair tax competition;*
- (3) *Standards set up by the G20 and/or the OECD;*
- (4) *Other relevant standards, including international standards set up by the Financial Action Task Force.*

The Commission shall regularly review the list and, where appropriate, amend it to take account of new circumstances.

Amendment 54

Proposal for a directive

Article 1 – paragraph 1 – point 2

Directive 2013/34/EU

Article 48i – paragraph 1

Text proposed by the Commission

The Commission shall report on the compliance with and the impact of the reporting obligations set out in Articles 48a to 48f. The report shall include an evaluation of whether the report on income tax information delivers appropriate and proportionate results, taking into account the need to ensure a sufficient level of transparency and the need *for* a competitive environment for undertakings.

Amendment

The Commission shall report on the compliance with and the impact of the reporting obligations set out in Articles 48a to 48f. The report shall include an evaluation of whether the report on income tax information delivers appropriate and proportionate results, ***and shall assess the costs and benefits of lowering the consolidated net turnover threshold beyond which undertakings and branches are required to report on income tax information. The report shall, in addition, evaluate any necessity to take further complementary measures,*** taking into account the need to ensure a sufficient level of transparency and the need ***to preserve and ensure*** a competitive environment for undertakings ***and private investment.***

Amendment 55

Proposal for a directive

Article 1 – paragraph 1 – point 2 a (new)

Directive 2013/34/EU

Article 48i a (new)

Text proposed by the Commission

Amendment

(2a) the following article is inserted:

‘Article 48ia

No later than 4 years after the adoption of this Directive and taking into account the situation at OECD level, the Commission shall review, assess and report on the provisions of this Chapter, in particular as regards:

- undertakings and branches required to report on income tax information, particularly whether it would be appropriate to enlarge the scope of this Chapter to include large undertakings as defined in Article 3(4) and large groups as defined in Article 3(7) of this Directive;***
- the content of the report on income tax information as provided for in Article 48c;***
- the temporary derogation provided for in subparagraphs 3a to 3f of Article 48c(3).***

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

Amendment 56

Proposal for a directive

Article 1 – paragraph 1 – point 2 b (new)

Directive 2013/34/EU

Article 48i b (new)

Text proposed by the Commission

Amendment

(2b) the following article is inserted:

‘Article 48ib

Common template for the report

The Commission shall, by means of implementing acts, lay down the common template to which Article 48b(1), (3), (4) and (6) and Article 48c(5) refer. Those

implementing acts shall be adopted in accordance with the examination procedure referred to in Article 50(2).’

Amendment 57

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point b

Directive 2013/34/EU

Article 49 – paragraph 3 a

Text proposed by the Commission

(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 [date].’

Amendment

(3a) Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement *of 13 April 2016* on Better Law-Making*, *taking particular account of the provisions of the Treaties and the Charter of Fundamental Rights of the European Union.*

* *OJ L 123, 12.5.2016, p. 1.*’

Amendment 58

Proposal for a directive

Article 1 – paragraph 1 – point 3 a (new)

Directive 2013/34/EU

Article 51 – paragraph 1

Present text

Member States shall *provide for* penalties applicable to infringements of the national provisions adopted in accordance with this Directive and shall take all the measures necessary to ensure that *those penalties are enforced*. The penalties provided for shall be effective, proportionate and dissuasive.’

Amendment

(3a) in Article 51, paragraph 1 is replaced by the following:

‘Member States shall *lay down rules on* penalties applicable to infringements of the national provisions adopted in accordance with this Directive and shall take all the measures necessary to ensure that *they are implemented*. The penalties provided for shall be effective, proportionate and dissuasive.

Member States shall at least provide for administrative measures and penalties for the infringement by undertakings of

national provisions adopted in accordance with this Directive.

Member States shall notify the Commission of those provisions at the latest by ... [please insert the date of one year after entry into force] and shall notify it without delay of any subsequent amendment affecting the provisions.

By ... [three years after the entry into force of this Directive] the Commission shall compile a list of the measures and penalties laid down by each Member State in accordance with this Directive.'