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**WORKING PAPER**

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**MEETING DOCUMENT**

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| From:          | General Secretariat of the Council                  |
| To:            | Working Party on Company Law (CBCR)                 |
| N° prev. doc.: | ST 15243/16   |
| N° Cion doc.:  | ST 7949/16  |
| Subject:       | Comments received from delegations on CBCR Proposal |

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Delegations will find in Annex comments received from delegations after the Working Party meeting on 29 March 2017.

| <b>ANNEX</b>   | <b>Drafting suggestions</b> | <b>Comments</b>   |
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| 2014/0121 (COD)  |                             | <p><b>DE:</b></p> <p><b>GER upholds its fundamental scrutiny reservation. GER still does not have a position whether we can accept the proposal.</b></p>  |
| 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,     |                             | <p><b>DE:</b></p> <p><b>See above.</b></p> <p><b>LU:</b></p> <p>In our view the appropriate legal basis remains the one of Article 115 TFEU. The legal basis of the proposal should be aligned with its content which is referring to the Directive 2011/16/EU as amended, based on the work of the OECD in tax matters.</p> <p><b>SE:</b></p> <p>The Swedish position on the Commission's proposal on public Country by Country reporting in the Accounting Directive is:</p> <p>- that it is important to protect the principle</p> |

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|   |  | <p>that tax matters shall be decided with unanimity</p> <ul style="list-style-type: none"> <li>- that it also is important to safeguard that tax provisions are not included in EU acts other than those relating to tax, and</li> <li>- that it is of the outmost importance not to jeopardise what has been achieved within the OECD, and that more countries decide to sign up to the global standard.</li> <li>- that we share the opinion of the Legal Service that the proposal must be based on Article 115 (i.e. unanimity) since the proposal relate to fiscal provisions.</li> </ul> |
| Having regard to the proposal from the European Commission,   |  |  |
| After transmission of the draft legislative act to the national parliaments,  |  |  |
| Having regard to the opinion of the European Economic and Social Committee <sup>1</sup> ,   |  |  |
| Acting in accordance with the ordinary legislative procedure,   |  |  |
| Whereas:  |  |  |
| (1) <del>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 both at global and Union level. The Commission in its communications entitled 'Commission Work Programme 2016 - No time for business as usual'</del> |  |  |

<sup>1</sup> OJ C , , p . .

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| <p>and 'Commission Work Programme 2015 - A New Start' 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.</p>  |  |   |
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| <p>(2) <del>The European Parliament in its resolution of 16 December 2015 on bringing transparency, coordination and convergence to corporate tax policies in the Union 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.</del></p> <p><b><u>In parallel to the work undertaken by the Council to fight corporate income tax avoidance, it is necessary to enhance public scrutiny of corporate income taxes borne by multinational undertakings carrying out activities in the Union, as this is an essential element to further foster corporate responsibility to contribute to the welfare of our societies, to promote a better informed public debate and to regain the trust of citizens of the Union in the fairness of the national tax systems. Such public scrutiny can be achieved by means of a report on income tax information, irrespective of where the ultimate parent undertaking of the multinational group is established.</u></b></p> | <p><b>SE:</b></p> <p>(2) The European Parliament in its resolution of 16 December 2015 on bringing transparency, coordination and convergence to corporate tax policies in the Union 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.</p> | <p><b>SE:</b></p> <p>We suggest that the deleted text should be in the directive.</p> |
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| <p>(3) Following the European Council conclusions of 22 May 2013, a review clause was introduced in Directive 2013/34/EU of the European Parliament and of the Council requiring the Commission to</p>  |  |   |

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| <p>consider the possibility of introducing an obligation on large undertakings of additional industry sectors to produce, on an annual basis, a country-by-country reporting taking into account the developments in the Organisation for Economic Cooperation and Development (OECD) and the results of related European initiatives.</p>   |  |  |
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| <p><del>(4) Calling for a globally fair and 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/EU.</del></p> |  |  |
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| <p><del>(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.</del></p>  |  |  |

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| <p>(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 <b><u>to the extent that the requested information is available to the subsidiary or branch. If the requested information is not available the subsidiary or branch should explain in the report the reasons of this omission.</u></b> 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.</p> |  | <p><b>LU:</b></p> <p>As a starting point, we are in favour of the wording that has been used in DAC 4, which allows the entity that cannot obtain all required information from its ultimate parent established in a third country only to file the information which is available and notify that the ultimate parent has refused to make the necessary information available. The concept of “comply and explain” in case the information is not available is a minimum that we could accept.</p> |
| <p><b><u>(6a) Multinational groups, and where relevant, non-affiliated undertakings, should provide the public with a report on income tax information when they exceed a certain size over a period of the last two consecutive financial years, depending on the consolidated revenue of the group or the revenue of the non-affiliated undertaking. Given the wide array of accounting frameworks with which financial statements may comply, such revenue should be defined as the net turnover for undertakings falling within the scope of this Directive. For other undertakings the revenue should be assessed in accordance with the financial reporting framework on the basis of which these</u></b></p>   |  | <p><b>LU:</b></p> <p>Assuming that a non-affiliated undertaking is an independent company which is not a part of a group and which is not controlled and has no subsidiaries, the proposal goes beyond the scope of Action 13 of OECD and DAC4. Luxembourg does not support extending the scope beyond what is required under Action 13 of OECD and DAC4.</p>   |

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| <b><u>financial statements are prepared.</u></b>  |   |   |
|   | <p><b>SE:</b></p> <p><b><u>(6b) At the same time it is stressed that, as concluded by the G20 and the OECD, country-by-country reports will be helpful for high-level transfer pricing risk assessment purposes only. The information in the Country-by-Country Report does not constitute conclusive evidence that transfer prices are or are not appropriate and that information should not be used as a substitute for a detailed transfer pricing analysis of individual transactions and prices based on a full functional analysis and comparability analysis.</u></b></p> | <p><b>SE:</b></p> <p>We suggest that a new 6b) is introduced in the directive. It explains that you cannot draw definite conclusions just from a Country-by-Country Report.</p> |
| <p>(7) In order to avoid double reporting for the banking sector, ultimate parent undertakings <b><u>and non-affiliated undertakings</u></b> which are subject to Directive 2013/36/EU of the European Parliament and of the Council and which include in their report prepared in accordance with Article 89 of Directive 2013/36/EU all its activities and, <b><u>where appropriate,</u></b> all the activities of its affiliated undertakings included in the consolidated financial statements, including activities not subject to the provisions of Chapter 2 of Title 1 of Part Three of Regulation (EU) No 575/2013 of the European Parliament and of the Council , should be exempted from the reporting requirements set out in this Directive.</p> |   |   |
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| <p>(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 <b><u>consolidated</u></b> by an ultimate parent undertaking <b><u>or, depending on the</u></b></p>  |   | <p><b>DE:</b></p> <p><b><u>It should be clarified what “depending on the circumstances” exactly means.</u></b></p>  |

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| <p><b><u>circumstances, concerning all the activities of a non-affiliated undertaking.</u></b> 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 <b><u>for undertakings. For this reason, the list of information is exhaustive.</u></b> 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".</p>             | <p><b>SE:</b></p> <p>The definitions and requirements in Chapter 10a do not affect the requirements of annual reports or consolidated accounts</p>   | <p><b>SE:</b></p> <p>The recital should be clear that the requirements in this proposal does not affect the requirements of annual reports or consolidated accounts.</p>   |
| <p><b><u>(8a) In order to avoid administrative burden, when preparing a report on income tax information in compliance with this Directive, undertakings should be entitled to prepare the information on the basis of the reporting specifications laid down in Annex III, Section III, parts B and C of Council Directive 2011/16/EU. For this reason, the report should specify the reporting framework used.</u></b> The report should <b><u>might in addition</u></b> 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.</p> | <p><b>DK:</b></p> <p><b><u>(8a) In order to avoid administrative burden, when preparing a report on income tax information in compliance with this Directive, undertakings should be entitled to prepare the information on the basis of the reporting specifications laid down in Annex III, Section III, parts B and C of Council Directive 2011/16/EU. For this reason, the report should specify the reporting framework used.</u></b> The report should <b><u>might in addition</u></b> 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.</p> | <p><b>DK:</b></p> <p>We believe that it is unnecessary to state that the undertaking can provide more information than required in the proposal. As we understand the proposal it outlines minimum requirements. See below also the draft proposal to delete Article 48 c (4)</p> <p><b>LU:</b></p> <p>We support the possibility of a reporting based on the DAC4. We suggest however to amend the reference to the DAC to '<b><u>Council Directive 2011/16/EU as amended</u></b>'.</p> |
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| <p>(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.</p>   | <p><b>DK:</b></p> <p>(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 <u>third country</u> tax jurisdictions which pose particular challenges. For all other third country operations, the information <del>should</del> <u>can</u> be given in an aggregate number.</p> | <p><b>DK:</b></p> <p>The proposed text is a draft proposal merely to specify</p> <ul style="list-style-type: none"> <li>• that this part of the recital is concerning third country tax jurisdictions, and</li> <li>• that it is also allowed to disclose disaggregated information.</li> </ul> |
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| <p>(10) In order to strengthen responsibility vis-à-vis third parties and to ensure appropriate governance, the members of the administrative, management and supervisory bodies of the ultimate parent undertaking <b>or non-affiliated undertakings</b> which <del>is</del> <b>are</b> established within the Union and which <del>has</del> <b>have</b> the obligation to draw up, publish and make accessible the report on income tax information, should be collectively responsible for ensuring the compliance with these reporting obligations. Given that members of the administrative, management and supervisory bodies of the subsidiaries which are established within the Union and which are controlled by an ultimate parent undertaking established outside the Union or the person(s) in charge of carrying out the disclosures formalities for the branch may have limited knowledge of the content of the report on income tax information prepared by the ultimate parent undertaking <b>or may have limited ability to obtain such information from their ultimate parent undertaking</b>, their responsibility to publish and make accessible the report on income tax information should be limited.</p> |   | <p><b>DK:</b></p> <p>The recital should be aligned with Article 48b (3).</p>  |
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| <p>(11) <b><u>To ensure public awareness on the compliance of the reporting obligations by the relevant undertakings.</u></b> <del>To ensure that cases of non-compliance are disclosed to the public,</del> statutory auditor(s) or audit firm(s) should check <b>state</b> whether the report on income tax information has been <del>submitted and presented</del> <b>published</b> 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, <b><u>within the time limits established by this Directive.</u></b></p> | <p><b>AT:</b></p> <p>(11) <b><u>To ensure public awareness on the compliance of the reporting obligations by the relevant undertakings.</u></b> <del>To ensure that cases of non-compliance are disclosed to the public,</del> statutory auditor(s) or audit firm(s) should check <b>state</b> whether the report on income tax information has been <del>submitted and presented</del> <b>published</b> 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 <b>or on the website of the register, within the time limits established by this Directive.</b></p> <p><b>DE:</b></p> <p>(11) <b><u>To ensure public awareness on the compliance of the reporting obligations by the relevant undertakings.</u></b> <del>To ensure that cases of non-compliance are disclosed to the public,</del> statutory auditor(s) or audit firm(s) should check <b>state</b> whether <b>A</b> the report on income tax information has been <del>submitted and presented</del> <b>published</b> in accordance with the requirements of this Directive and made accessible on the relevant undertaking's <b>OR THE NATIONAL REGISTER'S</b> website or on the website of an affiliated undertaking, <b><u>within the time limits established by this Directive</u></b></p> | <p><b>AT:</b></p> <p>Suggestion to align the text with the compromise proposal to Art 48d.</p> <p><b>DE:</b></p> <ol style="list-style-type: none"> <li>1. The auditor should only check whether there is "a" report but not the content of the report (which might be indicated by using "the" report in the current draft.).</li> <li>2. Art. 48d has been amended to include the accessibility via the national register's website. This should be mentioned in recital 11 as well (Drafting suggestion on capital letters).</li> </ol> |
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| <p>(12) This Directive aims to enhance transparency and public scrutiny on corporate income tax by adapting the existing legal framework concerning the obligations imposed on companies and firms in respect of the publication of reports, for the protection of the interests of members and others, within the meaning of Article 50(2)(g) TFEU. As the Court of Justice held, in particular, in Case C-97/96</p>  |  | <p><b>DE:</b></p> <p>See above.</p> <p><b>LU:</b></p> <p>As mentioned already above we do not consider the legal basis of the Article 50 as appropriate one</p>  |

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| <p>Verband deutscher Daihatsu-Händler, Article 50(2)(g) TFEU refers to the need to protect the interests of "others" generally, without distinguishing or excluding any categories falling within the ambit of that term. Moreover, the objective of attaining freedom of establishment, which is assigned in very broad terms to the institutions by Article 50(1) TFEU, cannot be circumscribed by the provisions of Article 50(2) TFEU. Given that this Directive does not concern the harmonisation of taxes but only obligations to publish reports on income tax information, Article 50(1) TFEU constitutes the appropriate legal basis.</p>   |  | <p>for the purpose of the proposal.</p> |
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| <p><del>(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.</del></p> |  |   |

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| (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.   |   |  |
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| (15) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.  |   |  |
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| (16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified. | <p><b>DE:</b></p> <p><del>(16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.</del></p> | <p><b>DE:</b></p> <p><b>DELETE – We do not see a necessity to impose a correlation table for the current instrument.</b></p> |
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| (17) Directive 2013/34/EU should therefore be amended accordingly,  |   |  |

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| <i>Article 1</i>  |  |   |
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| Amendments to Directive 2013/34/EU  |  |   |
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| Directive 2013/34/EU is amended as follows:   |  |   |
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| (1) in Article 1, the following paragraph 1a is inserted:   |  |   |
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| '1a. The coordination measures prescribed by Articles 2, 48a to 48 <del>ee</del> 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.'; | <p><b>DE:</b></p> <p>1a. The coordination measures prescribed by Articles <del>2,</del> 48a to 48<del>ee</del> and 51 shall also apply to the laws, regulations and administrative provisions of the Member States relating to branches opened <b>AND STILL OPERATED</b> 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. <b>ARTICLE 2 SHALL APPLY TO THESE BRANCHES AS FAR AS ARTICLES 48A TO 48E AND 51 REFER TO SUCH BRANCHES.'</b></p> | <p><b>DE:</b></p> <p><b>1. It should be clarified that including Art. 2 for branches does not mean that all the definitions in Art. 2 shall apply to branches in the future. New wording has been added at the end while the reference to Art. 2 in the beginning has been deleted.</b></p> <p><b>2. We still see a problem if an undertaking with a legal form under Annex I has opened the branch but has in the meantime changed its legal form into one not falling under Annex I. In this case no requirements should apply to branches.</b></p> <p><b>3. In a recital the question of "comparable legal forms" should be dealt with. COM may provide a drafting suggestion which refers to the existing Accounting Directive.</b></p> <p><b>LU:</b></p> |

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|  |  | <p>The Article should be clear about which undertakings is covered.</p> <p>How and at what time shall a MS make the assessment if the undertaking is of a legal form comparable with the types of undertakings listed in Annex I is still unclear?</p> |
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| (2) the following Chapter 10a is inserted:   |  |  |
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| <b>'Chapter 10a</b>  |  |  |
| <b>Report on Income tax information</b>  |  |  |
| <i>Article 48a</i>   |  |  |
|  |  |  |
| Definitions relating to reporting on income tax information  |  |  |
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| 1. For the purposes of this Chapter, the following definitions shall apply:  |  |  |
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| (1) 'ultimate parent undertaking' means an undertaking which draws up the consolidated financial statements of the largest body of undertakings; |  |  |
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| (2) 'consolidated financial statements' means the financial statements prepared by a parent  |  |  |

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| undertaking of a group in which the assets, liabilities, equity, income and expenses are presented as those of a single economic entity;        |  |  |
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| (3) 'tax jurisdiction' means a State as well as a non-State jurisdiction which has fiscal autonomy in respect of corporate income tax.          |  |  |
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| <b><u>2. For the purposes of Article 48b, the following definition shall apply:</u></b><br><br><b><u>'revenue' has the same meaning as:</u></b> |  |  |
|   |  |  |
| <b><u>(1) the 'net turnover', for undertakings governed by the law of a Member State, and</u></b>   | <p><b>DK:</b></p> <p><b><u>(1) the 'net turnover', for undertakings falling within the scope of this Directive governed by the law of a Member State, and</u></b></p> <p><b>IE:</b></p> <p>A recital clarifying the intent of this paragraph would be useful</p> | <p><b>DK:</b></p> <p>We believe that this is a more correct and precise description and it is similar to the description in recital (6a).</p> <p><b>IE:</b></p> <p>EU companies that apply IFRS may have difficulty in understanding and accepting that the scope is determined by the Accounting Directive measurement "net turnover" instead of the IFRS measurement "revenue". A recital would help to reinforce the message.</p> <p>The term "net turnover" is not relevant to banks, insurance undertakings and investment undertakings. It does not feature in the layouts in Directive 86/635/EEC or 91/674/EEC. The term is used in Article 89 of Directive 2013/36/EU (DAC IV CbCR); this gave rise to difficulties in interpretation and the EBA found it necessary to give an interpretation for that purpose (EBA Single</p> |

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|   |   | Rulebook Q&A (Question ID: 2014_1249).  |
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| <b><u>(2) the 'revenue' as defined by or within the meaning of the financial reporting framework on the basis of which financial statements are prepared, for other undertakings.</u></b>   |   |   |
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| <i>Article 48b</i>  |   |   |
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| Undertakings and branches required to report on income tax information  |   |   |
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| <p>1. Member States shall require ultimate parent undertakings governed by their national laws <b><u>which on their balance sheet date exceeded for the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in their consolidated financial statements</u></b> 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 <b><u>and make accessible a report on income tax information as regards the later of the last two consecutive financial years.</u></b> <del>on an annual basis.</del></p> <p><b><u>Member States shall require undertakings governed by their national laws that are not affiliated undertakings and which on their balance sheet date exceeded for the last two consecutive financial years a total revenue of EUR 750 000 000 as reflected in their annual</u></b></p> | <p><b>LU:</b></p> <p>"which on their balance sheet exceeded for <u>each of</u> the last two consecutive financial years a total..."</p> | <p><b>DE:</b></p> <p><b>Second subpara.:</b><br/>Question the reference to purely non-affiliated undertakings (does this go beyond DAC IV?).</p> <p><b><u>A written COM answer should be provided.</u></b></p> <p><b>LU:</b></p> <p>Clarification of the paragraph.</p> <p><b>EL:</b></p> <p>1. The scope for which there is no support (from MS) is extremely large (€ 750,000,000) for large companies and groups.</p> <p><b><u>We want to lower the threshold from</u></b></p> |



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| <p><b><u>financial statements to draw up, publish and make accessible a report on income tax information as regards the later of the last two consecutive financial years.</u></b></p> <p>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.</p> |  | <p><b><u>750,000,000 to the limit of 40,000,000 and concern the LARGE companies and groups as defined by Article 3 (4) (for companies) &amp; par. 7 (for groups) of accounting Directive (2013/34 / EU):</u></b></p> <p>{4. Large enterprises are enterprises which, at the balance sheet date, exceed the limits of at least two of the following three criteria: (a) balance sheet total: EUR 20000000; (b) net turnover: EUR 40000000; (c) average number of employees during the year: 250.}</p> <p>7. Large groups are groups of parent and subsidiary undertakings to be consolidated and which, consolidated, exceed the limits of at least two of the following three criteria at the balance sheet date of the parent undertaking: (a) balance sheet total: EUR 20000000; (b) net turnover: EUR 40000000; (c) average number of employees during the year: 250.}</p> <p>So if the threshold goes down then it's worth talking about a good number of companies.</p> <p>Also in this position has already been addressed by the Parliament with the relevant report of the Social &amp; Economic Committee, which states that the scope should apply to large companies and groups.</p> |
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| <p><b><u>1a. Member States shall not apply the rules set out in paragraph 1 to non-affiliated undertakings, ultimate parent undertakings and their affiliated undertakings where such undertakings operate only within the territory of one single Member State and in no other</u></b></p>   | <p><b><u>AT:</u></b></p> <p><b><u>1a. Member States shall not apply the rules set out in paragraph 1</u></b></p> <p><b><u>a) to ultimate parent undertakings where the</u></b></p> | <p><b><u>AT:</u></b></p> <p>Alignment to the "NME Group"-Definition in Directive 2016/881.</p>  |

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| <p><b><u>tax jurisdiction.</u></b></p>  | <p><b><u>tax residence of the affiliated undertakings is within the territory of the same Member State and in no other tax jurisdiction;</u></b></p> <p><b><u>b) to non-affiliated undertakings that are not subject to tax with respect to the business carried out through a permanent establishment in another jurisdiction.</u></b></p> <p><b><u>DE:</u></b></p> <p><b><u>1a. Member States shall not apply the rules set out in paragraph 1 to non-affiliated undertakings, ultimate parent undertakings and their affiliated undertakings where such undertakings HAVE NO SUBSIDIARY UNDERTAKING OR BRANCH IN OTHER STATES operate only within the territory of one single Member State and in no other tax jurisdiction.</u></b></p> | <p><b><u>DE:</u></b></p> <p><b>1. The use of “operate” may lead to questions in practice. We suggest to use a clearer wording which is based on the concept of the Accounting Directive.</b></p> <p><b>2. Question as before the reference to non-affiliated undertakings (does this go beyond DAC IV?)</b></p> <p><b><u>LU:</u></b></p> <p>We would like to understand the difference between the term “carrying out activities” as written in recitals (2) and (6), and “operate” in paragraph 1a and why different terminology is used?</p> |
| <p>2. Member States shall not apply the rules set out in paragraph 1 of this Article to <b><u>non-affiliated undertakings and</u></b> ultimate parent undertakings where such undertakings or their affiliated undertakings <b><u>disclose a report in accordance with</u></b> are subject to Article 89 of Directive 2013/36/EU of the European Parliament</p> | <p><b><u>DE:</u></b></p> <p>2. Member States shall not apply the rules set out in paragraph 1 of this Article to <b><u>non-affiliated undertakings and</u></b> ultimate parent undertakings <b><u>WHICH ARE GOVERNED BY THEIR NATIONAL</u></b></p>  | <p><b><u>DE:</u></b></p> <p><b>1. Question as before the reference to non-affiliated undertakings (does this go beyond DAC IV?).</b></p>   |

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| <p>and of the Council<sup>2</sup> and encompass, in a country-by-country <del>that</del> report, information on <b><u>all their activities and</u></b> all the activities of all the affiliated undertakings included in the consolidated financial statement of those ultimate parent undertakings.</p>  | <p><b>LAW</b> where such undertakings or their affiliated undertakings <b><u>disclose a report in accordance with</u></b> are subject to Article 89 of Directive 2013/36/EU of the European Parliament and of the Council<sup>3</sup> and encompass, in a country-by-country <del>that</del> report, information on <b><u>all their activities and</u></b> all the activities of all the affiliated undertakings included in the consolidated financial statement of those ultimate parent undertakings.</p>  | <p><b>2. Add reference to “governed by their national law” as in para. 1.</b></p>   |
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| <p>3. Member States shall require the medium-sized and large subsidiary undertakings referred to in Article 3(3) and (4) <del>that</del> which are governed by their national laws and controlled by an ultimate parent undertaking which <b><u>on its balance sheet date exceeded for the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in its consolidated financial statements</u></b> <del>has a consolidated net turnover exceeding EUR 750 000 000 and which is not governed by the law of a Member State, to publish</del> <b><u>and make accessible the a</u></b> report on income tax information of that ultimate parent undertaking <b><u>as regards the later of the last two consecutive financial years, to the extent that the information is available to the subsidiary undertaking. When the information is not available, the subsidiary</u></b></p> | <p><b>DE:</b></p> <p>3. Member States shall require the medium-sized and large subsidiary undertakings referred to in Article 3(3) and (4) <del>that</del> which are governed by their national laws and controlled by an ultimate parent undertaking which <b><u>on its balance sheet date exceeded for the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in its consolidated financial statements</u></b> <del>has a consolidated net turnover exceeding EUR 750 000 000 and which is not governed by the law of a Member State, to publish</del> <b><u>and make accessible the a</u></b> report on income tax information of that ultimate parent undertaking <b><u>as regards the later of the last two consecutive financial years, to the extent that A REPORT the information is</u></b></p> | <p><b>DE:</b></p> <p><b>1. It is unclear whether the subsidiary should check the content of report which is provided by the parent company.</b></p> <p><b>2. Typo to be corrected (“udertaking” should be “undertaking”).</b></p> |

<sup>2</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

<sup>3</sup> Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).

**undertaking shall request its ultimate parent undertaking not governed by the law of a Member State to provide it with all information required to enable it to meet its obligation. In case the information is not provided, the report shall contain an explanation as to why this is the case.** ~~on an annual basis.~~

**If such subsidiary undertaking exceeds the threshold set out in paragraph 1, it shall publish its own report on income tax information as provided for under paragraph 1.**

~~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.~~

**available to the subsidiary undertaking. When the A REPORT information is not available, the subsidiary undertaking shall request its ultimate parent uNdertaking not governed by the law of a Member State to provide it with all information required to enable it to meet its obligation. In case the information is not provided, the report shall contain an explanation as to why this is the case.** ~~on an annual basis.~~

**LU:**

which on their balance sheet exceeded for each of the last two consecutive financial years a total..."

**DK:**

A comment to this part of the paragraph:

**In case the information is not provided, the report shall contain an explanation as to why this is the case.** ~~on an annual basis.~~

Which report shall contain this information? An "empty" report submitted by the subsidiary stating only that information has not been provided by the ultimate parent undertaking?

**LU:**

Clarification of the paragraph

**IE:**

This "comply or explain" provision is very helpful and we would like it to be kept in. We would have legal difficulty imposing sanctions on a legal entity (or on the management of a legal entity) as a result of the actions (or omissions) of a different legal entity (the ultimate parent undertaking) over which the first legal entity has no control.

**EL:**

**1. Widen the scope and scope of small business subsidiaries** with regard to the

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|  |  | <p>obligation for them to issue a reference for information on taxable income and which are controlled together with the medium and large enterprises by the parent company, Conditions of that Article. With this arrangement, the number of companies that will be obliged to produce the report will increase significantly.</p> <p>2. We agree with the phrase : « <b><u>for the last two consecutive financial years</u></b>»</p> <p>3. The scope for which there is no support (from MS) is extremely large (€ 750,000,000) for large companies and groups.</p> <p><b><u>We want to lower the threshold from 750,000,000 to the limit of 40,000,000 and concern the LARGE companies and groups as defined by Article 3 (4) (for companies) &amp; par. 7 (for groups) of accounting Directive (2013/34 / EU):</u></b></p> <p>{4. Large enterprises are enterprises which, at the balance sheet date, exceed the limits of at least two of the following three criteria: (a) balance sheet total: EUR 20000000; (b) net turnover: EUR 40000000; (c) average number of employees during the year: 250.}</p> <p>7. Large groups are groups of parent and subsidiary undertakings to be consolidated and which, consolidated, exceed the limits of at least two of the following three criteria at the balance sheet date of the parent undertaking: (a) balance sheet total: EUR 20000000; (b) net turnover: EUR 40000000; (c) average number of employees during the year: 250.}</p> <p>So if the threshold goes down then it's worth talking about a good number of companies.</p> |
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|  |  | <p>Also in this position has already been addressed by the Parliament with the relevant report of the Social &amp; Economic Committee, which states that the scope should apply to large companies and groups.</p> <p><b>4. We disagree with the addition to paragraph 3 of Article 48b of the phrase "In the case of a subsidiary undertaking, In paragraph 1, it shall publish its own report on income tax information as provided for in paragraph 1. " <u>Here we consider that there is a reporting obligation and any explanation opens the door to companies and groups not to report.</u></b></p> <p><b>We do not agree on that. In any case the information must be provided. It is a provision with no exceptions. Otherwise will create an environment of non reporting. Here is not the case of explain or comply. We delete this item because it is against the provisions.</b></p> |
| <p>4. 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 <b><u>and make accessible</u></b> on an annual basis the <b><u>a</u></b> report on income tax information of the ultimate parent undertaking <b><u>or the non-affiliated undertaking</u></b> referred to in point (a) of <b><u>this</u></b> paragraph <b><u>as regards the later of the last two consecutive financial years, to the extent that the information is available to the person(s) designated to carry out the disclosure formalities referred to in Article 48e(2).</u></b> <b><u>When the information is not available, such person(s) shall request the ultimate parent undertaking not governed by the law of a</u></b></p> | <p><b>DE:</b></p> <p>4. Member States shall require branches which are opened in their territories by an undertaking <b><u>AND STILL OPERATES IT</u></b> which is not governed by the law of a Member State to publish <b><u>and make accessible</u></b> on an annual basis the <b><u>a</u></b> report on income tax information of the ultimate parent undertaking <b><u>or the non-affiliated undertaking</u></b> referred to in point (a) of <b><u>this</u></b> paragraph <b><u>as regards the later of the last two consecutive financial years, to the extent that A REPORT the information is available to the person(s) designated to carry out the disclosure formalities referred to in Article 48e(2).</u></b></p> | <p><b>DE:</b></p> <p><b>1. We still struggle with the concept that the text refers to the legal form of the opening undertaking only for the moment when the branch is opened. It should be added that such an undertaking still operates the branch. In the case of subsidiaries any requirements are only applicable if the parent company has the legal form of Annex I.</b></p> <p><b>2. As in paragraph 3 reference should be made to "a report" rather than to information.</b></p> <p><b>3. In the second subparagraph reference</b></p>   |

**Member State or the non-affiliated undertaking referred to in point (a) of this paragraph to provide all information required to meet their obligations. In case the information is not provided, the report shall contain an explanation as to why this is the case.** ~~5 of this Article.~~

~~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.~~

Member States shall **not** apply the first subparagraph of this paragraph ~~only~~ to branches which have net turnover **did not** exceeding **at least for two consecutive financial years the** net turnover threshold defined by the law of each Member State pursuant to Article 3(2).

**When A REPORT the information is not available, such person(s) shall request the ultimate parent undertaking not governed by the law of a Member State or the non-affiliated undertaking referred to in point (a) of this paragraph to provide all information required to meet their obligations. In case the information is not provided, the report shall contain an explanation as to why this is the case.** ~~5 of this Article.~~

~~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.~~

Member States shall **not** apply the first subparagraph of this paragraph ~~only~~ to branches which have net turnover **did not** exceeding **at least for THE LAST two consecutive financial years the** net turnover threshold defined by the law of each Member State pursuant to Article 3(2).

should be made – as in the first subparagraph – to the “last” two financial years.

**DK:**

A comment to this part of the paragraph:

**In case the information is not provided, the report shall contain an explanation as to why this is the case.** ~~5 of this Article.~~

Which report shall contain this information? An “empty” report submitted by the branch stating only that information has not been provided by the ultimate parent undertaking?

**LU:**

As a starting point, we are in favour of the wording that has been used in DAC 4, which allows the entity that cannot obtain all required information from its ultimate parent established in a third country only to file the information which is available and notify that the ultimate parent has

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|   |   | <p>refused to make the necessary information available. The concept of "comply and explain" in case the information is not available is a minimum that we could accept.</p> <p><b>EL:</b></p> <p>1. <b>We disagree with the addition to paragraph 4 of Article 48b</b> of the phrase "In case the information is not provided, the report shall contain an explanation as to why this is the case." <b><u>Here we consider that there is a reporting obligation and any explanation Explain) opens the door to companies and groups for not reporting.</u></b></p> <p><b>The same here. The obligation is that the income tax reporting must be provided with no exceptions.</b></p> |
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| <p>5- Member States shall apply the rules set out in <b>this</b> paragraph <del>4 only</del> to a branch <b>only</b> where the following criteria are met:</p>  |   |  |
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| <p>(a) the undertaking that <del>which</del> opened the branch is either an affiliated undertaking of a group <del>which is controlled by an</del> <b>whose</b> ultimate parent undertaking <b>is</b> not governed by the law of a Member State and which <b><u>on its balance sheet date exceeded for two the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in its consolidated financial statements</u></b> <del>has a consolidated net turnover exceeding</del> or an undertaking that is not an affiliated undertaking and which <del>has a net turnover exceeding</del> <b><u>on its balance sheet date exceeded</u></b></p> | <p><b>DE:</b></p> <p>(a) the undertaking that <del>which</del> opened the branch <b>AND STILL OPERATES IT</b> is either an affiliated undertaking of a group <del>which is controlled by an</del> <b>whose</b> ultimate parent undertaking <b>is</b> not governed by the law of a Member State and which <b><u>on its balance sheet date exceeded for two the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in its consolidated financial statements</u></b> <del>has a consolidated net turnover exceeding</del></p> | <p><b>DE:</b></p> <p><b>See above.</b></p>   |



**for the last two consecutive financial years a total revenue of EUR 750 000 000 as reflected in its financial statements; and**

exceeding or an undertaking that is not an affiliated undertaking and which has a net turnover exceeding **on its balance sheet date exceeded for the last two consecutive financial years a total revenue of EUR 750 000 000 as reflected in its financial statements; and**

**SE:**

..."which on their balance sheet exceeded for each of the last two consecutive financial years a total..."

..."which on their balance sheet exceeded for each of the last two consecutive financial years a total..."

**SE:**

Clarification of the paragraph. And there is an extra "two" that should be deleted.

Clarification of the paragraph.

**EL:**

1. For branch-based enterprises that are affiliated with a group, determine **whether the head office of that group is located inside or outside the EU.**
2. We agree with the phrase : « **for the last two consecutive financial years** »
3. The scope for which there is no support (from MS) is extremely large (€ 750,000,000) for large companies and groups.

**We want to lower the threshold from 750,000,000 to the limit of 40,000,000 and concern the LARGE companies and groups as defined by Article 3 (4) (for companies) & par. 7 (for groups) of accounting Directive (2013/34 / EU):**

{4. Large enterprises are enterprises which, at the balance sheet date, exceed the limits of at least two of the following three criteria: (a) balance sheet total: EUR 20000000; (b) net turnover: EUR 40000000; (c) average number of

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|  |   | <p>employees during the year: 250.}</p> <p>7. Large groups are groups of parent and subsidiary undertakings to be consolidated and which, consolidated, exceed the limits of at least two of the following three criteria at the balance sheet date of the parent undertaking: (a) balance sheet total: EUR 20000000; (b) net turnover: EUR 40000000; (c) average number of employees during the year: 250.}</p> <p>So if the threshold goes down then it's worth talking about a good number of companies.</p> <p>Also in this position has already been addressed by the Parliament with the relevant report of the Social &amp; Economic Committee, which states that the scope should apply to large companies and groups</p> |
|  |   |   |
| (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. | <p><b>DE:</b></p> <p>(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 <b>AND</b></p> | <p><b>DE:</b></p> <p><b>As an alternative for the amendment in point (a) with regard to the legal form of the undertaking operating the branch at the moment of the reporting obligation one could add point (c).</b></p>   |
|  | <p><b>DE:</b></p> <p><b>(c) the ultimate parent undertaking referred to in point (a) has a legal form which is comparable with the types of undertakings listed in Annex I.</b></p>       | <p><b>DE:</b></p> <p>See Above.</p>   |
| 6. Member States shall not apply the rules set out in paragraphs 3 and 4 of this Article where a report on income tax information drawn up in accordance |   | <p><b>DE:</b></p> <p><b>The AUT comment in the last Working Group</b></p>   |

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| with <b>consistently with</b> Article 48c <b>and:</b>   |  | <p><b>meeting should be verified in order to exclude circular references.</b></p> <p><b>SE:</b></p> <p>Should be "5."</p>   |
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| <b>(a)</b> is made accessible;  |  |   |
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| <b>(i)</b> to the public on the website of the ultimate parent undertaking <b>or of the non-affiliated undertaking</b> not governed by the law of a Member State;                 |  | <p><b>DE:</b></p> <p><b>The condition ("not governed by the law of a Member State") applies to both, "ultimate parent undertakings" and "non-affiliated undertakings", which should be made clear in the text.</b></p>              |
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| <b>(ii) in at least one of the official languages of the Union;</b>   |  |   |
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| <b>(iii)</b> within a reasonable period of time, which shall not exceed 12 months after the balance sheet date <b>of the financial year for which the report is drawn up;</b> and |  |   |
|   | <p><b>EL:</b></p> <p><b>(iv) in the commercial registers of the Member States and that this obligation is even at no cost.</b></p> | <p><b>EL:</b></p> <p>1. The reporting of taxable income for branches and subsidiaries, where there is no obligation to apply the provisions of paragraphs 3 and 4 of that Article, <b>shall be published and accessible, in</b></p> |

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|   |  | addition to that already provided for in (a) (I) to (iii) and (b) <b>in the commercial registers of the Member States</b> in which the said branches and subsidiaries are registered and that this obligation is even at no cost.   |
| <del>(b) where the report</del> identifies the name and the registered office of the single subsidiary undertaking or <b>the name and the address of</b> the single branch governed by the law of a Member State which has published <del>the a</del> report in accordance with Article 48d(1).   |  |   |
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| 7. Member States shall require subsidiaries <b>and of</b> branches not subject to the provisions of paragraphs 3 and 4 to publish and make accessible <del>the a</del> report on income tax information where such subsidiaries or branches have been established for the purpose of avoiding the reporting requirements set out in this Chapter. |  | <p><b>LU:</b></p> <p>The current drafting of this anti-abuse clause is much too broad. It is not clear at all what concrete situations are meant to be covered, which would give rise to legal uncertainty. Either this paragraph should be deleted or at least it should be substantially redrafted in order to be better framed</p> <p><b>SE:</b></p> <p>The Article is unclear how the MS will have the knowledge that a subsidiary or a branch has been established for the purpose of avoiding the reporting requirements?</p> |
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| <i>Article 48c</i>  |  |   |
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| Content of the report on income tax information   |  |   |
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| <p>1. The report on income tax information shall include information relating to all the activities of the <b>non-affiliated</b> undertaking <del>and</del> <b>or</b> the ultimate parent undertaking, including activities <del>those</del> of all affiliated undertakings consolidated in the financial statement in respect of the relevant financial year.</p> |  | <p><b>LU:</b></p> <p>What is the exact meaning of the non-affiliated entities? What type of entities would it encompass, respectively how the ultimate parent entity can esteem a given non-affiliated entity should be included in the report/consolidated financial statements and what would be the next step in case the information cannot be received from the non-affiliated entity/entities?</p> |
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| <p>2. The information referred to in paragraph 1 shall <b>be as follows</b> <del>comprise the following:</del></p>   |  |  |
|  |  |  |
| <p><b><u>(-a) the name of the ultimate parent undertaking or the non-affiliated undertaking, financial year concerned and the currency used;</u></b></p>   |  |  |
|  |  |  |
| <p>(a) a brief description of the nature of the activities;</p>  |  |  |
|  |  |  |
| <p>(b) the number of employees <b><u>which is the average number of employees during the financial year;</u></b></p>   |  |  |
|  |  |  |
| <p>(c) the <b><u>revenues which are:</u></b> <del>amount of the net turnover, which includes the turnover made with related parties;</del></p>   |  |  |
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| <p><b><u>(i) the sum of the net turnover, other operating income, income from participating interests, excluding dividends received from affiliated undertakings, income from other investments and loans forming part of the fixed assets, other interest receivable and similar income as listed in Annexes V and VI of this Directive, or</u></b></p> |  | <p><b>IE:</b></p> <p>The term “net turnover” is not relevant to banks, insurance undertakings and investment undertakings.</p> |
|  |  |  |
| <p><b><u>(ii) the income as defined by or within the meaning of the financial reporting framework on the basis of which financial statements are prepared excluding value adjustments and dividends received from affiliated undertakings;</u></b></p>   | <p><b>DK:</b></p> <p><b><u>(ii) the income as defined by or within the meaning of the a financial reporting framework other than this Directive on the basis of which financial statements are prepared excluding value adjustments and dividends received from affiliated undertakings;</u></b></p> | <p><b>DK:</b></p> <p>Proposal for clarification.</p>   |
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| <p>(d) the amount of profit or loss before income tax;</p>   |  |  |
|  |  |  |
| <p>(e) the amount of income tax accrued <b><u>in the</u></b> (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;</p>   |  |  |
|  |  |  |
| <p>(f) the amount of income tax paid <b><u>on cash basis</u></b> 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; and</p>  |  |  |

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| (g) the amount of accumulated earnings.   | <b>DE:</b><br><del>(g) the amount of accumulated earnings.</del>  | <b>DE:</b><br><b>According to the Commission's Impact Assessment this item leads to the risk of misinterpretation.</b>   |
|   |   |  |
| <b><u>For the purposes of point (c) of the first subparagraph the revenues shall include transactions with related parties.</u></b>   |   |  |
|   |   |  |
| 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.   |   |  |
|   |   |  |
| <b><u>For the purposes of point (f) of the first subparagraph taxes paid shall include withholding taxes paid by other undertakings with respect to payments to undertakings and branches within a group.</u></b>   |   |  |
|   |   |  |
| <b><u>For the purposes of point (g) of the first subparagraph the accumulated earnings shall mean the sum of the profit brought forward which was not decided for distribution to members as of the end of the relevant financial year. With regard to branches, accumulated earnings shall be reported by the undertaking which opened a branch.</u></b> | <b>DE:</b><br><b><u>For the purposes of point (g) of the first subparagraph the accumulated earnings shall mean the <del>sum of the profit</del> OF THE FINANCIAL YEAR brought forward which was not decided for distribution to members as of the end of the relevant financial year. With regard to branches, accumulated earnings shall be</u></b> | <b>DE:</b><br><b>1. DELETE (as seen above).</b><br><b>2. If the text is not deleted the reference should be made to the profits which have been brought forward in the financial year which the report covers.</b> |

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|   | <p><b><u>reported by the undertaking which opened a branch.</u></b></p>  | <p><b>IE:</b></p> <p>Our understanding is that “accumulated earnings” refers to profits not distributed to shareholders, built up over all prior years as well as in the current year (i.e. the year for which the revenue and number of employees is disclosed). A comment made by a delegate at the meeting on 29 March 2017 suggests that not all Member States share this view. It is important that its meaning for the purpose of this Proposal is essentially the same as for BEPS 13. Clarification might be helpful.</p> |
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| <p><b><u>2a. Member States shall permit the information listed in paragraph 2 to correspond to the reporting specifications referred to in Annex III, Section III, Parts B and C of Directive 2011/16/EU.</u></b></p>   | <p><b>DK:</b></p> <p><b><u>2a. Member States shall permit the information listed in paragraph 2 to correspond to the reporting specifications referred to in Annex III, Section III, Parts B and C of Directive 2011/16/EU.</u></b></p> <p><u>The report shall specify whether it was prepared in accordance with paragraph 2 or 2a.</u></p>           | <p><b>DK:</b></p> <p>We propose to move the first sentence in para 3 to the end of para 2a as it seems to more naturally belong there.</p>  |
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| <p><b><u>3. The report shall specify whether it was prepared in accordance with paragraph 2 or 2a.</u></b></p> <p>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.</p> <p>The report shall also present the information</p> | <p><b>AT:</b></p> <p><b><u>3. The report shall specify whether it was prepared in accordance with paragraph 2 or 2a.</u></b></p> <p>The report shall present the information referred to in paragraph 2 <b>or 2a</b> separately for each Member State. Where a Member State comprises several tax jurisdictions, the information shall be combined</p> |   |



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| <p>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 <del>common EU non</del> <b>non-cooperative jurisdictions for tax purposes</b><sup>4</sup> <del>certain tax jurisdictions drawn up pursuant to Article 48g</del>, 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.</p> <p>The report shall present the information referred to in paragraph 2 on an aggregated basis for other tax jurisdictions.</p> <p>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 <b>or non-affiliated undertaking</b>, can give rise to income tax liability in that tax jurisdiction.</p> <p>Where the activities of several affiliated undertakings can give rise to a 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.</p> <p>Information on any particular activity shall not be attributed simultaneously to more than one tax</p> | <p>at Member State level.</p> <p>The report shall also present the information referred to in paragraph 2 <b>or 2a</b> of this Article separately for each tax jurisdiction which, at the end of the previous financial year, is listed in the <del>common EU non</del> <b>non-cooperative jurisdictions for tax purposes</b><sup>5</sup> <del>certain tax jurisdictions drawn up pursuant to Article 48g</del>, 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.</p> <p>The report shall present the information referred to in paragraph 2 <b>or 2a</b> on an aggregated basis for other tax jurisdictions.</p> <p><b>DE:</b></p> <p><b><u>NEW 8. The report shall specify whether it was prepared in accordance with paragraph 2 or 2a.</u></b></p> <p><b>DK:</b></p> <p>3. <b><u>The report shall specify whether it was</u></b></p> | <p><b>DE:</b></p> <p><b>The requirement to specify whether the report has been prepared in accordance with paragraph 2 or 2a should be moved to a new paragraph 8 in order to catch all cases.</b></p> <p><b>DK:</b></p> <p>See our comment immediately above in regard to the</p> |
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<sup>4</sup> **List adopted by the Council on** [lawyer-linguists: please add the reference].  
*The precise language of this footnote shall be adapted when the list is adopted by the Council.  
List as referred to in the Conclusions of the Council of the European Union of 25 May 2016 and 8 November 2016.*

<sup>5</sup> **List adopted by the Council on** [lawyer-linguists: please add the reference].  
*The precise language of this footnote shall be adapted when the list is adopted by the Council.  
List as referred to in the Conclusions of the Council of the European Union of 25 May 2016 and 8 November 2016.*

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| <p>jurisdiction.</p> | <p><b><u>prepared in accordance with paragraph 2 or 2a:</u></b></p> <p>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.</p> <p>The report shall also present the information referred to in paragraph 2 <a href="#">respectively paragraph 2a</a> of this Article separately for each tax jurisdiction which, at the end of the previous financial year, is listed in the <del>common</del> <b>EU</b> <del>non</del> list of <b>non-cooperative jurisdictions for tax purposes</b><sup>6</sup> <del>certain tax jurisdictions drawn up pursuant to Article 48g</del>, 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.</p> <p>The report shall present the information referred to in paragraph 2 <a href="#">respectively paragraph 2a</a> on an aggregated basis for other tax jurisdictions.</p> <p>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 <b>or non-affiliated undertaking</b>, can give rise to income tax liability in that tax jurisdiction.</p> <p>Where the activities of several affiliated undertakings can give rise to a tax liability within a single tax jurisdiction, the information attributed to</p> | <p>draft proposal to delete the first sentence of the paragraph.<br/>A reference to paragraph 2a seems to appropriate.</p> |
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<sup>6</sup> **List adopted by the Council on** *[lawyer-linguists: please add the reference]*.  
*The precise language of this footnote shall be adapted when the list is adopted by the Council.*  
*List as referred to in the Conclusions of the Council of the European Union of 25 May 2016 and 8 November 2016.*

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|  | <p>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.</p> <p>Information on any particular activity shall not be attributed simultaneously to more than one tax jurisdiction.</p> | <p><b>IE:</b></p> <p>We agree that there should be just one list.</p> <p>The term "fixed place of business" features in Article 5(1) of the OECD Model Tax Convention (in the definition of "permanent establishment") while Article 7 refers to attributing profits to a permanent establishment. The subparagraph in column 1 seems to take no account of the fact that residence or domicile can (and generally do) give rise to a tax liability on the basis of Article 4 of the Model Convention. BEPS 13 makes a reasonably clear distinction in this respect.</p> <p><b>EL:</b></p> <p>1. "...place of business or of a permanent business activity which..."</p> <p><b>To clarify whether</b>, in relation to the information given to the relevant tax jurisdiction, <b>the concept of permanent business includes the provision of distance services (eg via the internet / e-shop, etc.).</b></p> <p>2. "...Information on any particular activity shall not be attributed simultaneously to more than one tax jurisdiction..."</p> <p>Allow the information to be passed on to another tax jurisdiction <b>and not limited to one.</b></p> |
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**3a. Member States may allow information required to be disclosed by paragraphs 2 and 3 of this Article to be omitted when its nature is such that it would be seriously prejudicial to the commercial position of the undertakings to which it relates, including when only a single affiliated undertaking operates in a tax jurisdiction which is not listed in the EU list of non-cooperative jurisdictions for tax purposes. Any such omission shall be disclosed in the report.**

**DE:**

**3a. Member States may allow information required to be disclosed by paragraphs 2 and 3 of this Article to be omitted when its nature is such that it would be seriously prejudicial to the commercial position of the undertakings to which it relates, including when only ONE PROJECT IS REALIZED IN A TAX JURISDICTION OR a single affiliated undertaking ONLY operates in a tax jurisdiction. THIS DOES NOT APPLY IF THE TAX JURISDICTION -which is not listed in the EU list of non-cooperative jurisdictions for tax purposes. Any such omission shall be disclosed in the report.**

**DK:**

**3a. Member States may allow information required to be disclosed by paragraphs 2 and 3 of this Article to be omitted when its nature is such that it would be seriously prejudicial to the commercial position of the undertakings to which it relates, e.g. including when only an single affiliated undertaking has only one activity-operates in a particular tax jurisdiction-which is not listed in the EU list of non-cooperative jurisdictions for tax purposes. Any such omission and the grounds for the omission shall be disclosed in the report.**

**DE:**

**First sentence: The exemption should also cover cases where only a single project is realized only in one tax jurisdiction.**

**Second sentence: If the exception shall work it is not useful to add a requirement to disclose the omission as this would require undertakings to at least publish some of the prejudicial information.**

**DK:**

Firstly, we propose to amend the text referring to a situation in which an undertaking is allowed to omit information, as we find the example unclear. We have proposed another example to illustrate a situation in which we believe it could be seriously prejudicial for an undertaking to disclose information.

Secondly, the draft proposal shall ensure that undertakings making use of the option must not only disclose the fact that they have omitted information – but also the reasons why they have omitted information.

**EL:**

**We do not agree with this paragraph. We want to delete it.** Member States should not be allowed to omit the obligation to disclose the information referred to in subparagraphs 2 and 3 of that Article on the ground that such information would, by its very nature, be detrimental to the undertaking concerned. Such an option would

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|   |   | negate the purposes of this Directive with regard to the disclosure of financial information and contribute to the strengthening of tax evasion.   |
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| 4. The report shall <del>shall</del> <b>may</b> include, <del>where applicable</del> at group level, an overall narrative providing explanations on material discrepancies between the amounts disclosed pursuant to points (e) and (f) of paragraph 2, if any, taking into account if appropriate corresponding amounts concerning previous financial years.   | <b>DK:</b><br><del>4. The report shall <b>may</b> include, <b>where applicable</b> at group level, an overall narrative providing explanations on material discrepancies between the amounts disclosed pursuant to points (e) and (f) of paragraph 2, if any, taking into account if appropriate corresponding amounts concerning previous financial years.</del> | <b>DK:</b><br>We believe that it is unnecessary to state that the undertaking can provide more information than required in the proposal. As we understand the proposal it outlines minimum requirements. See above also the draft proposal to delete part of recital (8a) |
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| <del>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.</del>  |   |  |
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| 6. The currency used in the report on income tax information shall be the currency in which the consolidated financial statements <b>of the ultimate parent undertaking or the annual financial statements of the non-affiliated undertaking</b> are presented. Member States shall not require this report to be published in a different currency than the currency used in the financial statements. |   |  |
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| 7. Where Member States have not adopted the euro, the threshold referred to in Article 48b(1) shall <b>may</b> be converted into the national currency, <del>by <b>Such conversion must</b> applying the exchange rate as at [Publications Office- set the date = the date of the entry in force of this Directive]</del> published in the Official Journal of the European                             |   | <b>EL:</b><br>"...and by <b>may increase</b> increasing or <b>decrease</b> decreasing it <b>the thresholds</b> by not more than 5 % in order to produce a round sum in the national currencies..."<br>Where Member States have adopted the euro on                         |

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| <p>Union and by <b>may increase</b> increasing or <b>decrease</b> decreasing it <b>the thresholds</b> by not more than 5 % in order to produce a round sum in the national currencies.</p> <p>The thresholds referred to in Article 48b(3) and (4) shall be converted to an equivalent amount in the national currency of any relevant third countries by applying the exchange rate as at [Publications Office - set the date = the date of the entry in force of this Directive], rounded off to the nearest thousand.</p> |   | <p>the financial statements prepared in local currency, <b>not to enable variation of 5% for the euro-national currency conversion rate</b> (such as the exchange rate published in the EU official journal) <b>but be drawn at the rate determined on that day, without the possibility percent fluctuation</b> and which rate of the day to be a reference and identification for the preparation of financial statements of each type Enterprises takings (subsidiaries, associated, native, branches).</p> |
|  | <p><b>DE:</b></p> <p><b>NEW 8. The report shall specify whether it was prepared in accordance with paragraph 2 or 2a.</b></p> | <p><b>DE:</b></p> <p><b>See above.</b></p>   |
| <p><i>Article 48d</i></p>  |   |  |
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| <p>Publication and Accessibility</p>   |   |  |
|  |   | <p><b>DK:</b></p> <p>Can the Presidency confirm that the proposal does not specify if the CBCR report should be published as a part of the annual financial statement or as a separat report meaning that Member States can decide to require either option or Member States can leave it up to the undertakings to decide for themselves?</p>   |
| <p>1. The report on income tax information shall be published <b>within 12 months after the balance sheet date of the financial year for which the report is drawn up</b> as laid down by the laws of each Member State in accordance with Chapter 2 of Directive 2009/101/EC, <del>together with documents referred to in Article 30(1) of this Directive and</del></p>   |   |  |

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| where relevant, with the accounting documents referred to in <b>in accordance with</b> Article <b>7 9</b> of Council Directive 89/666/EEC <sup>7</sup> .   |  |   |
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| <b><u>1a. The report published in accordance with paragraph 1 shall be made accessible to the public within 12 months after the balance sheet date of the financial year for which the report is drawn up:</u></b> |  |   |
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| <b><u>(a) on the website of the undertaking when Article 48b(1) applies, or</u></b>  |  |   |
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| <b><u>(b) on the website of the subsidiary undertaking or on the website of an affiliated undertaking when Article 48b(3) applies, or</u></b>  |  |   |
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| <b><u>(c) on the website of the branch or on the website of the undertaking which opened the branch or on the website of an affiliated undertaking when Article 48b(4) applies.</u></b>                            |  |   |
|  | <b>EL:</b><br><b>d) "to the Commercial Register of the Member State"</b> | <b>EL:</b><br><b>1. Add Case (d) "to the Commercial Register of the Member State"</b> |
| <b><u>1b. Member States may exempt undertakings to apply the rules set out in paragraph 1a of this Article where the report published in</u></b>   |  | <b>DE:</b><br><b>We very much welcome this exception which</b>                        |

<sup>7</sup> 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).

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| <p><b><u>accordance with paragraph 1 is simultaneously made accessible to the public on the website of the register referred to in Article 3(1) of Directive 2009/101/EC. The website of the undertakings and branches as referred to in paragraph 1a shall contain information on the exemption and the reference to the website of the relevant register. The report on the website of the register must be accessible to any third parties located within the Union and free of charge.</u></b></p> |   | <p><b>leads to less costs for companies and a more effective enforcement.</b></p> <p><b>DK:</b></p> <p>Denmark is very supportive of this paragraph as it will reduce administrative burdens for the undertakings concerned if they need only submit the CBCR report to the national company register and not to publish it themselves on their website.</p> <p><b>SE:</b></p> <p>It is unclear to whom the last sentence in this paragraph is directed. The requirements to publish are directed to the undertakings, but when the last sentence is in this context it could be read that the provisions in the last sentence are addressed towards the register.</p> |
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| <p>2. The report referred to in Article 48b(1), (3), (4) and (6) shall remain accessible on the website for a minimum of five consecutive years.</p>   | <p><b>DK:</b></p> <p>2. The report referred to in Article 48b(1), (3), (4) and (6) shall remain accessible on the website, <a href="#">cf paragraph 1a</a> or on the website of the register mentioned <a href="#">cf paragraph 1b</a> for a minimum of five consecutive years.</p> | <p><b>DK:</b></p> <p>Proposal for clarification.</p> <p><b>EL:</b></p> <p><b><u>1. We agree on that. We mark that the publicity point (commercial publicity) for all the entities is business registry ( GEMI in GREECE). Although we will provide this specific information free of charge.</u></b></p>   |
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| <p><i>Article 48e</i></p>  |   |  |
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| <p>Responsibility for drawing up, publishing and making accessible the report on income tax information</p>   |  |   |
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| <p>1. Member States shall ensure that the members of the administrative, management and supervisory bodies of the ultimate parent undertaking <b>or the non-affiliated undertakings</b> 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.</p>  |  |   |
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| <p>2. Member States shall ensure that the members of the administrative, management and supervisory bodies of the subsidiary undertakings referred to in Article 48b(3) of this Directive and the person(s) designated to carry out the disclosure formalities provided for in Article 13 of Directive 89/666/EEC for the branch referred to in Article 48b(4) of this Directive, acting within the competences assigned to them by national law, have collective responsibility for ensuring that, to the best of their knowledge and ability, the report on income tax information <del>is</del> drawn up <b>consistently with Article 48c, is</b> published and made accessible in accordance with Articles <del>48b, 48c and</del> 48d.</p> | <p><b>AT:</b></p> <p>2. Member States shall ensure that the members of the administrative, management and supervisory bodies of the subsidiary undertakings referred to in Article 48b(3) of this Directive and the person(s) designated to carry out the disclosure formalities provided for in Article 13 of Directive 89/666/EEC for the branch referred to in Article 48b(4) of this Directive, acting within the competences assigned to them by national law, have collective responsibility for ensuring that, to the best of their knowledge and ability, the report on income tax information <del>is</del> drawn up <b>consistently with Article 48c, is</b> published and made accessible in accordance with Articles <del>48b, 48c and</del> 48d.</p> <p><b>Where a subsidiary undertaking has to publish its own report according to the last sentence of Article 48b(3), its administrative, management and supervisory bodies shall have the responsibilities according to paragraph 1.</b></p> | <p><b>AT:</b></p> <p>Alignment to the change in Art 48b(3) last sentence.</p> |

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|  | <p><b>DK:</b></p> <p>2. Member States shall ensure that the members of the administrative, management and supervisory bodies of the subsidiary undertakings referred to in Article 48b(3) of this Directive and the person(s) designated to carry out the disclosure formalities provided for in Article 13 of Directive 89/666/EEC for the branch referred to in Article 48b(4) of this Directive, acting within the competences assigned to them by national law, have collective responsibility for ensuring that, to the best of their knowledge and ability, the report on income tax information is drawn up <del>consistently with Article 48c,</del> <u>is drawn up in accordance with Articles 48b(3) and 48b(4)</u> <del>is</del> published and made accessible in accordance with Articles <u>48b(3), 48b(4)</u> <del>48b, 48c and and</del> 48d.</p> | <p><b>DK:</b></p> <p>We believe that the reference to Article 48c indicates that members of the management are responsible for not only <i>publishing</i> the report but also for the <i>content</i> of the report as described in Article 48c. We believe the management should <i>not</i> be responsible for the content – not even to the best of their knowledge and ability – and we therefore propose the deletion of the reference to Article 48c.</p> <p>We propose to insert a reference to Article 48b, paragraph (3) and (4) instead as the responsibility should include the responsibility to ensure whether the subsidiary or branch is within the scope to publish a report.</p> <p>We believe there should be a reference to the responsibility for the management of the subsidiary in the situation where the subsidiary exceeds the thresholds in Article 48b (1) and the ultimate parent undertaking is not drawing up a report for the subsidiary to publish of the last sentence in Article 48b (3). We have not yet drafted a proposal though.</p> <p><b>IE:</b></p> <p>This paragraph may not take full account of the “comply or explain” element introduced into Article 48b(3) and (4). As worded, it appears to leave local management exposed even where the ultimate parent refuses to provide the necessary information.</p> <p><b>EL:</b></p> <p><b><u>We completely disagree with the wording of Article 48e, paragraph 2, and we want the deletion of the phrase in the 6th line</u></b> “..... to the best of their knowledge and ability, ....”, as this phrase drastically restricts The responsibility of the</p> |
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|   |  | management (board of directors or directors / managers) for drafting and submitting the financial reporting by country.   |
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| Article 48f   | <b>CZ:</b><br><br><i>Article 48f</i>   |   |
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| Independent check <b>statement</b>  | <b>CZ:</b><br><br><i>Independent check <b>statement</b></i><br><br><b>DE:</b><br><br>Independent check Statement <b>BY STATUTORY AUDITOR</b><br><br><b>DK:</b><br><br>Independent check <b>statement</b><br><br><i>Statement by the statutory auditor</i>  | <b>DE:</b><br><br>"Independent" statement may be misleading.<br><br><b>DK:</b><br><br>Proposal for clarification.   |
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| Member States shall ensure that, where the financial statements of an affiliated undertaking <b>governed by the law of a Member State referred to in Article 48b(1), (3) and (6)(b)</b> are <b>required to be</b> 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 <b>state(s) in the next audit report after publication or, if applicable after the expiration of the time limit for publication whether, as of the date of the audit report,</b> the | <b>CZ:</b><br><br><i>Member States shall ensure that, where the financial statements of an affiliated undertaking <b>governed by the law of a Member State referred to in Article 48b(1), (3) and (6)(b)</b> are <b>required to be</b> 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 <b>state(s) in the next audit report after publication or, if applicable after</b></i> | <b>CZ:</b><br><br>The Czech Republic proposes to delete <i>Article 48f</i> and related <i>Article 1a</i> of Directive 2006/43/EC concerning the independent check (or statement) and the extension of scope of the audit report. Requirements introduced in <i>Article 48f</i> aren't appropriate for these reasons:<br><br>Current wording doesn't void our concerns expressed during negotiation within the working |

report on income tax information has been provided and made accessible in accordance with **referred to in** Articles 48b, 48c and 48d **has been published**. The statutory auditor(s) or audit firm(s) shall indicate in the audit report if the report on income tax information has not been provided or **and** made accessible in accordance with those Articles **48b and 48d**.

~~the expiration of the time limit for publication whether, **as of the date of the audit report**, the report on income tax information has been provided and made accessible in accordance with referred to in~~ Articles 48b, 48c and 48d **has been published**. The statutory auditor(s) or audit firm(s) shall indicate in the audit report if the report on income tax information has not been provided or **and** made accessible in accordance with those Articles **48b and 48d**.

party regarding effectivity (gains) of introduced measure especially whether this measurement entails formal verification that the required information has been provided or also a substantive review of the correctness and accuracy of provided information.

**Case: What happens if an undertaking discloses the report but it doesn't fulfil contentual requirements referred to in Article 48c or substantial or all information published in the report are misrepresented?**

Current wording set forth in *Article 48f* [check (or statement)] doesn't provide to a statutory auditor or audit firm relevant legal framework how to check (or statement) requirements set out in the proposal or doesn't provide a Member state particular legal framework how to fulfil requirements contain in *Article 48f*.

The Czech Republic doesn't perceive any benefits from formal verification of CBCR Tax report, let us say, if it has been published, by statutory auditor or audit firm.

The current wording could lead to a situation where a statutory auditor or audit firm has to obtain all information on a client's full structure or even group's structure world-wide and their requirements in area of CBCR Tax reporting in order to identify whether the audit client is subject to the proposal's requirements and only then could provide the appropriate statement in the audit report.

**The Czech Republic still dissents from the extension of the content of the auditor's report stipulated in the Article 28 of the directive 2006/43/ES for reasons of ineffectiveness.**

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|  | <p><b>DE:</b></p> <p>Member States shall ensure that, where the financial statements of an <del>affiliated</del> undertaking <b><u>governed by the law of a Member State referred to in Article 48b(1), (3) and (6)(b)</u></b> are <b><u>required to be</u></b> audited by one or more statutory auditor(s) or audit firm(s) <del>pursuant to Article 34(1)</del>, the statutory auditor(s) or audit firm(s) <del>also check</del> <b><u>state(s) in the next audit report after publication or, if applicable after the expiration of the time limit for publication</u></b> whether, <b><u>as of the date of the audit report</u></b>, the <b><u>A</u></b> report on income tax information <del>has been provided and made accessible in accordance with referred to in Articles 48b, 48c and 48d</del> <b><u>has been published</u></b>. The statutory auditor(s) or audit firm(s) shall indicate in the audit report if the report on income tax information has not been provided or <b><u>and</u></b> made accessible in accordance with those Articles <b><u>48b and 48d</u></b>.</p> | <p><b>DE:</b></p> <p><b>The statutory auditor should only check whether there is "a" report.</b></p> <p><b>DK:</b></p> <p>We propose to have a discussion whether the Directive should require the auditor to be able to prove that he has made a useful effort to obtain the needed information on the basis of which he could conclude whether the undertaking was under an obligation to draw up respectively publish and make accessible a CBCR report.</p> <p>Further we do not understand the reference to (6)(b) in article 48b. Perhaps it should have been (4) instead?</p> <p><b>SE:</b></p> <p>It is unclear why a requirement is introduced for the auditors to check if the company has made a report accessible in accordance with Article 58b</p> |
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|  |  | and 48d.<br><br>It is also unclear if the auditor first must make an assessment whether the undertaking is an undertaking that is required to draw up a report and only then could provide the appropriate statement in the audit report. |
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| <i>Article 48g</i>   |  |   |
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| Common Union list of certain tax jurisdictions   |  |   |
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| <del>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:</del> |  |   |
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| <del>(1) Transparency and exchange of information, including information exchange on request and Automatic Exchange of Information of financial account information</del>  |  |   |
|  |  |   |
| <del>(2) Fair tax competition;</del>   |  |   |
|  |  |   |
| <del>(3) Standards set up by the G20 and/or the OECD.</del>  |  |   |
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|---|---|---|
| (4) Other relevant standards, including international standards set up by the Financial Action Task Force.  |   |   |
|   |   |   |
| <del>The Commission shall regularly review the list and, where appropriate, amend it to take account of new circumstances.</del>  |   |   |
|   |   |   |
| <i>Article 48h</i>  |   |   |
|   |   |   |
| Commencement date for reporting on income tax information   |   |   |
|   |   |   |
| Member States shall ensure that laws, regulations and administrative provisions transposing Articles 48a to 48f apply, at the latest, from the commencement date of the first financial year starting on or after [ <i>Publications Office- set the date = one year after the transposition deadline</i> ]. |   |   |
|   |   |   |
| <i>Article 48i</i>  |   |   |
|   |   |   |
| Report  |   |   |
|   |   |   |
| 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   | <b>EL:</b><br><i>Two years after the transposition date of this</i> | <b>EL:</b><br>The deadline for submitting the financial reference |

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| <p>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.</p> <p>The report shall be submitted to the European Parliament and to the Council by <i>[Publications Office- set the date = five years after the transposition date of this Directive].'</i></p>  | <p><b>Directive'</b></p> | <p>to the European Parliament and the Council <b>should be reduced to two (2) years from the final date for the transposition of the Directive.</b></p> |
|   |                          |   |
| <p>(3) Article 49 is amended as follows:</p>  |                          |   |
|   |                          |   |
| <p>(a) Paragraphs 2 and 3 are replaced by the following</p>   |                          |   |
|   |                          |   |
| <p>'2. The power to adopt delegated acts referred to in Article 1(2), Article 3(13), <b>and</b> Article 46(2) <b>and</b> <del>Article 48g</del> shall be conferred on the Commission for an indeterminate period of time from the date referred to in Article 54.</p>   |                          |   |
|   |                          |   |
| <p>3. The delegation of power referred to in Article 1(2), Article 3(13), <b>and</b> Article 46(2) <b>and</b> <del>Article 48g</del> may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.'</p> |                          |   |
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| (b) The following paragraph 3a is inserted:  |  |  |
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| '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 <b>13 April 2016</b> <sup>8</sup> [date].'  |  |  |
|  |  |  |
| (c) Paragraph 5 is replaced by the following:  |  |  |
|  |  |  |
| '5. A delegated act adopted pursuant to Article 1(2), Article 3(13) <del>and Article 46(2) and Article 48</del> shall enter into force only if no objection has been expressed either by the European Parliament or by the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.' |  |  |
|  |  |  |
| <b><u>Article 1a</u></b>   | <b>CZ:</b><br><br><b><u>Article 1a</u></b> |  |
|  |  |  |

<sup>8</sup> OJ L 123, p. 1.

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| <b><u>Amendment of Directive 2006/43/EC as regards the audit report</u></b>   | <b>CZ:</b><br><br><b><u>Amendment of Directive 2006/43/EC as regards the audit report</u></b>  |  |
|   |  |  |
| <b><u>Directive 2006/43/EC is amended as follows:</u></b>   | <b>CZ:</b><br><br><b><u>Directive 2006/43/EC is amended as follows:</u></b>  | <b>CZ:</b><br><br>see comments to the <i>Article 48f</i> |
|   |  |  |
| <b><u>Point (h) is added in paragraph 2 of Article 28:</u></b><br><br><b><u>"(h) where applicable, provide the statement referred to in Article 48f of Directive 2013/34/EU<sup>9</sup>."</u></b> | <b>CZ:</b><br><br><b><u>Point (h) is added in paragraph 2 of Article 28:</u></b><br><br><b><u>"(h) where applicable, provide the statement referred to in Article 48f of Directive 2013/34/EU<sup>10</sup>."</u></b> |  |
|   |  |  |
| Article 2   |  |  |
|   |  |  |
| Transposition   |  |  |
|   |  |  |

<sup>9</sup> **Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.**

<sup>10</sup> **Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.**

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| <p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by <i>[Publications Office - set the date = <del>one</del> <b>two</b> years after entry into force]</i> at the latest. They shall forthwith communicate to the Commission the text of those provisions.</p> <p>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.</p> | <p><b>EL:</b></p> <p><b>"one year after entry into force"</b></p> | <p><b>EL:</b></p> <p>1. The time for transposition of the Directive <b>into one year after its vote.</b></p> |
|  |   |  |
| <p>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.</p>   |   |  |
|  |   |  |
| <p><i>Article 3</i></p>  |   |  |
|  |   |  |
| <p>Entry into force</p>  |   |  |
|  |   |  |
| <p>This Directive shall enter into force on the twentieth day following that of its publication in the <i>Official Journal of the European Union.</i></p>  |   |  |
|  |   |  |
| <p><i>Article 4</i></p>  |   |  |
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| Addressees   |  |  |
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| This Directive is addressed to the Member States.  |  |  |
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| Done at Strasbourg,                                |  |  |
| <i>For the European Parliament For the Council</i> |  |  |
| <i>The President The President</i>                 |  |  |

**EL:**

**FURTHER GENERAL COMMENTS on the DRAFT REPORT of the Committee on Economic and Monetary Affairs  
Committee on Legal Affairs of the European Parliament (2016/0107(COD))**

1. In the DRAFT REPORT OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS / COMMITTEE ON LEGAL AFFAIRS (DOCUMENT 2016/0107 (COD) p.27, second paragraph) it is noted **that the scope should in no case be limited to information relating to the Community MS, But instead have a global character and in addition companies and / or groups should provide global information in every jurisdiction, including tax havens.** Therefore, financial reporting will be complete (since it will be global) and taxes will be paid where earnings are generated by ensuring fairer and more sustainable tax-based national systems. **We agree with the above position of the EC Committee on Economic and Monetary Affairs. And we support it as it is in the right direction.**
2. **A SINGLE DECLARATION FORM** (page 27, fourth paragraph, of the above report) for the disclosure of data, in order to ensure comparability of financial data, a central element of the Accounting Directive (2013/34 / EU). **We agree with the above position of the EC Committee on Economic and Monetary Affairs. And we support it as it is in the right direction.**