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Subject:	Delegations comments received after the Working Party meeting on 20 of September 2017

Delegations will find in Annex the comments received from the delegations after the Working Party meeting on 20 of September 2017

General Comments on Presidency proposal (MT)	
LV:	LV upholds its scrutiny reservation on the proposal. LV supports Council's Legal Services opinion on the proposal's legal base.
DE:	We uphold our general scrutiny reservation as we still have not finished our decision-making process.
UK:	<p>On the Presidency compromise text, the UK would like to emphasise two points. We believe it is vital that there are not dual reporting requirements. Affiliated undertakings that already report under CRD IV need to be excluded from also having to report under PCBCR obligations.</p> <p>We also feel it is important that undertakings can publish the template they prepare for DAC IV, as set out in Recital 8a – this is imperative in reducing the administrative burden for business.</p>
Presidency proposal (MT)	
Proposal for a DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches (Text with EEA relevance)	
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION, Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50(1) thereof, Having regard to the proposal from the European Commission,	
After transmission of the draft legislative act to the national parliaments, Having regard to the opinion of the European Economic and Social Committee ¹ ,	

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) ~~In recent years, the challenge posed by corporate income tax avoidance has increased considerably and has become a major focus of concern within the Union 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’² and ‘Commission Work Programme 2015 - A New Start’³ 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.~~

(2) ~~The European Parliament in its resolution of 16 December 2015 on bringing transparency, coordination and convergence to corporate tax policies in the Union⁴ 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.~~

In parallel to with the work undertaken by the Council to fight corporate income tax avoidance, it is necessary to enhance public scrutiny of corporate income taxes borne by multinational undertakings carrying out activities in the Union, as this is an essential element to further foster corporate 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.

(3) Following the European Council conclusions of 22 May 2013, a review clause

UK:

We would like to underline that the Directive confirms that an affiliated or non-affiliated undertaking may not be able to get access to this information from their ultimate parent undertaking (if the UPU is located outside of the EU).

<p>was introduced in Directive 2013/34/EU of the European Parliament and of the Council⁵ requiring the Commission to consider the possibility of introducing an obligation on large undertakings of additional industry sectors to produce, on an annual basis, a country-by-country reporting taking into account the developments in the Organisation for Economic Cooperation and Development (OECD) and the results of related European initiatives.</p>	
<p>(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/EU⁶.</p>	
<p>(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.</p>	
<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,</p>	

operating subsidiaries and branches should publish and make accessible the report of the ultimate parent undertaking **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.**

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, **and still operating**, in a Member State by an undertaking which is established outside the Union **and which has a legal form which is comparable to the types of undertakings listed in Annex I of Directive 2013/34/EU.**

(6a) Multinational groups, and where relevant, certain 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. Having regard to Article 2(12) of Directive 2013/34/EU, non-affiliated undertakings are intended to be stand-alone entities which are not part of a group. Given the wide array of accounting frameworks with which financial statements may comply, such revenue should be defined as the net turnover for undertakings governed by the law of a Member State or the revenue as defined in paragraph 2 of Article 48a for other undertakings. Article 43(2)(c) of Directive 86/635/EEC and Article 66(2) of Directive 91/674/EEC provide definitions as to the determination of the net turnover of a credit institution or of an insurance undertaking, respectively. For other undertakings, the revenue should be assessed in accordance with the financial reporting framework on the basis of which these financial statements are

UK:

We appreciate the work that has already been done to define a non-affiliated undertaking, however we think the definition of non-affiliated undertaking may cause some confusion and lacks clarity. We suggest the following amendment to the current proposal.

Having regard to Article 2(12) of Directive 2013/34/EU, non-affiliated undertakings are intended to be stand-alone entities which are not a legal part of the group but which are under the common control of the group.

<p><u>prepared.</u></p> <p><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 on its own 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></p>	
<p>(7) In order to avoid double reporting for the banking sector, ultimate parent undertakings <u>and non-affiliated undertakings</u> which are subject to Directive 2013/36/EU of the European Parliament and of the Council⁷ and which include in their report prepared in accordance with Article 89 of Directive 2013/36/EU all its activities and, <u>where appropriate,</u> 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 Council⁸, should be exempted from the reporting requirements set out in this Directive.</p> <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 <u>consolidated</u> by an ultimate parent undertaking <u>or, depending on the circumstances, concerning all the activities of a non-affiliated undertaking.</u> The information should be based on the reporting specifications of BEPS' Action 13 and 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 <u>for undertakings. For this reason, the list of required information is exhaustive. The provisions of Chapter 10a of this Directive do not affect the provisions regarding annual financial statements and</u></p>	<p>Presidency: Addition to reflect that additional voluntary explanations or disclosures are not prohibited.</p>

<p><u>consolidated financial statements.</u> <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 as amended. For this reason, the report should specify the reporting framework used.</u> The report should <u>might in addition</u> 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>UK:</p> <p>We think the ability for entities to publish their DAC IV report is vital in reducing the administrative burden on business and therefore should have some operative provisions in the directive.</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 tax jurisdictions which pose particular challenges. For all other third country operations, the information should be given in an aggregate number.</p>	<p>DK:</p> <p>We propose to amend the text in recital 9 merely to clarify that:</p> <ul style="list-style-type: none"> • this part of the recital is concerning third country tax jurisdictions, and • it is also allowed to disclose disaggregated information. <p>Recital 9) In order to ensure a level of detail that enables citizens to better assess the contribution of multinational undertakings to welfare in each Member State, the information should be broken down by Member State. Moreover, information concerning the operations of multinational enterprises should also be shown with a high level of detail as regards certain third country tax jurisdictions which pose particular challenges. For all other third country operations, the information shouldcan be given in an aggregate number.</p>
<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 <u>or non-affiliated undertakings</u> which is <u>are</u> established within the Union and which has <u>have</u> 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</p>	

members of the administrative, management and supervisory bodies of the subsidiaries which are established within the Union and which are controlled by an ultimate parent undertaking established outside the Union or the person(s) in charge of carrying out the disclosures formalities for the branch may have limited knowledge of the content of the report on income tax information prepared by the ultimate parent undertaking **or may have limited ability to obtain such information or report from their ultimate parent undertaking**, their responsibility to publish and make accessible the report on income tax information should be limited. **In case this information or report is not provided, the subsidiary undertakings should publish and make accessible a statement as to why the report on income tax information could not be published and made accessible.**

(11) To ensure **public awareness on the compliance of the reporting obligations by the relevant undertakings**, ~~that cases of non-compliance are disclosed to the public,~~ statutory auditor(s) or audit firm(s) should check **state** whether ~~a~~ the report on income tax information has been ~~submitted and presented~~ **published, or not**, 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, **or on the website of the register, within the time limits established by this Directive. A statutory auditor or audit firm should fulfil the requirements set out in Article 48f of this Directive to the extent of the information provided by the undertaking governed by the law of a Member State and to the extent of the information being readily available to the statutory auditor or audit firm.**

(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,

<p>in particular, in Case C-97/96 <i>Verband deutscher Daihatsu-Händler</i>⁹, 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.</p> <p>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><u>(12a) To ensure the full functioning of the internal market and a level playing field between the European Union and third-country multinational enterprises, the Commission should consider issuing recommendations on how to ensure that global dis-aggregation may be achieved particularly in international fora.</u></p>	<p>DE: We very much doubt why we need this recital. We would ask to delete it.</p>
<p>(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</p>	

<p>Commission expert groups dealing with the preparation of delegated acts.</p> <p>(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.</p>	
<p>(15) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union.</p>	
<p>(16) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents¹⁰, 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> <p>(17) Directive 2013/34/EU should therefore be amended accordingly,</p>	
<p>HAVE ADOPTED THIS DIRECTIVE:</p> <p style="text-align: center;"><i>Article 1</i> <i>Amendments to Directive 2013/34/EU</i></p>	
<p>Directive 2013/34/EU is amended as follows:</p> <p>(1) in Article 1, the following paragraph 1a is inserted:</p>	
<p>‘1a. The coordination measures prescribed by Articles 2, 48a to 48e and 51 shall also apply to the laws, regulations and administrative provisions of the Member States relating to branches opened and still operating 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</p>	<p>UK: We would like clarity on the phrase ‘and still operating’.</p>

<p>undertakings listed in Annex I.² <u>Article 2 shall apply to these branches to the extent that Articles 48a to 48e and 51 are applicable to such branches</u>’;</p>	
<p>(2) the following Chapter 10a is inserted:</p>	
<p style="text-align: center;">‘Chapter 10a Report on Income tax information <i>Article 48a</i> <i>Definitions relating to reporting on income tax information</i></p> <p>1. For the purposes of this Chapter, the following definitions shall apply:</p> <p>(1) ‘ultimate parent undertaking’ means an undertaking which draws up the consolidated financial statements of the largest body of undertakings;</p> <p>(2) ‘consolidated financial statements’ means the financial statements prepared by a parent undertaking of a group in which the assets, liabilities, equity, income and expenses are presented as those of a single economic entity;</p>	
<p>(3) ‘tax jurisdiction’ means a State as well as a non-State jurisdiction which has fiscal autonomy in respect of corporate income tax.</p> <p><u>2. For the purposes of Article 48b, the following definition shall apply: ‘revenue’ has the same meaning as:</u></p> <p><u>(1) the ‘net turnover’, for undertakings governed by the law of a Member State, and</u></p>	<p>DK:</p> <p>We propose an amendment to Article 48a.2 (1) as we believe that this is a more correct and precise description and it is similar to the description in recital (6a).</p> <p>(1) the ‘net turnover’, for undertakings falling within the scope of this Directive governed by the law of a Member State, and</p>
<p><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></p>	
<p style="text-align: center;"><i>Article 48b</i> <i>Undertakings and branches required to report on income tax information</i></p>	
<p>1. Member States shall require ultimate parent undertakings governed by their national laws <u>which on their balance sheet date exceeded for each of the last two consecutive financial years a total</u></p>	

consolidated revenue of EUR 750 000 000 as reflected in their consolidated financial statements 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 **and make accessible** a report on income tax information **as regards the later of the last two consecutive financial years.** on an annual basis.

Member States shall require undertakings governed by their national laws that are not affiliated undertakings and which on their balance sheet date exceeded for each of the last two consecutive financial years a total revenue of EUR 750 000 000 as reflected in their annual financial statements to draw up, publish and make accessible a report on income tax information as regards the later of the last two consecutive financial years.

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.

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, including their branches, are established only within the territory of one single Member State and in no other tax jurisdiction.

2. Member States shall not apply the rules set out in paragraph 1 of this Article to **non-affiliated undertakings and** ultimate parent undertakings where such undertakings or their affiliated undertakings **disclose a report in accordance with** ~~are subject to Article 89 of Directive 2013/36/EU of the European Parliament and of the Council and encompass, in a country-by-country~~ **that** report, information on **all their activities and** all the activities of all the affiliated undertakings included in the consolidated financial statement of those ultimate parent undertakings.

Presidency:

Need for consistency with language in paragraph 3 of Art 48c where it says: “The information shall be attributed to each relevant tax jurisdiction **on the basis of a legal presence, the existence of a fixed place of business or of a permanent business activity...**”

UK:

Our understanding is that this intends to exempt those entities that already disclose a report under CRD IV. We believe the current compromise does not cover all affiliated undertakings that are subject to CRD IV.

All affiliated undertakings, including those above the €750m threshold, that are subject to CRD IV should be excluded from having to produce a report. We suggest the following addition to the current proposal.

Where an affiliated undertaking is required

<p>3. Member States require the medium-sized and large subsidiary undertakings referred to in Article 3(3) and (4) that which are governed by their national laws and controlled by an ultimate parent undertaking which <u>on its balance sheet date exceeded for each of the last two consecutive financial years a total consolidated revenue of EUR 750 000 000 as reflected in its consolidated financial statements</u> has a consolidated net turnover exceeding EUR 750 000 000 and which is not governed by the law of a Member State, to publish <u>and make accessible</u> the <u>a</u> report on income tax information of that ultimate parent undertaking on an annual basis <u>as regards the later of the last two consecutive financial years, to the extent that this information or report is available to the subsidiary undertaking. When this information or report is not available, the subsidiary undertaking shall request its ultimate parent undertaking not governed by the law of a Member State to provide it with all information required to enable it to meet its obligation.</u> <u>In case this information or report is not provided, the subsidiary undertakings shall publish and make accessible a statement as to why the report on income tax information could not be published and made accessible. 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 and 1a.</u> 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.</p>	<p>to publish a report under Article 48b (3), Member States shall not apply the rules set out in paragraph 1 of this article if the affiliated undertaking discloses a report in accordance with Article 89 of Directive 2013/36/EU.</p> <p>UK:</p> <p>We would be very grateful for clarity on exactly what report a subsidiary that exceeds the €750m threshold in its own right, will have to produce. Does the report consist of information on only itself or its branches if relevant?</p> <p>DE: ... <u>If such subsidiary undertaking exceeds the threshold set out in paragraph 1 FOR EACH OF THE LAST TWO CONSECUTIVE FINANCIAL YEARS, it shall publish its own report on income tax information as provided for under paragraph 1 and 1a.</u> ...</p> <p>In the current text we always refer to the thresholds to be met over two years. At this pace we do not refer to it. We should avoid misunderstandings stemming from the fact that at this place the reference of two years has been omitted.</p>
<p>4. Member States shall require branches which are opened in their territories <u>and still operated</u> by an undertaking which is not governed by the law of a Member State to publish <u>and make accessible</u> on an annual</p>	

basis the ~~a~~ report on income tax information of the ultimate parent undertaking **or the non-affiliated undertaking** referred to in point (a) of ~~this~~ paragraph 5 of this Article **as regards the later of the last two consecutive financial years, to the extent that this information or report is available to the person(s) designated to carry out the disclosure formalities referred to in Article 48e(2). When this information or report 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 this information or report is not provided, the branches shall publish and make accessible a statement as to why the report on income tax information could not be published and made accessible.**

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 each of the last two consecutive financial years the** net turnover threshold defined by the law of each Member State pursuant to Article 3(2).

~~5.~~ Member States shall apply the rules set out in ~~this~~ paragraph 4 ~~only~~ to a branch **only** where the following criteria are met:

(a) the undertaking ~~that~~ **which** opened **and still operates** the branch is either an affiliated undertaking of a group ~~which is controlled by an~~ **whose** ultimate parent undertaking **is** not governed by the law of a Member State and which **on its balance sheet date exceeded for each of the last two consecutive financial years a total consolidated revenue of** EUR 750 000 000 **as reflected in its consolidated financial statements** ~~has a consolidated net turnover exceeding~~ or an undertaking that is not an affiliated undertaking and which has a net turnover ~~exceeding~~ **on its balance sheet**

<p><u>date exceeded for each of the last two consecutive financial years a total revenue of EUR 750 000 000 as reflected in its financial statements; and</u></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 3.</p> <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 with <u>consistently with</u> Article 48c and:</p> <p><u>(a)</u> is made accessible;</p> <p><u>(i)</u> to the public on the website of the ultimate parent undertaking <u>not governed by the law of a Member State or of the non-affiliated undertaking</u> not governed by the law of a Member State;</p> <p><u>(ii)</u> <u>in at least one of the official languages of the Union;</u></p> <p><u>(iii)</u> within a reasonable period of time, which shall not exceed 12 months after the balance sheet date <u>of the financial year for which the report is drawn up;</u> and</p> <p><u>(b)</u> where the report identifies the name and the registered office of the a single subsidiary undertaking or <u>the name and the address of the a</u> single branch governed by the law of a Member State which has published the a report in accordance with Article 48d(1).</p> <p>7. Member States shall <u>may</u> require subsidiaries <u>and</u> or branches not subject to the provisions of paragraphs 3 and 4 to publish and make accessible the a 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>	<p>SE:</p> <p>The provision is unclear on how MS shall obtain the knowledge that a subsidiary or a branch has been established for the purpose of avoiding the reporting requirements set out in the Chapter.</p>
<p style="text-align: center;"><i>Article 48c</i> <i>Content of the report on income tax information</i></p>	
<p>1. The report on income tax information shall include information relating to all the activities of the <u>non-affiliated</u> undertaking <u>and or</u> the ultimate parent undertaking, including activities <u>those</u> of all affiliated undertakings consolidated in the financial statement in respect of the relevant financial year.</p>	

<p>2. The information referred to in paragraph 1 shall <u>be as follows</u> comprise the following:</p> <p><u>(-a) the name of the ultimate parent undertaking or the non-affiliated undertaking, financial year concerned and the currency used;</u></p> <p>(a) a brief description of the nature of the activities;</p>	
<p>(b) the number of employees <u>which is the average number of employees during the financial year;</u></p> <p>(c) the <u>revenues which are:</u> amount of the net turnover, which includes the turnover made with related parties;</p> <p><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></p>	
<p><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></p> <p>(d) the amount of profit or loss before income tax;</p> <p>(e) the amount of income tax accrued <u>in the (current year), during the relevant financial year</u> 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>DK:</p> <p>We propose an amendment to clarify the text in Article 48c(2)(c)(ii):</p> <p>(ii) the income as defined by or within the meaning of the a other than this Directive financial reporting framework on the basis of which financial statements are prepared excluding value adjustments and dividends received from affiliated undertakings;</p> <p>Presidency: Language consistency with other points of the same paragraph.</p>
<p>(f) the amount of income tax paid <u>on cash basis</u> 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>	
<p>(g) the amount of accumulated earnings. <u>For the purposes of point (c) of the first subparagraph the revenues shall include</u></p>	

<p><u>transactions with related parties.</u> <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> <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 and the profit for that financial year which was not distributed. With regard to branches, accumulated earnings shall be reported by the undertaking which opened a branch.</u></p>	<p>DE: <u>For the purposes of point (g) of the first subparagraph the accumulated earnings shall mean the sum of the profit OF THE FINANCIAL YEAR brought forward which was not decided for distribution to members as of the end of the relevant financial year and the profit for that financial year which was not distributed. ...</u></p> <p>We still believe that an annual report should publish those profits which have been made in the financial year about which a report has to be made and which have not been distributed – but not as the current text the sum of- all- non-distributed profits of all financial years of the past.</p>
<p><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></p>	
<p>3. The report shall present the information referred to in paragraph 2 <u>or 2a</u> separately for each Member State. Where a Member State comprises several tax jurisdictions, the information shall be combined at Member State level.</p>	<p>UK:</p> <p>We are concerned that these provisions constitute a defensive measure. Discussions are taking place in the EU Code of Conduct Group to consider the use of defensive measures. That discussion has not yet resulted in any agreed approach. Therefore, it seems inappropriate to include a defensive measure prior to agreement or even comprehensive discussion in the forum with primary responsibility for this issue.</p> <p>In any case, we believe that any defensive measure (if agreed) should be effective, proportionate and targeted. This defensive measure does not recognise the varied reasons why a jurisdiction may be blacklisted. <u>We suggest deleting these provisions entirely.</u> Obviously, if global disaggregation is agreed to then this problem is resolved.</p>
<p>The report shall also present the information</p>	

<p>referred to in paragraph 2 or 2a of this Article separately for each tax jurisdiction which, at the end of the previous financial year, is listed in the common EU union list of non-cooperative jurisdictions for tax purposes¹ certain tax jurisdictions drawn up pursuant to Article 48g, unless the report explicitly confirms, subject to the responsibility referred to in Article 48e below, that the affiliated undertakings of a group governed by the laws of such tax jurisdiction do not engage directly in transactions with any affiliated undertaking of the same group governed by the laws of any Member State.</p>	
<p>The report shall present the information referred to in paragraph 2 or 2a on an aggregated basis for other tax jurisdictions. The information shall be attributed to each relevant tax jurisdiction on the basis of the legal presence, the existence of a fixed place of business or of a permanent business activity which, arising from the activities of the group or non-affiliated undertaking, 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>SE: The meaning of the term “legal presence” is unclear. It is also unclear in the article what is meant by the wording “can give rise to income tax liability”. The wording suggests that is something different that factual tax liability. In which situations is this applicable?</p>
<p>Information on any particular activity shall not be attributed simultaneously to more than one tax jurisdiction.</p>	
<p>3a. Member States may allow certain 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</p>	<p>DE: Member States may allow certain 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</p>

¹ **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.

for tax purposes.

TAX JURISDICTION OR a single affiliated undertaking operates in a tax jurisdiction which is not listed in the EU list of non-cooperative jurisdictions for tax purposes.

Sometimes there is no subsidiary but another body which handles a project. This should be exempted as well.

DK:

With the aim not to increase burdens for undertakings covered by the CBCR obligations Denmark cannot support the amendment that requires undertakings to obtain an administrative authorization prior to omitting information in the CBC report. Denmark supports however that an undertaking must disclose in the CBC report, if any information is omitted and give a detailed reasoning for the omission. It seems to us that no MS has asked for an amendment as the one proposed in para 3a.

SE:

MS may allow certain information to be omitted in the report. The article is unclear if it requires approval from both MS if the information concerns transactions between a subsidiary which is resident in a MS and a subsidiary resident in another MS or if it is sufficient with the approval from one of the MS.

Any such omission shall be subject to prior administrative or judicial authorisation for a period of one year, which may be renewed, and disclosed in the report. The report shall include a detailed account of the basis for any exemption granted under this paragraph.

4. The report shall **may** include, **where applicable** at group level, an overall narrative providing explanations on material discrepancies between the amounts disclosed pursuant to points (e) and (f) of paragraph 2, if any, taking into account if appropriate corresponding amounts concerning previous financial years.

5. The report on income tax

<p>information shall be published and made accessible on the website in at least one of the official languages of the Union.</p>	
<p>6. The currency used in the report on income tax information shall be the currency in which the consolidated financial statements <u>of the ultimate parent undertaking or the annual financial statements of the non-affiliated undertaking</u> are presented. Member States shall not require this report to be published in a different currency than the currency used in the financial statements.</p> <p><u>However, in the case mentioned in the second subparagraph of Article 48b(3), the subsidiary undertaking shall publish the report in the currency in which it publishes its annual financial statements.</u></p>	
<p>7. Where Member States have not adopted the euro, the threshold referred to in Article 48b(1) shall <u>may</u> be converted into the national currency. by <u>Such conversion must</u> applying the exchange rate as at <i>[Publications Office- set the date = the date of the entry in force of this Directive]</i> published in the Official Journal of the European Union and by <u>may increase</u> increasing or <u>decrease the thresholds</u> decreasing it 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 <i>[Publications Office - set the date = the date of the entry in force of this Directive]</i>, rounded off to the nearest thousand.</p>	
<p><u>8. The report shall specify whether it was prepared in accordance with paragraph 2 or 2a of this Article.</u></p> <p style="text-align: center;"><i>Article 48d</i> <i>Publication and Accessibility</i></p>	
<p>1. The report on income tax information <u>or the statement mentioned in Article 48b</u> shall be published <u>within 12 months after the balance sheet date of the financial year for which the report is drawn up</u> as laid down by the laws of each Member State in accordance with Chapter 2</p>	<p>DE: ... ANY SHORTER PERIOD FOR THE PUBLICATION OF FINANCIAL STATEMENTS SHALL NOT APPLY WITH REGARDS TO THE REPORT.</p> <p>We suggest to clarify that any deadlines for financial statements under other directives</p>

<p>of Directive 2009/101/EC, together with documents referred to in Article 30(1) of this Directive and where relevant, with the accounting documents referred to in accordance with Article 7⁹ of Council Directive 89/666/EEC.</p>	<p>(e.g. Transparency Directive) do not apply. We acknowledge that the link to the financial statements has been deleted (reference to Art. 30 I the old text), but we should at least clarify in a recital what we intend to achieve with the deletion of the reference to Art. 30: “The report should be made accessible within 12 months after the balance sheet date. Any shorter periods for the publication of financial statements shall not apply with regard to the report on income tax information.”</p>
<p><u>1a. The report or the statement 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> <u>(a) on the website of the undertaking when Article 48b(1) applies, or</u> <u>(b) on the website of the subsidiary undertaking or on the website of an affiliated undertaking when Article 48b(3) applies, or</u> <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></p>	
<p><u>1b. Member States may exempt undertakings to apply the rules set out in paragraph 1a of this Article where the report published in accordance with paragraph 1 is simultaneously made accessible to the public on the website of the register referred to in Article 3(1) of Directive 2009/101/EC, free of charge to any third party located within the Union. The website of the undertakings and branches as referred to in paragraph 1a shall contain information on the exemption and the reference to the website of the relevant register. The report on the website of the register must be accessible to any third parties located within the Union and free of charge.</u></p>	
<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>DK: We propose the following clarification: (2) The report referred to in Article 48b(1), (3), (4) and (6) shall remain accessible on the</p>

	website, cf paragraph 1a or on the website of the register mentioned cf paragraph 1b for a minimum of five consecutive years.
<i>Article 48e</i> <i>Responsibility for drawing up, publishing and making accessible the report on income tax information</i>	
1. Member States shall ensure that the members of the administrative, management and supervisory bodies of the ultimate parent undertaking <u>or the non-affiliated undertakings</u> referred to in Article 48b(1), <u>or the subsidiary undertaking exceeding for each of the last two consecutive financial years EUR 750 000 000 of total consolidated revenue as referred to in Article 48b(3)</u> , 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.	DK: In Article 48e(1), the responsibility of the management of subsidiary undertakings <i>exceeding the net turnover threshold of EUR 750 000 000</i> is regulated. In our understanding Article 48e(2), should therefor only regulate the responsibility of the management of subsidiary undertakings <i>not exceeding the net turnover threshold of EUR 750 000 000</i> (and branches). We believe this needs to be clarified in Article 48e(2), which refers only to ‘subsidiary undertakings referred to in Article 48b(3). Article 48b(3) regulates both subsidiary undertakings below and above the net turnover threshold.
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 <u>consistently with Article 48c</u> , is published and made accessible in accordance with Articles 48b, 48c and 48d. <i>Article 48f</i> Independent check <u>Statement by statutory auditor</u>	
Member States shall ensure that, where the financial statements of an affiliated undertaking <u>governed by the law of a Member State referred to in Article 48b(1), (3) and (6)(b)</u> are <u>required to be</u> audited by one or more statutory auditor(s) or audit firm(s) pursuant to Article 34(1), the statutory auditor(s) or	LU: III. Statement of the statutory auditor It appears that the statement of the statutory auditor does not bring much of an added value, is burdensome and could raise costs for the companies. The responsibility for preparing the financial statements and

audit firm(s) also check **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,** the a report on income tax information ~~has been provided and made accessible in accordance with~~ **referred to in** Articles 48b, 48e 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 **or not,** in accordance with ~~those~~ **Articles 48b and 48d.**

submitting them for approval, is also a members of the administrative, management and supervisory bodies responsibility (similarly to the ultimate responsibility for drawing, publishing and making accessible the report on income tax information referred to in Article 48e) which sign off on the latter. The obligation of the auditor for the production of the statement adds therefore checks upon checks of the same reporting (financial information that presumably the same auditor has already controlled) in light of the report already checked and approved by the board. Additionally the role and responsibilities of the auditor are being enlarged and therefore most probably raise costs for the companies. Further, in line with the Article 48f the obligation to issue and publish such income tax report is an obligation that would apply only to entities that are subject to an audit. In such a case entities that are not subject to be audited are out of scope, in other words, one could wonder what is the purpose and added value of such an additional check/statement by the independent auditor and does this objective disappear in case of companies that are not subject to audit?

Also, it would be good to clarify as to what is meant by “independent check”. Note that, in LU there is a distinction between the role of statutory auditors and the role of “réviseurs d’entreprises” (independent auditors).

SE:

We do not see the extra value in that the statutory auditor or audit firm shall check if a report has been published and made accessible. For example there are no such requirements in Chapter 10 of the Directive. If it is still to be introduced a requirement that the statutory auditor or audit firm should check whether a report has been published and made accessible, the statement of the auditor or audit firm should not be part of the audit report since it does not concern the accounts or the annual report as such. Therefore we suggest that the provision, if introduced, has similar wording as what is

	<p>already introduced in in Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.</p> <p>UK:</p> <p>The UK believes this paragraph should be deleted as we do not see any reason for an independent statement by an auditor or any value added by imposing additional compliance burdens on businesses.</p> <p>We believe it would be obvious whether publication (or not) has taken place and so we are not clear what additional value there is in imposing a requirement for an independent statement by an auditor.</p>
<p><i>Article 48g</i> <i>Common Union list of certain tax jurisdictions</i></p>	
<p>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:</p> <p>(1) — Transparency and exchange of information, including information exchange on request and Automatic Exchange of Information of financial account information;</p> <p>(2) — Fair tax competition;</p> <p>(3) — Standards set up by the G20 and/or the OECD;</p> <p>(4) — Other relevant standards, including international standards set up by the Financial Action Task Force.</p> <p>The Commission shall regularly review the list and, where appropriate, amend it to take account of new circumstances.</p>	
<p><i>Article 48h</i> <i>Commencement date for reporting on income tax information</i></p>	
<p>Member States shall ensure that laws, regulations and administrative provisions transposing Articles 48a to 48f apply, at the latest, from the commencement date of the first financial year starting on or after [Publications Office- set the date = one year after the transposition deadline].</p>	

<p style="text-align: center;"><i>Article 48i</i> <i>Report</i></p> <p>The Commission shall report on the compliance with and the impact of the reporting obligations set out in Articles 48a to 48f. The report shall include an evaluation of whether the report on income tax information delivers appropriate and proportionate results, taking into account the need to ensure a sufficient level of transparency and the need for a competitive environment for undertakings.</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>(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), and Article 46(2) and Article 48g 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), and Article 46(2) and Article 48g 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>	
<p>(b) The following paragraph 3a is inserted:</p> <p>‘3a. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016 ²{date}.’</p>	
<p>(c) Paragraph 5 is replaced by the following:</p> <p>‘5. A delegated act adopted pursuant to Article 1(2), Article 3(13), and Article</p>	

² *OJ L 123, 12.5.2016, p. 1.*

<p>46(2) and Article 48g 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.’</p>	
<p style="text-align: center;"><i>Article 2</i> <i>Transposition</i></p>	
<p>1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [Publications Office - set the date = one two years after entry into force] 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>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 style="text-align: center;"><i>Article 3</i> <i>Entry into force</i></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 style="text-align: center;"><i>Article 4</i> <i>Addressees</i></p>	
<p>This Directive is addressed to the Member States.</p>	