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Second edition

The 'EU Legislation in Progress' briefings are updated at key stages throughout the legislative procedure.

Please note this document has been designed for on-line viewing.

# Public country-by-country reporting by multinational enterprises

Tax transparency has gained particular importance as a tool in the fight against tax avoidance and tax evasion, particularly in the field of corporate income tax and aggressive tax planning. Cooperation between tax authorities aims at allowing them to obtain information covering the global business of multinational enterprises (MNEs), and progress has already been made in this area.

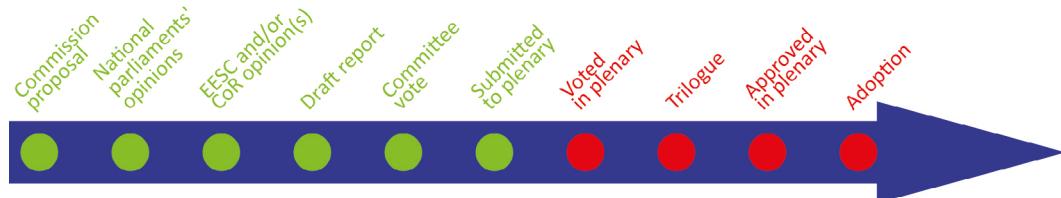
A further step in tax transparency would be to broaden it by providing publicly available information relating to tax paid at the place where profits are actually made. Public country-by-country reporting (CBCR) is the publication of a defined set of facts and figures by large MNEs, thereby providing the public with a global picture of the taxes MNEs pay on their corporate income.

The proposal is being considered by the European Parliament (EP) and the Council. In the EP, the ECON and JURI committees jointly voted their report on 12 June 2017.

#### Proposal for a directive of the European Parliament and of the Council amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches

COM(2016) 198, 12.4.2016, 2016/0107(COD), Ordinary legislative procedure (COD)  
(Parliament and Council on equal footing – formerly 'co-decision')

Committees responsible (jointly under Rule 55):	Legal Affairs (JURI) Economic and Monetary Affairs (ECON)
Rapporteurs:	Hugues Bayet (S&D, Belgium); Evelyn Regner (S&D, Austria)
Shadow rapporteurs:	Rosa Estaràs Ferragut (EPP, Spain); Dariusz Rosati (EPP, Poland) Sajjad Karim (ECR, UK); Pirkko Ruohonen-Lerner (ECR, Finland) Enrique Calvet Chambon (ALDE, Spain); Jean-Marie Cavada (ALDE, France); Jiří Maštálka (GUE/NGL, Czech Republic), Miguel Viegas (GUE/NGL, Portugal); Pascal Durand (Greens/EFA, France); Ernest Urtasun (Greens/EFA, Spain); Laura Ferrara (EFDD, Italy); Beatrix von Storch (EFDD, Germany)
Next steps expected:	Vote in plenary



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## Introduction

The [proposal](#) for a directive on the disclosure of income tax information by certain undertakings and branches follows the adoption of Council Directive (EU) 2016/881 on 25 May 2016, which provides for country-by-country reporting (CBCR) to tax administrations. The current proposal is an amendment to the Accounting Directive 2013/34 providing for public country-by country reporting.

## Context

Among the tools to fight corporate tax avoidance and aggressive tax planning are recently established mechanisms for disclosure of tax information and publication of tax-relevant information by companies. A lack of transparency makes it difficult to identify, quantify and tackle tax avoidance, since tax authorities lack the information that would enable them to see a map of the profits generated in each country. This is because avoidance relies on profit-shifting among jurisdictions in which a multinational enterprise (MNE, also referred to as transnational corporations or multinational companies) is doing business. In other words, tax planning and tax avoidance have a cross-border dimension. Tax jurisdictions cover a defined territory, whereas an MNE's profits move globally from one jurisdiction to another.

CBCR of financial information is the umbrella term used for disclosure by a single MNE group of information relating to each country in which it operates, the names of all its subsidiaries and affiliates in these countries, and information for each of these relating to their performance, tax charges, fixed assets and details of gross and net assets, as well as payments to and/or subsidies received from individual governments in each country.<sup>1</sup> CBCR is one tool to 're-establish the link between taxation and where economic activity takes place'.

## Existing situation

Some CBCR rules already exist in the European Union (EU). Their format is sector-specific and they have either a limited or a wider audience (information must be provided to authorities only, or public CBCR).<sup>3</sup>

The CBCR requirement for companies was established for the extractive industries and logging of primary forests under the Accounting Directive ([Directive 2013/34/EU](#)), but this does not yet include an obligation

1 As defined by R. [Murphy](#) in the early 2000s: 'Country-by-country reporting is a new and innovative form of accounting. The basic concept is to require the inclusion in annual audited financial statements of a profit and loss account for each jurisdiction in which a multinational corporation had operations during the year. These profit and loss accounts would include disclosure of both third party and intra-group transactions, which for these purposes are those trades that take place across national boundaries but between companies under common ownership or control. They would be required to be reconciled with the overall group results. In addition, limited cash flow and balance sheet data would also be required to be published.'

2 See Commission communication, A Fair and Efficient Corporate Tax System in the European Union: 5 Key Areas for Action, 17 June 2015. See also March 2015 [tax transparency package](#), June 2015 [Action Plan on Corporate Taxation](#) and January 2016 [Anti-Tax Avoidance Package](#). Another tool is the determination of a [Common Consolidated Corporate Tax Base \(CCCTB\)](#), which has just been re-launched in a two-step approach consisting of a [CCTB](#) and a [CCCTB](#) proposal, currently under consideration.

3 For a presentation of these CBCRs, see the [document](#) 'Public country-by country Reporting – a template for disclosing corporate information', by the Federation of European Accountants.

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to publish CBC reports. It is part of the worldwide Extractive Industries Transparency Initiative (EITI).<sup>4</sup> Similar requirements exist elsewhere. In the United States, for example, they were introduced in 2010 for companies that develop oil, gas, or mineral reserves and are registered with the Securities and Exchange Commission (SEC) ([Section 1504 of the Dodd-Frank Act](#)).<sup>5</sup>

High levels of banking activity in a country with low levels of real economic activity underscore the disconnect between the weight of financial activities and real economic activities. An overview of the places where financial institutions are generating financial flows and those where taxpayers are undertaking real activities can provide an indication of tax avoidance and tax evasion activities. In the EU, Article 89 of the Capital Requirements Directive ([Directive 2013/36/EU](#) or '[CRD IV](#)') provides for country-by-country reporting (CBCR) by financial institutions.<sup>6</sup> The [report](#) on the general assessment of economic consequences of these country-by-country disclosure requirements concluded that they were unlikely to have a significant negative economic impact, and could have a limited positive economic impact. Alongside this, a [survey](#) from Tax Research UK<sup>7</sup> provides an assessment on the implementation of CBCR by financial institutions (resulting from CRD IV provisions). It concluded that the data published is useful and powerful, despite the limitations resulting from the limited amount of data required by CRD IV Article 89 and from certain inconsistencies, notably that 'some banks report all the jurisdictions in which they trade whilst others only report a selection'.

[Action 13](#) of the OECD/G20 [BEPS](#) (Base erosion and profit shifting) project provides for country-by-country reporting to tax authorities for large MNEs. EU-level implementation was proposed in January 2016 in the Commission's anti-tax-avoidance package, as an amendment to Council Directive 2011/16/EU concerning administrative cooperation in the field of taxation (DAC). [Directive \(EU\) 2016/881](#) adopted on 25 May 2016 [reflects](#) the framework set in the Action 13 minimum standard, setting a general filing requirement for MNE groups with annual consolidated revenue in the immediate preceding fiscal year of more than €750 million (or near-equivalent amount in domestic currency). The implementation deadline for the Member States was [4 June 2017](#), thus enabling the communication of country-by-country reports to start in the first fiscal year after 1 January 2016. The list of countries that have agreed to share submitted CBC reports with other tax authorities has increased – as of 27 January 2017, seven countries had signed the OECD [MCAA](#) for BEPS 13.

4 For more details see part V, 'Existing public country-by-country reporting standards' (p. 7 ff) in the Trade Union Advisory Committee to the OECD (TUAC) paper '[The Case for Making Country-by-Country Reporting Public](#)' Paris, 27 June 2016. Information on EITI coverage can be found on its [website](#).

5 After a legal challenge, new [rules](#) were adopted on 27 June 2016 (for more details see [press release](#) 2016-132).

6 The information required covers (a) the name(s), nature of activities and geographical location; (b) turnover; (c) number of employees on a full-time equivalent basis; (d) profit or loss before tax; (e) tax on profit or loss; (f) public subsidies received.

7 '[European Banks' Country-by-Country Reporting - A review of CRD IV data](#)' July 2015 Revised Richard Murphy -Tax Research LLP, for the Greens/EFA MEPs in the European Parliament.

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There are initiatives to establish further tax disclosure aimed at public CBCR, either in a national context, or initiated by market actors themselves.<sup>8</sup> At national level, initiatives building on wider transparency as a tool to address tax avoidance and evasion exist in some Member States<sup>9</sup> and in third countries.<sup>10</sup>

There are diverging opinions on CBCR itself, both concerning CBC reports to authorities and, even more so, in the case of public CBCR, and this was reflected in the public consultation prior to adoption of the proposal (see below).

8 A description is provided in the [impact assessment](#) (IA), covering the situation at that time (Annex D3 and D4).

9 In particular in France, [provisions](#) providing for CBCR for all third countries (not limited to 'tax havens') were included in (Article 137) of a law adopted in late 2016 ('*loi Sapin2*'). These provisions were found to be contrary to the Constitution by a [decision](#) of the 'Conseil constitutionnel' (the French Constitutional Court) on 8 December 2016.

10 In the United States, in April 2017, two tax bills have been in the US House of Representatives and Senate. The '[Stop Tax Haven Abuse Act](#)' and the '[Tax Fairness and Transparency Act](#)' propose a public Country by Country Reporting (CBCR) requirement on multinational companies.



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## Proposal

### Parliament's starting position

Parliament has voiced its support for more tax transparency and country-by-country reporting for all industries, in a series of resolutions which are presented synthetically in the July 2016 EPRS Implementation Appraisal briefing '[Publishing corporate tax information – A proposal to amend Directive 2013/34 on the disclosure of income tax information by certain undertakings and branches](#)'.

CBCR in particular was discussed in the context of two legislative proposals during the current parliamentary term. The [resolution](#) on the amendment of Directive 2011/16/EU concerning administrative cooperation and mandatory automatic exchange of information in the field of taxation ([2016/0010 \(CNS\)](#)) was prepared by the Economic and Monetary Affairs Committee (ECON) and relates to CBCR to tax authorities. The [resolution](#) on long-term shareholder engagement and the corporate governance statement ([2014/0121 \(COD\)](#)) was prepared by the Legal Affairs Committee (JURI) and it included measures to require EU-based multinational companies (MNCs) to reveal details of tax payments to governments around the world.

In the [report](#) (2015/2010(INL)<sup>11</sup>) calling on the Commission to make legislative proposals aimed at bringing transparency, coordination and convergence to corporate tax policies in the Union, the European Parliament also called for a voluntary European 'Fair tax payer' label for companies who engage in good tax practices.

### Preparation of the proposal

As the proposal and adoption of the rules on CBCR to tax authorities took place in a context of tax revelations which put tax transparency under the spotlight, the call for public reporting was already present at the time of discussions on aggressive tax planning. The question of broader CBCR was left to the discussion of the proposal on public CBCR. The [Panama papers](#) leak led to the proposal being [strengthened](#) in respect of tax havens.

A [public consultation](#) on tax transparency was organised by the Commission. It illustrates the [wide spectrum of positions](#) held by business and societal organisations. It also highlights the concern to remain in line with broader international moves on tax transparency and not to act as a frontrunner. An exchange of views at the [Platform for Tax Good Governance](#) was also devoted to public CBCR.<sup>12</sup>

<sup>11</sup> "Recommendation A2. A new 'Fair Tax Payer'". It is discussed in the impact assessment and annex R is dedicated to a 'Description of a possible labelling system'. The Confédération fiscale européenne (CFE) issued an [opinion](#) assessing the latter in May 2016.

<sup>12</sup> Annex A of the IA provides further information on the consultations.



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The proposal aims at adding geographical information linking corporate taxes and actual profits, in line with the principle that enterprises should pay tax where they actually make profits. This objective, which can be broadened to the dimensions of corporate social responsibility and fair taxation, is distinct from the reporting obligation aimed at protecting shareholders, investors and other stakeholders. The existing requirement to publish financial statements meets the latter objective, which is specifically directed at the public at large.<sup>13</sup> Under EU law it covers limited liability companies established in the EU. However, this publicly available information does not always make it possible for outsiders to construct a breakdown on a country-by-country basis, hence the reason for CBC reporting.

The proposal aims at inserting an additional chapter in the Directive entitled 'Report on income tax information'. It is based on Article 50(1) of the Treaty on the Functioning of the European Union, as is Directive 2013/34/EU that it would modify. The proposal aims at establishing financial reporting obligations as regards income tax information. It is not proposing tax harmonisation.<sup>14</sup>

Public CBCR applies to very large MNE groups (with annual consolidated revenue in the immediate preceding fiscal year of more than €750 million or a converted equivalent in other currencies) on a worldwide basis, which is in line with CBCR to tax authorities fulfilling the BEPS action (the proposal's article 48(b)(1) and 48(c)(7)).<sup>15</sup>

For multinational groups having their headquarters in the EU, the obligation to provide this information lies with the ultimate parent enterprise in the EU. When the ultimate parent is not governed by the law of an EU Member State, the reporting will fall on EU subsidiaries or branches,<sup>16</sup> unless the ultimate parent publishes a report itself and indicates which subsidiary or branch in the EU is responsible for publication on its behalf, including for information on those subsidiaries and branches (article 48(b)(3) to (7)).

The information to be included in the report relates to all members of the group (article 48(c)(1)), i.e. including members outside the EU. It covers seven areas: a) a brief description of activities, b) number of employees, c) net turnover (including related party turnover), d) profit or loss before tax, e) tax accrued (excluding deferred tax and uncertain tax positions) in the year, f) tax paid in the year, and g) the amount of accumulated earning (article 48c(2)). These reporting requirements are all included in CBCR reporting to tax authorities, which also covers additional elements.<sup>17</sup>

The information would be presented on a geographical basis, for each Member State jurisdiction (meaning that if a Member State comprises several tax jurisdictions, the information is combined). For third countries,

13 The tax administrations receive the same information (and others) as a result of the CBCR to tax authorities provided in Council Directive 2011/16/EU concerning administrative cooperation in the field of taxation (DAC) as amended by Directive (EU) 2016/881 of 25 May 2016.

14 On the choice of the legal basis, see [IA point 2.6.3](#).

15 This threshold is different from the [thresholds provided in the Accounting Directive](#) for large companies.

16 A subsidiary is a company incorporated in a given country, with legal personality. A branch office is not a separate legal entity from the company that opened it. These are company law concepts, distinct from the tax law concept of permanent establishment.

17 EU tax authorities will receive broader information. A presentation of this is included in Annex C of the IA 'Features of country-by-country reporting according to OECD BEPS action 13'



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information would be reported on an aggregated level except for certain jurisdictions listed in a 'Common EU list' (regarded as having inadequate tax governance; this list is to be set by delegated acts and to be reviewed regularly (article 48(g)), for which the information must be provided separately, on a geographical basis as for within the EU (unless no transactions take place with those affiliated undertakings and undertakings governed by the law of any Member State (article 48(c)(3)).

An explanation of material discrepancies between reported amounts of income tax accrued and income tax paid broken down for each EU Member State where the group is active is also to be included (article 48(c)(4)). The currency is that used in the consolidated financial statements (article 48(c)(6)).

The report must be published and made accessible on a company's websites (article 48(c)(5) and 48(d)) for at least five years. It must be published and made accessible on the corporate website in at least one of the official languages of the EU and already largely accessible in the business registers of each Member.

Reports will have to be audited (article 48(f)) and responsibility will lie with the management of the ultimate parent undertaking (article 48(e)).

The scope of the provision takes account of existing CBCR schemes. The provisions will apply to a different extent in these schemes. This includes companies subject to CBCR to tax authorities, which covers broader information but is communicated only to those public authorities. This also includes companies subject to the CBCR established by Directive 2013/34/EU for the extractive industries and logging of primary forests. On the contrary, however, (financial services) companies required to publish CBCR under Article 89 of CRD IV (Directive 2013/36/EU) will be exempted (when they are above the turnover threshold), provided that the information disclosed on the basis of the CRD IV obligation encompasses all the activities of all the affiliated undertakings included in the consolidated financial statement of the ultimate parent undertaking.

#### 'Common EU list of certain tax jurisdictions'

The 'Common EU list of certain tax jurisdictions' is a tool aimed at ensuring that the information requested from companies covered is relevant.<sup>18</sup> This derives from the fact that such jurisdictions, with offshore firms, can play an important role in tax avoidance and tax evasion, and that financial flows with these jurisdictions need to be identified in the overall third-country aggregated data.

The determination and case-by-case assessment of third countries is part of the '[External Strategy for Effective Taxation](#)', presented in January 2016, setting out a three-phase EU assessment, screening and listing process to identify and act against third countries that contribute to making tax abuse possible. Article 48(g) contains criteria for identifying 'certain tax jurisdictions' (possibly 'problematic' ones) for which MNEs will be required to provide disaggregated data reflecting their activities in these countries. These criteria are the same as the tax governance criteria detailed in the external strategy. Work is under way, on the basis of the three-step process as defined in the communication on an external strategy for effective taxation, which consists of establishing a neutral scoreboard of indicators, screening of third countries' tax good governance standards and listing third countries that have refused to cooperate or engage with

<sup>18</sup> This common EU list will replace the current compilation of Member States' diverse national lists for tax purposes, first published in June 2015.



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the EU regarding tax good governance concerns, with a view to defining a list by 2017. A first step was completed with the '[scoreboard of indicators](#)' for the screening of third countries, issued in 15 September 2016 by the Commission and passed to the Council for an assessment by Member States.<sup>19</sup>

<sup>19</sup> In the Council, the 'Subgroup on third countries of the Code of Conduct Group' conducts and oversees the screening process that will lead to the establishment of the EU list by the [end of 2017](#).



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### Advisory committees

The Economic and Social Committee adopted its [opinion](#) on 'Public tax transparency (country-by-country reporting)' on 21 September 2016. The opinion supports the objective of strengthening transparency through country-by-country-reporting, thereby contributing to a level playing field in the single market. The opinion supports the use of the BEPS standards already adopted by the EU and most Member States. It recommends the data be disclosed in an internationally used languages, which would enable civil society and business to access and use the data more easily. It also calls for Member States to establish a public register for country-by-country reporting, as well as a reduction (or a gradual decrease) of the €750 million revenue threshold.

### National parliaments

The [Irish parliament](#) adopted a reasoned opinion, arguing that the proposal breaches subsidiarity, in particular because 'the objectives of the proposal fall generally within the area of tax policy rather than accounting and thus impinges on a national competency'. The [Swedish parliament](#) also adopted a reasoned opinion which claims that 'the drawing up of a list of jurisdictions that do not follow good governance standards ... is so far-reaching that a decision on this matter should be taken by the Member States in the Council' and that 'the proposal entails a harmonisation of tax regulations and from this it follows that the legal basis for the proposal should be changed'.

### Stakeholders' views<sup>20</sup>

Stakeholders expressed their views on the principle of greater tax transparency on the part of companies in the public consultation process, as well as in reaction to the leaks revealing the extent of the shadow economy, in particular in the wake of the Panama papers leak that was revealed in early April 2016.

The consultation shows that there are stakeholders calling for the EU to lead the debate and go 'beyond the current initiatives at international level' on CBCR, that is, CBCR to tax authorities following BEPS Action 13, whereas most businesses preferred to stay in line with existing initiatives.

Positions expressed by business on the proposal. ([Business Europe](#) and [AmCham](#)) express concerns that public CBCR could damage investment, by imposing additional compliance requirements and costs on companies, and forcing disclosure of sensitive taxpayer information. Insurance Europe expressed concerns relating to the fact that public CBCR would not provide [meaningful information](#) to interested parties ('as it would ignore the existing differences between accounting rules and the non-harmonised tax regimes

<sup>20</sup> This section aims to give a sense of the debate on the issues surrounding the legislative file and cannot provide an exhaustive account of all the different views expressed. Additional information can be found in related briefings listed under References below.



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in different Member States and globally'). These concerns were addressed to the European Parliament Members preparing the EP position, namely by Business Europe [addressing](#) the chairs of the committees responsible in March 2017, and by the European Confederation of Directors Associations (ecoDa) ahead of the vote on the draft report in committee, in a 29 May 2017 [letter](#). On the question of whether tax transparency should cover public country-by-country reporting or be kept within the remit of tax authorities (as in BEPS action 13 already implemented in the EU), there is the view that 'public opinion has no role in fighting tax optimisation'.

On the other hand, civil society organisations, having already called for public CBCR in the context of the discussion of the Shareholders Directive, have strongly supported the move towards public CBCR, which is considered a '[must](#)'.<sup>21</sup>

Yet some supporters of public CBCR also stress what they consider to be a '[major weakness](#)' of the proposal, namely that reporting by country does not cover all countries in which the multinational companies have activities (i.e. it only covers EU Member States, and the tax jurisdictions included in the list to be established). In addition to this criticism of the geographical scope of the proposal, there is some criticism regarding [data coverage](#) (e.g. excluding the scale of companies' investments), which makes it difficult for 'the public ... to see the true pattern of activity'.<sup>22</sup> Some other transparency campaigners also stress that public CBCR can also be seen as [good for business](#) in Europe.

Further to the preparation and vote of the draft report, some expressed concerns regarding the [impact](#) of the introduction of [exemptions](#), departing from a simple system and the risk of transparency loopholes.

21 Similar views are expressed by US NGOs ([FACT Coalition](#) – Financial Accountability and corporate transparency) '[Urge Public Country-by-Country Reporting](#)' to better inform investors' (6 July 2016) ([Americans for tax fairness](#)).

22 The criticism also stresses that this will prevent a company from being able 'to show, for example, that their operations in one country with high activity but low tax paid actually reflect a major new investment.'



## Legislative process

In the Council, the [working party on company law](#) is [preparing](#) the Council's position. The question of the legal basis has been raised.<sup>23</sup> The Council Legal Service provided an opinion concluding that the legal basis should be Article 115, meaning that the adoption of the proposal should follow a special legislative procedure requiring adoption by the Council by unanimity, with the European Parliament only consulted. For a legal basis to be changed by Council, unanimity is required. On the substance, the preparatory work aims at [preparing](#) the Council proposal, building on Presidency compromise texts. A further [state of play](#) document dated 22 June 2017 from the Presidency takes stock of the work undertaken at working party level.

In the European Parliament, the '[Joint committee procedure](#)' is being applied. As a result, the committees responsible for the preparation of the European Parliament position are the Legal Affairs Committee (JURI) and Economic and Monetary Affairs Committee (ECON), while the Development (DEVE) committee has given an opinion. Evelyn Regner (S&D, Austria) and Hugues Bayet (S&D, Belgium) were appointed [rapporteurs](#) from JURI and ECON, respectively. The question of the legal basis was also assessed. A legal opinion was delivered by the Parliament Legal Service and an [opinion](#) on the legal basis was rendered by the Committee on Legal Affairs on 17 January 2017. They concluded that Article 50(1) TFEU retained by the Commission constitutes the appropriate legal basis for the proposal.

On the substance of the proposal, the joint rapporteurs prepared a draft report and amendments were tabled. The amendments include the alignment of the threshold with that of the Accounting Directive – €40 million, the addition of items to be disclosed (e.g. the number of hours worked), the scope, exempting through a safeguard clause disclosure of commercially sensitive information, and flexibility for non-EU parent companies (e.g.'comply or explain').

The vote on the report and the amendments took place in a joint committee meeting on 12 June 2017. The draft report with amendments was supported at committee level with 38 votes in favour, 9 against and 36 abstentions.

<sup>23</sup> [Opinion](#) of the Council Legal service, 11 November 2016. For a presentation of this see, for instance, E&Y, Global Tax [Alert](#) dated 18 November 2016



## References

### EP supporting analysis

EPRS Implementation Appraisal briefing '[Publishing corporate tax information A proposal to amend Directive 2013/34 on the disclosure of income tax information by certain undertakings and branches](#)', July 2016

EPRS Initial Appraisal of the Commission IA '[Publishing corporate tax information Country-by-country reporting for multinational enterprise groups](#)', July 2016

### Other sources

[Disclosure of income tax information by certain undertakings and branches](#), European Parliament, Legislative Observatory (OEIL).

Commission webpages: [Public Country-By-Country Reporting](#), [Corporate tax transparency](#), [Disclosure of payments to governments \(or the so-called country by country reporting\)](#) and [Common EU list of third country jurisdictions for tax purposes](#)

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