



# EU Parliament votes for public country-by-country reporting

The legislative process for approving the European Commission's proposal on public country-by-country reporting ('public CbCR') is progressing further, with a European Parliament session in early July during which MEPs debated and voted on the [report](#) on public CbCR.

## Background

The proposal on public CbCR was launched by the European Commission on 12 April 2016, following the introduction of country-by-country reporting to tax authorities (via an amendment to the Administrative Cooperation Directive 2011/16/EU that was transposed into Luxembourg [last year](#)).

The Commission's proposal on public CbCR would require qualifying multinational groups to publish and make accessible certain information on all companies within the group (i.e. including non-EU members) in a business register and online. The information would be aggregated for companies outside the EU, except if they are located in listed (non-cooperative) jurisdictions. The requirements would apply to groups that are EU-parented or otherwise have EU subsidiaries or branches and that have a consolidated net turnover of at least EUR 750 million.

The information required includes:

- a brief description of the group's activities;
- number of employees;
- net turnover (including related party turnover);
- profit or loss before tax, tax accrued and paid; and
- the amount of accumulated earnings.

## The Parliament's report

Compared to the initial text put forward by the Commission, the Parliament's report, which was published in July, includes amendments on the following issues:

- multinational corporations should provide information on their activities separately for each jurisdiction where they operate, not only within the EU but also outside it
- the addition of a "safeguard clause", which would allow certain information to be temporarily omitted if its publication would be seriously prejudicial to the commercial position of the company
- additional information to be disclosed, including a list of group companies, fixed assets, stated capital, preferential tax treatment (e.g. patent box benefits) public subsidies received, donations made to political organisations, and related party turnover

A proposed amendment to lower the EUR 750 million consolidated net turnover threshold to EUR 40 million was rejected. However, the Parliament suggested that the Commission should consider extending the scope of public CbCR to groups with a lower threshold four years after the adoption.

## Next steps

At the Council level, a document indicating the [state of play](#) on the public CbCR proposal has been published. It presents the work that has been undertaken at working party level in the context of ongoing discussions between Member States and contains a number of the amendments proposed in the Parliament's report. A vote in the Council has not yet been scheduled.

Since the ordinary legislative procedure may be applicable according to a [legal opinion of the EU Parliament](#), the Council and the Parliament will have to agree on the final text, which is subject to approval by a qualified majority of EU finance ministers in the Economic and Financial Affairs Council (ECOFIN) Council as well as by the European Parliament. In contrast and according to a divergent legal opinion from the Council, the proposal would require unanimous consent by the Council of the EU, instead of a qualified majority, in order to be adopted. The legislative developments should therefore be proactively and closely monitored. The Court of Justice of the EU may be asked to rule on this issue.

## KPMG Luxembourg comment

As with the public CbCR established for the banking sector as well as the extractive and logging industries, the proposal on public CbCR for qualifying multinational groups is part of a shift towards more transparency on corporate tax affairs in the form of information on the taxes paid by multinationals and where those taxes are paid.

However, unlike the transparency requirements for the banking sector as well as extractive and logging industries, this proposal includes a "safeguard clause", which would allow information to be omitted if its disclosure would be seriously prejudicial to the commercial position of the company. This clause was vigorously disputed in the Committees responsible for this dossier and also during the plenary session, with some MEPs suggesting that it may create loopholes in the legislation. As a similar provision was also included in the Council's latest text, the two legislators may agree to this clause. Nevertheless, the definition of the phrase "seriously prejudicial" and the practical implementation for companies remains unclear.

Furthermore, it seems unclear whether a qualified majority in the Council – let alone unanimity – will be reached to support the initiative of the Commission. Noteworthy in this regard is a recent decision of the French Constitutional Court from 8 December 2016 which concludes that a public CbC reporting is unconstitutional in France (for more details, please refer to the [Tax Alert of our French colleagues here](#)).

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