



Euro Tax Flash from KPMG's EU Tax Centre



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Outcome of the European Parliament plenary session July 2017

[EP Plenary Session – Double Tax Dispute Resolution Mechanism – Public country-by-country reporting](#)

At its plenary sittings on July 4 and 6, the European Parliament adopted its [report](#) on the European Commission's proposal on public country-by-country reporting ('public CbCR') and its [report](#) on the proposal for a Council Directive on Double Taxation Dispute Resolution Mechanisms in the EU (the Directive). The reports set out the Parliament's recommended amendments to the two proposals.

Public Country-by-Country Reporting

Background

The proposal on public CbCR was launched by the European Commission on April 12, 2016 (see [ETF 278](#)), as a supplement to the Commission's Anti-Tax Avoidance Package issued on January 28, 2016 (see [ETF 273](#)). The proposal followed the introduction of country-by-country reporting to tax authorities (via an amendment to the Administrative Cooperation Directive 2011/16/EU – 'DAC') (see [ETF 275](#)) and is intended to make certain tax information reported by multinationals on a country-by-country basis public by amending the Accounting Directive 2013/34/EU. The Commission considers it to be a key element in the fight against tax evasion and tax avoidance through further improving tax transparency at the EU-level.

The Commission's proposal on public CbCR, as published in April 2016, 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 finally the amount of accumulated earnings.

The Parliament's report

During the plenary sitting held on July 4, 2017, MEPs debated and voted on the [report](#) on public CbCR, which sets out recommended amendments to the Commission's proposal. The report was adopted by 534 votes to 98 votes, with 62 abstentions.

Compared to the initial text put forward by the Commission, the Parliament's report 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 European Union 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 etc., 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 of the Directive.

Next steps

After the vote on the report, MEPs agreed to send the report back to the responsible Committees to start inter-institutional negotiations with the Council and the Commission.

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.

The initiative is in the form of an amendment to the Accounting Directive based on Article 50(1) of the Treaty on the Functioning of the European Union (TFEU) and the ordinary legislative procedure (ex co-decision) applies. Therefore, in order for the directive to be adopted, 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.

Dispute Resolution Mechanism

Background

The Directive on Double Taxation Dispute Resolution Mechanisms in the EU is part of the Commission's Action Plan for fair and efficient corporate taxation in the European Union and reflects recommendations provided in Action 14 of the OECD BEPS project. Launched on October 25, 2016 (see [ETF 303](#)), the proposal aims to improve existing procedures to resolve disputes involving double taxation that arise from the application and interpretation of double tax treaties within the EU. The Directive was adopted by the Council during the ECOFIN meeting of May 23, 2017 (see [ETF 326](#)). While the legislative procedure for this proposal requires unanimity in the Council, it only requires a non-binding opinion from the European Parliament. This consultative opinion is expressed in the report adopted on July 6, 2017.

During the debate that preceded the vote, MEPs welcomed the Commission's proposal. They stressed that the prevention of double taxation within the EU is equally important to the fight against money laundering, tax avoidance and tax evasion. According to the MEPs, this Directive will create a fair, efficient and competitive tax environment and will encourage companies and investors to do business in the EU. However, despite the fact that the Directive was not adopted under the ordinary legislative procedure – so that the Parliament was not a co-legislator – MEPs were very disappointed that the Council was not represented during the debate and that it did not wait for the European Parliament to adopt its report before voting on the Directive.

The Parliament's report

During the plenary sitting held on July 6, 2017, MEPs debated the [report](#) on dispute resolution and adopted most of the amendments to the Commission's proposal tabled in the Committees by 535 votes to 73 votes, with 25 abstentions.

The final report includes amendments on the following points:

- **Deadlines:** compared to the Agreement reached by the Council, the Parliament suggests implementation of shorter deadlines for Member States to resolve disputes on double taxation. MEPs noted during the debate that it generally takes about five years to resolve such a dispute and that 900 cases are currently awaiting resolution, representing EUR 10.5 billion. In this context, the report recommends that in cases where the competent authorities of the Member States accept a complaint,

they should endeavour to reach an agreement within one year, instead of the two-year deadline mentioned in the text agreed by the Council.

- Small and medium-size enterprises (SMEs): whereas the Council's text only provides a general recommendation for the Member States regarding SMEs (e.g. lesser administrative burden when accessing the dispute resolution procedure), the Parliament's report goes further in that if an appeal brought by an SME against a rejection of the decision by the national tax authorities is successful, the financial burden would be borne by the competent authority that initially rejected the complaint.
- Hierarchy of procedures: the report includes a recommendation for the procedure provided for in the Directive to be prioritized over mutual agreement procedures under bilateral double tax treaties or under the European Union Arbitration Convention. A further provision asks the European Commission to clarify the hierarchy of these mechanisms. Neither the Commission's proposal nor the text agreed by the Council give clear guidelines on which mechanism should be applied first.
- Transparency: The Parliament suggests several amendments as regards transparency, such as: if the complaint is rejected, the competent authorities must inform the taxpayer of the precise reasons for the rejection - whereas the text agreed upon by the Council only requires the competent authority to provide the general reasons for a rejection.
Regarding the final decision, both MEPs and the Council suggest that it should be published in its entirety and be made available to the public by the Commission; only sensitive trade, industrial or professional information should not be disclosed to the public, whereas under the Commission's proposal an authorization from the affected person was required.
- Independent persons of standing: according to the report, in the context of the composition of the advisory commission, independent persons of standing should preferably be officials and civil servants working in the field of tax law or members of an Administration Court. The text agreed upon by the Council is less precise on this.
- Protection of the affected person: contrary to the position adopted by the Commission and the Council, the European Parliament suggests that when a dispute is submitted for the mutual agreement procedure or the dispute resolution procedure, the Member States should be prevented from initiating or continuing judicial proceedings or proceedings for administrative and criminal penalties in relation to the disputed matters.

Next steps

The Directive is subject to formal adoption by the Council and publication in the Official Journal of the European Union. Member States will then have until June 30, 2019, to transpose its provisions, which will apply to complaints submitted after that date on issues relating to tax years commencing on January 1, 2018. However, Member States may apply the Directive to complaints related to earlier tax years.

EU Tax Centre comment

As with the public CbCR established for the banking sector, the proposal on public CbCR for qualifying multinational groups is part of a shift toward 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, 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 this clause 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.

The Directive on Double Taxation Dispute Resolution may be seen as a major step toward a fair, efficient and competitive European tax system. However, since its interaction with existing mechanisms is not clearly defined in the agreement reached by the Council, its application by taxpayers remains complex.



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