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# Euro Tax Flash from KPMG's EU Tax Centre



## Ministers discuss public Country-by-Country Reporting proposal

Country-by-Country Reporting – Tax Transparency – Council of the EU

On February 25, 2021, the EU Member States' internal market and industry ministers exchanged views on the proposed public Country-by-Country Reporting initiative. Discussions where held during a public debate, based on which there may be broad political support to move forward with the proposal. The meeting made it clear that certain countries (for example, Austria) have changed their previous position and will now support the proposal.

Considering the current legal basis for the file and depending on further discussions in the Committee of the Permanent Representatives of the Governments of Member States (Coreper), the necessary support (qualified majority) to move forward with the proposal may be achieved. However, a number of Member States have expressed strong concerns with regard to the appropriateness of the legal basis and the precedent it could potentially create. These member states believe this to be a tax proposal, for which unanimity voting is required. The future of the file therefore remains uncertain.

### Background

In April 2016, the European Commission presented a proposal on public Country-by-Country Reporting requirements for Multinational groups headquartered in the EU with a total consolidated group revenue of at least EUR 750 million. The proposal would require public reporting of certain information on items such as revenues, number of employees, profit or loss before tax, tax accrued and paid, accumulated earnings, stated capital and tangible assets.

The initiative has been in deadlock ever since, due to disagreements on its legal basis, in particular whether the proposal should be based on:

- article 50 of the Treaty on the Functioning of the European Union (TFEU), meaning that it would be subject to the ordinary legislative procedure – requires qualified majority voting in the Council, or
- on article 115 TFEU (i.e. treated as a tax file), meaning that it would be subject to the special legislative procedure – the common procedure used in tax matters and subject to unanimous approval at Council level.

Following concerns raised by certain Member States with respect to the sharing of sensitive data that might affect the competitiveness of the MNE, there was an attempt to address this issue in a 2019 compromise text by inserting a “comply or explain clause”. Under this clause, companies would be given the possibility to omit some of the information otherwise disclosable when the disclosure would be seriously prejudicial to their commercial position. However, any omission should be explained and also made public in a later report on income tax information within no more than six years from the date of its original omission.

## February 25 Competitiveness Council Meeting

On February 25, 2021, during an informal public videoconference of the Competitiveness Council configuration (COMPET), the Portuguese Presidency of the Council invited Ministers to express their views on a compromise text proposed by the Presidency. The proposed text includes amendments meant to clarify the aim of the proposal, which is to improve transparency and reporting related to companies, in an attempt to strengthen the position that article 50 is the appropriate legal basis.

The Portuguese Presidency reiterated their commitment to move the proposal forward and noted that this file is a political priority during their mandate. Commissioner Mairead McGuinness (Financial services, financial stability and Capital Markets Union) also participated in the exchange and note that, in the Commission’s view, the legal basis chosen for the directive is correct, as the text does not imply any changes to tax rules.

With the exception of Lithuania and Slovakia, all other Member States took the floor to express their views on the proposal. Sixteen Member States[1] broadly expressed their support for the compromise text proposed by the Presidency, with some noting that although they do not agree with the legal basis, they are willing to compromise in the interest of breaking the deadlock. Germany abstained from expressing an opinion, while a debate on the issue continues within the German government.

The other Member States either noted their support for transparency initiatives but noted reservations on the choice of legal basis[2] or expressed concerns regarding the impact the proposal may have on the competitiveness of EU MNEs compared to those based in countries that do not impose such requirements. Of the countries opposing the qualification of the proposal of a non-tax file and hence the choice of legal basis, a majority expressed concerns regarding the precedent that this may create. In their view, Member States should remain sovereign on direct tax matters and therefore tax files (which they consider the public CbC Reporting proposal to be) should continue to be subject to unanimous approval in the Council.

[1] Austria, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Latvia, Italy, Netherlands, Poland, Portugal, Romania, Slovenia, Spain.

[2] Cyprus, Croatia, Czech Republic, Hungary, Luxembourg, Malta

In the closing of the exchange and also in a [subsequent press release] the Portuguese Presidency noted that "a clear majority of ministers" were of the view that the compromise text is technically mature and concluded that there was political support for it to seek a negotiating mandate with the European Parliament. The file will be discussed by Member States' representative in Coreper.

## EU Tax Centre comment

A number of Member States (e.g. Austria, Estonia) that previously had strong reservations regarding the choice of legal basis for the CbC Reporting file appear to be willing to compromise in the interest of moving ahead with the initiative, while noting (in the case of Estonia) that the adoption of the proposal based on qualified majority voting should not serve as precedent for the adoption of tax files.

For a qualified majority to be obtained, a minimum of 15 (55%) Member States, representing at least 65% of the EU's population must agree with the proposal. The exchange of views during the February 25 meeting indicates that these conditions could be met; however, it remains to be seen if sufficient support if garnered based on discussions in Coreper.

Should you have any queries, please do not hesitate to contact KPMG's EU Tax Centre, or, as appropriate, your local KPMG tax advisor.

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