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Euro Tax Flash from KPMG's EU Tax Centre

Council of the EU approves compromise text on public Country-by-Country Reporting

Public Country-by-Country Reporting – Tax Transparency – Council – European Parliament

On September 28, 2021, the Competitiveness configuration (COMPET) of the Council of the EU adopted the Council's position at first reading on the EU public Country-by-Country Reporting directive. Adoption by the European Parliament – the next step in the legislative process, is expected in October 2021.

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 “public CbCR Directive” or “the Directive”).

The initiative was in deadlock 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.

A breakthrough was achieved in February 2021 in the Council of the EU, as a result of certain countries changing their previous position and agreeing to support the proposal. The Council and the European Parliament approved on March 3 and March 4, 2021 respectively, mandates for their respective negotiating positions in anticipation of the start of interinstitutional negotiations (so-called "trilogue") on the Directive.

On June 1, 2021, the Council of the EU and the European Parliament, following the third trilogue meeting, announced that they reached a provisional political agreement on the public CbCR Directive. The compromise text was subsequently approved, on June 9, by Member State representatives in Coreper (the Permanent Representatives Committee) and on June 14 by the European Parliament Committees on Economic and Monetary Affairs (ECON) and Legal Affairs (JURI) – see ETF 451.

In a letter sent to the chair of Coreper on June 17, the chairs of the ECON and JURI Committees confirmed that the European Parliament would approve the Council's position at first reading, following the standard legal linguistic check, without amendments.

COMPET vote

On September 28, 2021, the Competitiveness Council configuration (COMPET) adopted the compromise text based on qualified majority, with 21 votes in favor, two votes against (Cyprus and Sweden) and four Member States abstaining (Czech Republic, Ireland, Luxembourg, Malta). In a draft statement published before the vote, the Council confirms that the text approved fully reflects the compromise reached in the interinstitutional negotiations. The document also lists the agreed-upon approach for several elements on which the Council and Parliament negotiation positions diverged prior to the start of the trilogue – please refer to ETF 451 for an overview of these items.

Next steps

As stated in their June 17 letter, the European Parliament is expected to approve the Council's position in one of the upcoming plenary sessions, without amendments.

Next, the Directive would be published in the Official Journal of the EU and would enter into force on the 20th day following the date of its publication. EU Member States would have 18 months to transpose the Directive into national law.

The transposition deadline and date of application therefore would depend on the date when the Directive is official adopted and published. For example, if the final text enters into force in November 2021, Member States would have until May 2023 to transpose the Directive into local law and the rules would become applicable from May 2024. For calendar year taxpayers, the reporting obligation would therefore be due with respect to financial year 2025, with a report due 12 months after the end of the balance sheet date.

Member States are nevertheless at liberty to apply the rules earlier than the set deadline.

EU Tax Centre Comment

According to views previously expressed by Member States that voted against the initiative or that abstained from voting, their position is not against tax transparency (the substance of the file), but rather against the choice of legal basis, i.e. some Member States consider that the proposal relates to tax matters and therefore should have been based on Article 115 TFEU.

Two plenary sessions of the European Parliament are scheduled for October 2021 (October 4 to 7 and October 18 to 21). It remains to be seen in which of the two session the file will be adopted and whether the Directive will enter into force in October or November 2021. Implementation should nevertheless be monitored on a Member State by Member State basis and the implications of a staggered adoption analyzed by impacted taxpayers.

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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