Euro Tax Flash from KPMG's EU Tax Centre

[Background]

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EU Public Country-by-Country Reporting Implementation – where we are

Public Country-by-Country Reporting – Disclosure requirements – Tax Transparency – Domestic transposition

The EU Public Country-by-Country (CbyC) Reporting Directive (the Directive) entered into force on December 21, 2021 and introduced a timeline for the adoption of rules that will require multinational groups (MNEs) operating in the EU and that exceed specified size thresholds to publish certain information on their tax affairs.

EU Member States had until June 22, 2023 to transpose the Directive into domestic legislation, though as discussed below, not all Member States have complied with this deadline. The rules will apply, at the latest, from the commencement date of the first financial year starting on or after June 22, 2024. Individual Member States can nevertheless opt for an early adoption of the rules.

This Special Edition EuroTaxFlash summarizes where Member States are in terms of implementing the new rules into their domestic legislation as at **July 26, 2023**.

Background and summary of the rules

Following a proposal put forward by the European Commission in April 2016 and lengthy negotiations among Member States, as well as between the Council of the EU and the European Parliament, Council Directive (EU) 2021/2101 was adopted on November 24, 2021.

Scope

The new rules apply to multinational groups with total consolidated revenues exceeding EUR 750 million for each of the last two consecutive financial years if the group's ultimate parent undertaking[1] is either:

- based in the EU, or
- based in a third-country and operates in the EU through a qualifying subsidiary or branch[2].

The disclosure obligation will also apply to EU entities that are not part of a group (i.e. standalone undertakings) that meet the size threshold. However, the rules do not apply to standalone undertakings or groups (including their branches) that are established or have their fixed place of business or permanent business activity in a single Member State.

Required disclosures

In addition to the name of the ultimate parent undertaking (or the standalone undertaking), the financial year concerned, the currency used for the presentation of the report and, where applicable, a list of all subsidiary undertakings consolidated in the financial statements of the ultimate parent undertaking, the report on income tax information should include data on seven key areas:

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

Disclosing entities are allowed – and in certain cases maybe required – to provide an explanation for any material divergency between the amount of income taxes paid and accrued in the reporting year, taking into account the amounts related to the prior year.

Note that one of the differences between the data set above and that required under existing CbyC Reporting rules (i.e., CbyC reports modeled on the OECD's Action 13 Final Report or "non-public" CbyC reports) is that the former does not require information on stated capital and on tangible assets (other

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[1] The undertaking which draws up the consolidated financial statements of the largest body of undertakings in the group (according to Article 48a (1) of the Directive).

[2] A qualifying EU presence is defined in accordance with Article 3 of the Directive 2013/34/EU and includes:

- medium-sized or large subsidiaries that meet two of the following three conditions: a balance sheet greater than EUR 4 million, net turnover greater than EUR 8 million, or an average number of employees exceeding 50;
- branches which exceed the turnover threshold above (i.e., EUR 8 million) for each of the last two consecutive financial years.

Member States are nevertheless allowed to increase the limits above, up to EUR 6 million for the balance sheet total and EUR 12 million for the net turnover. In addition, the thresholds are periodically updated to keep pace with inflation and may be set in a Member State's local currency if they have not adopted the Euro.

than cash and cash equivalents), which do have to be disclosed in CbyC reports submitted to tax authorities.

The information listed above must be separately reported for each EU Member State where the group is active and for each jurisdiction deemed “non-cooperative” by the EU (Annex I of the EU list of non-cooperative jurisdictions) or that has been on the EU’s “grey” list for a minimum of two years (Annex II)[3]. Information concerning all other jurisdictions may be reported on an aggregated "rest of the world” basis – another difference compared to private CbyC reporting, which requires data to be separately reported for each jurisdiction in which the group operates.

Publication

In the case of groups where the ultimate parent company is based in the EU, the disclosure obligation lies with the EU parent. Reports must be filed in publicly accessible commercial registers in the relevant Member State as well as on applicable group websites (unless Member States opted for the publication exemption option described below).

For non-EU parented groups that operate in the EU through qualifying subsidiaries and branches, the main rule is that each of the EU subsidiaries or EU branches is required to disclose information for the in-scope group. It is important to note that the information required to be disclosed will not only be related to the reporting entity or to the EU Member States in which the group operates, but will relate to the entire group – i.e. essentially equivalent to the EU entity reporting on behalf of its non-EU parent. EU subsidiaries and branches that do not have access to the required information at group level will need to ask the non-EU parent to provide the data required to enable them to meet their obligations in the EU. If the parent does not provide all the required information, the subsidiary or branch will be required to publish the report based on all the information it possesses and a statement indicating that its parent did not make the necessary information available.

There is one exception to this general rule for non-EU parented groups, whereby the EU subsidiaries and branches of the non-EU headquartered group are exempt from their obligations if the non-EU parent has published the report on their website and has assigned one of the EU subsidiaries or branches to file the report with their national commercial registry. Reporting by the non-EU parent will be deemed to extinguish the reporting obligation of all in-scope EU entities. It will, however, be important to monitor if or where Member States deviate from the minimum standard introduced by the Directive so as to ensure that a report filed by the non-EU parent addressed the requirements of all Member States that are relevant in the case of that group.

Where website publication is required, the reports need to remain accessible for at least five years.

Implementation options

Member States are specifically provided with a number of choices with respect to domestic implementation:

- introducing the so-called “safeguard clause”: Member States can choose to allow in-scope groups to defer the disclosure of commercially sensitive information for a maximum of five

[3] Please refer to the EU list of non-cooperative jurisdictions (Annex I and II).

years – with the exception of data related to jurisdictions on the EU list of non-cooperative jurisdictions (Annexes I and II);
- website publication exemption: Member States may opt to exempt companies from publishing the report on their websites, if the report is already made publicly available to any third party located in the EU, free of charge, on the website of the commercial registry.

The Directive does not provide for priority rules when Member States make use of different options or expand the scope of the Directive by, for example, requiring additional data points. As it stands and absent specific implementation guidance from individual Member States, the choice for one jurisdiction to give the option of a deferral of publication of certain data does not bind other EU jurisdictions. In other words, it is expected that non-EU groups would only be able to apply the safeguard clause if all the EU jurisdictions in which they have a qualifying presence offer this possibility.

Once the rules are implemented into domestic law, subject to the timeline mentioned above, in-scope groups will have 12 months after the end of the balance sheet date of the relevant financial year to publish the report on income tax information. For example, for calendar year taxpayers, the first reporting year will be financial year 2025 and the report will be due by the end of December 2026 (assuming that the Member State does not adopt a shorter reporting deadline).

Note, however, that the Directive only sets the deadlines for implementation but does not prevent Member States from adopting and applying the rules sooner than the deadline. We have therefore attempted to summarize what steps Member States have already taken in terms of implementation, with the notable development in Romania, where the rules are already effective from January 1, 2023.

Implementation into domestic legislation

Although EU Member States had until June 22, 2023 to implement the Directive into domestic legislation, several jurisdictions have not yet adopted the public disclosure rules.

The next section provides a brief overview of where Member States are in terms of the legislative process to transpose the Directive.

Status of the legislation:

- 11 Member States have adopted legislation - Denmark, France, Germany, Hungary, Ireland, Lithuania, Luxembourg, Romania, Slovakia, Spain, Sweden
- 5 Member States have released draft legislation – Belgium, Croatia, Czech Republic, Netherlands, Poland
- 11 Member States have not initiated the transposition process.

Croatia: Public consultation on the transposition legislation closed

Draft legislation to implement the Directive was published and the public consultation phase is now closed. Key takeaways include:

- The provisions of the draft Croatian public CbyC bill are closely aligned with the text of the Directive.

- Croatia intends to adopt the “safeguard clause”, i.e. to allow in scope groups to temporarily omit for a maximum of five years information that would cause a significant disadvantage to the companies concerned, provided they can justify the reason for the omission.
- Croatia intends to opt for the website publication exemption.

In terms of next steps, the draft bill has to be submitted to the Parliament for approval.

For more details, please contact KPMG in Croatia (Paul Suchar or Juraj Boric).

Czech Republic: Draft legislation published

Draft legislation to implement the Directive was published in the Czech Republic. Key takeaways include:

- The provisions of the Czech public CbyC bill are closely aligned with the text of the Directive.
- The threshold applicable to branches is a net turnover of CZK 200 million (approximately EUR 8.3 million), for the last two consecutive financial years.
- The Czech Republic intends to adopt the “safeguard clause”.
- The Czech Republic doesn’t intend to opt for the website publication exemption.

For more details, please contact KPMG in the Czech Republic (Ladislav Malusek or Sona Saidlova).

Denmark: Directive transposed into local legislation

On June 1, 2023, the Danish Parliament passed a bill to transpose the Directive into domestic legislation. Key takeaways include:

- The provisions of the transposing bill are closely aligned with the text of the Directive.
- The consolidated net turnover threshold for MNEs in scope is DKK 5.6 billion (approximately EUR 752 million) in each of the last two consecutive financial years.
- Adoption of the “safeguard clause”.
- From a Danish perspective, the public CbyC report should be submitted to the Danish company registry (“Erhvervsstyrelsen”) and be made available on the company’s corporate website.

The reporting rules will apply to financial years starting on or after June 22, 2024.

For more details, please refer to a report prepared by KPMG in Denmark or contact KPMG in Denmark (Lars Terkilsen).

France: Directive transposed into local legislation

On June 21 and 22, 2023, France published an implementing ordinance and decree to transpose the Directive into domestic legislation. Key takeaways include:

- The provisions of the French bill are largely aligned with the text of the Directive.
- The threshold applicable to branches is a net turnover of EUR 12 million.
- Adoption of the “safeguard clause”.
- The provisions applicable to companies established in an EU Member State are extended to companies established in the European Economic Area (EEA)[4] Among others, country-by-country disclosure is required for all EEA states[5]
- The public CbyC report needs to be translated into French.
- The bill introduces the possibility for any person to ask for a court ruling that would order non-complying companies to publish or make available the CbyC report.

The public disclosure rules apply to financial years starting on or after June 22, 2024.

For more details, please refer to a report (in French) prepared by KPMG in France or contact KPMG in France (Marie-Pierre Hôo).

Germany: Directive transposed into local legislation

On June 21, 2023, Germany published the law to transpose the EU Public CbyC Reporting Directive into domestic legislation following its approval by the German Parliament and Federal Council. Key takeaways include:

- The provisions of the German bill are largely aligned with the text of the Directive.
- Adoption of the “safeguard clause”. However, Germany will only allow in scope groups to temporarily omit information that would cause a significant disadvantage to the companies concerned for a maximum of four years (instead of five as per the Directive). The Explanatory Memorandum provides guidance on what type of information can qualify as causing a “significant disadvantage” and notes that there should be an “overwhelming probability” that the disadvantage will occur.
- Adoption of the website publication exemption.
- Failures to comply with the disclosure obligations may be sanctioned with an administrative penalty of EUR 250,000.

The reporting rules apply to financial years starting on or after June 22, 2024.

For more details, please contact KPMG in Germany (Gerrit Adrian).

[4] The European Economic Area (EEA) Agreement covers all EU Member States and three additional jurisdictions: Iceland, Liechtenstein, and Norway.

[5] The Directive only requires country-by-country disclosure for EU Member States and countries on the EU list of non-cooperative jurisdictions, provided certain conditions are met.

Hungary: Directive transposed into local legislation

In May 2023, Hungary adopted a law to transpose the EU Public CbyC Reporting Directive into domestic legislation. Key takeaways include:

- The provisions of the Hungarian bill are largely aligned with the text of the Directive.
- No adoption of the "safeguard clause".
- Hungary also decided not to opt for the website publication exemption.
- Hungary will require in-scope multinational groups to explain the reasons behind any significant differences between the income tax accrued and income tax paid, if such significant differences exist – this additional narrative is only mentioned in the Directive as an option for MNEs.

The public disclosure rules apply to financial years starting on or after June 22, 2024.

For more details, please contact KPMG in Hungary (Mihály Gódor and Tamás Kovács).

Ireland: Directive transposed into local legislation

On June 23, 2023, Ireland published a law to transpose the EU Public CbyC Reporting Directive into domestic legislation. Key takeaways include:

- The provisions of the Irish public CbyC bill are closely aligned with the text of the Directive.
- The threshold applicable to branches is a net turnover of EUR 12 million for the last two consecutive financial years.
- Adoption of the "safeguard clause".
- Adoption of the website publication exemption.
- A person who fails to comply with these regulations shall be guilty of a category three offence, i.e. a possible fine of up EUR 5,000 or six months imprisonment.

The public disclosure rules apply to financial years starting on or after June 22, 2024.

For more details, please contact KPMG in Ireland (Colm Rogers and Cormac Golden).

Lithuania: Directive transposed into local legislation

On June 15, 2023, the Lithuanian government adopted the bill to transpose the Directive into domestic legislation. Key takeaways include:

- The provisions of the Lithuanian public CbyC bill are closely aligned with the text of the Directive.
- Adoption of the "safeguard clause".

— Adoption of the website publication exemption.

The public disclosure rules apply to financial years starting on or after June 22, 2024.

For more details, please contact KPMG in Lithuania (Birute Petrauskait or Ignas Rickus).

Luxembourg: Draft legislation approved by the Parliament

In July 2025, the bill transposing the Directive into local legislation was approved by the Parliament. Key takeaways include:

- The provisions of the Luxembourg public CbyC bill are closely aligned with the text of the Directive.
- Adoption of the "safeguard clause".
- Adoption of the website publication exemption.

The public disclosure rules apply to financial years starting on or after June 22, 2024.

For more details, please contact KPMG in Luxembourg (Sandrine Degreve and Driss Delubac).

Netherlands: Draft legislation published

On July 5, 2022, the Dutch government published draft legislation to implement the Public CbyC Reporting Directive. Key takeaways include:

- The provisions of the Dutch public CbyC bill are closely aligned with the text of the Directive.
- Is it not clear whether the Netherlands intends to make use of the "safeguard clause".
- Companies would be required to publish the reports on their website, as the Netherlands does not intend to grant an exemption from publication where the reports are made available free of charge on the website of the local commercial registry.

Based on the current text of the draft law, the public disclosure rules would apply to financial years starting on or after June 22, 2024.

For more details, please contact KPMG Meijburg (Robert Van der Jagt or Adriaan Bijleveld).

Poland: Draft legislation published

The latest draft bill transposing the Directive into local legislation is dated March 29, 2023. The law has not been passed by the Polish Parliament yet. The upcoming Parliamentary elections in autumn may cause a significant delay in implementation (due to principle of legislative discontinuity, i.e. any unfinished parliamentary works must be restarted). Key takeaways include:

- The provisions of the Polish public CbyC bill are closely aligned with the text of the Directive. However, changes could occur due to the early stage of legislative proceedings.
- The consolidated net turnover threshold for MNEs in scope is PLN 3.5 billion (approximately EUR 788 million) in each of the last two consecutive financial years.
- The thresholds applicable to subsidiaries are:
  - i) a balance sheet greater than PLN 25.5 million (approximately EUR 5.75 million),
  - ii) net turnover greater than PLN 51 million (approximately EUR 11.5 million),
  - iii) an average number of employees exceeding 50.

  At least two out of these three thresholds must be exceeded in order for the subsidiary to be in scope of the rules in Poland.
- The threshold applicable to branches is a net turnover of PLN 51 million (approximately EUR 11.5 million), for the last two consecutive financial years.
- Adoption of the "safeguard clause".
- Existing criminal liability under the Accounting Act is proposed to be extended to cases of non-compliance with the public CbyC rules.

Based on the current text of the draft law, the public disclosure rules would apply to financial years starting on or after June 22, 2024.

For more details, please contact KPMG in Poland (Michal Niznik or Maciej Wisniewski).

Romania: implemented – early application from January 1, 2023

On September 7, 2022, legislation to implement the Directive was published in the Romanian Official Gazette. The law was subsequently amended on June 21, 2023, bringing further clarifications. Key takeaways include:

- The provisions of the Romanian public CbyC bill are largely aligned with the text of the Directive. However, Romania opted for early adoption of the rules.
- The consolidated net turnover threshold for MNEs in scope is RON 3.7 billion (approximately EUR 747.5 million) in each of the last two consecutive financial years.
- Adoption of the "safeguard clause".
- Adoption of the website publication exemption.

  The provisions applicable to companies established in an EU Member State are extended to cover companies established in the EEA. Among others, country-by-country disclosure is required for all EEA states (the Directive only requires country-by-country disclosure for EU Member States and countries on the EU list of non-cooperative jurisdictions, provided certain conditions are met).

As mentioned above, Romania opted for the early adoption of the rules. As a result, the disclosure rules apply for financial years starting on or after January 1, 2023. The first reporting deadline will be 12 months after the end of the first reportable financial year, i.e. for calendar year taxpayers, the deadline

will be end of 2024 with respect to FY23. Early adoption is particularly relevant for non-EU headquartered groups operating in Romania through qualifying subsidiaries or branches as the entry into force of the rules in this jurisdiction will trigger an early reporting obligation with respect to the entire group, as described above.

For more details, please refer to a report prepared by KPMG in Romania or contact KPMG in Romania (Ionut Mastacaneanu).

Slovakia: Directive transposed into local legislation

Slovakia adopted a bill to transpose the Directive into domestic law. Key takeaways include:

- The provisions of the Slovakian public CbyC bill are largely aligned with the text of the Directive.
- No adoption of the "safeguard clause".
- Adoption of the website publication exemption.

For more details, please refer to a report prepared by KPMG in Slovakia or contact KPMG in Slovakia (Zuzana Blazejova).

Spain: Directive transposed into local legislation

On December 22, 2022, Spain published a law in the Official Gazette to transpose the Directive into domestic legislation. Key takeaways include:

- The provisions of the Spanish public CbyC bill are largely aligned with the text of the Directive.
- The CbyC report must be approved and published within six months from the closing date of the financial year to which they refer (the Directive provides for a 12-month deadline) and must be submitted with the Spanish Mercantile Registry.
- Adoption of the "safeguard clause".
- Adoption of the website publication exemption.

The public disclosure rules apply to financial years starting on or after June 22, 2024.

For more details, please contact KPMG in Spain (Cristina Concepción Toscano).

Sweden: Directive transposed into local legislation

On June 7, 2023, Sweden published a law to transpose the Directive into domestic legislation. Key takeaways include:

- The provisions of the Swedish public CbyC bill are largely aligned with the text of the Directive.
- The minimum consolidated net turnover which brings multinational groups in scope of the Directive was set at SEK 8 billion (approximately EUR 724 million).
- The provisions applicable to companies established in an EU Member State are extended to cover companies established in the EEA. Among others, country-by-country disclosure is

required for all EEA states (the Directive only requires country-by-country disclosure for EU Member States and countries on the EU list of non-cooperative jurisdictions, provided certain conditions are met).

- Adoption of the “safeguard clause”.
- The website publication exemption was not adopted.

The public disclosure rules apply to financial years starting on or after May 31, 2024.

For more details, please contact KPMG in Sweden (Karolina Viberg).

EU Tax Centre comment

In-scope taxpayers – whether part of groups with an EU or non-EU parent, are advised to monitor closely when and how individual Member States decide to implement specific provisions of the Public CbyC Reporting Directive. As mentioned above, the Directive has several opt-in clauses which would lead to differences in the way the provisions are transposed into domestic law. Moreover, the disclosures in the Directive represent a minimum standard, and – in theory – Member States could extend their scope. As an example, Hungary requires in-scope groups to provide clarifications on the differences between the income tax accrued and income tax paid, which is not prescribed as being mandatory by the Directive.

It is worth noting that the European Commission has urged Member States to ensure consistency of interpretation and not deviate from the standards set in the Directive, a suggestion which was met with the disapproval of the European Parliament.

With regard to non-EU parented MNEs in particular, when determining whether or not they have a qualifying presence in one of the Member States, these groups should be mindful of the fact that Member States are allowed to increase the “Net Turnover” threshold up to EUR 12 million and “Balance sheet” threshold up to EUR 6 million. Accordingly, the thresholds may be different depending on where the subsidiary or the branch is located. The potential early adoption of the rules by certain Member States brings an additional layer of complexity, as in-scope multinationals might be faced with public disclosure requirements sooner than expected. For example, non-EU headquartered multinationals with a qualifying Romanian presence would need to disclose their CbyC data up to two years earlier than the deadline provided for under the Directive.

Multinational groups should consider whether they fall within the scope of the EU public disclosure rules and determine if current internal reporting systems and processes are suitable for the collection of group-wide data reporting requirements. Even those MNEs that are not immediately in the crosshairs of EU public CbyC reporting should consider how they would respond to a request to publish CbyC data from tax authorities in other jurisdictions, investors, or other interested stakeholders.

KPMG Tax Impact Reporting can help your tax department use data driven methodologies to help accurately compile information on your CbyC reports and tax footprint, provide guidance for compliance and use leading technology solutions.

For more details on EU public country-by-country reporting as well as on how it relates to other, similar, initiatives, please refer to the KPMG's EU Tax Centre dedicated webpage.

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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