EU Public Country-by-Country Reporting Implementation – state of play of domestic implementation in the EU

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. As will be discussed below, not all Member States have complied with this deadline and are yet to adopt domestic CbyC-legislation. 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 opt for an early adoption of the rules.

This Special Edition EuroTaxFlash summarizes the most recent information on implementation of the new rules into Member States' domestic legislation, as at the date of its publication.

Implementation of the EU Public CbyC Reporting Directive – State of Play

As at the date of this publication, nineteen EU Member States – *Belgium, Bulgaria, Croatia, Czech Republic, Greece, Denmark, France, Germany, Hungary, Ireland, Latvia, Lithuania, Luxembourg, Netherlands, Portugal, Romania, Slovakia, Spain, and Sweden*, had finalized the internal legislative process required for implementation of the EU Public CbyC Reporting Directive.

In *Poland and Finland*, draft legislation was released but has not yet been adopted.

To the best of our knowledge, the remaining six EU Member States – *Austria, Cyprus, Estonia, Italy, Malta, and Slovenia,* have not officially initiated the transposition process.

The European Commission (the Commission or the EC) has sent letters of formal notice (the first step of the infringement proceedings) to all Member States that failed to notify the transposition of the Directive by the June 22, 2023, deadline.

A summary of the regulations outlined in the EU Public CbyC Reporting Directive are presented in the subsequent sections, accompanied by comments of how various Member States have incorporated these rules.

Preliminary observations on local implementation

The following section provides some preliminary observations from implementing legislation that has already been enacted in various Member States.

Scope

Summary of the EU rules

The rules apply to multinational groups (MNEs) with total consolidated revenues exceeding EUR 750 million for each of the last two consecutive financial years[1], if the group's ultimate parent undertaking[2] is either:

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

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

- medium-sized or large subsidiaries that meet two of the following three conditions: a balance sheet greater than EUR 5 million, net turnover greater than EUR 10 million, or an average number of employees exceeding 50;
- branches which exceed the turnover threshold above (i.e., EUR 10 million) for each of the last two consecutive financial years.

Member States are nevertheless allowed to increase the limits above, up to EUR 7.5 million for the balance sheet total and EUR 15 million for the net turnover.

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.

[1] Note that this provision differs from the CbyC rules provided under BEPS Action 13 where the threshold only refers to the previous financial year and not to the last two consecutive financial years.

[2] 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).

[3] The limits listed above generally apply as of financial years starting on or after January 1, 2024. The previous monetary thresholds were increased by 25 percent, on December 21, 2023, through a Commission delegate act – see E-news Issue 189.

Implementation into domestic legislation

All Member States that have published and adopted final legislation have adhered to the consolidated revenues group threshold prescribed by the Directive.

It should be noted, however, that the size threshold for the group is not assessed based on the euro amount in all Member States, generally because not all 27 EU jurisdictions use the euro as their local currency. Jurisdictions with such variation in the size threshold, i.e., due to foreign exchange differences, include:

- *Bulgaria:* BGN 1.5 billion (approximately EUR 766 million);
- *the Czech Republic*: CZK 19 billion (approximately EUR 773 million) for Czech headquartered MNEs and the CZK equivalent of EUR 750 million for non-EU headquartered MNEs;
- *Demark:* DKK 5.6 billion (approximately EUR 751 million);
- *Hungary:* HUF 275 billion (approximately EUR 724 million) for Hungarian headquartered MNEs and EUR 750 million for non-EU headquartered MNEs;
- *Poland*[4]*:* PLN 3.5 billion (approximately EUR 798 million); and
- *Romania:* RON 3.7 billion (approximately EUR 743 million).

Non-EU MNEs should also carefully consider the rules in each relevant Member State with respect to the size thresholds for qualifying subsidiaries and branches. In addition to potential differences arising from currency translations, variations may also occur due to the options available to Member States under the EU Accounting Directive, as mentioned above. As an example, *France* and *Ireland* chose to set the minimum threshold for branches at the higher end of the interval prescribed by the EU Accounting Directive in 2023, i.e., EUR 12 million. Notably, due to the early adoption of the rules in *Romania*, MNEs should also consider the lower monetary thresholds for subsidiaries and branches applicable in that jurisdiction before January 1, 2024, i.e., balance sheet greater than EUR 4 million, respectively net turnover greater than EUR 8 million.

First reporting year and reporting deadline

Summary of the EU rules

The EU Directive requires Member States to apply the Directive from the commencement date of the first financial year starting on or after June 22, 2024, at the latest. In-scope MNEs will generally have 12 months following the balance sheet date of the relevant financial year to publish the report on income tax information. For calendar year taxpayers, the initial reporting year will therefore generally be the financial year 2025, with the report due by the end of December 2026.

Member States are, however, free to apply the rules earlier than the Directive deadline and to adopt shorter reporting deadline.

Implementation into domestic legislation

Most EU countries that have enacted EU public CbyC reporting legislation have aligned the timeline of their local rules with those prescribed under the Directive and will therefore apply the reporting obligation with respect to financial years starting on or after June 22, 2024.

[4] Based on draft legislation, still subject to changes.

A notable exception is *Romania,* where the rules apply for financial years starting on or after January 1, 2023. Two other EU Member States also opted for early adoption: *Croatia* – starting with financial years commencing on or after January 1, 2024, and *Sweden* – starting with financial years commencing on or after May 31, 2024.

With regard to reporting deadlines, most Member States maintained the 12-month reporting deadline. However, two Member States will apply notably shorter reporting deadlines:

- *Hungary* set a reporting deadline of four months after the end of the financial year for companies with securities listed on an EEA market, and five months for other companies; and
- *Spain* mandated in-scope MNEs to submit their reports within six months after the end of the financial year.

Required disclosures

Summary of the EU rules

The report on income tax information should include 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 should also 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 to provide an explanation for any material divergence between the amount of income taxes paid and the amount of income tax 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 the information required under existing non-public CbyC Reporting rules (i.e., CbyC reports modeled on the OECD's Action 13 Final Report or "non-public" CbyC reports), is that information on stated capital and on tangible assets (other than cash and cash equivalents) must be disclosed in CbyC reports submitted to tax authorities but is not required under the new EU public CbyC reporting rules.

The information listed above must be reported for each 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)[5]. Information concerning all other jurisdictions may be reported on an aggregated "rest of the world" basis – another difference compared to non-public CbyC reporting, which requires data to be reported separately for each jurisdiction in which the group operates.

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

Implementation into domestic legislation

Most Member States adhered closely to the text of the Directive with respect to required disclosures. However, certain Member States chose to introduce additional requirements. *Hungary*, for instance, mandates an obligatory explanation of differences between income taxes paid and accrued (which is otherwise optional, as noted above). *France, Romania,* and *Sweden* expanded the country-by-country disclosure rules to cover all EEA countries, i.e., in addition to the EU Member States, information will also be required with respect to operations in Iceland, Liechtenstein and Norway.

Belgium extended the scope of the disaggregated data disclosures (i.e. country-by-country instead of aggregated data) to cover all jurisdictions on the Belgian tax haven list (in addition to those listed on the EU list of non-cooperative jurisdictions, as required under the Directive. This extended scope has been included in the explanatory memorandum to the Belgian legislation.

Publication

Summary of the EU rules

In the case of MNEs 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 have 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 relevant EU subsidiaries and EU branches is required to disclose information on the group's operations worldwide. 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 MNEs, 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.

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

Implementation into domestic legislation

All EU jurisdictions that have enacted EU public CbyC reporting legislation aligned the rules on publication with the text of the Directive. Note, however, the next sessions on the options exercised by Member States where permitted under the EU text.

Implementation options

Summary of the rules

Member States are provided with options choices with respect to:

- *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 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.

Implementation into domestic legislation

Most EU jurisdictions that have enacted EU public CbyC reporting legislation have opted to implement the 'safeguard clause'. This group includes: *Bulgaria, Croatia, the Czech Republic, Denmark, France, Germany, Ireland, Latvia, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Spain, Sweden*. In *Poland,* the current draft legislation also includes the 'safeguard clause'.

Notably, *Germany* opted for a deferral of the disclosure obligation for a maximum of four years (as compared to the maximum five years allowed under the Directive).

It is important to note that the Directive does not provide for priority rules when Member States make use of different options. As it stands, and absent specific implementation guidance from individual Member States, where a jurisdiction allows an MNE to defer the disclosure of specific data, the choice is not binding on other jurisdictions and therefore does not apply by default in the other EU Member States where the group operates. It is therefore expected that non-EU groups that make an application for deferral under the safeguard clause would only benefit from the deferral if all the EU jurisdictions in which they have a qualifying presence offer this possibility and approve the application.

The following ten Member States opted for the website publication exemption: *Croatia, the Czech Republic, Germany, Greece, Ireland, Latvia, Lithuania, Luxembourg, Romania, Slovakia, Spain*.

Other variations

The EU Public CbyC Reporting Directive is a minimum standard – Member States may therefore expand the scope of the rules or the tailor the requirements based on local specifics.

In this context, we observe that *France* requires that the public CbyC is also translated into French. *Germany* and *Romania* require the report to be submitted in the local language—German and Romanian, respectively.

Penalties

The EU Directive does not determine the scope and value of penalties to be applied in case of non-compliance with the public CbyC reporting rules. As a result, the maximum penalties applied in case of non-compliance, incomplete or delayed fulfilment of reporting or notification requirements, vary significantly. For example, depending on the type of infringement, penalties of up to EUR 10,000 may apply in *Belgium* (with potential further consequences in the event of fraudulent intent), and up to EUR 250,000 in *Germany*.

ETC Comment

The first reporting period for the Public CbyC Reporting Directive is swiftly approaching. In light of the early adoption of the rules in Romania, the first reports are expected to be published and filed with the local commercial register by December 31, 2024.

Multinational groups should consider whether they fall within the scope of the EU public disclosure rules and which EU jurisdictions they may have a qualifying presence in. Once the scope has been mapped out, MNEs will want to determine if current internal reporting systems and processes are suitable for the collection of group-wide data reporting requirements in line with the new EU rules and specific requirements in each Member State. Even those MNEs that are not immediately in the crosshairs of EU public CbyC reporting may want to consider how they would respond to a request to publish CbyC data from tax authorities in other jurisdictions, investors, or other interested stakeholders.

The variations highlighted above underline the importance of an analysis of domestic transposition of the Directive in each jurisdiction that is relevant for non-EU MNE groups, which generally have reporting obligations in each EU country where they have a qualifying presence. Such MNEs should therefore also consider how to achieve consistent disclosures that meet the requirements of each of the countries where they have an obligation and should monitor developments in each EU jurisdiction.

Generally, it is evident that tax transparency is here to stay. As anyone involved in the tax arena will be aware, there has been a paradigm shift in the global tax landscape, resulting in public and political pressure to address perceived harmful tax practices, particularly by corporate entities. The EU public CbyC disclosure rules are not the only note-worthy development in terms of tax-related disclosures. In Australia, a proposal intended to apply starting July 2024 would introduce additional qualitative disclosures (the proposal is currently being redrafted as a result of feedback received during a public consultation carried out earlier in 2023). In parallel, the Financial Accounting Standards Board in the US adopted, on December 14, 2023, significant changes to income tax disclosure and reconciliation requirements.

In addition to these targeted tax-related disclosures, information on a group's tax position will also be relevant in the context of the EU Corporate Sustainability Reporting Directive (CSRD), requiring companies operating in the EU to prepare extensive sustainability reports as part of their management reports. For tax, this will likely represent a step beyond the quantitative data required under EU public CbyC Reporting and towards a focus on qualitative information.

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.

Relevant links

- KPMG's EU Tax Centre Public CbyC Reporting implementation tracker
- KPMG's EU Tax Centre public CbyC dedicated webpage
- KPMG's EU Tax Centre public CbyC FAQ
- KPMG Tax Impact Reporting

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

Raluca Enache
Associate Partner,
Head of KPMG's EU Tax Centre

Ana Puscas
Senior Manager,
KPMG's EU Tax Centre

Felix Kohlstetter
Intern
KPMG's EU Tax Centre

Key EU Public CbyC Reporting Country contacts

Ulf Zehetner
Partner
KPMG in Austria
E: UZehetner@kpmg.at

Kathy Lim
Partner
KPMG in Belgium
E: klim1@kpmg.com

Kalin Hadjidimov
Manging Partner
KPMG in Bulgaria
E: khadjidimov@kpmg.com

Maja Maksimović
Partner
KPMG in Croatia
E: mmaksimovic@kpmg.com

Katia Papanicolaou
Board Member
KPMG in Cyprus
E: Katerina.Papanicolaou@kpmg.com.cy

Ladislav Malusek
Partner
KPMG in the Czech Republic
E: lmalusek@kpmg.cz

Terkilsen, Lars
Director
KPMG in Denmark
E: lars.terkilsen@kpmg.com

Joel Zernask
Partner
KPMG in Estonia
E: jzernask@kpmg.com

Sanna Laaksonen
Partner
KPMG in Finland
E: sanna.laaksonen@kpmg.fi

Marie-Pierre Hôo
Partner
KPMG in France
E: mhoo@kpmgavocats.fr

Gerrit Adrian
Partner
KPMG in Germany
E: gadrian@kpmg.com

Antonia Ariel Manika
Director
KPMG in Greece
E: amanika@cpalaw.gr

Mihály Gódor
Partner
KPMG in Hungary
E: Mihaly.Godor@kpmg.hu

Colm Rogers
Partner
KPMG in Ireland
E: colm.rogers@kpmg.ie

Lorenzo Bellavite
Partner
KPMG in Italy
E: lbellavite@kpmg.it

Kaspars Bandars
Director
KPMG in Latvia
E: kbanders@kpmg.com

Vita Sumskaite
Partner
KPMG in Lithuania
E: vsumskaite@kpmg.com

Laureen Tardy
Partner
KPMG in Luxembourg
E: laureen.tardy@kpmg.lu

John Ellul Sullivan
Partner
KPMG in Malta
E: johnellulsullivan@kpmg.com.mt

Adriaan Bijleveld
Manager
KPMG in the Netherlands
E: Bijleveld.Adriaan@kpmg.com

Michał Niznik
Partner
KPMG in Poland
E: mniznik@kpmg.pl

Tomás Ramos
Director
KPMG in Portugal
E: tomasramos@kpmg.com

Ionut Mastacaneanu
Director
KPMG in Romania
E: imastacaneanu@kpmg.com

Zuzana Blazejova
Executive Director
KPMG in Slovakia
E: zblazejova@kpmg.sk

Marko Mehle
Senior Partner
KPMG in Slovenia
E: marko.mehle@kpmg.si

Cristina Concepción Toscano
Partner
KPMG in Spain
E: cconcepcion@kpmg.es

Karolina Viberg
Partner
KPMG in Sweden
E: karolina.viberg@kpmg.se