

Country-by-country reporting for multinational enterprise groups

SUMMARY

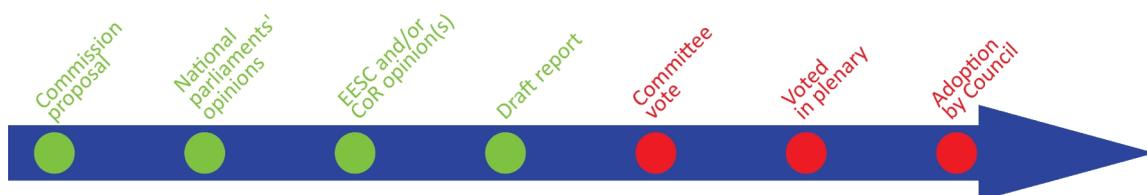
New proposals on transparency would provide tax authorities with comprehensive and relevant information on the activities of multinational enterprise (MNE) groups to help countries fight tax avoidance and aggressive tax planning. Action has been designed to be implemented at both international and European Union (EU) levels.

In particular, Action 13 of the OECD/G20 BEPS (Base erosion and profit shifting) action plan includes a requirement that MNEs provide all relevant governments with information on their global allocation of income, economic activity and taxes paid using a common template.

The European Commission has proposed to amend the Directive on administrative cooperation in the field of taxation (DAC) to implement BEPS action 13 on country-by-country reporting (CBCR) in the EU. CBCR would be added to the categories of information subject to automatic exchange of information between Member State tax administrations, under the DAC's exchange mechanism. As a tax measure, Parliament is only consulted and the proposal has to be adopted by the Council.

Proposal for a Council Directive amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation

<i>Committee responsible:</i>	Economic and Monetary Affairs (ECON)	COM(2016) 25
<i>Rapporteur:</i>	Dariusz Rosati (EPP, Poland)	of 28.01.2016
		<i>procedure ref.:</i>
<i>Next steps expected:</i>	Vote on draft report scheduled in ECON, 26 April	2016/0010(CNS) Consultation



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Introduction

Addressing the need to advance in the fight against tax avoidance and aggressive tax planning, new transparency requirements have been developed in order to provide tax authorities with comprehensive and relevant information on the activities of multinational enterprise (MNE) Groups. The size and structure of MNEs means that they each operate – and thus report on – businesses in several countries. Information on a country-by-country basis is considered an essential tool to counter-act aggressive corporate tax avoidance. Actions have been defined at both international and European Union levels.

Context

The OECD/G20 15-point action plan to address [Base erosion and profit shifting \(BEPS\)](#) has three main pillars: creating more consistency in national tax rules that affect cross-border activities; strengthening substance requirements¹ in existing international standards; and **improving certainty and transparency**. [Final reports](#) were agreed in October 2015, with BEPS actions decided by consensus among the participating countries (OECD and G20). They were designed **to be implemented** in domestic law and practices, as well as through changes in the provisions of relevant treaties.

The current proposal relates to [BEPS action 13](#), entitled 'Transfer Pricing Documentation and Country-by-Country Reporting.' Action 13² is based on the OECD's work on Transfer Pricing Documentation.³ The action provides that **MNEs** provide all relevant **governments** with **information** on their **global allocation of income, economic activity and taxes paid** to different countries using a common template (including both the level of income and number of employees present in a country for instance). This can highlight discrepancies which might signal a problem. The country-by-country (CBC) report is intended to be **an assessment tool for high risks** and not the basis for proposing transfer-pricing adjustments.

The CBC report has a **three-tier** design:

- a **master file** provides a high-level overview of an MNE's global operations and transfer-pricing policies, and is provided to the tax administrations of all the countries concerned;
- a **local file** covers detailed information concerning specific inter-company transactions; and
- a separate **country-by-country report**, based on a common template, gives all countries a broad picture of how a company operated, including aggregate information on income, taxes paid, total employment, retained earnings and tangible assets in each jurisdiction.

MNEs should file CBC reports as of the fiscal years starting on or after 1 January 2016; they would be required to file them within 12 months of the end of the relevant fiscal year.⁴

As regards the size of MNEs (**materiality threshold**), there would be an exemption from the general filing requirement for MNE groups with annual consolidated revenue in the immediate preceding fiscal year of less than €750 million (or near-equivalent amount in domestic currency). This will exclude approximately 85 to 90% of MNE groups, while still covering 90% of corporate revenues. A review of this threshold is set for 2020. No further exemption should be adopted (e.g. exemptions excluding certain sectors or industries).

The ultimate parent of the group that meets the revenue threshold will be required to file the CBC report in its home-state jurisdiction. The latter would automatically **exchange the information** with other countries in which the MNE group operates (**government-to-government** mechanisms). If a country fails to do so, a secondary mechanism is in place (through local filing, or through filing of the Country-by-Country Reports by a designated member of the MNE group acting in place of the ultimate parent entity).⁵

Countries⁶ participating in the BEPS project have agreed to develop an [implementing package](#), which includes in particular key elements of the domestic legislation to require CBC reports. In addition, they have endorsed implementing arrangements for the automatic exchange of information (agreements between the competent authorities based on the [Multilateral convention on mutual administrative assistance in tax matters](#), bilateral tax treaties and Tax Information Exchange Agreements or [TIEAS](#)). The agreement covers the conditions underpinning obtaining and using CBC reports. Protection of **confidentiality** (including limitation of use, and rules on persons to whom the information may be disclosed), consistency (with the standard template contained in the OECD [transfer-pricing guidelines](#)) and appropriate use (i.e. for assessing transfer-pricing risks, to which is added the possibility to use them for assessing BEPS-related risks). Possible uses do not include adjustment of income on the basis of an income allocation based on those reports.

Existing situation

[Council Directive 2011/16/EU](#) concerning administrative cooperation in the field of taxation (referred to as **DAC1**) defines the necessary procedures for better cooperation between tax administrations. It replaced the 1977 Directive on mutual assistance ([77/799/EEC](#)). The DAC provides for the exchange of information in three cases: spontaneous, automatic and on request. It establishes mechanisms for the participation of Member States' authorities in administrative enquiries, and simultaneous controls and mutual notifications of tax decisions. It also provides for the necessary practical tools, such as a secure electronic system for information exchange.

The DAC has [so far undergone two revisions](#), respectively in 2014 and 2015. The [first](#) revision (Council Directive 2014/107/EU), adopted on 9 December 2014, amended the DAC as regards mandatory automatic exchange of information in the field of taxation, aligning EU law with the AEOI (automatic exchange of information) global standard (**DAC2**). The [second](#) revision (Council Directive (EU) 2015/2376) was adopted on 8 December 2015, and amended the DAC to extend the mandatory automatic exchange of information to rulings and advance-pricing arrangements (**DAC3**).

An [implementation appraisal](#) prepared by EPRS provides a succinct overview of material publicly available on the implementation of automatic exchange of information.

The changes the proposal would bring

The [proposal](#) for a directive amending the DAC as regards mandatory automatic exchange of information in the field of taxation will be the third amendment to that directive. As a result, it will be the fourth 'version', which leads some to call it **DAC4**.

EU-level implementation of BEPS Action 13 on CBCR will be put in place through amendments to the DAC. CBCR would be included within the DAC, which already provides for exchange mechanisms. The amendments include reports on corporations' financial results in the categories of information subject to automatic exchange of information between Member State tax administrations, by inserting a new article 8aa on the 'Scope and conditions of mandatory automatic exchange of information on country-by-country reports'.

The amendments primarily cover 'the ultimate Parent Entity of an MNE Group that is resident for tax purposes' in the territory of a Member State, or the 'reporting entity' defined in section II of the added Annex III on 'Filing rules for Groups of multinational enterprises'. The proposal applies the material threshold defined in BEPS action 13 (that is, €750 million) and provides that the measures will apply first for the fiscal year of the MNE group that starts on or after 1 January 2016.

The automatic exchange of information on country-by-country reporting will use a standard form in the Annex added to the DAC, and will be transmitted via the Common Communication Network (CCN). The European Commission will assess each year in the future the effectiveness of these mechanisms. Penalties are set for infringing the national provisions transposing the directive. In the proposal, the implementation deadline for Member States is set for 31 December 2016 at the latest, with the Member States applying the provisions from 1 January 2017.

Preparation of the proposal

The proposal was prepared in conjunction with the progress of the BEPS action plan. It was announced in the [Transparency action plan](#) of the European Commission [adopted](#) in March 2015.

Parliament's starting position

The [Special Committee](#) on tax rulings (and other measures similar in nature or effect) (TAXE 1), set up on 12 February 2015 in the wake of the Luxleaks revelations, prepared a [report](#) adopted in plenary on 25 November 2015. With regard to tax transparency, it [identified](#) measures needed to address corporate tax-base erosion and revenue losses, both in the EU and in developing countries. These measures cover increased transparency through systematic sharing of rulings and tax information likely to have an impact on other Member States, providing tax authorities with sufficient resources, as well as informing the Commission and public country-by-country reporting (CBCR) by MNEs of profits made, taxes paid and subsidies received.

The Economic and Monetary Affairs Committee (ECON) prepared a legislative own-initiative [report](#) on 'Bringing transparency, coordination and convergence to Corporate Tax policies in the Union', adopted in plenary on 16 December 2015. On country-by-country reporting, it recommended mandatory, public country-by-country reporting for all sectors by MNEs, based on the BEPS Action 13 requirements. The report took into

account the results of the Commission's consultation into CBCR, conducted between 17 June and 9 September 2015, which examined different options for the possible implementation of CBCR in the Union, as well as the proposals for full public CBCR outlined in the revised Shareholder Rights Directive.⁷

Stakeholders' views

Stakeholders hold differing views. Some insist on [confidential](#) country-by-country reporting and the protection of commercially sensitive information, in line with the OECD's CBCR provisions; they also [stress](#) the need to prevent additional and excessive bureaucracy and to streamline reporting requirements. However, some commentators see the proposal as [only a first step](#) towards a public and broader CBCR, given that the material threshold excludes all but a [limited number of](#) multinationals (assessed as between 10-15% of the total). The range of opinions is apparent from the summary of the responses (20 January 2016) to the public [consultation](#) by the Commission Directorate-General Financial Services, Stability & Capital Markets Union) (DG FISMA).

Advisory committees

The European Economic and Social Committee is expected to adopt an [opinion](#) on the proposal later in 2016.

Council

The proposal, received by the Council of the European Union on 28 January 2016, was discussed at working-party level in February 2016, and subsequently referred to Coreper in March 2016.⁸ Based on the preparatory work, the Ecofin Council decided on a [general approach](#) to the proposal, inserting country-by-country reporting **to tax administrations** by amending the Directive on Administrative Cooperation, on [8 March 2016](#). The general approach is in line with the proposal, with amendments to the recitals and the annex added to the DAC, entitled 'Filing rules for Groups of multinational enterprises'.⁹

The position insisted on the need **to protect data by not publishing** them, providing that they are communicated to tax administrations (DE, MT). An added recital states that 'the information exchanged under (the) directive does not lead to the disclosure of confidential, industrial or professional secret, or of a commercial process, or of information whose disclosure would be contrary to public policy.'

National parliaments

The deadline for [national parliaments](#) to submit comments on the proposal was 30 March 2016. Three chambers had forwarded a position by the deadline. One of them (the Swedish Parliament) decided to adopt a reasoned opinion.

Legislative process

The European Parliament's Committee on Economic and Monetary Affairs (ECON) has discussed a [draft report](#) (rapporteur Dariusz Rosati, EPP, Poland) that is expected to be adopted by ECON on 26 April 2016.

References

[Taxation: scope of the mandatory automatic exchange of information in the EU](#), European Parliament, Legislative Observatory (OEIL).

[Transfer Pricing Documentation and Country-by-Country Reporting, Action 13 - 2015 Final Report](#) and [Action 13: Country-by-Country Reporting Implementation Package](#), OECD.

Endnotes

- ¹ Substance (economic or tax) refers to the actual economic activities of a company, typically assessed through its personnel, its functions and the risks it undertakes, as well as the key assets.
- ² Discussions, as well as a public consultation, took place in 2014 and 2015.
- ³ The July 2013 OECD White Paper and revised guidance on transfer-pricing documentation of the OECD Transfer-pricing Guidelines defined a two-tier approach (a **master file** with comprehensive information about the global operations of an MNE and standardised information on all MNE group members; and a **local file**, with transactional information relevant to each country, that supplements the master file).
- ⁴ Defined in the '[Implementation package](#)' as 'The term "Reporting Fiscal Year" means that Fiscal Year the financial and operational results of which are reflected in the country-by-country report defined in Article 4.'
- ⁵ Transfer-pricing Documentation and Country-by-Country Reporting – Action 13: 2015 Final Report, OECD, 2015, p. 25.
- ⁶ As for the EU, 21 of its Member States are [OECD](#) members and the EU itself is part of the [G20](#).
- ⁷ As voted for by the European Parliament on 8 July 2015 and the outcome of the ongoing trilogues on this Directive.
- ⁸ See Council documents [6672/16](#), of 3 March 2016, and [6949/16](#), of 15 March 2016, available in the Council register.
- ⁹ A consultation on public CBCR has been organised. On 12 April 2016, the Commission made a proposal for a directive which imposes on EU and non-EU multinational groups the requirement to publish a yearly report on their profits and tax paid and other information, with reference 2016/0107(COD).

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