

# EU members debate proposal on public country-by-country reporting

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## In brief

During an informal video conference on 25 February 2021, a majority of EU Member States (through their Ministers of Internal Market and Industry) expressed support for the compromise text of a proposed Directive on public country-by-country reporting (pCbCR). The disclosure of certain tax information by undertakings and branches is now supported by 15 Member States, including the current Presidency (Portugal) as a non-tax matter that requires a 'qualified majority' of votes (QMV) to proceed. While the Council obtained a legal interpretation that it was a tax measure that would require unanimous support, Parliament's Committee on Legal Affairs has concluded that the proposal is essentially a transparency and disclosure provision - this informal debate suggests the matter will be brought to a head soon. According to the Commissioner responsible for the file, the compromise is technically mature and can serve for entering into trilogue negotiations. Next, the text will be sent to the committee of permanent representatives (the 'Coreper') to formalise the decisions that have been taken as part of this process and get a mandate to begin negotiations with the European Parliament.

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## In detail

### Background

Groups with global turnover in excess of EUR 750m generally are required to submit various information related to their operations to the parent's - or sometimes an alternate's - tax authority under the BEPS Action 13 minimum standard on country-by-country reporting (CbCR). That tax authority then shares the information with other relevant tax authorities provided they have implemented the standard.

There is a degree of overlap between the information required above and a proposed EU Directive regarding the public disclosure of tax information by certain undertakings and branches in the EU. This is often known as 'public country-by-country reporting,' or pCbCR. The Directive would not, as proposed, require the publication of the actual reports submitted but a range of similar information.

### Data and purpose

Some commentators have requested that the publication of the reports be made available to tax authorities, as an alternative form of pCbCR. The OECD has said that this would undermine the purpose of the CbCR reporting, which is to provide information required by tax authorities for tax risk assessment purposes only. It is not intended to be used for any form of formulary apportionment.

Governments as well as taxpayers have expressed concern that information made public in any kind of official requirement would make the task of complying with the tax system significantly more difficult. For example, analysts could use it to speculate as to the 'fair' amount of tax that an organisation should pay in a country, without full knowledge and understanding of each country's tax regime and without the supplementary information available to tax authorities and the usual discussions they have with taxpayers.

The Portuguese Presidency of the EU Council suggests in its [discussion paper of 12 February 2021](#) that the current proposal "aims to enhance corporate transparency and public scrutiny on the activity of multinational companies, prompting them to behave in a more socially responsible way". The proposed public reporting obligations are very similar to those already imposed on certain types of companies, such as in the banking and extractive industries, where regulation, anti-money laundering rules, or other factors make competition more open or transparency more of a public issue.

A number of MNE groups have, where confidentiality has not been a factor, voluntarily shared an extensive narrative to contextualise information about their operations in different regions/ countries, lines of business, and more. Some have included much of the information as required for any of the purposes mentioned above, but many agree this is not always appropriate for every large organisation, irrespective of the nature of their business and environment in which they operate.

The [current compromise text](#), which formed the basis of the debate on 25 February 2021, commenced with the European Commission's proposal tabled in April 2016. The European Parliament adopted its position at first reading in July 2017; however, the Council failed to reach agreement and made no further progress. On 24 October 2019, the European Parliament adopted a resolution calling on the Council to conclude its first reading as a matter of urgency. The Competitiveness Council failed to reach a general approach on 28 November 2019, and the proposal has languished since then.

The debate included a statement by the European Commissioner for Financial Stability, Financial Services, and the Capital Markets Union (Commissioner McGuinness) that the Commission would proceed on the grounds that the appropriate legal basis is Article 50(1) of the Treaty on the Functioning of the EU rather than Article 115, those stating:

- Art. 50(1) - "In order to attain freedom of establishment as regards a particular activity, the European Parliament and the Council, acting in accordance with the ordinary legislative procedure and after consulting the Economic and Social Committee, shall act by means of directives."
- Art 115 - "... the Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market."

The rest of the debate largely focused on a series of short presentations by each Member State. Many stated their agreement with the choice of legal basis, or their willingness to accept it provided that it set no precedent for dealing with tax matters on a qualified majority voting basis (a concern expressed by some who thought it did involve tax). Some stressed that it did not involve tax harmonisation nor the enforcement of fiscal provisions and was already the subject of similar measures for extractives and banking; others noted that the sharing of CbCR information between Member States was under a tax Directive on administrative cooperation (DAC). The Portuguese Presidency concluded that the majority viewed it as a matter of transparency and functioning of the internal market.

### Next steps

The Committee of Permanent Representatives (Coreper) - senior diplomats based in the Council that work beneath minister level to negotiate on behalf of national governments - will decide on the way forward.

If Art. 50(1) is accepted as the legal basis, discussions will move politically to trilogue, involving discussions between the Council, Commission, and Parliament, and procedurally within the Competitiveness Council to agree amendments. If it is not accepted, the ECOFIN Council may be asked to discuss any basis on which a unanimous compromise could be reached.

In their statements, some Member States suggested that they may wish to consider further textual amendments to the Presidency compromise text while others would not block its progress. The proposed safeguard for postponing the reporting of sensitive commercial information was mentioned on several occasions. The current draft stipulates that disclosure should apply, at the latest, from the commencement date of the first financial year starting at least one year after the transposition deadline (which is itself two years and twenty days after the Directive is published in the Official Gazette).

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## The takeaway

The debate showed that EU Member States are still divided as to the advantages and disadvantages of a pCbCR Directive on the proposed lines. It seems equally clear that the Portuguese Presidency will try to put it to a vote in the Council of the EU during its term. It is uncertain whether the Council of Ministers will accept that it is not a tax matter requiring unanimous approval. Also uncertain is whether any vote as a non-tax measure would get the majority required on the basis of QMV - but based on the informal policy debate on 25 February there seems to be 15 countries and 70% of the EU-population in favour, while 15 countries and 65% is needed. Even if there is political agreement in Council, the trilogue negotiations involving the Parliament and Commission may not be straightforward.

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## Let's talk

For a deeper discussion of how this issue might affect you, please get in touch with your usual PwC contact or one of the following:

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