

# Procedure file

Basic information		
CNS - Consultation procedure Directive	2016/0338(CNS)	Procedure completed
Tax dispute resolution mechanisms in the European Union		
Subject 3.45.04 Company taxation		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	 Economic and Monetary Affairs	 <a href="#">THEURER Michael</a>	24/11/2016
		Shadow rapporteur	
		 <a href="#">SCHWAB Andreas</a>	
		 <a href="#">GILL Neena</a>	
		 <a href="#">RUOHONEN-LERNER Pirkko</a>	
		 <a href="#">URTASUN Ernest</a>	
		 <a href="#">KAPPEL Barbara</a>	
	Committee for opinion	Rapporteur for opinion	Appointed
	 Internal Market and Consumer Protection	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3563</a>	10/10/2017
	<a href="#">Economic and Financial Affairs ECOFIN</a>	<a href="#">3543</a>	23/05/2017

Key events			
25/10/2016	Legislative proposal published	<a href="#">COM(2016)0686</a>	Summary
01/03/2017	Committee referral announced in Parliament		
08/06/2017	Vote in committee		
14/06/2017	Committee report tabled for plenary, 1st	<a href="#">A8-0225/2017</a>	Summary

	reading/single reading		
05/07/2017	Debate in Parliament		
06/07/2017	Results of vote in Parliament		
06/07/2017	Decision by Parliament	<a href="#">T8-0314/2017</a>	Summary
10/10/2017	Act adopted by Council after consultation of Parliament		
10/10/2017	End of procedure in Parliament		
14/10/2017	Final act published in Official Journal		

#### Technical information

Procedure reference	2016/0338(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the EU TFEU 115
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ECON/8/08350

#### Documentation gateway

Legislative proposal	<a href="#">COM(2016)0686</a>	25/10/2016	EC	Summary
Document attached to the procedure	<a href="#">SWD(2016)0343</a>	26/10/2016	EC	
Document attached to the procedure	<a href="#">SWD(2016)0344</a>	26/10/2016	EC	
Committee draft report	<a href="#">PE599.632</a>	02/03/2017	EP	
Amendments tabled in committee	<a href="#">PE602.778</a>	30/03/2017	EP	
Committee report tabled for plenary, 1st reading/single reading	<a href="#">A8-0225/2017</a>	14/06/2017	EP	Summary
Text adopted by Parliament, 1st reading/single reading	<a href="#">T8-0314/2017</a>	06/07/2017	EP	Summary
Commission response to text adopted in plenary	<a href="#">SP(2017)538</a>	06/09/2017	EC	

#### Additional information

Research document	<a href="#">Briefing</a>
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#### Final act

[Directive 2017/1852](#)  
[OJ L 265 14.10.2017, p. 0001](#) Summary

**PURPOSE:** to establish an effective dispute resolution mechanism regarding double taxation for the proper functioning of the internal market.

**PROPOSED ACT:** Council Directive.

**ROLE OF THE EUROPEAN PARLIAMENT:** the Council adopts the act after consulting Parliament but without being obliged to follow the latter's opinion.

**BACKGROUND:** one of the main problems encountered by businesses operating across borders is double taxation. There are already mechanisms in place that deal with the resolution of double taxation disputes. These are the mutual agreement procedures that are provided in double taxation conventions (DTCs) entered into by Member States as well as in the Union [Arbitration Convention](#) on the elimination of double taxation in connection with the adjustment of profits of associated enterprises. The Commission considers that these mechanisms should be improved with respect to access for taxpayers to those mechanisms, coverage, timeliness and conclusiveness. Moreover, the traditional methods of resolving disputes no longer fully fit with the complexity and risks of the current global tax environment.

In its [communication of June 2015](#) on an action plan for a fair and efficient corporate tax system in the EU, the Commission indicated that its [proposal for a Common Consolidated Corporate Tax Base](#) (CCCTB), which will be adopted on the same day as this proposal, is a major step towards a better tax environment for business.

**IMPACT ASSESSMENT:** the preferred option is to set up a mandatory binding effective dispute resolution mechanism, i.e. a mutual agreement procedure combined with an arbitration phase, with a clear time limit and an obligation of result for all Member States.

In terms of economic impact, the proposal will reduce the compliance and litigation burden for companies operating in the EU as regards their cross-border activities.

**CONTENT:** the draft directive aims to improve existing double taxation dispute resolution mechanisms in the EU in order to establish a fair and efficient tax system that increases legal certainty. It focuses on business and companies, the main stakeholders affected by double taxation situations. It builds on the existing Union Arbitration Convention, which already provides for a mandatory binding arbitration mechanism, but broadens its scope to all cross-border situations subject to double income tax imposed on business profits. However, it adds an explicit obligation regarding results for Member States as well as a clearly defined time limit. On the other hand, situations that involve double non-taxation or cases of fraud, wilful default or gross-negligence are excluded.

In line with the Union Arbitration Convention, the draft Directive allows for a Mutual Agreement Procedure, initiated by the complaint of the taxpayer, under which the Member States shall freely cooperate and reach an agreement on the double taxation dispute within 2 years. If the Mutual Agreement Procedure fails, it automatically leads to a dispute resolution procedure with the issuance of a final mandatory binding decision by the competent authorities of the Member States involved.

**BUDGETARY IMPLICATIONS:** the estimated impact of the proposal on the Union budget is EUR 0.097 million (human resources and administrative expenditure). This will be met within available resources.

## Tax dispute resolution mechanisms in the European Union

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The Committee on Economic and Monetary Affairs adopted, following a special legislative procedure (Parliament's consultation), the report by Michael THEURER (ALDE, DE) on the proposal for a Council directive on double taxation dispute resolution mechanisms in the European Union.

The committee called on the European Parliament to approve the Commission proposal as amended.

Double taxation represents one of the biggest obstacles to the Single Market as it creates barriers for cross-border investments.

The report noted that attempts to eliminate double taxation have often led to "double non-taxation", where, through the practice of base erosion and profit shifting, companies have managed to have their profits taxed in those Member States which have corporate taxes of close to zero. That ongoing practice distorts competition.

Furthermore, current dispute resolution procedures are too long, costly and often do not result in an agreement, with some cases receiving no acknowledgement at all.

For this reason, it is essential that mechanisms available in the Union ensure an effective, rapid and enforceable resolution of double taxation disputes and the effective and timely elimination of the double taxation at stake, with regular and effective communication to the taxpayer.

The main amendments are as follows:

**CCCTB:** in order to shape a fair, clear and stable tax environment and to reduce taxation disputes within the internal market, at least some minimum convergence in corporate tax policies is required. Members considered that the introduction of a common consolidated corporate tax base (CCCTB) as proposed by the Commission is the most effective way of eliminating the risk of double corporate taxation.

**Stricter deadlines:** the report stated that the competent authorities of the Member States concerned shall take a decision on the acceptance and admissibility of the complaint of a taxpayer within three months (as opposed to six) of the receipt of the complaint and inform that taxpayer and the competent authorities of the other Member States in writing of their decision within two weeks. In this regard, Member States should dedicate an adequate level of human, technical and financial resources.

**Sanctions:** when a taxpayer submits a complaint requesting the resolution of the double taxation, Members considered that it is vital not to impose sanctions on the taxpayer in relation to the same matters until a binding decision is taken.

**Central contact point:** in order to create a harmonised and transparent framework of the double taxation dispute resolution mechanisms, Members proposed that the Commission shall host a central contact point in all official languages of the Union, which is easily accessible to the public with up-to-date contact information for each competent authority and a full overview of applicable Union legislation and tax treaties.

**Review:** the Commission shall review the application of this Directive after five years with regard to the possible extension of its scope to cover all cross-border double taxation situations and double non-taxation, and if appropriate, an amending legislative proposal.

## Tax dispute resolution mechanisms in the European Union

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The European Parliament adopted by 535 votes to 73, with 25 abstentions, following the consultation procedure, a legislative resolution on the proposal for a Council directive on double taxation dispute resolution mechanisms in the European Union.

Double taxation represents one of the biggest obstacles to the Single Market as it creates barriers for cross-border investments.

Members noted that attempts to eliminate double taxation have often led to "double non-taxation", where, through the practice of base erosion and profit shifting, companies have managed to have their profits taxed in those Member States which have corporate taxes of close to zero. That ongoing practice distorts competition.

Furthermore, current dispute resolution procedures are too long, costly and often do not result in an agreement, with some cases receiving no acknowledgement at all.

For this reason, Parliament considered it essential that mechanisms available in the Union ensure an effective, rapid and enforceable resolution of double taxation disputes and the effective and timely elimination of the double taxation at stake, with regular and effective communication to the taxpayer.

Parliament approved the Commission proposal subject to the following amendments:

Complaints (time delays and procedure): any taxpayer subject to double taxation shall be entitled to submit a complaint to each of the competent authorities of the Member States concerned:

- each competent authority shall acknowledge receipt of the complaint in writing and notify the competent authorities of the other Member States concerned within two weeks of receipt of the complaint;
- the competent authorities of the Member States concerned shall take a decision on the acceptance and admissibility of the complaint of a taxpayer within three months of the receipt of the complaint (compared to six months) and inform that taxpayer and the competent authorities of the other Member States in writing of their decision within two weeks;
- where the competent authorities of the Member States concerned decide to accept the complaint, they shall endeavour to eliminate the double taxation by mutual agreement procedure within one year starting from the last notification of one of the Member States decision on the acceptance of the complaint. The period of one year may be extended by up to three months.

The competent authorities shall inform the taxpayer of the reasons for the rejection of the complaint. In the event of rejection of the complaint, the taxpayer shall be entitled to make an appeal to either competent authority.

Central contact point: in order to create a harmonised and transparent framework of the double taxation dispute resolution mechanisms, Parliament proposed that the Commission shall host a central contact point in all official languages of the Union, which is easily accessible to the public with up-to-date contact information for each competent authority and a full overview of applicable Union legislation and tax treaties.

Advisory committee: the Advisory Committee shall consist of a chairman, two representatives from each competent authority concerned and one or two independent persons appointed by each competent authority.

Members suggested that the Commission check the information concerning the independent persons of standing nominated by Member States. Where the Commission has doubts as to the independence of the nominated persons, it can request a Member State to provide additional information and, if doubts remain, it may ask the Member State to remove that person from the list and appoint someone else.

Review: the Commission shall review the application of this Directive after five years with regard to the possible extension of its scope to cover all cross-border double taxation situations and double non-taxation, and if appropriate, an amending legislative proposal.

Lastly, Parliament stated that the introduction of a common consolidated corporate tax base ([CCCTB](#)) as proposed by the Commission is the most effective way of eliminating the risk of double corporate taxation.

## Tax dispute resolution mechanisms in the European Union

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**PURPOSE:** to establish an effective dispute resolution mechanism regarding double taxation in the EU.

**LEGISLATIVE ACT:** Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union.

**CONTENT:** the Directive strengthens the mechanisms used to resolve disputes arising from the interpretation of agreements on the elimination of double taxation. The mechanisms currently provided for in bilateral tax treaties and in the [Union Arbitration Convention](#) might not achieve the effective resolution of such disputes in all cases in a timely manner. The aim is to encourage investment by putting in place a more favourable tax environment and reducing costs for businesses.

**Scope:** while the scope of the Union Arbitration Convention is limited to disputes over transfer pricing and the allocation of profits to permanent establishments, the Directive shall apply to all tax payers that are subject to taxes on income and capital covered by bilateral tax treaties and the Union Arbitration Convention.

**Tax dispute settlement mechanisms:** the purpose of the Directive is to establish a procedure under which, as a first step, the case is submitted to the tax authorities of the Member States concerned, with a view to settling the dispute by using a mutual agreement procedure. In the absence of an agreement within a certain time frame, the case should be submitted to a dispute resolution procedure.

Any affected person shall be entitled to submit a complaint on a question in dispute to each of the competent authorities of each of the Member States concerned, requesting the resolution thereof. Each competent authority shall acknowledge receipt of the complaint within 2 months from the receipt of the complaint and shall inform the competent authorities of the other Member States.

Where the competent authorities of the Member States concerned accept a complaint, they shall endeavour to resolve the question in dispute by mutual agreement within 2 years, starting from the last notification of a decision of one of the Member States on the acceptance of the complaint. The period of 2 years may be extended by up to 1 year at the request of a competent authority.

In case of rejection of the complaint by at least one Member State or in the absence of an amicable agreement, the person may request the establishment of an Advisory Commission composed of representatives of the tax authorities concerned and independent persons.

The competent authorities of the Member States concerned may agree to set up an alternative dispute resolution commission instead of an Advisory Commission to deliver an opinion on how to resolve the question. The competent authorities of the Member States may also agree to set up an Alternative Dispute Resolution Commission in the form of a committee that is of a permanent nature.

An Advisory Commission or Alternative Dispute Resolution Commission shall deliver its opinion to the competent authorities of the Member States concerned no later than 6 months after the date on which it was set up.

The competent authorities of each of the Member States concerned shall take a decision on the acceptance or rejection of the complaint within 6 months of the receipt. The competent authorities shall inform the affected person and the competent authorities of the other Member States of their decision without delay. The competent authority may decide to resolve the question in dispute on a unilateral basis, without involving the other competent authorities of the Member States concerned. In such case, the relevant competent authority shall notify the affected person and the other competent authorities of the Member States concerned without delay, following which the proceedings under this Directive shall be terminated.

Each Member State shall provide that its competent authority shall notify the final decision on the resolution of the question in dispute to the affected person without delay. The final decision shall be binding on the Member States concerned.

By 30 June 2024 at the latest, the Commission shall assess the implementation of the Directive and report to the Council.

ENTRY INTO FORCE: 3.11.2017. The Directive shall apply to any complaint submitted from 1 July 2019 onwards relating to questions of dispute relating to income or capital earned in a tax year commencing on or after 1 January 2018. Competent authorities of Member States concerned may however agree to apply this Directive with regard to any complaint that was submitted prior to that day or to earlier tax years.

TRANSPOSITION: no later than 30.6.2019.