Procedure file

Basic information

CNS - Consultation procedure Directive	2021/0433(CNS)	Awaiting final decision
Minimum level of taxation for multinational groups Subject 2.70 Taxation 3.45.04 Company taxation		

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		25/01/2022
		S&D LALUCQ Aurore	
		Shadow rapporteur	
		NIEDERMAYER Luděk	
		BOYER Gilles	
		GRUFFAT Claude	
		BECK Gunnar	
		JURZYCA Eugen	
		GUSMÃO José	
Council of the European Union			
European Commission	Commission DG	Commissioner	
	Taxation and Customs Union	GENTILONI Paolo	

Key events

22/12/2021	Legislative proposal published	COM(2021)0823	Summary
14/02/2022	Committee referral announced in Parliament		
28/04/2022	Vote in committee		
03/05/2022	Committee report tabled for plenary, 1st reading/single reading	A9-0140/2022	
18/05/2022	Debate in Parliament		
19/05/2022	Decision by Parliament	T9-0216/2022	Summary

Technical information

Procedure reference	2021/0433(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	Awaiting final decision
Committee dossier	ECON/9/08060

Documentation gateway

Legislative proposal		COM(2021)0823	22/12/2021	EC	Summary
Document attached to the procedure		SWD(2021)0580	22/12/2021	EC	
Committee draft report		PE719.752	14/03/2022	EP	
Economic and Social Committee: opinion, report		CES6525/2021	23/03/2022	ESC	
Amendments tabled in committee		PE730.002	30/03/2022	EP	
Committee of the Regions: opinion		CDR1727/2022	28/04/2022	CofR	
Reasoned opinion	SE_PARLIAMENT	PE731.657	29/04/2022	NP	
Committee report tabled for plenary, 1st reading/single reading		A9-0140/2022	03/05/2022	EP	
Text adopted by Parliament, 1st reading/single reading		T9-0216/2022	19/05/2022	EP	Summary

Minimum level of taxation for multinational groups

PURPOSE: to swiftly implement the international agreement on minimum taxation of multinationals to ensure a global minimum effective tax rate of 15% for large multinationals operating in the European Union.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: the anti-tax avoidance directives have laid down rules against the erosion of tax bases in the internal market and the shifting of profits out of the internal market. Those rules converted into Union law the recommendations made by the Organisation for Economic Cooperation and Development (OECD) in the context of the initiative against base erosion and profit shifting (BEPS) to ensure that profits of multinational enterprises (MNEs) are taxed where economic activities generating the profits are performed and where value is created.

The proposal delivers on the EU's pledge to move swiftly to implement the recent comprehensive tax reform agreement of the OECD and G20 inclusive framework agreed by 137 countries in October 2021 on a two-pillar solution to the tax challenges raised by the digitalisation of the economy, which aims to bring fairness, transparency and stability to the international corporate tax framework. The discussions centred around two main themes: Pillar 1, which deals with the partial reallocation of taxing rights, and Pillar 2, which concerns the minimum level of taxation of profits of multinational enterprises.

With the present proposal, the European Commission wishes to implement Pillar 2 of the Global Agreement. There is a political urgency to move forward with the project - i.e. to apply the OECD Model Rules in the EU from the beginning of 2023, as agreed by the Inclusive Framework.

CONTENT: the proposed directive sets out the method for calculating the effective tax rate by jurisdiction and includes clear and legally binding rules that will ensure that large groups operating in the EU pay a minimum rate of 15% for each jurisdiction in which they operate.

Scope

The proposed Directive will apply to any large group, both domestic and international, including the financial sector, with combined financial revenues of at least EUR 750 million a year in its consolidated financial statements in at least two of the last four consecutive fiscal years, and with either a parent company or a subsidiary situated in an EU Member State.

Governmental entities, international organisations, non-profit organisations, pension fund and investment funds are excluded from the scope of the Directive.

Calculation of the effective tax rate

The proposal provides that if the effective tax rate applicable to entities in a given jurisdiction is below the 15% minimum, then the group will have to pay a top-up tax to bring its rate up to 15%. This top-up tax is known as the Income Inclusion Rule'. This top-up applies irrespective of whether the subsidiary is located in a country that has signed up to the international OECD/G20 agreement or not.

The effective tax rate is established per jurisdiction by dividing taxes paid by the entities in the jurisdiction by their income.

Groups established in a third country

The proposal also ensures effective taxation in cases where the parent company is located outside the EU in a low-tax country which does not apply equivalent rules. Member States would then apply the under-taxed payments rule, designed as a safety net to the primary income inclusion rule.

In practice, a Member State will collect the top-up tax due at the level of the entire group if some jurisdictions where entities are based impose tax below the minimum level and do not impose any domestic top-up tax.

Exemptions

In order to reduce compliance burdens in low-risk situations, an exclusion applies to minimal amounts of profit: the de minimis income exclusion. This is when profits of the MNE groups constituent entities in a jurisdiction are below EUR 1 million and revenues below EUR 10 million. To reduce the impact on groups carrying out real economic activities, companies will be able to exclude an amount of income equal to 5% of the value of tangible assets and 5% of payroll.

Moreover, due to its highly volatile nature and the long economic cycle of this industry, the international shipping sector has traditionally been subject to alternative or supplementary tax regimes in Member States. The proposal therefore excludes income generated by this sector from the scope of application.

Special rules for mergers and acquisitions

The proposal contains special rules for mergers, acquisitions, joint ventures and certain multi-parented multinational enterprises. It provides for the application of a consolidated revenue threshold to group members in a merger or demerger situation.

Minimum level of taxation for multinational groups

The European Parliament adopted by 503 votes to 46, with 48 abstentions, following a special legislative procedure (consultation), a legislative resolution on the proposal for a Council directive on ensuring a global minimum level of taxation for multinational groups in the Union.

The aim of the Directive is to transpose into EU law the reform of the rules on international corporate taxation that was agreed by the OECD and the G20 in December 2021. It sets out the method for calculating the effective tax rate by jurisdiction and includes clear and legally binding rules that will ensure that large groups operating in the EU pay a minimum rate of 15% for each jurisdiction in which they operate.

The Directive will apply to any large group, both domestic and international, including the financial sector, with combined financial revenues of at least EUR 750 million a year in its consolidated financial statements in at least two of the last four consecutive fiscal years.

Parliament approved the main elements of the Commission's proposal, including maintain the proposed timetable and the deadline of 31 December 2022 for implementation, to allow for rapid implementation of the legislation.

However, Members made some changes to the Commission's proposal.

Location of a constituent entity

An amendment clarifies that a constituent entity other than a flow-through entity should be deemed to be located in the jurisdiction where it is considered as resident for tax purposes based on its place of effective management, namely the place where key management and commercial decisions that are necessary for the conduct of business are taken, place of creation or similar criteria that reflect real economic activities in accordance with this Directive and the GloBE Model Rules.

Anti-avoidance rules

Members wanted to reduce some of the exemptions proposed by the Commission, and to limit the possibility of abuse by including a specific article that includes rules to combat tax avoidance schemes.

For the purposes of calculating the top-up tax, Member States should disregard any arrangement or series of arrangements which, having been put in place for the essential purpose of obtaining a tax advantage that defeats the object or purpose of this Directive, is not genuine, having regard to all relevant facts and circumstances.

An arrangement or a series of arrangements that is disregarded under the Directive should be treated, for the purpose of calculating the tax base, by reference to its economic substance.

The Commission is empowered to adopt delegated acts in order to lay down more detailed rules against tax avoidance, in particular to take into account future modifications of the GloBE Model Rules.

Reporting obligations

Where no constituent entity has been appointed by other constituent entities of the MNE group, the designated local entity in charge of filing

the top-up tax information shall be the largest entity of the MNE group located in the same Member State in terms of annual revenues for the last two consecutive years.

Review clause

Members introduced a review clause in order to guarantee that the application of this Directive is subject to proper evaluation five years after its entry into force. That review should:

- assess and reconsider progress in the global implementation of the OECD agreement/GloBE Model Rules, as well as certain exemptions and derogations, in particular as regards distribution tax systems and substance-based income exclusion;

- assess the relevance of the threshold for MNE Group and large-scale domestic firms in scope and the impact on tax revenues on developing countries.

As part of the review, modifications to the GloBE Model Rules could also be integrated into Union law if necessary.

Monitoring by the Code of Conduct Group (Business Taxation)

While leaving Member States some flexibility in the technical implementation of the domestic top-up tax, the Councils Code of Conduct Group (business taxation) should carefully monitor the application of that tax. The Commission should provide assistance in that regard.

The Councils Code of Conduct Group (business taxation) should continuously monitor the development of the accounting standards and their application for minimum tax purposes. If necessary, it should make proposals to adjust the profit determination rules.

Transitional rules

The Directive would also give large-scale domestic groups a transitional period of three years (instead of five) during which their low-taxed domestic activities would be excluded from the rules.

Transparency

LALUCQ Aurore	Rapporteur	ECON	10/03/2022	CCFD-Terre Solidaire Oxfam France ETUC