

# Taxation: scope of the mandatory automatic exchange of information in the EU

2016/0010(CNS) - 25/05/2016 - Final act

**PURPOSE:** to improve administrative cooperation in the field of taxation.

**LEGISLATIVE ACT:** Council Directive (EU) 2016/881 amending Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation.

**CONTENT:** the Council Directive amends [Directive 2011/16/EU](#) on administrative cooperation by introducing into the latter a new article establishing the scope of application and conditions relating to the mandatory automatic exchange of information regarding country-by-country reporting.

As multinational enterprise groups (MNE Groups) are active in different countries, they have the possibility of engaging in aggressive tax-planning practices that are not available for domestic companies. Enhancing transparency for MNE Groups towards tax authorities is therefore an essential part of tackling base erosion and profit shifting. It could have the effect of giving MNE Groups an incentive to abandon certain practices and pay their fair share of tax in the country where profits are made.

On 19 July 2013 the Organisation for Economic Development and Cooperation (OECD) published its Action Plan on Base Erosion and Profit Shifting (BEPS Action Plan), which is a major initiative to modify existing international tax rules. The work on Action 13 of the BEPS Action Plan resulted in a set of standards for providing information for MNE Groups, including the country-by-country report.

OECD standards must be taken into account when establishing the rules on the country-by-country report.

The main points of the Directive are as follows:

**Scope:** MNE Groups that are established or operate within the EU, with total consolidated group revenue equal or higher than EUR 750 000 000, will be obliged to file the country-by-country report.

The competent authority of a Member State where the country-by-country report was received must communicate by means of automatic exchange, the country-by-country report to any other Member State in which, on the basis of the information in the country-by-country report, one or more Constituent Entities of the MNE Group of the Reporting Entity are either resident for tax purposes or subject to tax with respect to the business carried out through a permanent establishment. This communication shall take place within 15 months of the last day of the Fiscal Year of the MNE Group to which the country-by-country report relates.

**Exchange of information:** the country-by country-report must include:

- for each tax jurisdiction in which the MNE Group carries out its activities, aggregated information on: (i) revenues, (ii) profit (loss) before income tax, (iii) income tax paid (on cash basis); (iv) income tax accrued (current year); (v) stated capital; (vi) accumulated earnings; (vii) number of employees; (viii) tangible assets other than cash and cash equivalents;
- the list of all the Constituent Entities of the MNE Group included in each aggregation per tax jurisdiction, the tax jurisdiction of organisation or incorporation if different from tax jurisdiction of residence, and the nature of the main business activities carried out by the Constituent Entity.

Information communicated between Member States will be used for the purposes of assessing high-level transfer-pricing risks and other risks related to base erosion and profit shifting.

**Standard form:** the automatic exchange of information on the country-by-country report will be carried out using the standard form provided in Annex III. The information will be provided by electronic means using the common communication network defined in Directive 2011/16/EU (CCN network).

**Timetable:** the first country-by-country report shall be communicated for the fiscal year of the MNE Group commencing on or after 1 January 2016, which shall take place within 18 months of the last day of that fiscal year.

**Penalties:** Member States shall lay down the rules on penalties applicable to infringements of national provisions adopted pursuant to the Directive and take all measures necessary to ensure that they are implemented. The penalties provided for shall be effective, proportionate and dissuasive.

**ENTRY INTO FORCE:** 3.6.2016.

**TRANSPOSITION:** by 4.6.2017.

**APPLICATION:** from 5.6.2017.