

Consultation response

Public Country-by-Country Reporting Directive

Implementing Regulation



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3.7 trillion in 2022, directly supports more than 4.9 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Executive summary

The European Commission's proposed common template and electronic reporting formats play an important role in minimising the compliance burden affiliated with the public Country-by-Country Reporting Directive (pCbCR Directive) and in ensuring that the public receives consistent reports between multi-national enterprises (MNEs) and from year to year.

The proposal largely address taxpayers' needs but should align further with the Organisation for Economic Co-operation and Development's (OECD) non-public Country-by-Country Reporting (CbCR) requirements. Since taxpayers and tax authorities are simultaneously developing systems to comply with both public and non-public Country-by-Country reporting (non-public CbCR), and many multi-national enterprises (MNEs) have already completed their non-public CbCR implementation, aligning public CbCR with non-public CbCR would reduce the additional compliance burdens and costs brought on by public CbCR while increasing coherence for taxpayers, tax authorities and the public.

Introduction

The proposed common template and electronic reporting formats have significant interplay with tax transparency reporting developments at the international and Member State level. At the international level, taxpayers are refining their non-public CbCR systems. Across Europe, taxpayers are preparing to comply with several member states' early adoption of the pCbCR Directive.

The European Commission can take several steps to simplify compliance for business, improve the quality of disclosures received by the public, and improve Europe's attractiveness. Namely, the Commission should aim to align public and non-public CbCR requirements, ensure that reporting and timelines are harmonised across member states, and publish technical guidance for member states and businesses.

Comments on the proposed implementing regulation

Subject matter and scope

Clarify the interpretation of EU public CbCR data

CbCR was first introduced as a non-public filing intended for use by competent tax authorities to undertake risk assessments. The original purpose of CbCR was not intended for public use. As the pCbCR Directive only covers corporate income taxes, it does not capture the total contribution made by MNEs. As such, it cannot provide a comprehensive overview of the total contribution made and may be open to misinterpretation and misuse.

The public CbCR templates should provide a qualifying narrative and disclaimer that the data refers to specific data only and does not report on other taxes (eg employment taxes, value added tax) that MNEs incur and remit.

Likewise, a non-mandatory field for taxpayers to provide voluntary commentary would be helpful in cases where targeted explanations could be useful for interpreting certain pieces of reported data.

Clarify to what extent EU public CbCR compliance can align with OECD CbCR compliance

MNEs are implementing their public CbCR processes alongside those used for global CbCR compliance. Clarity on the extent to which MNEs can align their public CbCR and non-public CbCR processes would increase certainty for MNEs and reduce confusion for the authorities receiving or interpreting public and non-public CbCR.

Specifically, the European Commission should clarify which types of MNEs are required to use the common template and electronic reporting requirements, and what options exist for those who are not required to do so, while still allowing for flexibility in reporting formats.

Differing interpretations of the directive can lead MNEs to contrasting conclusions as to their reporting options. Paragraph 3 of the pCbCR Directive states that ‘those templates & electronic reporting formats are to be applicable also in cases where an undertaking relies on a proxy governed by the law of a Member State to publish and make accessible its report on income tax information.’ However, paragraph 9 may suggest an alternative interpretation: where the ultimate parent entity (UPE) is not governed by the law of a Member State, and to comply with 48b(6), there is no impediment for a UPE or the identified single subsidiary or branch governed by the law of a Member State to use the template or electronic formats provided, as long as the CbyC report is made accessible in a machine-readable format.

The Commission should clarify whether the second interpretation is correct and if so, **whether non-EU UPEs may use the OECD CbCR format instead of that offered by the European Commission**. This approach would reduce compliance costs for MNEs by allowing them to drive a consistent ‘one number’ approach across public and non-public CbCR by utilising the OECD format to publish their public CbCR on one global website and in one ‘surrogate’ EU country.

The Commission should also consider the needs of non-EU headquartered companies who need to use public CbCR formats required under the national legislation of their headquarters’ country for sensitivity reasons. For example, US MNEs that operate in the defense sector may need to file their public CbCR on an aggregated basis. A ‘one number’ approach would mitigate concerns related to the disclosure of information that could lead to national security or defense concerns.

Reporting Formats

Ensure maximum alignment with OECD templates

The Commission’s proposed implementing act largely aligns with the OECD CbCR requirements.

For example, the proposed electronic reporting format in annex I contains several sections (1 through 5) that reflect the OECD’s non-public CbCR requirements. The Commission’s clarification of the signage to be used as ‘reporting’ signs per the measure is helpful, along with the clarification that the same description of business activities can be utilised as per the OECD standards.

Despite this clarification, there are several outstanding areas that may open the door to divergent implementation or interpretation between Member States.

For example, the list of subsidiaries and its activities, the Commission's template in annex 1 section 3 is different from the OECD's table 2. The difference in presentation would require MNEs' additional efforts.

As such we encourage the Commission to review and ensure maximum alignment with OECD templates to reduce MNEs' reporting burdens and compliance costs.

Strive for global alignment on markup language

Annexes II through IV attempt to create a common standard for the submission of public CbCR through requiring the use of Inline LeXtensible Business Reporting Language (IXBRL) schema. This will require extensive technical set-ups, likely requiring MNEs to engage 3rd party providers, particularly to establish the necessary IXBRL 'tagging' of each data point which has already been completed for the OECD's XML.

MNEs are currently developing mechanisms to comply with increased tax transparency in the US, anticipated public CbCR requirements in Australia, as well as the EU's public CbCR. These systems draw on similar datasets used for other forms of corporate reporting, like those required by the Corporate Sustainability Reporting Directive (CSRD).

The European Commission should align its required markup languages at the most globally harmonious level possible. In this context, requiring MNEs to use IXBRL schema for public CbCR, while the OECD requires the use of XML (related to XHTML) for non-public CbCR, could create unnecessary burdens for MNEs.

Adoption of yet another schema for public CbCR is overly complex for the task at hand when existing mechanisms can be utilised. Furthermore, it is not aligned with the European Commission's aim to reduce reporting burdens.

Ensure member states do not diverge on reporting formats

The proposal provides several opportunities for divergence between member states. Divergence creates additional unforeseeable burdens for MNEs which can significantly increase administrative burdens and compliance costs.

For instance, the option to add "Additional columns [...] as necessary" in annex I section 2 may allow member states to diverge from the standard format. The Commission should strive to prevent national specificities, particularly in structuring the standard form. Alternatively, the Commission should aim to limit how many additional columns a Member State may add—thus limiting the degree of potential divergence.

Additionally, the Commission should clarify what needs to be taken into account while reporting information related to activities in non-EU tax jurisdictions in annex I sections 2 and 3. It is unclear whether it is limited to black-listed countries or to non-EU activities worldwide. The reference to article 13 of the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS) does not provide enough clarity to prevent diverging interpretations on behalf of MNEs and authorities.

Finally, the Commission should add further details to annex I section 4 to minimise the risk of national specificities. To minimise these risks, the Commission should specify if all items require justification if temporarily omitted, or if this only applies to certain ones.

Harmonised provisions

Encourage consistent implementation of the template's core elements with no deviations and issue clear guidance for early-adopters

Several jurisdictions – namely Romania, Croatia and Sweden – have decided to implement the pCbCR Directive on an earlier timeline than foreseen in the Directive. These decisions create significant uncertainty for MNEs, which is not abated by the proposed implementing regulation.

The proposal only mandates the use of the common template for public CbCR for financial years starting from 1 January 2025. However, it does not provide clarity on how MNEs should prepare their public CbCR for fiscal years falling before that date. This is burdensome for MNEs who must prepare their early public CbCR under a short timeframe with no clear legal guidance. It may result in inconsistent public CbCR between MNEs and between years.

Likewise, Spain requires public CbCR publication merely 6 months after the UPE's balance sheet date, creating further complexities for MNEs subject to Spanish public CbCR obligations.

The European Commission should examine the impacts of these early implementation and divergent publication deadline decisions and encourage these Member States to defer their implementation timelines or adjust their publication deadlines to align with those of the pCbCR Directive. Early public CbCR implementation and fragmented publication deadlines creates significant and unnecessary burdens for MNEs and authorities while fragmenting the harmonised approach foreseen in the Directive.

Regardless of the above, the European Commission should mandate that the Implementing Regulation and the common template and electronic reporting method applies to the period before January 2025. This would ensure a consistent approach is applied for those Member States who have transposed and adopted the Directive earlier (Romania, Croatia and Sweden). Ideally, the Commission would consider establishing a single filing deadline across all EU member states.

Further, a harmonised safeguard period would be beneficial to MNEs who must comply with public CbCR rules across several member states.

Publish technical guidance for member states and businesses

Authorities and MNEs will spend several years fully implementing public and non-public CbCR rules in an ever-evolving global tax transparency context. Publishing technical guidance for Member States and MNEs alike would help ensure that public and non-public CbCR rules are implemented consistently across the EU, while minimising existing and forthcoming compliance difficulties for MNEs.

The European Commission may look at its Pillar 2 Directive FAQs for inspiration. This FAQ has created value for authorities and MNEs alike.

Conclusion

The European Commission's proposed common template and electronic reporting formats for public CbCR come at a critical juncture, where MNEs are navigating complex and evolving compliance landscapes.

The Commission can ease public CbCR compliance burdens by clarifying reporting options for non-EU UPEs, seeking further alignment with OECD CbCR requirements, striving for global alignment on disclosure requirements, and providing sufficient flexibility to MNEs who simultaneously prepare similar reports across jurisdictions.

It can ensure consistency for taxpayers, authorities and the public by encouraging member states to adopt the pCbCR Directive according to its foreseen timeline and publishing technical guidance that evolves according to global tax transparency developments, and, for insistent early adopters, aiming to use coherent guidance to minimise uncertainties for taxpayers.

Finally, it will aid in the clear interpretation of public CbCR reports by including a qualifying narrative and disclaimer in the public CbCR template and allowing a non-mandatory voluntary field for instances when data requires targeted guidance.

In sum, these recommendations would not only enhance legal certainty and reduce compliance costs but also boost Europe's competitiveness.