



**European Committee
of the Regions**

ECON-VII/022

149th plenary session of 27 and 28 April 2022

OPINION

on ensuring a global minimum level of taxation for multinational groups in the Union

THE EUROPEAN COMMITTEE OF THE REGIONS

- welcomes the proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union, considers that the work done so far by the OECD in the preparation of legal measures to combat tax base erosion and profit shifting outside the EU could also have beneficial effects for local and regional situations as well, not only in terms of higher tax revenue available to the Member States, but also with a view to ensuring greater fairness and competitiveness of SMEs which, at national and local level, are currently experiencing less favourable tax conditions and positive consequences for employment and workers;
- is convinced that adopting a proposal for a minimum level of taxation would be the first step in creating a single taxation scheme within the EU, which is needed now more than ever in order to move towards adequate competition between companies on the internal European market, increase Europe's competitiveness, and to prevent the relocation or arbitrary closure of production centres, which greatly impacts workers, who are forced to look for new jobs or cope with travelling considerable distances to avoid losing their jobs;
- calls on the EU, when transposing the OECD's minimum tax rate into law, to constantly engage with its global partners and uphold its political guidelines, in order to avoid European companies facing stricter rules than their direct competitors, relegating the EU to a less open business environment with lower economic growth, fewer jobs, limited capacities and resources to respond to innovation challenges. It considers, in particular, that the failure of the US to participate in Pillar 1 could undermine the purpose and balance of the OECD agreement as a whole;

Rapporteur-general:

Federico Borgna (IT/PES)

Reference document

Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union
COM(2021) 823 final

Opinion of the Committee of the Regions – ensuring a global minimum level of taxation for multinational groups in the Union

I. RECOMMENDATIONS FOR AMENDMENTS

Amendment 1

Recital 7

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
<p><i>While it is necessary to ensure that tax avoidance practices are discouraged, adverse impacts on smaller MNEs in the internal market should be avoided. For this purpose, this Directive should only apply to entities located in the Union that are members of MNE groups or large-scale domestic groups that meet the annual threshold of at least EUR 750 000 000 of consolidated revenue. This threshold would be consistent with the threshold of existing international tax rules such as the country-by-country reporting rules. Entities within the scope of this Directive are referred to as constituent entities. Certain entities should be excluded from the scope based on their particular purpose and status. Excluded entities would be those that are not profit-driven and perform activities in the general interest and which are, for these reasons, not likely to be subject to tax in the Member State in which they are located. In order to protect those specific interests, it is necessary to exclude from the scope of the Directive governmental entities, international organisations, non-profit organisations and pension funds from the scope of this Directive. Investment funds and real estate investment vehicles should also be excluded from the scope when they are at the top of the ownership chain, since, for those so-called flow-through entities, the income earned is taxed at the level of the owners.</i></p>	<p><i>It is necessary to ensure that tax avoidance practices are discouraged. At the same time, adverse impacts on smaller MNEs in the internal market should be avoided. For this purpose, this Directive should only apply to entities located in the Union that are members of MNE groups or large-scale domestic groups that meet the annual threshold of at least EUR 750 000 000 of consolidated revenue. This threshold would be consistent with the threshold of existing international tax rules such as the country-by-country reporting rules. Entities within the scope of this Directive are referred to as constituent entities. Certain entities should be excluded from the scope based on their particular purpose and status. Excluded entities would be those that are not profit-driven and perform activities in the general interest and which are, for these reasons, not likely to be subject to tax in the Member State in which they are located. In order to protect those specific interests, it is necessary to exclude from the scope of the Directive governmental entities (including local and regional authorities and their associations), international organisations and non-profit organisations and pension funds.</i></p>

<i>Reason</i>
Self-explanatory.

Amendment 2

Article 2(3)(a)

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
(a) a governmental entity, an international organisation, a non-profit organisation, <i>a pension fund, an investment entity that is an ultimate parent entity and a real estate investment vehicle that is an ultimate parent entity</i> ; or	(a) a governmental entity (<i>local and regional authorities and their associations</i>), an international organisation, a non-profit organisation, <i>a pension fund</i> ;

<i>Reason</i>
Clarification. Self-explanatory.

Amendment 3

Article 3(31)(d)

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
(d) to a governmental entity, an international organisation, a non-profit organisation, <i>a pension fund, an investment entity that is not part of the MNE group or a life insurance company to the extent that the dividend is received in connection with pension fund activities that is subject to tax in the same manner as a pension fund</i> ;	(d) to a governmental entity (<i>including local and regional authorities and their associations</i>), an international organisation, a non-profit organisation, <i>a pension fund</i> ;

<i>Reason</i>
Clarification. Self-explanatory.

Amendment 4

Article 11

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
<i>Application of a UTPR across the MNE group</i> Where the ultimate parent entity of an MNE group is located in a third country jurisdiction that does not apply a qualified income inclusion rule, Member States shall ensure that its constituent entities located in the Union are subject, in the Member State in which they are located, to a top-up tax for the fiscal year (a 'UTPR top-up tax') for the amount allocated to that Member State in accordance with Article 13. <i>Constituent entities that are investment entities</i>	<i>Application of a UTPR across the MNE group</i> Where the ultimate parent entity of an MNE group is located in a third country jurisdiction that does not apply a qualified income inclusion rule, Member States shall ensure that its constituent entities located in the Union are subject, in the Member State in which they are located, to a top-up tax for the fiscal year (a 'UTPR top-up tax') for the amount allocated to that Member State in accordance with Article 13. <i>Pension funds shall not be subject to the UTPR top-up tax.</i>

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Reason
Self-explanatory.

Amendment 5
Article 12

Text proposed by the European Commission	CoR amendment
<p><i>Application of a UTPR in the UPE jurisdiction</i></p> <p>Where the ultimate parent entity of an MNE group is located in a low-tax jurisdiction, Member States shall ensure that its constituent entities located in a Member State are subject to UTPR top-up tax for the fiscal year and for the amount allocated to that Member State in accordance with Article 13 in respect of the low-taxed constituent entities that are located in the jurisdiction of the ultimate parent entity, irrespective of whether that jurisdiction applies a qualified income inclusion rule.</p> <p><i>Constituent entities that are investment entities and pension funds shall not be subject to the UTPR top-up tax.</i></p>	<p><i>Application of a UTPR in the UPE jurisdiction</i></p> <p>Where the ultimate parent entity of an MNE group is located in a low-tax jurisdiction, Member States shall ensure that its constituent entities located in a Member State are subject to UTPR top-up tax for the fiscal year and for the amount allocated to that Member State in accordance with Article 13 in respect of the low-taxed constituent entities that are located in the jurisdiction of the ultimate parent entity, irrespective of whether that jurisdiction applies a qualified income inclusion rule. <i>Pension funds shall not be subject to the UTPR top-up tax.</i></p>

Reason
Self-explanatory.

Amendment 6
Article 36(2)(b)

Text proposed by the European Commission	CoR amendment
<p>(b) a governmental entity, an international organisation, a non-profit organisation <i>or a pension fund other than a pension services entity that is tax resident in the jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to 5 % or less of the profits and assets of the ultimate parent entity.</i></p>	<p>(b) a governmental entity (<i>including local and regional authorities and their associations</i>), an international organisation <i>or</i> a non-profit organisation <i>or a pension fund.</i></p>

Reason
Clarification. Self-explanatory.

Amendment 7

Article 37(3)(c)

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
(c) a governmental entity, an international organisation, a non-profit organisation <i>or a pension fund other than a pension services entity that is tax resident in the jurisdiction where the ultimate parent entity is located and that holds ownership interests representing a right to 5 % or less of the profits and assets of the ultimate parent entity.</i>	(c) a governmental entity (<i>including local and regional authorities and their associations</i>), international organisation <i>or</i> a non-profit organisation <i>or a pension fund.</i>

Reason

Clarification. Self-explanatory.

Amendment 8

Article 53a (new)

<i>Text proposed by the European Commission</i>	<i>CoR amendment</i>
	<i>Three years after the entry into force of this Directive, the European Commission shall review the results and may propose an amendment to this Directive, in particular with regard to adapting the definitions relating to turnover threshold and minimum tax rate, in line with international developments.</i>

Reason

In the absence of an impact assessment by the European Commission when drafting this Directive, a review is even more important in order to analyse the results and consequences of its implementation.

II. POLICY RECOMMENDATIONS

THE EUROPEAN COMMITTEE OF THE REGIONS

GENERAL OBSERVATIONS

1. welcomes the proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union {COM(2021) 823 final};
2. reiterates that Article 3 of the Treaty on European Union (TEU) includes the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and that Article 113 of the Treaty on the Functioning of the European Union (TFEU) provides that the

Council must, acting unanimously, ensure the establishment and the functioning of the internal market and avoid distortion of competition;

3. considers that the work done so far by the OECD in the preparation of legal measures to combat tax base erosion and profit shifting outside the EU could also have beneficial effects for local and regional situations as well, not only in terms of higher tax revenue available to the Member States, but also with a view to ensuring greater fairness and competitiveness of SMEs which, at national and local level, are currently experiencing less favourable tax conditions and positive consequences for employment and workers;
4. is convinced that adopting a proposal for a minimum level of taxation would be the first step in creating a single taxation scheme within the EU, which is needed now more than ever in order to move towards adequate competition between companies on the internal European market, increase Europe's competitiveness, and to prevent the relocation or arbitrary closure of production centres, which greatly impacts workers, who are forced to look for new jobs or cope with travelling considerable distances to avoid losing their jobs;
5. considers it absolutely essential that the rules do not entail more red tape for businesses, thus holding back their development, particularly in the research and innovation sectors, and climate neutrality, which are crucial for ensuring the necessary digital and green transitions.

COMPLETE HARMONISATION OF THE RULES WITHIN THE EU

6. calls for the Directive to be applied comprehensively and consistently among the EU Member States, but also fully in line with the OECD agreement: the lack of harmonisation between minimum tax rules within the EU, or between the EU and third countries, could give rise to potential disputes on double taxation, with a direct negative impact on a large number of leading global companies and potential consequences for their suppliers (who are often SMEs), as regards to tax income, trade and investments;
7. considers it essential that the OECD's comments and further technical details on the model rules are included in the EU Directive in a comprehensive manner, and are not subject to hasty transposition, without excluding the possibility of measures being triggered by regulation in the future;
8. highlights the importance in the final drafting of the Directive and its subsequent application, of shared, unambiguous terminology: some of the new definitions used in the Directive may not be fully aligned with the definitions already established in international tax law; to ensure greater legal certainty, a cross-check of the translations of the EU Directive will be essential, in order to achieve precise alignment with the tax law concepts of individual countries;
9. with regard to large national groups, calls for every effort to be made to ensure that the new minimum taxation level complies with EU law to avoid legal uncertainty, and strongly encourages the establishment, where possible, of simplification measures for these entirely national groups. Currently, it is not clear how many large, exclusively national groups exist in the EU, and what the fiscal and administrative cost of such a measure would be.

INTERACTION AND A LEVEL PLAYING FIELD WITH THIRD COUNTRIES

10. calls on the EU, when transposing the OECD's minimum tax rate into law, to constantly engage with its global partners and uphold its political guidelines, in order to avoid European companies facing stricter rules than their direct competitors, relegating the EU to a less open business environment with lower economic growth, fewer jobs, limited capacities and resources to respond to innovation challenges. It considers, in particular, that the failure of the US to participate in Pillar 1 could undermine the purpose and balance of the OECD agreement as a whole;
11. calls on the EU to closely monitor the influence of the introduction of the second pillar system on the behaviour of investors and companies, to understand how the new rules will affect investment, jobs, growth, trade and the fiscal impact. This monitoring is essential to avoid negative spill-over effects on workers (through lower wages), consumers (through higher prices) or shareholders (through lower dividends). Since it is vital that all the EU's main trading partners apply the minimum taxation level, it is essential that third countries comply with international rules in order to avoid subjecting EU companies to a stricter regime than other companies, leaving them at the mercy of an uncoordinated global system;
12. stresses that the Undertaxed Payments Rule (UTPR) may, to some extent, limit the uneven playing field between companies, but this would not fully resolve the situation, particularly because the rule is very complex to apply in practice and could make the EU less attractive, for example for R&D activities or investments in the energy and climate transition;
13. considers it essential to prevent the possibility of EU companies being double taxed, due, for example, to the lack of coordination between Base Erosion and Profit Shifting (BEPS) or the European Income Inclusion Rule (IIR) and the US rules BEAT or GILTI.

HARMONISATION WITH INCENTIVES AND OTHER EU TAX RULES

14. suggests launching, as part of the considerable reduction to the taxation of business profits at European level (halved over the last 25 years), an evaluation of the many anti-avoidance measures taken over the last ten years, and assessing their efficiency, effectiveness, coherence and EU added value in terms of tax revenue (including how Member States have implemented this legislation in their audit work);
15. calls on the Commission to assess whether the 2017 EU dispute resolution mechanism could be used for the second pillar, or whether changes are needed;
16. believes that the Commission and the Member States' tax authorities should update and redesign their tax systems to ensure that they are still able to encourage (green) innovation, growth and jobs. Countries have designed and implemented various national taxes and numerous incentives in recent decades to stimulate employment and innovation in local economies. The most recent and important trend is the increase in tax incentives specifically designed to encourage climate protection, security of energy supply and R&D, as part of the EU Green Deal; certain tax

incentives currently used in the Member States will no longer be accessible, or will be less attractive from an investment point of view after the adoption of the Directive. Therefore, it would be useful for the Commission to prepare a guide explaining how to design future tax incentives in line with Pillar 2 requirements (e.g. incentives offering tax breaks on salaries or the social security contributions of researchers, or accelerated depreciation schemes to encourage investment);

17. considers it essential that the EU Member States still provide incentives to attract foreign investments, provided that they encourage the activity of the real economy through the hiring of more employees, paying workers more or investing in tangible assets: multinational enterprises (MNE) also rely on local SMEs for input products in their value chains, and their presence could lead to further positive spill-over effects for the local business environment;
18. supports the call made by the business community to introduce a testing phase for the application of the penalties provided for: for example, for the first year of implementation all companies could be given the chance to go through the necessary process of learning the new rules, so that the penalties applied to non-compliant entities are proportionate and do not involve those whose non-compliance is due to the late adaptation of the procedures rather than specific wilful intent;
19. suggests, with regard to deposit requirements, that company-related information should only be disclosed through an official exchange of information between tax authorities, subject to strict compliance with confidentiality rules and appropriate conditions of use, in order to prevent the uncontrolled leakage of sensitive information, without compromising transparency requirements as laid out in the OECD Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence;
20. calls for red tape to be cut in order to limit the costs of adapting to the new rules, for companies as well as tax authorities: every effort should be made to keep the administrative burden as low as possible. Legislation that is not overly convoluted can make it easier for companies to learn about the new rules, shortens the necessary transition period and will make it easier for tax authorities to verify the effective application of these new rules.

Brussels, 28 April 2022

The President
of the European Committee of the Regions

Apostolos Tzitzikostas

The Secretary-General
of the European Committee of the Regions

Petr Blížkovský

III. PROCEDURE

Title	Ensuring a global minimum level of taxation for multinational groups in the Union
Reference	Proposal for a Council Directive on ensuring a global minimum level of taxation for multinational groups in the Union COM(2021) 823 final
Legal basis	Article 307(3) TFEU
Procedural basis	Rule 41(b)(i) and Rule 56 of the Rules of Procedure
Date of Council/EP referral/Date of Commission letter	N/A
Date of Bureau/President's decision	14 March 2022
Commission responsible	Commission for Economic Policy (ECON)
Rapporteur	Federico Borgna (IT/PSE)
Analysis	
Discussed in commission	N/A
Date adopted by commission	N/A
Result of the vote in commission (majority, unanimity)	N/A
Adopted at plenary	28 April 2022
Previous Committee opinion(s)	
Date of subsidiarity monitoring consultation	