



House of Commons
European Scrutiny Committee

**Seventh Report of
Session 2021–22**

Documents considered by the Committee on 8 September 2021

Report, together with formal minutes

*Ordered by The House of Commons
to be printed 8 September 2021*

Notes

Numbering of documents

Three separate numbering systems are used in this Report for European Union documents:

Numbers in brackets are the Committee's own reference numbers.

Numbers in the form "5467/05" are Council of Ministers reference numbers. This system is also used by UK Government Departments, by the House of Commons Vote Office and for proceedings in the House.

Numbers preceded by the letters COM or SEC or JOIN are Commission reference numbers.

Where only a Committee number is given, this usually indicates that no official text is available and the Government has submitted an "unnumbered Explanatory Memorandum" discussing what is likely to be included in the document or covering an unofficial text.

Abbreviations used in the headnotes and footnotes

AFSJ	Area of Freedom Security and Justice
CFSP	Common Foreign and Security Policy
CSDP	Common Security and Defence Policy
ECA	European Court of Auditors
ECB	European Central Bank
EEAS	European External Action Service
EM	Explanatory Memorandum (submitted by the Government to the Committee) *
EP	European Parliament
EU	European Union
JHA	Justice and Home Affairs
OJ	Official Journal of the European Communities
QMV	Qualified majority voting
SEM	Supplementary Explanatory Memorandum
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Euros

Where figures in euros have been converted to pounds sterling, this is normally at the market rate for the last working day of the previous month.

Further information

Documents recommended by the Committee for debate, together with the times of forthcoming debates (where known), are listed in the European Union Documents list, which is published in the House of Commons Vote Bundle each Monday, and is also available on the [parliamentary website](#). Documents awaiting consideration by the Committee are listed in "Remaining Business": www.parliament.uk/escom. The website also contains the Committee's Reports.

*Explanatory Memoranda (EMs) and letters issued by the Ministers can be downloaded from the Cabinet Office website: <http://europeanmemoranda.cabinetoffice.gov.uk/>.

Staff

The current staff of the Committee are Ravi Abhayaratne (Committee Operations Assistant), Joanne Dee (Deputy Counsel for European and International Law), Alistair Dillon and Leigh Gibson (Senior Committee Specialists), Nat Ireton and Apostolos Kostoulas (Committee Operations Officers), Daniel Moeller (Committee Operations Manager), Foeke Noppert (Senior Committee Specialist), Indira Rao MBE (Counsel for European and International Law), Emily Unwin (Deputy Counsel for European and International Law), Dr George Wilson (Clerk), Beatrice Woods (Committee Operations Officer).

Contacts

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1 Public country-by-country tax reporting by multinationals in the EU (update)¹

This EU document is politically important because:

- it introduces EU legislation that will, from 2023, require large multinationals with operations in the EU to publish country-by-country reports (PCbCR) on where they pay tax, to facilitate public scrutiny of their tax affairs; and
- although the Government’s position on PCbCR had been somewhat ambiguous, the Treasury has now clarified it does not currently intend to implement such disclosure requirements under UK law in parallel with the EU (at least while international negotiations on corporate tax reform are on-going, and in the absence of a “global approach” to public country-by-country reporting).

Action

- Draw the Government’s position to the attention of the Business, Energy and Industrial Strategy Committee, the Public Accounts Committee and the Treasury Committee.

Overview

1.1 One of the measures being introduced within the European Union to tackle aggressive tax avoidance by large multinational companies is to make them subject to mandatory [public “country-by-country” reporting](#) (PCbCR), requiring them to disclose in which jurisdictions they are recording their profits and in which ones they are paying tax (and how much).² EU law already requires them to make such reports confidentially to revenue authorities. The logic behind PCbCR is that increased public scrutiny of companies’ tax affairs will put pressure on them and discourage them from artificially shifting profits through low-tax jurisdictions where they do not have substantial operations (and thereby reducing their corporation tax bill in countries with higher tax rates where the profits are actually generated). However, this presumed deterrent effect is untested, as no major jurisdiction anywhere in the world has implemented such public country-by-country (CbC) reporting to date.

1.2 The European Commission tabled [draft legislation](#) in early 2016 to introduce public disclosure of country-by-country tax payments for multinationals in the EU under the

1 [Proposal for a DIRECTIVE amending Directive 2013/34/EU as regards disclosure of income tax information by certain undertakings and branches](#); Council number 7949/16 + ADDs 1–2, COM(16) 198; Legal base: Article 50(1); ordinary legislative procedure; QMV; Department: HM Treasury; Devolved Administrations: Not consulted; ESC number: 37663.

2 The proposed introduction of public CbC reporting requirements for multinationals is only one of various measures being pursued at EU-level (and internationally) to address tax avoidance and evasion. For example, separate discussions are on-going about the taxation of the digital economy, where base erosion and profit shifting is especially pronounced, and the EU recently announced that it would try to establish a joint approach with the United States on this issue. The European Commission is also due to publish an “Action Plan” on EU corporate taxation policy later in 2021.

[Accounting Directive](#). After several years of negotiations, the European Parliament and a majority of the EU’s Member States in the Council of Ministers [reached agreement](#) on the [text of the new tax disclosure rules](#) in early June 2021. In essence, this will require companies with operations in the EU, and a yearly turnover exceeding €750 million (£643 million), to publish annual reports showing how much tax they pay in each individual EU Member State, as well as in certain [countries listed by the EU](#) as not complying fully with international standards to combat tax avoidance.³ For all other countries, the report would only have to include an aggregate, “rest of the world” amount for tax paid, not broken down by jurisdiction.⁴

1.3 Despite opposition from some Member States,⁵ the new EU rules now await formal adoption and are expected to take effect in the 2023 financial year.⁶ We explored the substance of the new EU Directive on public country-by-country reporting further, as well as its possible implications for UK policy in this area, in more detail in our [Report of 7 July 2021](#).⁷

1.4 The EU’s PCbCR initiative should be seen in the context of on-going international negotiations on an overhaul of corporate tax policy. In particular, more than 130 countries are participating in [talks managed by the OECD](#) to agree [new rules](#) on two “pillars” of tax reform which—if implemented—would align the laws of participating jurisdictions on, firstly where multinational corporations are taxed (“nexus”) and, secondly, allocation of taxable profits between jurisdictions and a minimum effective corporate tax rate. However, the impact of these developments is not yet clear, given disagreements—both political and technical—over the OECD’s approach persist, and implementation by individual tax jurisdictions is some way off. A further announcement on the state of play in the talks

3 The country-by-country report will need to include information on the specific amount of tax paid in each country listed by EU Finance Ministers in Annex I to their bi-annual conclusions on “non-cooperative jurisdictions”, which indicates that such jurisdictions “encourage abusive tax practices”. The same will apply to countries in Annex II to those conclusions (indicating they “do not yet comply with all international tax standards but have committed to reform”), but only for those jurisdictions that have been listed in Annex II for at least two consecutive years.

4 The EU Directive will therefore not require a truly global country-by-country report and the geographic scope of these new tax disclosure rules is somewhat unstable, because the list of non-EU countries for which tax payments must be publicly disclosed will be reviewed, and possibly changed, by EU Finance Ministers twice a year.

5 Some EU countries, notably Ireland, have [objected](#) to the legal basis for the legislation, arguing it is an EU tax measure rather than accounting policy (which, under EU rules, would mean every EU Member State could veto the draft legislation, whereas an amendment to the Accounting Directive only requires the support of a qualified majority of EU countries). These procedural objections are in turn likely also driven in part by political concerns about the legislation, as we discussed in our [Report of 7 July 2021](#).

6 Article 2 of the new Directive provides that the public CbC requirements must be implemented and enforced by all EU Member States starting 18 months after the legislation is published in the EU’s Official Journal. The US House of Representatives recently also [approved](#) a Bill for the introduction of public tax transparency requirements for multinationals, but it still awaits consideration by the Senate before it could become law.

7 We note that CbC measures are only a small part of current efforts to address shortcomings in the international tax system, as separate discussions are on-going about the introduction of new global rules on allocation of taxing rights and an effective minimum corporate tax rate. Those developments are beyond the scope of this chapter, but we may return to them in the future (in particular in the light of how the EU may implement such measures, and how these could affect the UK).

is expected in October 2021.⁸ In the interim, a large majority of EU countries maintain that increased corporate transparency measures through country-by-country reporting remains desirable.

Implications of the EU’s Country-by-Country Reporting Directive for the UK

1.5 The Government was [supportive of the EU’s public country-by-country reporting proposal](#) while the UK was a Member State of the EU, but its views on the merits of the Directive following Brexit have shifted given that the legislation will no longer apply in the UK.

1.6 In particular, although Ministers have said repeatedly they would be willing to introduce public CbC reporting as part of a multilateral effort (to avoid harming UK competitiveness by doing so unilaterally),⁹ the Treasury [told us](#) in April 2021 that it needed to “wait to see the final version of the draft Directive before it considers any implications for the UK”. It added that the UK’s preference “remains for a genuinely global approach to public country-by-country reporting, which commands wide international support”. Following agreement on the EU Directive in Brussels in June, the Government did not proactively indicate whether the introduction of CbC disclosures for multinationals in these other jurisdictions could enable the UK to proceed with similar measures.

1.7 On 7 July 2021, we therefore [wrote to the Financial Secretary to the Treasury](#) (Rt Hon. Jesse Norman MP) requesting further information on the UK’s position on public CbC reporting, and its view of the new EU rules in providing the basis for a multilateral approach in that area. More specifically, we asked him to clarify if the Government was pushing for CbC transparency obligations for multinationals as part of the OECD talks, and whether it believed such disclosure requirements would still be necessary if there is an international agreement on where multinationals should pay corporation tax and at what rate.

1.8 The Minister responded to our questions by [letter dated 13 August 2021](#). In his reply, he notes that increased transparency of multinationals’ profit shifting and tax avoidance activity—the primary objective of the EU’s PCbCR Directive—“may have been a helpful step forward”, but adds that “the OECD proposals on the table are a much more direct way of tackling the underlying issue of multinational tax avoidance” because they aim to prevent this underlying behaviour—artificial reductions in corporation tax liabilities through low-tax jurisdictions—in the first place. He also explains that the proposals being discussed within the OECD do not contain public country-by-country disclosure requirements for large companies.¹⁰ Nevertheless, while the EU initiative as agreed

8 On 1 July the OECD announced a new agreement signed by 130 of the 139 countries and jurisdictions of the OECD Inclusive Framework, setting October 2021 as a deadline for finalising the remaining technical work on the two-pillar approach, as well as a plan for effective implementation in 2023. See for more information [House of Commons Library Research Briefing 8719](#) of 2 July 2021.

9 The concern is that the introduction of public CbC reporting requirements outside of a multilateral arrangement could encourage companies to relocate to a jurisdiction where they would not face such requirements.

10 In his letter, the Minister states that the OECD talks are “about delivering effective frameworks for each Pillar, i.e. to ensure that businesses are taxed where their customers are located and pay a minimum rate of tax everywhere they operate”, rather than about “increasing disclosure requirements” (e.g. PCbCR).

“falls short of the global approach to PCbCR that would have been the Government’s preference”,¹¹ the Minister adds that the UK “will be ready to engage [...] if the possibility of a genuinely global approach to PCbCR emerges”.

Conclusions

1.9 It seems clear from the Minister’s reply that the Government does not intend to proceed with the introduction of public country-by-country tax reporting for multinationals with operations in the UK in parallel to the EU’s initiative, at least while there is a realistic prospect of agreement on, and implementation of, the OECD proposals on international corporate tax reform (and barring any future momentum behind a global PCbCR regime). In light of this, we have decided to conclude the scrutiny process for the EU’s Country-by-Country Reporting Directive. We nevertheless draw the Government’s position to the attention of the Business, Energy and Industrial Strategy Committee, the Public Accounts Committee and the Treasury Committee, should they wish to pursue the matter further with the Minister directly.

1.10 The Committee notes that the EU has also [announced](#) a number of other policy measures related to corporate taxation and transparency, including proposals to implement any future agreement within the OECD on profit allocation and corporate tax rates, rules to “neutralise the misuse of shell entities for tax purposes”, and further transparency measures on the effective tax rates paid by large companies. The Committee will consider the potential impact of these initiatives on the UK, where necessary, when more details are available in due course.

¹¹ In particular, introducing UK PCbCR requirements in parallel to the EU’s initiative would be complicated by the fact that the EU’s approach means the countries for which corporate tax payments needs to be disclosed is subject to change on a yearly basis (see above). As a result, the UK’s PCbCR requirements would either not be fully aligned with the EU’s in terms of geographical scope, with potential competitiveness implications, or the UK would have to stay aligned with the EU’s approach even though it no longer has any formal say over the EU’s list of tax havens.

2 Documents not considered to be legally and/or politically important

Department for Business, Energy and Industrial Strategy

(41830) Communication from the Commission Guidelines on regional State aid.

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(41859) Commission Implementing Decision (EU) 2021/867 of 28 May 2021 on harmonised standards for toys drafted in support of Directive 2009/48/EC of the European Parliament and of the Council.

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(41884) Commission Regulation (EU) .../... of XXX amending Annexes II, III and V to Regulation (EC) No 1223/2009 of the European Parliament and of the Council as regards the use in cosmetic products of certain substances classified as carcinogenic, mutagenic or toxic for reproduction.

10706/21

+ ADD 1

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Department for Environment, Food and Rural Affairs

(41879) Commission Delegated Regulation (EU) .../... of 11.6.2021 amending Delegated Regulation (EU) 2019/33 as regards the modification of traditional terms in the wine sector.

9765/21

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(41880) Commission Delegated Regulation (EU) .../... of 23.6.2021 amending, for the purpose of its adaptation to technical progress, Annexes I, II, III and IV to Regulation (EU) 2019/1009 of the European Parliament and of the Council laying down rules on the making available on the market of EU fertilising products.

10166/21

+ ADD 1

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(41881) Commission Delegated Regulation (EU) .../... of 5.7.2021 amending Annexes II and IV to Regulation (EU) 2019/1009 of the European Parliament and of the Council for the purpose of adding precipitated phosphate salts and derivatives as a component material category in EU fertilising products.

10630/21

+ ADD 1

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(41882) Commission Delegated Regulation (EU) .../... of 6.7.2021 amending Annexes II, III and IV to Regulation (EU) No 2019/1009 of the European Parliament and of the Council for the purpose of adding thermal oxidation materials and derivatives as a component material category in EU fertilising products.

10634/21

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(41883) Commission Delegated Regulation (EU) .../... of 7.7.2021 amending Annexes II, III and IV to Regulation (E Commission Delegated Regulation (EU) U) No 2019/1009 of the European Parliament and of the Council for the purpose of adding pyrolysis and gasification materials as a component material category in EU fertilising products.

10840/21

+ ADD 1

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Food Standards Agency

(41895) Commission Regulation (EU) .../... of XXX amending Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council as regards the inclusion of 2-(4-methylphenoxy)-N-(1H-pyrazol3-yl)-N-(thiophen-2-ylmethyl)acetamide in the Union list of flavourings.

11129/21

+ ADD 1

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(41896) Commission Regulation (EU) .../... of XXX amending Annex I to Regulation (EC) No 1334/2008 of the European Parliament and of the Council as regards the inclusion of 4-amino-5-(3-(isopropylamino)-2,2-dimethyl-3oxopropoxy)-2-methylquinoline-3-carboxylic acid in the Union list of flavourings.

11141/21

+ ADD 1

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HM Revenue and Customs

(41819) Commission Implementing Regulation (EU) 2021/414 of 8 March 2021 on technical arrangements for developing, maintaining and employing electronic systems for the exchange and storage of information under Regulation (EU) No 952/2013 of the European Parliament and of the Council.

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Annex

Documents drawn to the attention of select committees:

(‘SNC’ indicates that scrutiny (of the document) is not completed; ‘SC’ indicates that scrutiny of the document is completed)

Business, Energy and Industrial Strategy Committee: Public country-by-country tax reporting by multinationals in the EU (update) (SNC)

Public Accounts Committee: Public country-by-country tax reporting by multinationals in the EU (update) (SNC)

Treasury Committee: Public country-by-country tax reporting by multinationals in the EU (update) (SNC)

Formal Minutes

Wednesday 8 September 2021

Virtual meeting

Members present:

Sir William Cash, in the Chair

Jon Cruddas

Allan Dorans

Mr Marcus Fysh

Mrs Andea Jenkyns

Mr David Jones

Marco Longhi

Craig Mackinlay

Document scrutiny

Draft Report, proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1.1 to 2 agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

Adjournment

Adjourned till Wednesday 15 September 2021 at 1.45 pm

Standing Order and membership

The European Scrutiny Committee is appointed under Standing Order No.143 to examine European Union documents and—

- a) to report its opinion on the legal and political importance of each such document and, where it considers appropriate, to report also on the reasons for its opinion and on any matters of principle, policy or law which may be affected;
- b) to make recommendations for the further consideration of any such document pursuant to Standing Order No. 119 (European Committees); and
- c) to consider any issue arising upon any such document or group of documents, or related matters.

The expression “European Union document” covers—

- i) any proposal under the Community Treaties for legislation by the Council or the Council acting jointly with the European Parliament;
- ii) any document which is published for submission to the European Council, the Council or the European Central Bank;
- iii) any proposal for a common strategy, a joint action or a common position under Title V of the Treaty on European Union which is prepared for submission to the Council or to the European Council;
- iv) any proposal for a common position, framework decision, decision or a convention under Title VI of the Treaty on European Union which is prepared for submission to the Council;
- v) any document (not falling within (ii), (iii) or (iv) above) which is published by one Union institution for or with a view to submission to another Union institution and which does not relate exclusively to consideration of any proposal for legislation;
- vi) any other document relating to European Union matters deposited in the House by a Minister of the Crown.

The Committee’s powers are set out in Standing Order No. 143.

The scrutiny reserve resolution, passed by the House, provides that Ministers should not give agreement to EU proposals which have not been cleared by the European Scrutiny Committee, or on which, when they have been recommended by the Committee for debate, the House has not yet agreed a resolution. The scrutiny reserve resolution is printed with the House’s Standing Orders, which are available at www.parliament.uk.

Current membership

[Sir William Cash MP](#) (*Conservative, Stone*) (Chair)

[Tahir Ali MP](#) (*Labour, Birmingham, Hall Green*)

[Jon Cruddas MP](#) (*Labour, Dagenham and Rainham*)

[Allan Dorans MP](#) (*Scottish National Party, Ayr Carrick and Cumnock*)

[Richard Drax MP](#) (*Conservative, South Dorset*)

[Margaret Ferrier MP](#) (*Scottish National Party, Rutherglen and Hamilton West*)

[Mr Marcus Fysh MP](#) (*Conservative, Yeovil*)

[Mrs Andrea Jenkyns MP](#) (*Conservative, Morley and Outwood*)

[Mr David Jones MP](#) (*Conservative, Clwyd West*)

[Stephen Kinnock MP](#) (*Labour, Aberavon*)

[Mr David Lammy MP](#) (*Labour, Tottenham*)

[Marco Longhi MP](#) (*Conservative, Dudley North*)

[Craig Mackinley MP](#) (*Conservative, South Thanet*)

[Ann Marie Morris MP](#) (*Conservative, Newton Abbot*)

[Charlotte Nichols MP](#) (*Labour, Warrington North*)

[Greg Smith MP](#) (*Conservative, Buckingham*)