Stiftung
Familienunternehmen

The EU Proposal for Country-by-Country Reporting on the Internet

Costs, Benefits and Consequences

Imprint

Published by:

The Foundation for Family Businesses
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Germany

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ISBN: 978-3-942467-53-7

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Summary of main results

Multinational companies make lawful use of differences in rates and systems between different tax jurisdictions in order to transfer a portion of their profits to low-tax countries and thus reduce their overall tax burden. A demand for greater transparency has emerged as a central measure in the political efforts of the OECD, G20 and EU member states to achieve more tax justice. One such transparency measure is what is known as country-by-country reporting (CbCR). This obliges companies that are of a particular size or operate in certain industries to publish operational and tax data for each country in which they do business.

The Extractive Industries Transparency Initiative, the Dodd-Frank Wall Street Reform and Consumer Protection Act, and amendments to the EU's Accounting and Transparency Directives constitute CbCR initiatives that were enacted mainly to combat corruption in the commodities industry. CbCR as quoted in Article 89 of the EU's Capital Requirements Directive, however, arose from the need for enhanced transparency and tighter regulation of financial institutions in the wake of the global financial crisis.

The present study focuses mainly on the CbCR proposals contained in Action 13 of the OECD BEPS project and in the draft report to amend the EU Accounting Directive that was recently passed by the European Parliament. These proposals were developed in an effort to achieve more tax justice and thwart tax-planning activities that are deemed to be aggressive. They affect (multinational) enterprises with annual revenues of at least €750 million and apply across different industries. Whereas the CbCR agreed by the OECD provides only for the confidential disclosure of data to the relevant tax office and the subsequent sharing of that information with participating countries, the EU's proposal is for public CbCR. Thus CbCR would not only help tax administrators perform more efficient tax audits, by exerting public pressure it would encourage companies to voluntarily pay their fair share of tax in the countries in which they operate. The EU's initiative therefore goes substantially further than the OECD's, both in terms of the companies targeted and the scope of the information to be disclosed.

Regardless of whether CbC reports are made public or submitted confidentially to the tax authorities, the heterogeneity of the reports resulting from a lack of uniform implementation by different companies and countries will dilute their value in terms of information content and consequently create problems of interpretation. What is more, the basic idea behind CbCR – according to which corporate profits are to be divided between the countries in which a company operates using arbitrarily selected variables and then assessed to see whether they are appropriate – is a questionable one. CbCR cannot resolve the innate problem of taxing multinational enterprises, namely how to apportion profits within the group.

A detailed analysis of the implications of CbCR reveals that the cost to companies of public reporting will outweigh the overall benefits. It is not so much the direct costs of first-time implementation and ongoing reporting that are critical, but the potential implicit costs. These include not only unwarranted

damage to a company's reputation, compromised tax confidentiality and a higher risk of double taxation; above all else, there is the threat of competitive disadvantages brought about by the fact that the CbCR publication obligations apply only to companies of a certain size and domiciled in particular countries. The companies subject to the regulations must publish sensitive corporate data that was previously undisclosed. Competitors that are not subject to the regulations will be able to use this information to their own advantage, without being obliged to publish comparable data themselves. Unfair competition may result from this in the following ways:

(1) EU companies whose revenues are just over the reporting threshold may be disadvantaged compared with those of their EU competitors whose revenues are just below the threshold;

(2) EU companies that are obliged to publish reports may be disadvantaged compared with third-country competitors who do not have branches in the EU;

(3) EU companies that are obliged to publish reports may be disadvantaged compared with third-country competitors that have subsidiaries and/or facilities in the EU, but can circumvent the obligation to publish because of the EU's inability to impose sanctions on them;

(4) the EU economic region as a whole may be disadvantaged as companies shy away from establishing subsidiaries there owing to the disadvantages described.

In Germany, these competitive disadvantages will have a particular impact on large family businesses. In relative terms, this group of companies will also be more strongly affected by the direct costs of CbCR and the erosion of tax confidentiality it entails. On the whole, therefore, we can assume that a large part of the costs generated in Germany by the proposed EU regulations will be borne by family businesses.

Both the heterogeneity of the reports and the difficulty of apportioning total profit between different countries will diminish the potential benefits of CbCR. The additional information content the reports offer tax authorities and legislators is limited; the data cannot reveal which individual channels and instruments a company uses to shift its profits, nor does it allow conclusions to be drawn as to whether the tax-planning measures taken are lawful or where legislative reforms may be needed. In any case, the majority of the tax-planning measures adopted are within the law and already public knowledge. It is difficult to foresee the benefits of CbCR data for investors/analysts as they are already overloaded with information as a result of increasing disclosure obligations and can no longer process all the information at their disposal. The main argument put forward by the proponents of public CbCR is the public's control function. Quite apart from the public's lack of expertise in interpreting the relevant data, there is another fundamental question: whether generating public pressure is an adequate way of reining in tax planning. Such pressure undermines the rule of law because it means taxes will no longer be assessed solely on the basis of the law, but also in the court of public opinion. The inconsistent results of empirical research into the responses of consumers, managers and investors when confronted with what is considered to be the aggressive tax-planning activities of individual companies show that we cannot simply take the posited benefits of public CbCR for granted.

As any value that CbCR data might add for the tax authorities and legislators can also be achieved by means of confidential CbCR, the EU should restrict itself to the content of the OECD agreement and refrain from introducing a general obligation to publish figures. In particular this would prevent the competitive disadvantages that public CbCR could bring, as well as the potential negative side effects that the introduction of reporting obligations within the EU could trigger with respect to the sharing of information with third countries participating in the OECD agreement. Before the EU makes any definitive decision on the obligation to publish reports, we should first wait and see what experiences companies have with the CbCR regimes already in force.

As the majority of instruments used to minimise tax are lawful and already public knowledge, an alternative approach would thus be to focus on amending material rules – such as introducing stricter standards for transfer pricing and harmonising such rules internationally as well as rolling out uniform thin capitalisation rules. We should nonetheless point out that there is very little empirical evidence that profits are being shifted on a broad scale. Rather, there is a perception that a few known cases of such practices by US companies are being instrumentalised to fuel the ongoing debate surrounding tax planning by multinationals. In their efforts to limit companies' scope to shift profits to low-tax jurisdictions, legislators should not lose sight of the fact that such measures can lead to a noticeable reduction in investment levels in some industrialised countries. Against this backdrop, the EU would be well advised to take a measured approach. There is no need to introduce CbCR across the board nor, more particularly, to prescribe public CbCR.

A. Aims

In the course of the debate surrounding profit shifting by multinational enterprises, calls for country-by-country reporting (CbCR) on operating and tax data have increased. Whereas OECD countries have already agreed that multinationals should be obliged to submit such reports to tax authorities in their respective countries of domicile, the EU initiatives to combat aggressive tax planning are still in full swing. According to the European Parliament's latest draft report of 4 July 2017, large European companies are to be obliged to make public their business activities and profits in each individual country as well as the corresponding taxes paid on those profits. The publication of sensitive data of this kind can result in considerable costs for the companies involved, and large family businesses, in particular, could suffer competitive disadvantages as a result. The aim of the present study is to describe current developments in CbCR and to examine the potential costs and benefits of public country-by-country reporting.

The study is structured as follows: First, we take a look at the latest status of CbCR initiatives. Proceeding from the motives behind CbCR, we describe not only sector-specific developments in the commodities industry and banking sector, but also the cross-industry CbCR initiatives of the OECD and the European Parliament. We then analyse the information content, costs and benefits of CbCR for those involved, focusing mainly on the public CbCR recently proposed by the European Parliament. We examine the costs, particularly from the point of view of the affected companies, and the benefits from the standpoint of major stakeholders such as national governments. In the final section we highlight possible alternatives to CbCR that could achieve the same political aims, namely enhancing tax justice and combating aggressive tax-planning activities.

B. Current status of country-by-country reporting

I. Motives and fundamentals of country-by-country reporting

Multinational companies make lawful use of differences in rates and systems between different tax jurisdictions in order to transfer a portion of their profits to low-tax countries and thus reduce their overall tax burden. These practices have increasingly come to the attention of both the public and policymakers. As a result, numerous initiatives at OECD, G20 and EU level have focused on the political measures that can be taken to combat this trend and ensure that companies pay their fair share of taxes in the countries in which they operate. A demand for greater transparency has emerged as a central tool in the political efforts to achieve more tax justice. One such transparency measure is what is known as country-by-country reporting. This obliges companies that are of a particular size or that operate in certain industries to publish operational and tax data for each country in which they do business. There are two ways this information is intended to curb profit shifting through tax planning. Firstly, the data could help the tax authorities identify companies with especially aggressive tax-planning strategies and to perform tax audits in a more targeted manner.[1] Secondly, proponents of public reporting of company data hope that, as a result of the pressure from the general public triggered by the publication of sensitive data, companies will voluntarily reduce the magnitude of their tax avoidance.[2] Owing to a lack of empirical data, very little is known of the actual costs and benefits of public CbCR, and this study seeks to take a closer look at these.

The history of CbCR dates from 2003, when Richard Murphy, a British auditor who had co-founded the Tax Justice Network the previous year, called for multinational enterprises to be obliged to disclose certain operational and tax data broken down by country.[3] Although there is as yet no globally binding requirement to implement this, it has since found its way onto the agendas of various initiatives. The current state of play as regards CbCR is described in detail in the following sections. Whereas some of these initiatives relate to certain branches of industry only, e.g. the extractive industry or the banking sector, others span more than one sector.

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1 See Evers/Meier/Spengel (2016), p. 12.

2 See Schreiber/Voget (2017), p. 149; Grotherr (2016a), p. 856.

3 Murphy (2003).

II. Sector-specific developments

1. Developments in the extractive industry

What the initiatives described below have in common is that their primary aim is to combat corruption in the extractive industry by enhancing transparency. They thus differ from the problem of profit shifting by multinationals, which is the primary focus of the present study. We will nevertheless touch on them here as they paved the way for later initiatives.

a) Extractive Industries Transparency Initiative (EITI)

The Extractive Industries Transparency Initiative was one of the first initiatives relating to the country-specific disclosure of corporate data. Launched in June 2003, the EITI Standard has been constantly adapted and most recently revised in 2016.[4] The initiative is based on voluntary cooperation between the countries involved. Thus far, 52 countries have implemented the EITI Standard,[5] which applies only to companies active in the extractive industries of the implementing countries. The EITI provides a framework within which governments disclose certain payments they have received and companies certain payments they have made. Actual implementation in each country is entrusted to a multi-stakeholder group and can thus vary from country to country. The companies are expected to disclose to the authorities the following payments they make to government agencies: taxes levied on profits; production entitlements; royalties; dividends; signature, discovery and production bonuses; licence, rental and entry fees; and other significant payments. This data is to appear in a public report, alongside data on the payments received by the governments. However, as every country prepares and publishes its own report, in the case of multinational enterprises it would be necessary to analyse several such reports simultaneously to get an overview of the payments made in each country in which an enterprise operates.[6]

b) Dodd-Frank Wall Street Reform and Consumer Protection Act (Sec. 1504)

The Dodd-Frank Wall Street Reform and Consumer Protection Act – or Dodd-Frank Act for short[7] – was signed into law in 2010 as part of a comprehensive reform of the US financial sector. While the act as a whole is primarily aimed at regulating the financial sector, section 1504 of it provides for the public disclosure of payments by companies in the resource extraction industry that are registered with the Securities and Exchange Commission (SEC). Such companies must disclose the amount and nature of all payments exceeding USD 100,000 made to government bodies, broken down by project and country. Like the EITI Standard, section 1504 of the Dodd-Frank Act covers: tax on income, production or profits;

4 EITI International Secretariat (2016).

5 See https://eiti.org/who-we-are#implementing-countries [28 June 2017].

6 See Hardeck/Wittenstein/Yoganathan (2015), p. 402.

7 Congress of the United States of America (2010).

production entitlements; royalties; dividends; signature, discovery and production bonuses; licence, rental and entry fees; and payments for infrastructure improvements. This disclosure obligation was implemented in SEC 2012. However, after the SEC's final rule was successfully challenged in court,[8] amended regulations were passed in 2016, which are to be applied from October 2017.[9]

c) EU Accounting Directive (Article 10, 2013/34/EU) and EU Transparency Directive (2013/50/EU)

Influenced by trends in the United States, the EU began discussing the disclosure of certain payments by companies in the commodities industry in 2010. In 2013, the Accounting Directive (2013/34/EU)[10] was amended. Article 10 of that directive stipulates that large European enterprises and all public-interest entities active in the extractive industry or the logging of primary forests are required to disclose, in accordance with the applicable regulations in their respective member states, all payments exceeding €100,000 they make to governments, broken down by project and country. These include the same types of payments mentioned in the Dodd-Frank Act.[11] A few months after the amended Accounting Directive was passed, the Transparency Directive (2013/50/EU)[12] was also amended to include a reporting obligation for companies whose securities are admitted to trading on a regulated market in the EU and who are active in the extractive industry or the logging of primary forests. First-time disclosure was scheduled for reporting periods beginning on or after 1 January 2016.

2. Developments in the banking sector

Following the global financial crisis, the need for greater transparency and stricter regulation of financial institutions became pressing. The EU consequently passed its Capital Requirements Directive (2013/36/EU) in June 2013[13]. Article 89 of this directive states that European credit and financial institutions should be required to adopt CbCR. According to its provisions, for every country in which they operate companies must provide information on their entities, nature of activities and geographical location, turnover, number of employees (full time equivalents), profit or loss before tax, tax on profit or loss, as well as public subsidies received. After an external audit this information is to be published as an annex to the company's annual financial statements – for the first time for accounting periods beginning on or after 1 January 2014. The directive was implemented in Germany in section 26a of the German Banking Act (Kreditwesengesetz – KWG) in accordance with the stipulated content and deadlines.

8 See Miller (2015), p. 384.

9 See Securities and Exchange Commission (2016), p. 2.

10 EU (2013a).

11 See preceding section.

12 EU (2013b).

13 EU (2013c).

III. Cross-sector developments

1. OECD BEPS Action 13

In July 2013, the OECD published its BEPS Action Plan[14], the purpose of which is to develop measures to combat base erosion and profit shifting by multinational enterprises and ensure fair competition in tax matters between different jurisdictions. Action 13 requires that transfer pricing documentation include country-specific tax information[15]. A discussion draft on this topic was issued in January 2014[16] and a few months later guidance was published on transfer pricing documentation and CbCR[17], proposing a three-tiered approach. As well as a master file containing general information about an enterprise‘s global operations and a country-specific local file which together set out the details of the corporate structure, internal transactions and the transfer pricing methods used, a separate country-by-country report would form a third component of transfer pricing reporting. In 2015, the OECD published guidance on implementing transfer pricing documentation and CbCR[18], along with an implementation package[19] that provided more detailed information on the scope of the proposed regulations and their transposition into national law. Published on 5 October 2015, the Final Report on Action 13[20] summarises the OECD’s previous recommendations. These state that a multinational enterprise with annual consolidated group revenue in the immediately preceding fiscal year of at least €750 million must provide the tax authorities with the following information for each country in which it operates: revenue (broken down by related parties and unrelated parties), profit/loss before income tax, income tax paid (including tax at source), income tax accrued, stated capital, accumulated earnings, number of employees (FTEs), and tangible assets other than cash and cash equivalents. In addition, it must also provide the names and activities of the group’s individual companies and facilities in each country. Subsidiaries and facilities, too, are obliged to prepare a report for the entire group, provided they are domiciled in an OECD member country and either their parent company is not already obliged to compile a country-by-country report or another group company has not already submitted such a report. The OECD estimates that, owing to the revenue threshold of €750 million, 85–90 percent of multinational enterprises will be exempted from the reporting obligation, but that enterprises whose tax payments account for around 90 percent of

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14 OECD (2013).

15 In Germany, for example, documentation detailing the basis for determining intra-group transfer prices must be provided in accordance with section 90 (3) of the Tax Code (Abgabenordnung – AO) in connection with the regulations regarding the documentation of profit allocations (Gewinnabgrenzungsaufzeichnungsverordnung – GAufzV). See detailed information in Endres/Spengel (2016), p. 1052 ff.

16 OECD (2014a).

17 OECD (2014b).

18 OECD (2015a).

19 OECD (2015b).

20 OECD (2015c).

the corporate tax take will be subject to it.[21] The OECD proposal is not for public CbCR, as the reporting company has to submit the information only to its tax office, after which the information is shared with the tax authorities of the other participating countries. The OECD proposal was to be applied for the first time in accounting periods beginning on or after 1 January 2016.

In May 2016, in response to the OECD's proposal regarding BEPS Action 13, the EU amended Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation[22]. For the first time in accounting periods beginning on 1 January 2016, multinational enterprises with consolidated revenues in the immediately preceding fiscal year of at least €750 million are to provide the tax authorities of their country of domicile with a country-by-country report containing the information proposed by the OECD. The automatic sharing of information with the tax authorities of different jurisdictions means that this report will also be made available to the tax authorities of those countries in which the relevant enterprise operates. In Germany, confidential CbCR was transposed into national law in section 138a of the AO[23], where it applies for the first time in accounting years beginning after 31 December 2015 (Art. 97 section 31 of the law implementing the tax code – EGAO).

The OECD publishes a regularly updated list of participating countries along with an overview of the implementation status of CbCR worldwide.[24] According to this list, the overwhelming majority of countries (including leading industrialised nations such as the USA and Japan) have already implemented CbCR regulations in national law. However, there are differences as regards the dates of first-time application and individual aspects of implementation.[25] In two EU member states – Bulgaria and the Czech Republic – the legislation process has not yet progressed beyond the drafting stage. In order to regulate the sharing of CbCR data between countries, the OECD has enacted a Multilateral Competent Authority Agreement (CbC-MCAA), to which 65 nations – including Germany – have thus far become signatories.[26] However, a number of countries, including the United States, have not signed the agreement.[27] The United States

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21 See OECD (2015c), p. 21, marginal note 53.

22 EU (2016a).

23 In its letter dated 11 July 2017 (IV B 5 – S 1300/16/10010 :002), Germany's Federal Ministry of Finance made clear its stance as regards the technical details of transferring CbCR data to the Central Tax Office. See also Peters/Busch (2017).

24 http://www.oecd.org/tax/automatic-exchange/country-specific-information-on-country-by-country-reporting-implementation.htm [17 August 2017].

25 As regards differences in implementation in various countries, see the list compiled by KPMG at: http://www.kpmg-institutes.com/content/dam/kpmg/taxwatch/pdf/2017/beps-action-13-country-implementation-summary.pdf [17 August 2017].

26 https://www.oecd.org/tax/beps/CbC-MCAA-Signatories.pdf [17 August 2017].

27 See Bier/Voß (2017), p. 396.

would prefer to negotiate bilateral agreements with individual countries so as to determine itself what information it shares and on what conditions.

2. The EU's draft Accounting Directive

In addition to the confidential CbCR mentioned above, the European Commission has also prepared a proposal for public reporting. On 12 April 2016, the European Commission published a draft bill to amend the Accounting Directive[28]. Under the current version of the draft, which was revised by the European Parliament on 4 July 2017[29], the following will be obliged to prepare a report on income tax information:

- ultimate parent enterprises in the EU with consolidated net revenues of at least €750 million[30];
- unaffiliated EU enterprises with net revenues of at least €750 million;
- EU subsidiaries that are controlled by an ultimate non-EU parent entity with consolidated net revenues of at least €750 million;
- EU branches opened by an enterprise established outside the EU that
    - i) is controlled by a non-EU parent entity with consolidated net revenues of at least €750 million (branch obliged to report unless another subsidiary is already subject to the reporting obligation), or
    - ii) is an unaffiliated enterprise with net revenues of at least €750 million.

The country-by-country report is to be published on the company's website and in an official register kept by the European Commission. The following information is to be disclosed for each tax jurisdiction:

- name of the ultimate parent company and, where applicable, a list of all its subsidiaries along with a brief description of the nature of their activities and their geographical locations;
- number of employees (FTEs);
- tangible assets (with the exception of cash and cash equivalents);
- amount of net revenues, broken down by related parties and unrelated parties;
- amount of profit or loss before income tax;

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28 EU (2016b).

29 EU (2017).

30 In the interim, this threshold was lowered to €40 million in a European Parliament draft concerning changes to the proposal to amend the Accounting Directive, but then restored to €750 million.

- amount of income tax accrued (current year), which represents the current tax expense recognised on taxable profits or losses for the financial year by enterprises and branches resident for tax purposes in the relevant tax jurisdiction;
- the amount of income tax paid, which is the amount of income tax paid during the respective financial year by enterprises and branches resident for tax purposes in the relevant tax jurisdiction;
- amount of accumulated earnings;
- stated capital;
- details of government subsidies received and any donations made to politicians, political organisations or political foundations;
- details of whether the enterprise or its subsidiaries or branches benefit from preferential tax treatment by means of a patent box or comparable arrangements;
- overall description at group level explaining any material discrepancies between income tax already paid and income tax still to be paid.

According to the draft report, member states can, on application, allow companies to exclude certain information for individual countries if disclosure of this information would be "seriously prejudicial" to them. Such exemptions may be granted only if they do not prevent the tax authorities from gaining "a fair and balanced understanding of the tax position of the undertaking". A company must reapply every year for any exemption it has been granted. The European Commission may revoke any exemption granted by a member state if it has a different opinion on the matter.

IV. Comparison of OECD and EU initiatives

Table 1 compares the CbCR proposals of the OECD and EU. The core difference between the two approaches lies in the manner of disclosure. Whereas, under the OECD proposal, the information is provided confidentially to the relevant tax authority and subsequently shared with the tax authorities in other countries, under the proposal of the European Commission/European Parliament the information is to be posted on the company's website and also entered in a public register kept by the European Commission. These differences in the manner of disclosure reveal the divergent purposes of the two proposals. What they both have in common is that, by means of enhanced transparency, they aim to limit the ability of multinational enterprises to shift their profits to low-tax jurisdictions through tax planning. However, the channels used differ markedly. The OECD's focus is on enabling the tax authorities to assess profit-shifting risks better and more efficiently during tax audits – especially the risks posed by transfer pricing. The EU proposal concentrates primarily on generating public pressure by making sensitive corporate data available to the public. The aim is to influence the behaviour of the companies and ultimately prompt them to voluntarily pay their fair share of tax in the countries in which they operate.[31]

There are also differences as regards scope. According to the EU proposal, large unaffiliated EU enterprises that have no foreign group companies should be required to prepare and submit a report with income tax information. The OECD proposal contains no such requirement, it applies solely to multinational enterprises that operate in at least two countries.

A further difference concerns the reference period for consolidated revenues, which must exceed €750 million before the company is obliged to file a report: in the EU proposal the reference period for these revenues is the fiscal year of the report, whereas the reference period for CbCR in accordance with BEPS Action 13 is the immediately preceding fiscal year.[32]

What is more, the EU proposal offers two exemption options that have no counterpart in the OECD proposal: for banking-sector enterprises that are already obliged to perform CbCR under section 89 of 2013/36/EU, and the ability of member states to grant individual exemptions.

As far as the data to be published is concerned, the European Commission's original proposed directive of 12 April 2016 differs in many respects from the OECD's requirements. Changes made to the draft by the European Parliament of 4 July 2017 brought the proposal more into line again with what was required by the OECD. But the EU proposal goes far beyond what the OECD calls for in demanding the disclosure of government subsidies, donations, preferential tax treatment by means of a patent box or similar, as well as details of any material discrepancies between income taxes paid and income taxes still to be paid.

31 See Grotherr (2016a), p. 856.

32 See Grotherr (2016a), p. 860.

Table 1: Comparison of OECD CbCR (BEPS Action 13) and EU CbCR (proposal to amend the Accounting Directive)

Table	OECD CbCR (BEPS Action 13)	EU CbCR (proposal to amend the Accounting Directive)
Objective	Better assessment by tax authorities of profit-shifting risks, especially through transfer pricing arrangements	Influence behaviour of enterprises by means of public pressure
Manner of disclosure	Confidential (information shared between tax authorities)	Public (publication on company website and in a European Commission register)
Geographical scope	At least one group company/facility in an OECD country	At least one (group) company/facility in an EU member state
Scope of application	■ Multinational enterprises with consolidated prior-year revenues of at least €750 million ■ Subsidiaries and facilities of above corporate groups if domiciled in an OECD country and the parent company is not obliged to produce a CbC report or no other group company produces a CbC report	■ Ultimate EU parent enterprise with consolidated revenues of at least €750 million ■ Unaffiliated EU enterprises with revenues of at least €750 million ■ EU subsidiaries controlled by an ultimate non-EU parent enterprise with consolidated revenues of at least €750 million ■ EU branches opened by an enterprise established outside the EU that i) is controlled by a non-EU parent company with consolidated revenues of at least €750 million (branch obliged to report unless another subsidiary is already subject to the reporting obligation), or ii) is an unaffiliated enterprise with revenues of at least €750 million.
Size threshold	€750 million in revenues in the prior business year	€750 million in revenues in the fiscal year of the report
Sectors	All	All except for the banking sector (where CbCR obligation already exists under Art. 89 of 2013/36/EU)
Exemptions	None	Exemptions may be granted if disclosure of the information would be "seriously prejudicial" to the enterprise and the exemption does not hinder "a fair and balanced understanding of the tax position of the undertaking"

Table	OECD CbCR (BEPS Action 13)	EU CbCR (proposal to amend the Accounting Directive)
Data	Revenues (broken down by related and unrelated parties)	Revenues (broken down by related and unrelated parties)
	Profit/loss before income tax	Profit/loss before income tax
	Income tax paid	Income tax paid
	Accrued income tax	Accrued income tax
	Stated capital	Stated capital
	Retained profits	Retained profits
	No. of employees (FTEs)	No. of employees (FTEs)
	Tangible assets (with the exception of cash and cash equivalents)	Tangible assets (with the exception of cash and cash equivalents)
	Name(s) and activities of enterprises and facilities per country	Name(s), activities and countries of subsidiaries
		Government subsidies received and any donations made to politicians, political organisations or political foundations
		Preferential tax treatment by means of a patent box or similar
		Overall description at group level of any material discrepancies between income tax already paid and still to be paid

C. Analysis of information content and of costs and benefits of country-by-country reporting

I. Analysis of information content

Owing to a lack of empirical evidence, it is not yet clear whether CbCR is really a suitable means of curbing international profit shifting. However, the information content of CbCR is limited both by the heterogeneity of the reports as well as by the problem of finding the right measure of value creation within a corporate group. We will explain these two problem areas in brief in the following sections, before moving on to an analysis of the costs and benefits for the parties involved.

1. Heterogeneity of reports and problems of interpretation

In their statements concerning CbCR, neither the OECD nor the European Commission/European Parliament specifically stipulate what data source is to be used. According to the OECD's recommendations, for instance, enterprises are free to decide whether they base their reports on their consolidated financial statements (local GAAP), separate financial statements (local GAAP), supervisory reports or internal accounts.[33] Implementation in Germany of the OECD proposal in section 138a of the AO is based on a company's consolidated financial statements. However, other countries could specify a different set of data, resulting in differences between countries' reports. While the proposed EU directive does not explicitly specify what data is to be used, since it is intended as an amendment to the existing Accounting Directive we can assume it intends external accounting data to be used.[34] It is still unclear, though, whether this data is to be from separate or consolidated financial statements. If different companies use data from different sources, their reports will be comparable to a limited extent only.[35] For example, if consolidated financial statements are used, intra-group profits are not included in country-specific income.[36] Consequently, the tax payments, which are generally derived on the basis of the figures in the separate financial statements, will match the profit/loss figures reported for each country to a limited extent only.[37] By contrast, profits from intra-group transactions are reported in separate financial statements. While that makes it easier to explain tax payments, it weakens the connection to the figures in

33 See OECD (2014b), p. 40.

34 See Institut der Wirtschaftsprüfer [Institute of Public Auditors in Germany] (2016), p. 3-4; Deutsches Rechnungslegungs Standards Committee e.V. [Accounting Standards Committee of Germany] (2016), p. 5-6.

35 See Grotherr (2016b), p. 712.

36 See Evers/Meier/Spengel (2016), p. 7.

37 See Evers/Hundsdoerfer (2014), p. 12.

the consolidated financial statements.[38] In addition, the disadvantage of separate financial statements is that they are based on local GAAP and thus cannot easily be compared between different countries.[39]

A further source of heterogeneity in the reports is attributable to the different ways the OECD proposal has been implemented by different countries. For example, in section 138a of the AO, which regulates implementation in Germany, the OECD term "stated capital" was translated as "Eigenkapital" [equity capital] instead of "gezeichnetes Kapital" [subscribed capital]. If other tax authorities are not aware of this definition, misunderstandings can arise when information is shared automatically.[40] Open-ended, imprecise formulations in the CbCR proposals leave scope for misinterpretation. For instance, it is not really clear whether part-time employees, independent workers that participate in regular operations, independent sub-contractors, and temporary (agency) workers are to be taken into account when calculating an enterprise's FTEs.[41]

As far as terminology is concerned, care should be taken when interpreting the tax figures. As the amount paid in taxes also contains payments for earlier years and advance payments for later years, it cannot be used to derive the total amount of tax paid on income in a particular year.[42] What is more, CbCR does not contain tax-account data, but revenue and profit figures reported on the basis of external accounts. As there are discrepancies between how profit is calculated for tax purposes and for local GAAP, there is either a temporary or permanent disconnect between the taxes paid in each country and the profit generated. As a result, these two figures bear no meaningful relation to each other, at least when viewed in the context of a single fiscal year.[43] Nor can these figures be relied on to answer the question of whether a multinational enterprise is perceived to have aggressive tax-planning arrangements[44]. They thus aggravate the risk of misinterpretation.

Finally, the exemption options given in the European Parliament's draft report on amending the Accounting Directive are not very specific. According to the draft, member states can, on application, allow companies to exclude certain information for individual countries if disclosure of this information would be "seriously prejudicial" to them. Such exemptions may be granted only if they do not prevent the tax

38 See Evers/Hundsdoerfer (2014), p. 12.

39 See Evers/Hundsdoerfer (2014), p. 12; Evers/Meier/Spengel (2016), p. 7; Grotherr (2016b), p. 711.

40 See Grotherr (2016b), p. 716.

41 See Grotherr (2016b), p. 715.

42 See Schlie/Malke (2013), p. 2469; Institut der Wirtschaftsprüfer [Institute of Public Auditors in Germany] (2016), p. 6.

43 See Evers/Hundsdoerfer (2014), p. 16; Grotherr (2016b), p. 713.

44 See Grotherr (2016a), p. 867.

authorities from gaining "a fair and balanced understanding of the tax position of the undertaking". This wording is so vague that it leaves considerable scope for interpretation and consequently reduces legal certainty for the companies affected. Legal certainty is further reduced by the fact that the European Commission can revoke exemptions granted by member states if it does not agree with them.

2. Problem of assessing value creation using key variables

If group profit is taken as a basis for CbCR, it is necessary to apportion it to the individual countries in which the group operates by means of key variables. This process is quite arbitrary as it is unclear which variables should be used.[45] The same problem arises when interpreting the data. CbCR is supposed to highlight discrepancies between the taxes multinational enterprises pay in the countries in which they operate and the profits generated in those countries. In order to assess the appropriateness of country-specific profits and tax payments, these profits and tax payments must be set against indicators of economic activity. According to the proposals of the OECD and EU, the indicators to be used are number of employees, revenues and tangible assets excluding cash and cash equivalents. From the standpoint of the causation principle, however, it is impossible to define an unambiguous economic variable to assess the appropriateness of a company's profits and its income tax payments in a particular country.[46] Corporate profits are also influenced by intangible internal and external factors, such as economic and environmental impacts, infrastructure, degree of automation or levels of education. Nor can synergies between affiliated companies be divided up between corporate units using simple variables. This is precisely the problem inherent in transfer prices. If a multinational enterprise's profits could be clearly divided up between the countries in which it operates using a simple process that respects the causation principle, no CbCR would be needed for tax purposes as the whole problem of profit shifting would be solved. But as this is not possible, it is also impossible to accurately allocate profits when preparing country-specific reports on income tax.[47] One way of obtaining better base data for CbCR would have been to choose more specific indicators for known profit-shifting instruments, such as the separate disclosure of intra-group licence payments.[48] What is more, other labour market characteristics – such as labour productivity and personnel costs – should be taken into account[49], and an external comparison with the figures of a suitable peer group should be carried out in addition to an internal comparison of the figures between individual countries.[50]

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45 See Evers/Hundsdoerfer (2014), p. 12.

46 See Schreiber/Voget (2017), p. 148.

47 See Evers/Hundsdoerfer (2014), p. 13.

48 See Steinegger (2016), p. 458.

49 See Schwarz/Stein/Weinert (2017), p. 737.

50 See Nientimp/Holinski/Schwarz/Stein (2016), p. 2743.

II. Analysis of costs

1. Direct costs

The introduction of mandatory CbCR entails significant costs for the companies concerned. These include, on the one hand, the direct costs incurred to prepare the reports. As the data to be included in the reports exceeds the scope of the information already presented in the annual and consolidated financial statements, the companies will first have to adapt their reporting systems to the requirements of CbCR.[51] For example, both section 138a of the AO and the European Parliament's draft report require that the figures for non-autonomous facilities be assigned in each case to the country in which they are located; according to financial reporting standards, however, this data is simply included in the annual financial statements that the enterprise prepares in its country of domicile.[52] Further, some of the items in the CbC reports are more detailed or broken down differently from what is usual in annual financial statements (e.g. the item concerning income tax paid in the fiscal year). In this respect, first-time implementation of the CbCR requirements in a company's reporting system will give rise to one-time adjustment costs. In addition, as already mentioned under C.I.1., it is questionable whether reports prepared in accordance with section 138a of the AO and those prepared in accordance with the European Parliament's draft report are based on the same data. Whereas the OECD agreement regarding BEPS Action 13 allows companies to choose between separate financial statements, consolidated financial statements and internal accounts as their source of data,[53] German lawmakers have determined – in section 138a (2) no. 1 of the AO – that the data must be based on the enterprise's consolidated financial statements. The European Parliament's draft report does not explicitly specify a data source. If EU regulations were to specify anything other than the consolidated financial statements as the data source, companies would be doubly burdened by having to prepare two separate reports in parallel on the basis of different sets of data.[54]

In addition to these one-time costs, companies would also incur recurrent costs to collect and process the data required to prepare the CbC reports once a year. As the naked figures require interpretation and could be misleading in some fiscal years, the companies' tax and/or PR departments might also want to consider voluntarily publishing additional information and explanations.[55] If the reports have to be vetted by the auditors of the company's consolidated financial statements – as is already the case

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51 See Evers/Meier/Spengel (2014), p. 301.

52 See Evers/Hundsdoerfer (2014), p. 25.

53 See OECD (2015c), p. 32.

54 See also Deutsches Rechnungslegungs Standards Committee e.V. [Accounting Standards Committee of Germany] (2016), p. 5-6.

55 See Deutsches Rechnungslegungs Standards Committee e.V. [Accounting Standards Committee of Germany] (2016), p. 4-5.

under the CbCR regulations for banks in the EU[56] – that will also generate additional recurrent costs. In the latest draft report of the European Parliament, auditors are required to carry out only a formal check to ensure that the report has been made public as required. However, industry associations have complained that an unqualified audit certificate could cause the public to think that the content of the report has been audited.[57] In view of the regulations for banks, it is therefore conceivable that the auditing obligation could be extended to include the content of the report in the further course of the legislative process. As the reports prepared in accordance with section 138a of the AO are intended only for the tax authorities and not for publication, there is no obligation to have them audited. We nevertheless expect the tax authorities to intensify their tax audits of individual companies on the basis of the CbCR data they receive and to demand that they furnish additional documents, e.g. a reconciliation with other financial data.[58] Regardless of whether these audits ultimately result in any additional tax payments, they will generate higher compliance costs.

It is difficult to quantify the actual amount of the direct costs companies will incur introducing CbCR. For one thing, these costs depend on the size of the company in question, the complexity of its corporate structure and the design of its previous internal reporting system. We can further assume that, like other compliance costs, these costs will not rise in proportion to the size of the company. As a result, within the group of companies that exceed the threshold of €750 million in annual revenues, it is the smaller companies that will have to bear a comparatively higher cost burden.[59] The burden will be particularly heavy for family business. Whereas around one-third of the 500 German family businesses with the highest sales post annual revenues between €750 million and €2 billion,[60] the revenues of the 30 DAX-listed companies are between €2.4 billion and €217.3 billion.[61] Over half of the 500 German family businesses with the highest turnover have annual revenues in excess of the €750 million threshold.

2. Implicit costs

Far more substantial than the direct costs to be borne by companies are the indirect ones associated with the implementation of CbCR, and especially with the publication of information. They include potential

56 Art. 89 (4) of the CRD IV and section 26a (1) sentence 2 of the Banking Act (KWG).

57 See Wirtschaftsprüferkammer [Chamber of Public Accountants] (2016), p. 3; Institut der Wirtschaftsprüfer [Institute of Public Auditors in Germany] (2016), p. 7.

58 See Preisser (2016), p. 495

59 See Evers/Hundsdoerfer (2014), p. 21.

60 This information is based on unpublished rankings underlying the study carried out by The Foundation for Family Businesses (2017) as well as on publicly accessible rankings of Matchbird and EY, http://www.top-familienunternehmen.de/rankings [21.08.2017].

61 See https://de.statista.com/statistik/daten/studie/75495/umfrage/umsaetze-der-dax-konzerne/ [8 August 2017].

damage to a company's reputation, compromised tax confidentiality, the risk of double taxation and, in particular, competitive and locational disadvantages.

a) Reputational risks

Whereas the reports required by the OECD (and implemented in section 138a of the AO) are to be submitted to the tax authorities only, the European Parliament's draft report stipulates that the CbCR data be published on the company's website and entered in a publicly accessible register kept by the European Commission. Unlike tax office experts, however, the public at large has neither access to supplementary information nor the necessary expertise to fully appreciate and contextualise the figures in these reports.[62] International taxation law and the corporate structures of multinational enterprises are often highly complex. There is therefore a danger that the data will be misinterpreted in some cases – especially in view of the problems described in section C.I. concerning the meaningfulness and information content of the CbC reports. For instance, the public may jump to the conclusion that a company with a low tax burden in a high-tax jurisdiction which simultaneously posts high profits there must be guilty of aggressive tax planning. In many cases, however, a constellation of this kind can have other causes, such as the corporate structure (e.g. tax-free dividends of a holding company) or the utilisation of carryforwards from commercial losses incurred in the past.[63] For the companies in question, there is a significant risk of unwarranted reputational damage and a consequent loss of revenue. Economic disadvantages can thus arise very quickly – and can often take an extremely long time to overcome.[64] Whether companies can avoid this problem by publishing additional explanatory information is open to doubt. Given the already large amount of financial information that has to be published, it is not unlikely that public and media interest will focus on just the figures in the CbC reports rather than on any additional explanatory information.

b) Erosion of tax confidentiality

Another implicit cost factor of public CbCR is that it runs counter to tax confidentiality, a principle that is highly prized, especially in Germany. As defined in section 30 of the AO, tax confidentiality is an expression of every citizen's constitutionally guaranteed right to data privacy.[65] Its purpose is to engender trust in the confidentiality of the tax authorities and thus encourage people to share with them the personal data that is so essential for taxation purposes. In this way it helps achieve the principle of equality in taxation.[66] As the European Parliament's draft report envisages a statutory basis for the companies

62 See Deutsches Rechnungslegungs Standards Committee e.V. [Accounting Standards Committee of Germany] (2016), p. 4-5; Deutscher Steuerberater-Verband e.V. [German Association of Tax Advisers] (2016), p. 3.

63 See Deutscher Steuerberater-Verband e.V. [German Association of Tax Advisers] (2016), p. 3.

64 See Grotherr (2017), p. 330-337.

65 See Intemann (2014), section 30 of the AO, margin no. 5.

66 See Schreiber/Voget (2017), p. 149; Evers/Hundsdoerfer (2014), p. 22.

themselves to publish their CbCR information, publication does not, in formal terms, constitute a breach of tax confidentiality. The provisions of section 30 of the AO refer only to the unauthorised disclosure of information by tax office employees. But the obligation to publish de facto erodes tax confidentiality: once the country-specific data is made public in the CbC report, it no longer constitutes protected information under section 30 of the AO.[67] However, we should not overlook the fact that, historically, the main purpose of tax confidentiality has always been to protect the rights of natural persons.[68] For large enterprises and, in particular, listed companies, the scope of tax confidentiality has been severely eroded by the disclosure obligations already in place; in many cases the additional erosion brought about by the CbCR regime will not constitute any serious change.[69] Family businesses, by contrast, are the most likely to be affected in view of the relatively close connection between the enterprise and a small number of private individuals. The publicly accessible data can thus be used to draw certain conclusions about the tax situation of those private individuals, which is not the case with large publicly listed companies.

c) Risk of double taxation

A further problem to bear in mind is that the CbCR data could arouse the interest of the tax authorities in certain countries.[70] For tax authorities, the data reveals the scope of a company's business activities and corresponding tax payments in each country. It is to be expected that the tax authorities in some countries will use the CbCR data to validate companies' transfer prices. If they were to gain the impression that a company's tax payments in their country do not match the magnitude of its business activities, they might be inclined to use this information to adjust the company's transfer prices[71] – even though the CbCR data alone is no indicator of the appropriateness of a company's transfer prices. As adjustments of this kind are made almost solely in order to increase the tax base, and the other countries involved are unlikely to be willing to make corresponding counter-adjustments, companies will face a rising risk of double taxation.[72] This is reportedly already a problem for some German companies. Implementation of the CbCR regime could ultimately lead to battles for tax receipts between different jurisdictions, to an increase in taxation at source, and to the de facto introduction of formula apportionment in the absence of any explicit legal basis.[73] Incidentally, this is a problem posed not just by public CbCR as detailed in the draft report of the European Parliament, but also by the confidential sharing of CbCR information between the tax authorities of the participating countries under the OECD regime implemented in Germany under section 138a of the AO.

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67 See Schreiber/Voget (2017), p. 149.

68 See Rüsken (2016), § 30 AO, margin no. 2.

69 See Cockfield/MacArthur (2015), p. 651-654; Evers/Hundsdoerfer (2014), p. 22.

70 See Schlie/Malke (2013), p. 2469.

71 See Evers/Hundsdoerfer (2014), p. 23.

72 See Schlie/Malke (2013), p. 2469.

73 See Cockfield/MacArthur (2015), p. 642; Evers/Meier/Spengel (2016), p. 10.

d) Competitive and locational disadvantages

Competitive and locational disadvantages are the most significant of the implicit costs that could result from the introduction of public CbCR across the EU. This is because the figures in the reports represent confidential corporate information.[74] Such information must always be protected against access by contractual partners and, in particular, by competitors, as otherwise the company would suffer substantial commercial disadvantages. Competitors could trawl the CbCR data for information on a company's international presence, cost structures and production processes, and assess how it deploys know-how.[75] They could then use that information to analyse the company's strengths and weaknesses and make use of the findings to enhance their own efficiency. The CbCR data also provides insights into the profitability of a company's individual locations. Country-specific profit margins and profitability ratios could allow competitors to gauge the market potential in those countries and use that data to move into particular markets.[76] CbCR data is a valuable source of information for a company's suppliers and customers too. Suppliers and customers at one location can compare a company's profit margin there with their counterparts at other locations. If a company has a relatively high profit margin in one country, the local suppliers and customers could well use that as an argument during future contractual negotiations to adjust the terms and conditions to their advantage. These examples illustrate that the reports contain sensitive data that is worthy of the same protection as business secrets. For this reason, on 8 December 2016 the Constitutional Council in France declared the government's plan to introduce public CbCR there to be unconstitutional.[77] The issue of data confidentiality is of special significance when it comes to the draft report of the European Parliament as the scope of the information to be reported goes well beyond the requirements of the OECD agreement.

If public CbCR were to be introduced across the globe regardless of company size, all multinational enterprises would be obliged to publish confidential data, a scenario that ultimately would not impair competition to any great extent.[78] However, the introduction of CbCR as proposed in the European Parliament's draft report is neither size-neutral, nor is it global in scope (it cannot be applied globally as the EU has no power to impose its regulations on third countries). As explained in section B.III., the proposed scheme is restricted to enterprises with annual revenues of over €750 million that have at

74 See Evers/Meier/Spengel (2016), p. 9.

75 See See Institut der Wirtschaftsprüfer [Institute of Public Auditors in Germany] (2016), p. 1-2; Evers/Hundsdoerfer (2014), p. 21.

76 See Grotherr (2017), p. 330-337.

77 See press release of the Conseil Constitutionnel [Constitutional Council] of 8 Dec. 2016, http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/les-decisions/acces-par-date/decisions-depuis-1959/2016/2016-741-dc/communique-de-presse.148311.html [29.8.2017]; see also Schreiber/Greil (2017), p. 18. By contrast, Cockfield/MacArthur (2015), p. 655, express the opinion that none of the information contained in the reports should be classified as business secrets or as information meriting similar protection.

78 See Schlie/Malke (2013), p. 2469.

least one subsidiary, company or facility in at least one EU member state. The scope of the proposed obligation to publish information is thus limited both in terms of company size and geographical location. This asymmetrical implementation can considerably distort competition as it grants individual groups of companies access to the CbCR information of their competitors or contractual partners without having to provide corresponding data themselves.

For one thing, EU-based groups that exceed the revenue threshold are clearly disadvantaged against their EU-based competitors that do not. Both groups of companies are domiciled in the same economic region, compete against each other in the same markets and may even be of a comparable size (e.g. enterprises with annual net revenues of between €500 million and €1 billion). And yet, only one of these groups is obliged to publish data. Since, in Germany at least, almost all companies with revenues of around €750 million are SMEs, larger SMEs will suffer a competitive disadvantage compared with their relatively smaller competitors. A study focusing on Japan shows that companies with an asymmetrical obligation to publish tax data will, or fear they will, suffer serious disadvantages.[79] Until the corresponding regulations were abolished in 2006, companies in Japan whose income exceeded a certain threshold were obliged to publish their taxable income. A survey of income distribution during the period the regulations were in force suggests that some companies that were close to the threshold deliberately manipulated their income figures so as to remain below it and avoid having to make their income public.[80]

A much weightier problem than that of a size-based threshold, however, is the asymmetry caused by the fact that the obligation to publish CbCR data is restricted in geographical terms. As already mentioned, the regulations outlined in the European Parliament's draft report are to apply only to enterprises with at least one subsidiary, company or facility in at least one EU member state. This clearly disadvantages companies with subsidiaries in EU member states as opposed to their competitors with no such subsidiaries. We can assume that this disadvantage will have less impact on large publicly listed companies. The 30 companies listed on Germany's DAX index, for instance, compete mainly with international enterprises of a similar size. However, the global players in this top size category that are domiciled in a third country (e.g. those listed on the Dow Jones) generally already have subsidiaries and/or facilities in the EU due to the global nature of their business and are thus also subject to CbCR disclosure obligations. As the scope of disclosure for groups domiciled in third countries will cover their entire operations worldwide, EU-based groups in this size category will not be at any competitive disadvantage. The situation for German family businesses is different. It is quite probable that many family businesses exceeding the €750 million revenue threshold will be competing in markets outside the EU against third-country corporate groups that have no subsidiaries within the EU. For example, if a German SME that is over the revenue threshold is competing for major international orders against a Japanese SME that is of similar size but does not have a subsidiary in the EU, the German company will be at a competitive

79 See Hasegawa/Hoopes/Ishida/Slemrod (2013).

80 See Hasegawa/Hoopes/Ishida/Slemrod (2013), p. 588-591.

disadvantage as it has to publish its CbCR data and, as a result, grant its Japanese competitor access to sensitive information that the latter can use to its own advantage. Having no EU subsidiary, the Japanese competitor is not obliged to publish such data.

Concerns have also been raised that enterprises domiciled in third countries with subsidiaries and/or facilities in EU member states – and thus theoretically also subject to the CbC reporting obligation – might refuse to make the relevant information about their international corporate structure available to their EU subsidiaries. In such cases, the EU would have no suitable sanctions at its disposal to enforce its regulations so individual companies might attempt to circumvent publication.[81] The competitive disadvantages of EU-based companies would then broaden to include competitors of this kind as well. Here again we can assume that, in Germany, family businesses will be the main ones affected. It is rather unlikely that global players from third countries that generally have numerous subsidiaries across the EU and are also in the public eye would try and circumvent the regulations. By contrast, smaller multinational enterprises with only one or a handful of small subsidiaries in the EU and who are exposed to only a minor risk of reputational damage, might be tempted to do so. This group contains the traditional competitors of Germany's SMEs.

Finally, it should be noted that the above-mentioned competitive disadvantages for certain EU companies imply a competitive disadvantage for the EU economy as a whole.[82] From the standpoint of competition, EU-based enterprises welcome the fact that the same obligation to publish data on their entire international corporate structure will apply to enterprises domiciled in third countries as soon as they have only a single subsidiary in the EU (provided of course they meet that obligation). On the other hand, this comprehensive reporting obligation and the associated competitive disadvantages it entails could deter expanding enterprises in third countries from establishing a subsidiary in the EU in the first place. Similarly, the regulations could be a significant factor for companies considering whether to close down existing sites in the EU and, for instance, relocate to emerging markets[83]. Consequently, the implementation of public CbCR might ultimately have a negative impact on foreign direct investment in the EU and on European jobs.

As the OECD's CbCR regulations implemented in Germany in section 138a of the AO do not prescribe the publication of data (but merely notification of the tax authorities and the sharing of information between participating countries), they do not distort competition in the same way as the asymmetrical publication of sensitive corporate data does. Nonetheless, indirect competitive disadvantages could arise in that groups domiciled in countries implementing the regulations (including Germany) have to

81 See Institut der Wirtschaftsprüfer [Institute of Public Auditors in Germany] (2016), p. 1-2.

82 See Evers/Meier/Spengel (2016), p. 10.

83 See Kleinmanns (2016), p. 552; Institut der Wirtschaftsprüfer [Institute of Public Auditors in Germany] (2016), p. 2.

bear both the direct costs described in section C.II.1 and the risk of double taxation outlined in section C.II.2.c, while competitors domiciled in countries not implementing the regulations will be spared these. These disadvantages will be aggravated if the OECD agreement is not implemented in the same way in each country, especially if there are differences in the information shared between countries. As Germany has already signed the multilateral agreement for the sharing of CbCR information between countries, it provides the CbCR data of German enterprises to the tax authorities of all other signatory states. By contrast, the USA negotiates bilateral agreements with individual countries and thus decides in each individual case what data on US companies will be shared with which other tax authorities and on what conditions.

III. Analysis of benefits

1. Benefits for the tax authorities

The common goal of both the OECD's CbCR regime and the European Parliament's draft report is to combat tax avoidance and aggressive tax planning.[84] The reports are therefore primarily for the benefit of the tax authorities of the countries in which multinational enterprises have subsidiaries. The CbCR data is intended to provide the tax authorities with additional information to assist them in unmasking mechanisms for shifting or reducing profits. In particular, the data is to help them assess companies' transfer price arrangements and determine the intensity of tax audits.[85]

But, given that the tax authorities already have access to confidential corporate data that the general public does not, it is questionable whether the reports will provide them with real additional information. Moreover, we should not forget that, by its very design, CbCR is not an appropriate method for uncovering the specific mechanisms or channels a company uses to shift profits.[86] At most, the data can give an indication of a company's overall tax planning behaviour. In particular, the information cannot be used to determine whether a certain company's tax arrangements are still within what is legally permissible or whether they already constitute unlawful tax avoidance. The overwhelming majority of tax-planning activities employed by international enterprises – e.g. exploiting the leeway and tax loopholes that arise through inadequate coordination between different national tax jurisdictions – are in any case legal.[87] Even if the tax authorities of the countries concerned were to uncover such arrangements in the course of more intensive tax audits, the legal validity of those arrangements would rule out any adjustments to the companies' tax assessments. In view of this, the benefits of CbCR data for the tax authorities are doubtful.

84 See EU (2016b), p. 2; OECD (2013), p. 7-8.

85 See Murphy (2012), p. 37; Grotherr (2016a), p. 856; Steinegger (2016), p. 459.

86 See Evers/Hundsdoerfer (2014), p. 16.

87 See Evers/Meier/Spengel (2016), p. 11.

It may be the case, however, that the knowledge that they have to provide CbCR data to the tax authorities will influence companies' behaviour. It might prompt multinational enterprises to voluntarily renounce particularly aggressive (but legal) methods of profit shifting so as to avoid scrutiny – and more intensive tax audits – and the additional costs they entail. Studies carried out by Lohse/Riedel[88] and Braun/Weichenrieder[89] indicate that greater transparency toward the tax authorities can lead to a reduction in tax planning by companies. It is not possible to deduce whether this effect applies mainly to illegal tax arrangements or also to legal ones.[90] In this respect, it is difficult to predict whether the availability of CbCR data will actually bring the tax authorities any benefit. In any case, the confidential provision of CbCR data under section 138a of the AO would be sufficient to supply the tax authorities with additional information and bring about the hoped-for change in company behaviour; an obligation to report such data publicly as proposed in the draft report of the European Parliament would not.

2. Benefits for legislators

CbCR regulations are also intended to assist policymakers in drafting legislation. Firstly, enhanced transparency is supposed to help pinpoint specific deficits and loopholes in the tax system[91], enabling explicit countermeasures to be taken at national and international level. More generally, the information should engender a more informed political and public debate on profit-shifting mechanisms.[92] Secondly, greater transparency should, in a positive sense, generate public pressure on legislators. The fundamental idea is that the CbCR data will provide the public with information on the loopholes in the tax system that make excessive tax planning possible and on the countries that are attracting companies – perhaps deliberately – with tax rebates and incentives. A well-informed public is in a position to demand specific rule changes from legislators. In turn, legislators must respond to tax loopholes that become known or justify to the public why they tolerate certain tax arrangements.[93]

The objection to this argument is that CbCR can, at most, reveal basic trends, i.e. the countries to which profits are being channelled and what types of companies are more actively engaging in tax planning. However, the data does not indicate what specific mechanisms and arrangements companies employ to achieve their ends. At best this could be revealed indirectly: if the tax authorities use CbCR data to subject individual companies to more intensive tax audits, if new instruments are discovered in the course

88 Lohse/Riedel (2013).

89 Braun/Weichenrieder (2015).

90 See also Steinegger (2016), p. 459.

91 See EU (2016a), p. 8.

92 See Grotherr (2016a), p. 856-857.

93 See Cockfield/MacArthur (2015), p. 644.

of such audits, and if this information is passed on to legislators and/or the public.[94] It is nevertheless extremely doubtful to what extent this process would really lead to new insights. Both legislators and the public are already well aware of international tax loopholes and the tactics employed by companies to exploit these to shift profits.[95]

Finally, CbCR could at least contribute toward research into international tax planning: CbCR data available at company level is better than macroeconomic data when it comes to gaining a more accurate approximation of the magnitude of profit shifting. Moreover, empirical estimates using CbCR data in combination with other data can be used to control for a wide variety of company- and country-specific factors and consequently mitigate the information content problems described in section C.I.[96] Still, the nature of CbCR data means that only studies into the overall extent of profit shifting are possible. Due to a lack of specific indicators, CbCR data cannot be used to analyse the use of individual instruments or the effectiveness of legislative countermeasures against individual instruments.[97] This, however, would be the most valuable information for legislators and the public alike, and would enable specific conclusions to be drawn for the legislative process. In this respect, it is questionable whether legislators will benefit from the CbCR regime. Incidentally, publication of the reports (as proposed by the EU) is not necessary for the purposes of further research; it would be enough to anonymise the data and provide it to selected teams of researchers on a confidential basis.

3. Benefits for analysts and investors

Advocates of public CbCR also praise the benefits of the data for analysts and investors[98], claiming that the reports provide them with additional information, e.g. on a company's geographical spread and the associated geopolitical risks.[99] Investors may also find information on the use of tax havens and on the extent of tax planning significant if ethical aspects play a role in their investment decisions, or if they simply want to assess the risk of reputational damage and tax audits due to aggressive tax avoidance.[100]

On the other hand, it is doubtful whether investors will actually process the information contained in the reports at all. Large multinational enterprises, in particular, which are the targets of CbCR regulations, are already subject to extensive reporting obligations in the EU, and the volume of publicly accessible

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94 See Steinegger (2016), p. 458.

95 See Evers/Meier/Spengel (2014), p. 301-302.

96 See Steinegger (2016), p. 458.

97 See Steinegger (2016), p. 458.

98 See also Cockfield/MacArthur (2015), p. 642.

99 See Murphy (2012), p. 32.

100 See Murphy (2012), p. 32.

information will continue to grow as a result of current legislative initiatives such as the recently enacted CSR Directive.[101] This abundance of publicly available data forces investors and analysts to take a selective approach and choose carefully the information on which to base their decisions. The introduction of CbCR thus harbours the risk of financial reporting information overload[102]. Although empirical studies underscore the incremental information content of tax data for investors[103], they also show that, because of the superabundance of information, investors no longer factor all available data into their decision-making processes.[104] It is therefore difficult to predict whether the proposed introduction of public CbCR by the EU will generate any benefit for investors.

4. Benefits for the public and consumers

One of the main arguments for publishing CbCR data derives from the stakeholder concept, according to which a company's tax payments should satisfy the legitimate interests of all stakeholders, one of whom is society. Publication of CbCR data will supposedly enable the public to assess whether a company is meeting its social responsibilities in an adequate manner.[105] Pressure from the public is supposed to encourage a company to pay taxes commensurate with the scope of its business activities in each country. Ideally, that should induce companies – in view of the reputational risks involved – to voluntarily cease using some or all of the legal profit-shifting instruments in their repertoire, which constitute the majority of tax-planning measures.[106]

However, the public can exercise this control function only if the CbCR data provides reliable information on the scope of every reporting company's tax-planning activities and, additionally, if the public has the expertise required to make evaluations of this kind.[107] Both aspects are more than questionable, however. In section C.I., we already described in detail the deficits as regards the meaningfulness and information content of CbCR data and the problems of allocating group profits in a sensible way. As already put forward in section C.II.2.a), there are fears that in some cases this will give rise to misinterpretation, false accusations and unwarranted reputational damage. This stands in the way of the efficient exercise of the control function.

101 See Wirtschaftsprüferkammer [Chamber of Public Accountants] (2016), p. 2.

102 Deutsches Rechnungslegungs Standards Committee e.V. [Accounting Standards Committee of Germany] (2016), p. 5.

103 See for example Hanlon/Laplante/Shevlin (2005), Ayers/Laplante/McGuire (2010).

104 See for example Lenter/Slemrod/Shackelford (2003), Ready/Seidman/Shackelford (2011).

105 See Schreiber/Voget (2017), p. 149.

106 See Grotherr (2016a), p. 856-857.

107 See Evers/Hundsdoerfer (2014), p. 16-17

But even if CbCR data provided unambiguous information on the magnitude of tax planning and the public were able to process that information correctly, we have to ask whether generating public pressure is an appropriate way of reining in profit shifting. If the chosen tax arrangements are legal, which is the case for the majority of the instruments currently used, assessing which ones are "acceptable" and which "immoral" is highly subjective.[108] A consensus in this area seems impossible. The solution offered by CbCR thus undermines the rule of law: it makes measuring the amount of tax a company has to pay a process that is no longer performed solely on the basis of the applicable laws, but also on the basis of the opinions and perceptions of the public.[109] That makes the process to a certain extent unpredictable and can lead to variations in results both over time and between different regions. By restricting the rule of law in this way, legislators are walking into a minefield.

Another aspect requiring examination is the extent to which the public even takes note of information on tax planning and what the public's attitude to tax compliance is. There are contradictory theories on this. On the one hand, the general public could credit companies for refraining from excessive tax planning and acknowledge that, in doing so, the companies are fulfilling their responsibility towards society. On the other hand, customers in particular could be focused on prices and might even tolerate or appreciate profit-shifting arrangements because they push prices down.[110] We therefore cannot know in advance how customers and the general public will respond to a company's CbCR data. Whether and to what extent a company's management will curb its lawful tax-optimisation activities if it is obliged to make them public depends, in turn, on its assessment of the risks and opportunities involved and on the probability that the public, customers and investors could react in a certain way. Several factors are likely to determine the magnitude of potential negative effects on a company's reputation, including the size of the company, its market power, its ownership structure and the nature of its business activities.[111] We can assume then that the effects will differ markedly from company to company. For instance, B2C companies, such as those in the retail sector, are exposed to a much higher risk than companies that have no or only a small number of private customers.[112] This discrimination for or against certain industries and different types of company runs counter to the true intention of public CbCR.

The results of empirical studies of the responses of customers, management and investors to the publication of information on companies' tax planning activities are not uniform.[113] Whereas consumer

108 See Evers/Hundsdoerfer (2014), p. 18.

109 See Schreiber/Voget (2017), p. 153.

110 See Schreiber/Voget (2017), p. 154-155.

111 See Schreiber/Voget (2017), p. 154-155.

112 See Cockfield/MacArthur (2015), p. 641.

113 For an overview, see Schreiber/Voget (2017), p. 155-156.

surveys carried out by Hoopes et al[114] documented negative reputational effects for Australian companies after evidence of their aggressive methods of tax avoidance became known, Gallemore et al[115] could not ascertain any change in the revenues, revenue growth or marketing expenses of US firms following similar news reports. In a laboratory experiment, Hardeck/Hertel[116] found that, while media reports of aggressive tax planning did damage companies' reputations, consumers were not willing to pay higher prices for those companies' products to reward them for behaving more ethically.

The results are also mixed when it comes to the response of management. Dyreng et al[117] showed how, under public pressure from Action Aid, British FTSE 100 companies began to meet their reporting obligations for their foreign subsidiaries (especially those in tax havens) and subsequently reined in their tax-planning activities. On the other hand, Hoopes et al[118] did not observe any change in the effective tax rates of the companies concerned after the introduction of a disclosure obligation for certain types of income tax data in Australia. Gallemore et al[119] examined personnel turnover rates for CEOs and CFOs in the wake of media reports of aggressive tax avoidance and could not ascertain any significant impact.

In their study, Hanlon/Slemrod[120] focused on the reaction of investors to media reports of aggressive tax planning. They documented above-average drops in the share prices of the companies in question, which were particularly pronounced in the retail sector. Gallemore et al[121], however, showed these effects were only of a short-term nature and that within 30 days share prices had risen to their pre-crisis levels again. Johannesen/Larsen[122] observed negative responses from the capital markets to EU-based enterprises in the extractive industry at the moment the EU plan to introduce CbCR for these companies materialised. Last but not least, Huesecken et al[123] examined the repercussions of the "Lux Leaks", which uncovered binding agreements to minimise taxes between numerous international companies and the Luxembourg tax office. The positive reaction of the capital markets as observed by Huesecken et al indicates that investors actually appreciate information on successful, legally watertight measures to reduce taxation.

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114 See Hoopes/Robinson/Slemrod (2016).

115 Gallemore/Maydew/Thornock (2014).

116 Hardeck/Hertel (2014).

117 Dyreng/Hoopes/Wilde (2016).

118 Hoopes/Robinson/Slemrod (2016).

119 Gallemore/Maydew/Thornock (2014).

120 Hanlon/Slemrod (2009).

121 Gallemore/Maydew/Thornock (2014).

122 Johannesen/Larsen (2016).

123 Huesecken/Overesch/Tassius (2016).

All in all, given these heterogeneous empirical findings, we cannot make any clear prognosis of how the public or consumers will react to the publication of CbCR data and what impact their expected or actual reactions will have on the companies' managers or on capital markets. The research findings to date do not indisputably confirm the posited benefits of public pressure on companies.

5. Potential converse effects

A further aspect is that the benefits of introducing public CbCR could be counteracted by converse effects in the wake of publication. For one thing, the publication of CbCR data demonstrates how "tax-optimised" individual enterprises are. Companies can use this data to benchmark themselves against their direct competitors.[124] If a company's tax planning activities are of a much smaller magnitude than those of its competitors, the company's management might feel prompted to expand them in future. The capital markets' positive reaction to the Lux Leaks described in the previous section could even indicate that there is pressure from investors to maximise after-tax profits by means of legal tax-planning arrangements.[125] There is also a downside to the fact that the publication of CbCR data raises public awareness. If the reports point to a high level of aggressive tax planning and legislators fail to respond quickly and resolutely, this could be viewed as legitimising the companies' behaviour, further undermining overall tax compliance.[126]

Finally, we should not ignore potential interactions between the OECD's CbCR requirements and the regulations proposed in the draft report of the European Parliament. By its very design, the OECD agreement as implemented in section 138a of the AO – which comprises the submission of confidential reports to the national tax authorities and the subsequent sharing of data with the tax authorities of the other participating states – presupposes reciprocity. If public CbCR is introduced for EU-based enterprises, however, the tax authorities in third countries can get nearly all of the information they require from publicly accessible sources, rendering the mutual exchange of data virtually superfluous from the latter's point of view.[127] In this respect, public CbCR at EU level could have a negative impact on collaboration – and the sharing of data – with other countries.

124 See Cockfield/MacArthur (2015), p. 642-644.

125 See Cockfield/MacArthur (2015), p. 642-644.

126 See Deutscher Steuerberater-Verband e.V. [German Association of Tax Advisers] (2016), p. 4.

127 See Institut der Wirtschaftsprüfer [Institute of Public Auditors in Germany] (2016), p. 3.

IV. Results of cost-benefit analysis

Regardless of whether CbC reports are made public or submitted confidentially to the tax authorities, the heterogeneity of the reports resulting from a lack of uniform implementation by different companies and countries will dilute their value in terms of information content and consequently create problems of interpretation. What is more, the basic idea behind CbCR – according to which corporate profits are to be divided between the countries in which a company operates using arbitrarily selected variables and then assessed to see whether they are appropriate – is a questionable one. CbCR cannot resolve the innate problem of taxing multinational enterprises, namely how to apportion profits within the group.

The foregoing has shown that the confidential CbCR agreed by the OECD, and in particular the introduction of public CbCR as proposed by the EU, could generate substantial costs for the companies involved. In this context, the potential implicit costs are much higher than the direct costs incurred to implement the reporting system in the first place and to prepare and audit the annual reports where necessary. The limited information content of the CbCR data can give rise to misinterpretation by the public and to unwarranted reputational damage for individual companies. CbCR will further compromise tax confidentiality. What is more, individual national tax authorities could actually use the CbCR data to make unilateral adjustments to transfer prices, which could increase the risk of double taxation. The most serious effects, however, are the competitive and locational disadvantages that could arise through the introduction of CbCR publication obligations that apply only to companies of a certain size and only within the EU. The companies subject to the regulations must file public reports on sensitive internal data. Competitors that are not subject to the regulations will be able to use this information to their own advantage, without having to publish comparable data themselves. An analysis of the individual scenarios shows that, in Germany, large family businesses will be the ones particularly affected by the competitive disadvantages caused by this asymmetrical regime. In relative terms, this group of companies will also be more strongly affected by the direct costs of CbCR and the erosion of tax confidentiality it entails. On the whole, therefore, we can assume that a large part of the costs generated in Germany by the proposed EU regulations will be borne by family businesses.

It is thus doubtful whether the hoped-for benefits of CbCR will materialise. Given the design of CbCR, the additional information it will provide tax authorities and legislators with is limited. At best, the data may be viewed as an indicator of the overall extent to which a company makes use of tax planning and may serve as a starting point for more intensive tax audits. But it does not reveal which individual channels and instruments a company uses and does not allow us to draw any conclusions as to whether the arrangements chosen are lawful or where, if necessary, specific reforms are needed. In any case, the majority of the tax-planning measures adopted are within the law and already public knowledge. It is difficult to predict whether publicly available CbCR data will be of advantage to investors. On the one hand, tax information is always of relevance for investment decisions. On the other hand, investors and analysts are facing information overload given the increasing number of disclosure obligations and are thus unable to process all the data available to them. The main argument advanced for public CbCR is the public's control function. However, given the problems interpreting CbCR data and the general public's lack of expertise in this area, it is doubtful whether this control function can be properly exercised. Quite apart from that, we need to ask whether stoking public pressure is an appropriate way to rein in tax planning. Public pressure undermines the rule of law because taxes will no longer be assessed solely on the basis of the law, but also in the court of public opinion. It is also uncertain what attitude the public has as regards tax compliance. The inconsistent results of empirical research into the responses of consumers, managers and investors to the expansion of tax disclosure obligations and to revelations of individual companies' excessive tax-planning activities show that we cannot simply take the posited benefits of public CbCR for granted. Finally, we need to consider that the unilateral introduction of a public CbCR obligation across the EU could lead to negative interactions with the OECD's system of confidential CbCR and the mutual sharing of data.

Although the costs of public CbCR cannot really be quantified in advance, much in the foregoing analysis suggests that they will exceed its potential benefits. What is more, in Germany it is large family businesses that will bear a disproportionate share of those costs. Any potential benefits for the tax authorities and legislators can be achieved by means of the confidential CbCR regime implemented in section 138a of the AO. There is no need to make CbCR data public. Confidential CbCR entails only direct costs and, in some cases, a higher risk of double taxation; it avoids, in particular, the substantial competitive and locational disadvantages that publication of the data gives rise to.

D. Conclusions and alternatives

The many individual CbCR initiatives either recently implemented or currently under discussion reflect the trend of the last few years towards greater transparency in the fiscal reporting of multinational enterprises. The main purpose of the first sector-specific CbCR regulations was to combat corruption in the extractive industry and to restore confidence in financial markets. By contrast, the latest cross-sector initiatives – the CbCR agreed by OECD member states and implemented in Germany in section 138a of the AO as well as the draft directive of the European Commission and European Parliament – have their origins in a package of measures designed to thwart the profit-reduction and profit-shifting arrangements of major multinational enterprises. Both of these regimes oblige enterprises with consolidated annual revenues of at least €750 million to implement CbCR. Though they diverge in a number of minor ways, the main difference between the two regimes is that the EU draft provides for the publication of the reports, whereas, under the OECD scheme, the data is submitted confidentially to the tax authorities and subsequently shared globally with other tax jurisdictions.

A detailed analysis of the implications of CbCR has revealed that the costs to companies of public reporting exceed the posited overall benefits. It is not so much direct costs that play a role, but the potential implicit costs of competitive and locational disadvantages; from Germany's point of view, a disproportionate share of these costs would be borne by large family businesses. The potential benefits of CbCR are considerably restricted by the reports' heterogeneity and their lack of information content, and by the fundamental problem that it is impossible to divide up a group's overall profit between individual countries in a consistent, economically meaningful way. In addition, detailed analysis has shown that the posited benefits of public pressure are neither clearly justified in theoretical terms nor empirically proven on the basis of the research to date.

As any value that CbCR data might have for the tax authorities and legislators can also be achieved by means of confidential CbCR, the EU should restrict itself to the content of the OECD agreement and refrain from introducing a general obligation to publish figures. In particular, this would avoid the competitive disadvantages public CbCR threatens to bring. Under the provisions of the OECD agreement, CbCR constitutes the third component of transfer pricing documentation alongside a local file and a master file. This shows that the OECD considers CbCR data to be sensitive corporate data intended only for the tax authorities and not for general disclosure. Before the EU makes any definitive decision on the obligation to publish reports – which, as already described, would have far-reaching consequences – we should first wait and see what experiences the companies have with the CbCR regime already in force.[128] The obligation to publish CbCR data that was introduced for EU- and US-based companies in the extractive industry and for EU-based financial institutions, and the confidential CbCR agreed at OECD level, have been in force for a short time only and it is still too early to draw any conclusions from them.

128 See Deutsches Rechnungslegungs Standards Committee e.V. [Accounting Standards Committee of Germany] (2016), p. 5-6.

Once we have a few years' experience with these regimes, it will be possible to evaluate the problems that have arisen in practice and carry out an empirical analysis of the effects on the tax-planning activities of multinational enterprises.

As the majority of arrangements used to minimise tax are lawful anyway – and also public knowledge – legislators should not undermine the rule of law by attempting to put public pressure on companies. Instead, they should consider enhancing regulation of known tax-planning channels. As Heckemeyer/Overesch demonstrated in their meta-study[129], these relate especially to the pricing of intra-group transactions (transfer pricing) and the tax-optimised financing of cross-border capital expenditure, with the first of these channels accounting for around 72 percent of profit shifting and the latter around 28 percent. In this context, transfer pricing regulations could be tightened and harmonised internationally, and compliance with them monitored more closely by the tax authorities. In addition, more efficient and uniform thin capitalisation rules could be introduced. The effectiveness of such instruments can be empirically proven.[130]

Nonetheless, little is known about the true extent of profit shifting. The above-mentioned meta-study by Heckemeyer/Overesch, for instance, showed that, in the final analysis, the tax semi-elasticity of reported pre-tax profit is 0.8 in absolute terms. That means that reported pre-tax profit decreases by an average of around 0.8 percent for every one percentage point increase in the tax rate differential utilisable for tax arbitrage. The empirically verifiable magnitude of profit shifting is thus exceptionally small. Rather, there is the perception that a few known cases of such practices by US companies – above all Apple, Google, Amazon and Caterpillar[131] – are being instrumentalised to fuel the ongoing controversy surrounding tax planning by multinationals. It has become known, for example, that four US groups (Apple, Microsoft, Pfizer and General Electric) are responsible for around one-quarter of the total of some USD 2.5 billion in profits shifted from the US to tax havens.[132]

Over and above this, there are concerns that a tightening of the regulations to combat abuse could have a negative impact on investment. As Feld/Heckemeyer showed in their meta-study[133], the mean tax semi-elasticity of foreign direct investment is 2.49 in absolute terms. That means foreign direct investment in a country decreases by an average of 2.49 percent for every increase of one percentage point in the country's tax rate. The tax semi-elasticity of foreign direct investment is thus three times higher than the tax semi-elasticity of reported pre-tax profit. Therefore, in their efforts to limit companies' scope to

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129 Heckemeyer/Overesch (2013).

130 For an overview, see Evers/Meier/Spengel (2016), p. 13-14.

131 See also, for example, Fuest/Spengel/Finke/Heckemeyer/Nusser (2013); Pinkernell (2012).

132 See Avi-Yonah/Mazzoni (2017), p. 9-10 with further references.

133 Feld/Heckemeyer (2011).

transfer profits to low-tax jurisdictions, legislators should not lose sight of the fact that such measures can lead to a noticeable reduction in investment levels in some industrialised countries. Against this backdrop, the EU would be well advised to take a measured approach. There is no need to introduce CbCR across the board nor, more particularly, to prescribe public CbCR.

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ISBN: 978-3-942467-53-7