



# **EU Directive on tax dispute resolution mechanisms in the EU (COM(2016) 686 final)**

**Presentation at EU JTPF - 22 June 2017 meeting**



# DRM and double taxation: the political environment

There is an urgent need to challenge such corporate tax abuse and to review corporate tax rules in order to better tackle aggressive tax planning. Some companies are still subject to double taxation of their income by more than one Member State

*(Introduction Commission Action Plan for fair and efficient corporate taxation)*

*We will also be continuing the G20 initiative for greater legal certainty in taxation, which lowers the risk of unwarranted double taxation, thereby boosting international economic activity*

*(The German G20 presidency's priorities in the Finance Track)*

*Recommendation C9 of Dodds Niedermeyer report to EP:*

Improving cross-border taxation dispute resolution mechanisms  
The European Parliament calls on the European Commission to bring forward a proposal by summer 2016

- To improve the current mechanisms to resolve cross-border taxation disputes in the Union, not only focusing on cases of double taxation but also double non-taxation. The aim is to create a coordinated EU approach to dispute resolution, with clearer rules and more stringent timelines, building on the systems already in place.



# History and state of play for the DRM Directive

- ***Past legacy and background:*** the EU AC and bilateral tax treaties

- *Art. 220 TEC (Art. 293 TFEU)*
- *1976 Directive Proposal*
- *90/436/EEC Convention & Protocol (EUAC)*
- *Code of Conduct for the effective functioning of the EU AC*
- *EU MSs bilateral Tax Treaties*

## ***Current state of play:*** *DRM Directive*

- *New Proposal presented by Commission: 25.10.2016*
- *EESC Report: 22.02.2017*
- *EU Council vote on General Approach: 23.05.2017*
- *EP Report: 08.06.2017*



## **ECOFIN Meeting of 23 May 2017: agreement on a general approach on the DRM Directive**

**"Today's agreement extends the benefits of dispute resolution to all businesses and individuals and will ensure that taxpayers can benefit from a more reasonable timeframe for their cross-border tax problems to be sorted out."**

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PIERRE MOSCOVICI










## DRM Directive: Key characteristics

- *A broader material and personal scope with reference to "questions of dispute" arising from the application and interpretation of tax treaties and the EU AC*
- *An obligation of results to remove double taxation in a reasonable timeline*
- *A common and coordinated procedural framework with stringent and fixed deadlines – No disparities & common exclusions*
- *Clarity of rules*
- *Same level of obligations and rights for taxpayers*
- *Transparency*





# DRM Directive: before & after overview

BEFORE	AFTER
Member States' obligation to eliminate double taxation not always enforced	 Explicit and enforceable requirement to eliminate taxation for businesses and citizens in all cases covered by tax agreements
Often no recourse for taxpayers when mechanisms not applied properly	 Recourse for taxpayers to national courts to unblock procedures
Unpredictable timeline for procedures	 Clearly defined and enforceable timelines with a standard period of 18 months for the arbitration phase
Scope limited to issues related to transfer pricing and permanent establishment	 Scope extended to all cross-border double taxation issues and to citizens
No transparency requirements	 Obligation to notify taxpayers and publish abstracts of the arbitration decisions

## DRM Directive: Specific aspects

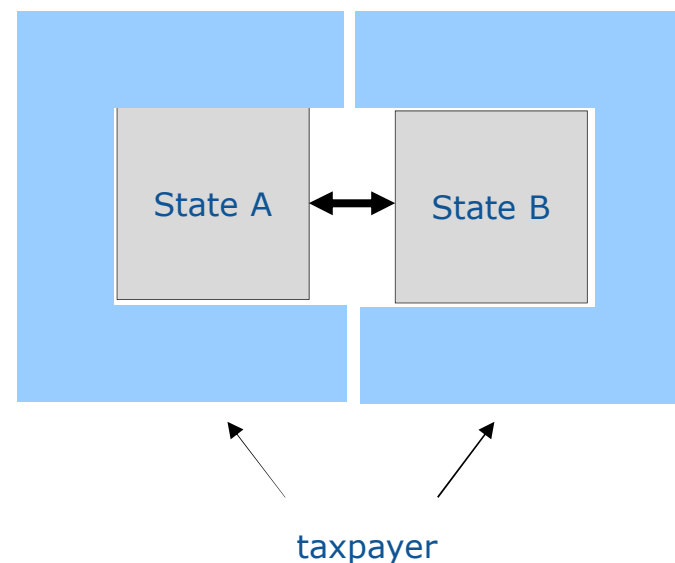
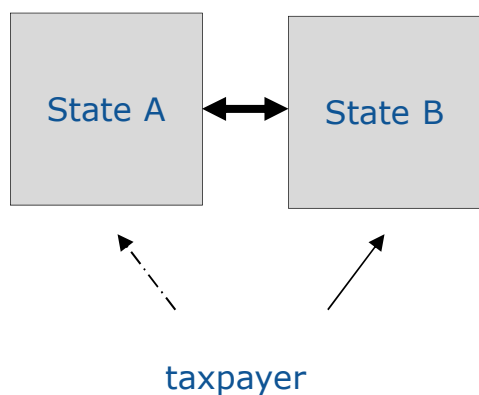
- *Stronger due to articulation with national tax systems, e.g. ordinary administrative review procedures of acts, specific and expeditious judiciary procedures for arbitrators' appointment, enforcement procedures*
- *Exclusion of other DTDRM procedures in parallel*
- *Possibility for alternative dispute resolution*
- *Exclusion of cases of fraud wilful default and gross negligence from mandatory resolution possible*
- *Independence criteria*
- *Chair to be a judge*
- *Transparency*





## Interaction with national systems (illustration)

*Embedding the State to State procedure for dispute resolution under DTC and EU AC into an administrative framework in all MS involved.*





# DRM Directive: Stringent and effective time-limits

*Timelines aligned to MLI as far as possible*

*Specific timelines for "enforcement patches"*

- **Submission of information**
- **Denial of access to the procedure**
- **Enforceability of arbitration**
- **Implementation of the result**





## DRM Directive: Dynamics

*Enforceability of dispute resolution may have implications on*

- *Development of alternatives to ad hoc arbitration*
- *Better preparation of files by taxpayers*
- *Increase of efficiency of administration*
- *Improved cooperation between TAs and taxpayers*
- *Increased efforts for preventing disputes*
  - **Cooperation in the context of tax controls**
  - **Cooperation on risk management**





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# DRM Directive: Swift default appointment rules

## SIMPLIFIED PROCEDURE



## FAST TRACK



UNCITRAL Model Convention Article 11\*  
By the court or other authority specified in Article 6\*\*



## PRESIDENT of the COURT

National rules in matters of civil and commercial arbitration when courts appoint arbitrators in cases where parties fail to agree in this.

## OTHER

\*Article 11 Appointment of arbitrators

(3) Failing such agreement:  
(a) in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court or other authority specified in article 6;  
(b) in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he shall be appointed, upon request of a party, by the court or other authority specified in article 6.

\*\*Article 6 Court or other authority for certain functions of arbitration assistance and supervision  
The functions referred to in articles 11(3), 11(4), 13(3), 14, 16(3) and 34(2) shall be performed by ... [Each State enacting this model law specifies the court, courts or, where referred to therein, other authority competent to perform these functions.]

# DRM Directive: Independence & Conflicts of interest

- **MEMBERS OF THE ADVISORY COMMISSION SHALL BE "INDEPENDENT PERSONS OF STANDING"** (ART. 8)
- INDEPENDENT, ACTING WITH IMPARTIALITY AND INTEGRITY (ART. 8a)
- **STRENGTHENED BY THE COUNCIL COMPROMISE**

## • CONSTITUTION OF THE LIST (ART. 8a)

*CRITERIA OF INDEPENDENCE AND DISCLOSURE*

*IMPLEMENTATION BY MSS*

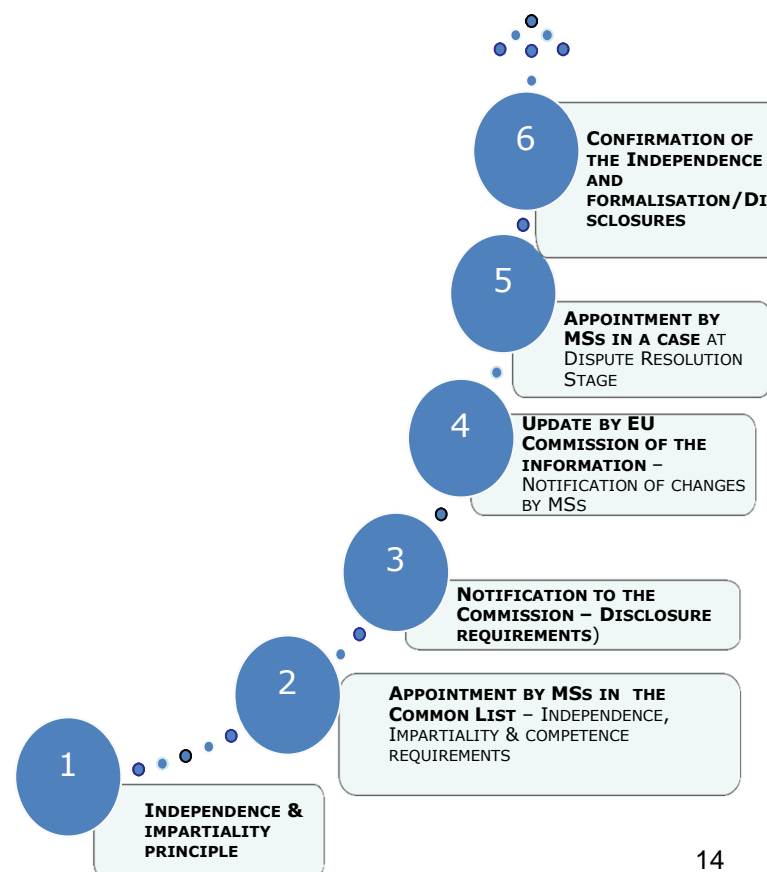
*NOTIFICATION TO AND UPDATE BY EU COMMISSION*

## • APPOINTMENT IN A CASE (ART. 7, 8 & 14)

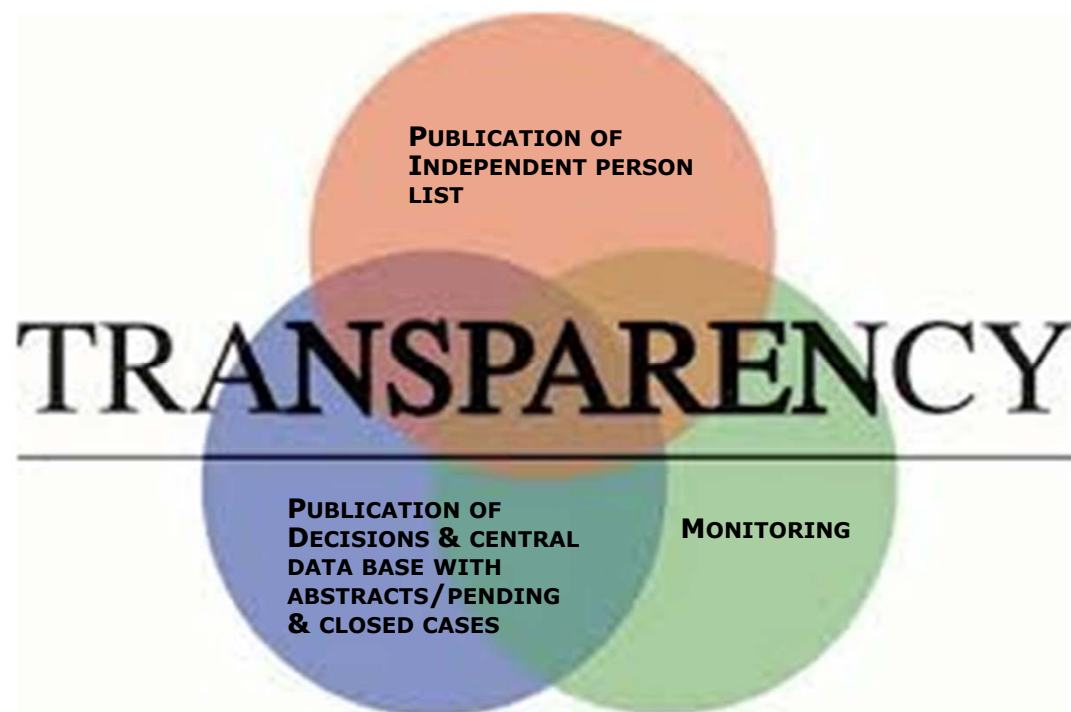
*CRITERIA OF INDEPENDENCE AND DISCLOSURE*

*TERMS IN THE RULES OF FUNCTIONING  
IMPLEMENTATION BY MSS (OBJECTION,  
DISCLOSURE & PUBLICITY, POSSIBLE IMPACT  
ON IMPLEMENTATION OF DECISIONS)*

*NOTIFICATION TO TAXPAYER*



# DRM Directive: Effective transparency





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