



# Statistical Framework for Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union

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## **Introduction**

Directive 2017/1852 on tax dispute resolution mechanisms (hereafter ‘DRM’) started to apply in the European Union on 1 July 2019. The main objective of the DRM is to ensure a quicker and more effective resolution of tax disputes between Member States. The scope of the DRM includes both businesses and individuals. The objective of this document is to create a statistical framework for the DRM to provide effective monitoring in order to meet the requirements of Article 21 DRM for the review of the implementation of the DRM due by June 2024<sup>1</sup>.

The Directive introduces time limits for complaints to be settled at the each stage of the DRM process. The Commission has an obligation vis-à-vis taxpayers and stakeholders to ensure transparency regarding whether complaints are being handled within the time limits laid down by the DRM. Ultimately, data provided under the DRM should help to assess its effectiveness while minimising the administrative burden on Member States.

The template for reporting the statistics under the Framework is attached as an annex.

## **Proposed Statistical Framework under the DRM**

**The statistics are calculated on a calendar year basis and are reported to the Commission within 4 months of the end of the calendar year.**

### ***Complaint:***

Complaints submitted to each of the concerned competent authorities:

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<sup>1</sup> Article 21 Review – by 30 June 2024, the Commission shall evaluate the implementation of this Directive and shall present a report to the Council. The report shall, of appropriate, be accompanied by a legislative proposal.

- (1) Opening inventory of Complaints pending for decision under Article 3(5) DRM or awaiting appeal (either under Article 5(3)<sup>2</sup> or 6(1)(a)<sup>3</sup>) on the first day of the reference year;
- (2) Number of Complaints submitted to the Competent Authorities under Article 3(5) DRM during the reference year;
- (3) Closing inventory: number of cases awaiting a decision under Article 3(5) or awaiting appeal (either under Article 5(3) or 6(1)(a)) at the end of the reference year;
- (4) Average cycle time in months for a decision under Article 3(5). The average is computed by using a template which aggregates the number of months it took to arrive at a decision under Article 3(5) during the reference year. The second step is to divide this aggregated number of months by the total number of such decisions. The result is the average cycle time in months to reach a decision.

Complaints under appeal before national courts:

- (1) Opening inventory of Complaints on appeal before the national courts under Article 5(3) DRM on the first day of the reference year;
- (2) Number of appeals against rejections of Complaints before national courts submitted during the reference year;
- (3) Closing inventory: number of cases awaiting a Decision on the appeal before national courts under Article 5(3) at the end of the reference year;
- (4) Average cycle time in months for an appeal before the national courts to be decided. The average is computed by using a template which aggregates the number of months it took to arrive at a decision during the reference year. The second step is to divide this aggregated number of months by the total number of such decisions. The result is the average cycle time in months to reach a decision.

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<sup>2</sup> This situation is where there has been a rejection of the Complaint by all of the Member States concerned.

<sup>3</sup> This situation is where there has been a rejection of the Complaint by at least one, but not all of the Member States concerned.

Complaints under appeal submitted for resolution to the Advisory Commission:

- (1) Opening inventory of Complaints pending on appeal for resolution by an Advisory Commission under Article 6(1)(a) DRM on the first day of the reference year;
- (2) Number of appeals for resolution by an Advisory Commission under Article 6(1)(a) DRM submitted during the reference year;
- (3) Closing inventory: number of cases awaiting a Decision by the Advisory Commission at the end of the reference year;
- (4) Average cycle time for a decision on the admissibility of a complaint to be taken by the Advisory Commission. The average is computed by using a template which aggregates the number of months it took to arrive at a decision during the reference year. The second step is to divide this aggregated number of months by the total number of such decisions. The result is the average cycle time in months to reach a decision.

***MAP:***

- (1) Opening inventory of Complaints that await a Decision under Article 4 DRM on the first day of the reference year;
- (2) Number of Complaints accepted to proceed to the MAP under Article 4(1) DRM during the reference year;
- (3) Number of MAP Decisions accepted by the Affected Person under Article 4(2) DRM during the reference year;
- (4) Number of MAP rejections by the Competent Authorities under Article 4(3) DRM and passed to the Advisory Commission during the reference year;
- (5) Closing inventory: number of cases awaiting a MAP decision at the end of the reference year:  $(1)+(2)-(3)-(4)$ ;
- (6) Average cycle time for a MAP decision to be taken by the Competent Authorities. The average is computed by using a template which aggregates the number of months it took to arrive at a decision during the reference year. The second step is to divide this aggregated number of months by the total number of such decisions. The result is the average cycle time in months to reach a decision.

***Arbitration:***

- (1) Opening inventory of Complaints awaiting an Opinion under Article 14 DRM on the first day of the reference year;
- (2) Number of Complaints submitted to dispute resolution (via an Advisory Commission or ADRC) under Article 6(1)(b) or 10 DRM during the reference year;
- (3) Number of Opinions issued under Article 14 DRM during the reference year;
- (4) Closing inventory: number of cases awaiting an Opinion at the end of the reference year:  $(1)+(2)-(3)$ ;
- (5) Average cycle time in months for an Opinion to be issued by the Advisory Commission or an ADRC. The average is computed by using a template which aggregates the number of months it took to arrive at an opinion during the reference year. The second step is to divide this aggregated number of months by the total number of such opinions. The result is the average cycle time to reach an opinion in months.

***Final Decision:***

- (1) Opening inventory of MAP Decisions and of Final Decisions that have not yet been implemented under Article 15(4) DRM on the first day of the reference year;
- (2) Number of MAP Decisions and Final Decisions implemented during the reference year;
- (3) Number of MAP Decisions under Article 4(2) DRM issued during the reference year and not yet implemented by the Competent Authorities at the end of the reference year;
- (4) Number of Final Decisions issued during the reference year and not yet implemented by the Competent Authorities under Article 15(4) at the end of the reference year;
- (5) Closing inventory: number of outstanding cases pending for implementation at the end of the reference year:  $(1)+(4)+(5)-(2)$ ;
- (6) Average cycle time in months for a MAP Decision and the Final Decision to be implemented. The average is computed by using a template which aggregates the number of months it took to implement the decisions during the reference year. The second step is to divide this aggregated number by the total number of such decisions. The results is the average cycle time for a decision to be implemented.

## **Interaction with Statistics submitted to the OECD under BEPS Action 14**

Although the DRM and BEPS Action 14 have similar aims, for example ensuring the consistent and proper implementation of tax treaties, they have a different scope and provide for distinct legal frameworks for dispute resolution. For instance there are aspects of the DRM like the Advisory Commission and the Alternative Dispute Resolution Commission that have no equivalent under BEPS Action 14.

The BEPS Action 14 contains extensive provisions about collecting data regarding how the MAP is actually settled. An essential difference between BEPS Action 14 and the DRM is that the latter supplies the means for enforcing a binding dispute resolution by referring the case to the national courts at different stages of the procedure. Another point is that BEPS Action 14 focuses primarily on the MAP. Therefore, for the purpose of statistics under the DRM, one would need to monitor, in addition to what one probably needs to do under BEPS Action 14, the complaint stage, the dispute resolution and the enforcement of the Final Decision. We need to collect information on all 4 stages of the DRM, in order to be in a position to properly monitor the functioning of the Directive and identify, if there is a complication, the stage that the problem is linked to.

Given the above differences, and the broader scope of the DRM, which includes four key procedural stages, it is necessary to keep the statistical framework for the DRM separate from that of the OECD Action 14. Simultaneously, the level of detail required for the MAP stage does not need to replicate *how* a MAP has been resolved under the DRM. Rather, effective monitoring will depend on key statistics like the average time taken for a Complaint to be submitted to the MAP procedure under Article 3, and the length of time taken to arrive at a decision if a complaint were submitted to the MAP under Article 4.

In order to ensure transparency of the monitoring process, the Commission will publish the statistics for the annual data gathering exercise of the DRM in the dedicated website for the DRM<sup>4</sup>.

## **Status of the EU Arbitration Convention**

Prior to the DRM, businesses in the EU used the EU Arbitration Convention<sup>5</sup> that established a procedure to resolve disputes for transfer pricing cases where double taxation occurs between enterprises of different Member States as a result of an upward adjustment of profits of an enterprise of one Member State.

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<sup>4</sup> [https://ec.europa.eu/taxation\\_customs/business/company-tax/resolution-double-taxation-disputes\\_en\\_en](https://ec.europa.eu/taxation_customs/business/company-tax/resolution-double-taxation-disputes_en_en)

<sup>5</sup> [https://ec.europa.eu/taxation\\_customs/business/company-tax/transfer-pricing-eu-context/transfer-pricing-arbitration-convention\\_en](https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/transfer-pricing-arbitration-convention_en)

For the monitoring of the Arbitration Convention, a statistical framework was established by the Joint Transfer Pricing Forum<sup>6</sup>. The definitions used in this statistical framework are based on the revised Code of Conduct<sup>7</sup> for the Arbitration Convention. On an annual basis, the Commission collects statistics from Member States regarding the disputes submitted to arbitration (so called ‘MAPS’). Up until 2018, these statistics were published on the Commission website for the JTPF under the section ‘statistics’<sup>8</sup>. As from 2019, the statistics are available on a separate web page of the Commission<sup>9</sup>.

The Commission will continue to collect statistics from Member States for the Arbitration Convention in future years as long as the Arbitration Convention is still in force. However, it is anticipated that an increasing number of the new cases of tax disputes will be submitted under the DRM. This is likely to result in a gradual decline of the outstanding cases under the AC.

Annex: Template for reporting data for the Statistical Framework of Council Directive (EU) 2017/1852 of 10 October 2017

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<sup>6</sup> [https://ec.europa.eu/taxation\\_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum\\_en](https://ec.europa.eu/taxation_customs/business/company-tax/transfer-pricing-eu-context/joint-transfer-pricing-forum_en)

<sup>7</sup> <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2009:322:0001:0010:EN:PDF>

<sup>8</sup>

[https://ec.europa.eu/taxation\\_customs/sites/taxation/files/statistics\\_on\\_pending\\_maps\\_under\\_the\\_arbitration\\_convention\\_2017\\_en.pdf](https://ec.europa.eu/taxation_customs/sites/taxation/files/statistics_on_pending_maps_under_the_arbitration_convention_2017_en.pdf)

<sup>9</sup> [https://ec.europa.eu/taxation\\_customs/news/statistics-apas-and-maps-eu\\_en](https://ec.europa.eu/taxation_customs/news/statistics-apas-and-maps-eu_en)