

OPINION

LAPAS



Latvian Platform  
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# Country-by-Country Reporting: features, promises, and reality

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## What is Country-by-Country Reporting?

Before I delve into all the technicalities and defining features of CbCR, let's first take time to consider an example and assess Meta (formerly known simply as Facebook) as the central object.

A global and an undoubtedly powerful enterprise – these words are nowhere near enough to explain the grand extent to which Meta has infiltrated and influenced our lives. Not only does it operate a service that can be considered as digitally feudal state (thus, the notion of Metaverse); perhaps crucially, it has had an unimaginable effect on both our daily lives and decisive global events.

As much as it is a tool for communication with friends and relatives, it is a tool for propaganda, misinformation, and all kinds of discrimination. It was there to spark revolutions in the Middle East during the Arab Spring, it was there to promote racism in Myanmar, and it was there to trailblaze the campaign for Trump's presidency. Imperatively, it is a tool that tirelessly collects and sells our data. It profits not from our pet and food photos, nor from our activism, nor from inspirational posts. It is menacing to think that nearly the entirety of Meta's profits come from exploiting both our digital and physical lives. It thrives on your compulsive, unhealthy behaviours, whether you are in Latvia, the US, Japan, or elsewhere. Yet, it is staggering that, despite Meta's impeccable influence on our lives, it remains largely neglected and underestimated.

There are multiple of dimensions that could be examined in relation to this, but, since the focus of this paper is tax oriented, I want to specifically target the paradoxical narrative that is the relationship between the revenue and tax payments by Meta in the scope of the European Union. To put it in simple terms, it would not be mistaken to assume that Meta, along with its respective social media, acquires its revenue from each and every country it operates in. As such, considering that collecting and selling our data is Meta's business model, there should be an approximate amount of income from those countries that can be taxable regardless of the fact that Meta itself is not registered as a legal entity in a large majority of the countries where it offers its services (thus, being considered as a non-transparent stateless entity). Yet, despite Meta's massive presence in the world, and also in Latvia, there are little to no considerable discussions on taxing it on a national level in most of the countries.

Thus, one might wonder at this point: how does this introduction relate to CbCR? To answer this question, I must first delineate the definition of it and the core issues CbCR must tackle. Just as the name itself suggests, **CbCR is supposed to be a legal**

and regulatory mechanism on either regional or global level to create a system in which multinational enterprises (MNEs) must report on their financial activities across every single country that they either directly or indirectly conduct their economic activities in lines of the OECD's Base Erosion and Profit Shifting (BEPS) project<sup>1</sup>. The fundamental basis for a global implementation of CbCR is Action 13 of BEPS, which postulates that every multinational corporation with a certain set combined minimum revenue, with the amount depending on each country, must showcase their annual CbC report, which breaks down their respective revenue, taxes paid and accrued, income, employment, capital, etc.



As such, if we would continue with Meta as the central figure to the story, then CbCR would showcase the amount of taxes they have paid in every single national jurisdiction from which they have acquired any amount of revenue. Hence, if we contextualise one definite goal of CbCR, then it is the financial transparency through which MNEs would be more encouraged, to put it mildly, to pay the just amount of taxes for their respective activities. This then would accordingly contribute to a potentially higher government tax revenue, which in turn would help bolster the economic development of the state in question, along with the hope of narrowing the gap between the world's richest and poorest, and attempting to lift the burdens imposed by the existing tax system from the shoulders of the proletariat onto the shoulders of giants, namely, MNEs.

While tackling stateless entities such as Meta is still out of question at the moment, the necessity for a much greater transparency is crucial in dealing with corporate tax abuse. Therefore, I will address the challenges of CbCR afterwards, but next let's look at the current developments at the global and EU level.

## Present state of the Country-by-Country Reporting

In accordance with the data provided in OECD's Exchange Portal, at least 98 states have CbCR laws and/or regulations in place. The most prominent framework on a global level is the aforementioned Action 13 of BEPS, while the European Union has established Council Directive (EU) 2016/881 as the guiding legal framework for its Member States. Hence, in hindsight, a general framework for the implementation of CbCR, at both global and EU regional level, has been established. A noteworthy feature of both frameworks is that they serve more as guidelines for how CbC reports should be composed, rather than strict measures for MNE Groups to abide by. Moreover, although each state separately can set out their own basic

<sup>1</sup> See more at <https://www.oecd.org/tax/beps/>

requirements according to which MNEs must conduct CbC reports, the Directive (EU) 2016/881 sets that bar at 750 million euros of consolidated group revenue. Furthermore, Directive (EU) 2021/2101 can be considered as another milestone in tackling the issue at hand. Nonetheless, all three of them suffer from nearly the same crucial limitations.

**At the EU level discussions have been held at the governmental level about making the CbCR data available to the public, which is critical to make MNEs' financial activities more transparent and accountable.** This point was demarcated within the 2019 Eurodad and Financial Transparency Coalition (FTC) briefing paper, which, among other things, addressed the positive impact that public CbCR had within the banking sector. As such, the main point of making the reports visible to the public is not to provide greater assistance to the tax authorities, since they still receive CbC reports from MNEs. Rather, publicly available report would provide a substantial amount of data and information to various other interested parties, such as NGOs, media, or academia, who would subsequently be able to provide more in-depth assessment of the inadequacies of MNEs financial activities. Such analysis, either as a reports or publications, would potentially provide substantial contribution back to governments, tax authorities, and the public on the findings.

Nevertheless, there is strong opposition from MNEs who have raised concerns regarding the publication of such information. Those concerns are predominantly twofold. On the one hand, MNEs are concerned about incorrect interpretation of their data, which could create a lasting negative impact on the reputation of the respective corporation, thus affecting their endeavours. On the other hand, they are concerned about that sensitive data, such as trade secrets or business strategies will be shared. Hence, succumbing under the pressure, the 2021 Directive has included a so called corporate-get-out clause that allows MNEs to refrain from reporting any information which they consider as commercially sensitive.

The scope of the information that needs to be included in the report is also severely limited and crucial information can be hidden under multiple layers of accountancy data, which makes the reports rather daunting to try to comprehend for any person wanting to have clarity on a MNE's financial activities. Thus, while reports must contain such indicators as revenue, income, profit/loss before tax, and income tax paid on a cash basis, the Directive does not require MNEs to report on such crucial indicators as transactions with related parties, stated capital, details of public subsidies and relevant donations, etc.

And lastly, in a similar fashion to what has already been stated on CbCR at the EU level, following the Directive (EU) 2016/881, the government of Latvia has adopted Regulation No 397, which provides the regulatory framework at the national level. Despite outlining the necessity for MNEs to fill out a CbC report, Latvia fails to prescribe any penalty and its enforcement upon the infringement of CbCR. However, there is a great opportunity for the Latvian lawmakers to overcome such limitations with the transposition of the 2021 Directive.

## Challenges of Country-by-Country Reporting

In its presently existing form, whether we consider CbCR at the global, EU or national levels, **it exhibits great potential for making the global corporate taxation substantially more transparent.** Yet, despite it being a major step in the right direction, states are rather adamant of imposing much more drastic measures to have a more rapid development towards tax justice. Instead, states seem to be more involved in trying to reach consensus with MNEs, than with implementing progressive policies that are essential for making any considerable progress. Of course, it is understandable why corporations, which have absolutely relished the amount of wealth neoliberalism has brought them, would rather indulge in longer consensus making processes than concede their relatively unrestricted activities. However, in a world that is ravaged by the same corporations, causing massive inequality and accelerating climate crisis among a plethora of other issues, we should no longer tolerate the *“socialism for the few, austerity for the many”* politics. Thus, among the many challenges that present themselves, I will indicate four, which I believe are crucial to overcome if we want to see CbCR as a tool to hold MNEs transparent and accountable, instead of it becoming just another useless bunch of paperwork which the corporations must fill out annually.

**First, the established minimum revenue of MNEs is too high. As I described above, the standard minimum of 750 million euros within the scope of the EU can be considered as a rather convenient threshold, which is not based on any noteworthy evidence that we could know of.** The convenience factor arises from the general fact that plenty of MNEs can escape the conduction of CbC reports simply due to not reaching that threshold, especially when we consider such small states as Latvia where no more than 15 MNEs would fit the bill. Moreover, such a high threshold can empower MNEs, which should conduct a CbC report, to cover some of their data as commercially sensitive information, in order to attest that they are not eligible within the scope of CbCR.

**Second, the rules regarding who must fill out CbC report are too lax and ambiguous.** All three of the aforementioned frameworks set out that a CbC report can be filled out by any constituent entity of MNE, as long as one of them is registered as resident for tax purposes in the state in question. This unravels multiplicity of issues with the most predominant being that it is not always clear which entity belongs to which parent group, or whether its shares are owned by multiple other entities. Thus, this also raises the dilemma of MNE shareholder and the true beneficiary transparency, as it is indicated in the OECD Guidelines for MNEs. Furthermore, this point is closely interrelated with the previously mention clauses within the regulatory framework for the protection of commercial sensitive information, which apparently is not yet limited. This then results in detrimental unclarity, which can greatly hinder the end goal of transparency in the scope of the CbCR.

**Third, there are no enforcement mechanisms for MNEs to actually abide by the existing regulations.** The existing frameworks are straightforward in instituting obligation for MNEs, that are not exempted from their duty, to conduct CbC reports. However, a question that is not answered is what happens if they don't? The ambiguity caused by the present frameworks poses massive restrictions on states to deal with MNEs either with legal or economic means on their own. Not only the attempt to sanction or of litigation can prove to be fruitless but can potentially cause harm to the state in question. Furthermore, Article 25a of Directive (EU) 2016/881 postulates that legal framework in relation to penalizing due to any infringements by MNE's in relation to CbCR must be laid down by the Member States themselves, showcasing little to no solidarity at the EU level.

**Lastly, CbCR is not publicly available and centralized at the EU level.** Usually hidden behind various restrictions, such as a paywall, necessity to have a bank account in the respective country, or not having other necessary credentials, there exists a substantial implausibility for researchers, journalists, activists, etc. to unravel any substantial, comprehensive, and comparative data. This fundamentally diminishes the potential for nearly any noteworthy assessment of MNE' financial activities within EU and above due to the sheer unavailability of having access to data. Hope has over the years, however, come in the form of various leaks of secret company data (Pandora papers, Paradise papers, Panama papers, etc.), which has exposed a systematic abuse by MNEs and various public officials.

## Recommendations

First, **CbCR must be accompanied with progressive tax policies, and they need to be global.** It is simply not enough for MNEs to report their activities if there is a substantial number of states, which do not actively seek to prevent high amounts of tax avoidance. Let's take Latvia for instance. The present corporate income tax regime practically allows corporations to avoid paying anything in taxes if certain conditions are met. However, if Latvia alone would impose 40-50% corporate income tax, then it would not be considered as a business-friendly environment, and corporations would move on to another place. Nevertheless, if there would be a global commitment to reign in corporations, then we could finally move passed the monstrous neoliberal politics where the society forms the frontier of taxpayers while CEOs along with other top members of corporations sit back and watch from their towering mountains of cash. We are in a dire need for socialism for the many, austerity for the few.

Secondly, **widening the scope for which MNEs must fill out those reports and maintaining a register of all the included corporations, which would be publicly accessible on a global level.** Ideally, every single MNE should take part in CbCR. There should not be any single corporation that does not pay their fair share of taxes and does not report on them. They must be upheld to the same standards as every single one of us: paying the necessary amount of taxes and being penalized



2 See more at GRI 207: Tax 2019, which can be found at GRI Resource center

if they don't. But if we forget for a moment such idealistic notions, and consider existing frameworks, then how should we know which MNEs have to report? The answer is a rather simple one: having an EU level register, just like with criminals, refugees, or NGOs, which outlines every single MNE, along with their entities, that must report and has reported. Furthermore, this must be accompanied with the inclusion of more concrete indicators within the report, which are indicated by the Global Reporting Initiative<sup>2</sup>.

Thirdly, **there is an urgent necessity for rigorous enforcement mechanisms embedded into the law along with severe policing of MNEs.** It is commonly known that MNEs, and large businesses in general, are held to much different, more lenient standards of justice than regular individuals. They exist relatively unthreatened of being deprived of daily necessities, expenses, or freedom, since their vast amounts of financial resources and their power to impact legal and political processes are beyond our imagination. Thus, such requirements are not only essential for improving the general governmental tax revenue. The most fundamental dimension is a humanitarian one – to establish that individual lives are not worth less than the wellbeing and support of an MNE. If we are able to pursue laws and policies that are aimed towards a drastic increase in social welfare and dissolution of corporate welfare, then we can take a step closer to a more prosperous rather than a more dystopian future.

### Further reading on CBCR

- Directive (EU) 2016/881
- Directive (EU) 2021/2101
- Regulation of the Cabinet of Ministers No 397 of July 4, 2017
- Eurodad and FTC briefing paper (2019)

Fourth, **all of the CbC reports must be made publicly accessible for every single interested person.** This should be accompanied with the creation of a centralised database both at the EU and global levels. This step is crucial to make MNEs' financial activities more transparent and for them to be held accountable by the civil society. Moreover, this could encourage MNEs to pursue more just practices onwards.

Conclusively, **the lawmakers from each and every EU state have the political, moral, and ethical responsibility not to simply transpose the 2021 Directive into their national laws but to take more steps forward and improve upon it.** There is absolutely nothing more standing in the way of politicians than their will and the dirty money from MNEs.

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The Latvian Platform for Development Cooperation (hereinafter – LAPAS) is a network of national non-governmental organizations founded in 2004, which unites 30 organizations and operates in the field of sustainable and fair development, development cooperation, global education, community resilience and humanitarian aid.

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