THE PROSPECT OF AN EU DIRECTIVE ON THE INTRODUCTION OF PILLAR ONE IN THE EUROPEAN UNION: ANY POSSIBLE DEVIATIONS FROM THE OECD BLUEPRINT ?

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Título

La perspectiva de una Directiva de la UE sobre la introducción del pilar uno en la Unión Europea: ¿Posibles desviaciones del proyecto de la OCDE?

Resumen

La Comisión Europea, en su Comunicación COM(2021)251 final, ha indicado su intención de presentar una propuesta de Directiva destinada a introducir el Pilar Uno en la Unión Europea. El Pilar Uno atribuiría normas fiscales a las jurisdicciones de mercado con independencia de la presencia física de la empresa en dichas jurisdicciones, creando así un nexo adicional para la fiscalidad. Dado que la OCDE ha publicado en 2020 un extenso proyecto sobre el Pilar Uno –un proyecto que abarca todos los aspectos de su diseño y aplicación–, se plantea la cuestión crucial de si una directiva de la UE sobre el Pilar Uno debería seguir completamente el proyecto de la OCDE o debería diferir de este proyecto en aspectos específicos. El documento sostiene que una directiva de la UE sobre el Pilar Uno debería diferir del proyecto de la OCDE en al menos tres aspectos: las normas de alcance con respecto a la identificación de las Empresas Multinacionales cubiertas por el Pilar Uno, el tratamiento de las «entidades pagadoras» que crean filiales frente al tratamiento de las entidades pagadoras que crean sucursales en la jurisdicción del mercado, y el enfoque de la ventanilla única. El documento sostiene que sería conveniente apartarse de la guía de la OCDE en estos aspectos a la luz, respectivamente, de las normas sobre ayudas de Estado, de la necesidad de garantizar la coherencia con las libertades fundamentales y del objetivo de simplificación administrativa, en consonancia con la estrategia a largo plazo indicada en la Comunicación COM(2021)251 final.

Palabras clave

Proyecto, Pilar Uno, libertades fundamentales, normas sobre ayudas de Estado, ventanilla única.

Abstract

The European Commission, in its Communication COM(2021)251 final, has indicated its intention to submit a proposal for a Directive aimed at introducing Pillar One in the European Union. Pillar One would attribute taxing rights to market jurisdictions regardless of the physical business presence in these jurisdictions, thereby creating an additional nexus for taxation. As the OECD has published in 2020 an extensive blueprint on Pillar One –a blueprint covering all aspects of its design and implementation– the crucial issue arises as to whether an EU Directive on Pillar One should completely follow the OECD blueprint or should diverge from this blueprint in specific aspects. The paper argues that an EU Directive on Pillar One should diverge from the OECD blueprint in at least three respects: the scoping rules with regard to identification of MNEs covered by Pillar One, the treatment of «paying entities» creating subsidiaries vs. the treatment of paying entities creating branches in the market jurisdiction, and the one-*stop*-shop approach. The paper submits that diverging from the OECD blueptint in these aspects would be appropriate in light respectively of State aids rules, of the need to ensure consistency with fundamental freedoms and of the administrative simplification objective, consistently with the longer term strategy indicated in Communication COM(2021)251 final.

Keywords

Blueprint, Pillar One, fundamental freedoms, State aids rules, one-*stop*-shop

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SUMARIO

In its 2021 Communication «Business Taxation for the 21st Century»[1], the EU Commission (hereinafter: the Commission), after highlighting that «there is now consensus that the fundamental concepts of tax residence and source on which the international tax system has been based for the last century are outdated», sets out its intended moves to align tax developments at EU level with globally discussed actions. At global level, 130 member jurisdictions of the OECD/Inclusive Framework on BEPS agreed, on 1 July 2021, on the OECD's «unified approach» based on a «two pillars» plan –namely, Pillar One on a reallocation of taxing rights and Pillar Two on a global minimum level of taxation– to reform international tax rules. As it was noted in literature, the Commission's search for alignment with these OECD proposed solutions appears to be understandable in light of Art. 220(1) of the Treaty on the Functioning of the European Union (TFEU), in light of the special and unique «full participant» *status* enjoyed by the Commission according to the Supplementary Protocol to the OECD Convention, and in light of the fact that all EU Member States have joined the OECD/G20 Inclusive Framework[2].

With regard to Pillar One, the Commission highlighted its aim to «give market jurisdictions a right to tax part of the profits of certain non-resident businesses by providing for a reallocation of a portion of these global profits among the jurisdictions where the group has customers or users, using an agreed formula»[3]. The Commission, in stressing its agreement with this objective, indicated its intention to propose a Directive on the implementation of Pillar One in the EU[4]. In turn, the introduction of a Directive on Pillar One is bound to be one of the targeted measures (among which another Directive on Pillar Two) with a view to the proposal, in 2023, of a single corporate tax rulebook for the taxation of business income –named «*Business in Europe: Framework for Income Taxation*» (BEFIT)– which could lead to a single EU corporate tax return for a group[5].

The OECD published in 2020 a comprehensive blueprint on Pillar One (hereinafter: the OECD blueprint), a blueprint covering virtually all aspects (including aspects on which work is fully in progress), concerning its design and administration: the scope, the nexus, the revenue sourcing rules, the tax base determination, the determination and the allocation to market jurisdictions of a part of the profit, defined as «Amount A», the elimination of double taxation, the determination of the remuneration, defined as «Amount B», for baseline marketing and distribution activities; the proposed rules to ensure tax certainty to in-scope

1 COM(2021) 251 final, issued on 18 May 2021

2 As stressed by F.Roccatagliata, *A Long and Complicated Chess Match The role of the European Commission in the OECD/G20's current debate on the taxation of the digital economy,* presentation in the conference *Global Tax Governance, Taxation on Digital Economy, Transfer Pricing and Litigation in Tax Matters (MAPs + ADR) Tax Policy for Social Sustainability,* 2021

3 COM(2021) 251 final, cit. at p. 8

4 Id.

5 Id., at p. 12.

businesses and to prevent disputes; the implementation and administration[6]. Originally, Pillar One was proposed as applying when the «market revenue» obtained in a certain market jurisdiction exceeds a certain threshold –i.e., in the first draft, 10% of the profit before tax or € 25.000.000– and as covering two categories of activities, namely Automated Digital Services (ADS) and Consumer Facing Businesses (CFB).

However, in the latest «*Statement on a two Pillars Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy*» released by the OECD/20 Inclusive Framework on 01 July 2021 (hereinafter: 2021 Statement), it was described as including in its scope «*multinational enterprises (MNEs) with a global turnover above 20 billions euros and profitability above 10% (i.e. profit before tax/revenue)».* The profit exceeding 10% return on sales would be regarded as the *residual profit*, and certain market jurisdictions would be allocated between 20% and 30% of this residual profit. The market jurisdictions receiving part of the reallocated profit are those jurisdictions where the MNE derive at least € 1.000.000 in revenues, or at least € 250.000 in revenues in case of small jurisdictions having a GDP lower than € 40 billion[7].

Turnover threshold for inclusion in scope could be reduced to 10 billion € contingent on successful implementation with the relevant review beginning 7 years after the entry into force of the agreement. As the 2021 Statement identifies the in-scope MNEs with reference to their turnover thresholds and profitability and it expressly excludes from the scope of Pillar One only Extractives and Regulated Financial Services, it intends going well beyond digital business or digital business models. However, apart from the newly defined scope, the 2021 Statement does not contradict all other aspects of the design and administration indicated in the OECD blueprint.

In its Communication, the Commission apparently noted the ongoing developments at OECD level. On the one hand, it acknowledged that «Pillar 1 discussions initially focused primarily on companies active in the digital sector. However, the proposed solution could now be simplified with a lower number of MNEs in scope and at the same time broadened to cover the largest and most profitable multinational companies, regardless of their business sector»[8]. On the other hand, it highlighted that «the global agreement on Pillar One will apply initially only to a limited number of companies»[9]. However, the Commission did not mention the OECD blueprint.

Although academic literature has already started dealing with legal issues arising from the implementation of both Pillars in the EU[10], it would therefore

6 OECD(2020), Tax Challenges Arising from Digitalization – Report on Pillar One Blueprint: Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris (hereinafter: OECD blueprint).

7 OECD/G20 Base Erosion and Profit Shifting Project, Statement on a Two Pillar Solution to Address the Ta Challenges Arising from the Digitalisation of the Economy, July 2021.

8 COM(2021) 251 final, at p. 7-8.

9 Id. at p. 12

10 Cecile Brokelind, An Overview of Legal Issues Arising from the Implementation in the European Union of the OECD's Pillar One and Pillar Two Blueprint, Bulletin for International Taxation, vol, 75, No. 5, 2021; Luc Be Broe, Melanie Massant, Are the OECD/G20 Pillar Two GloBE-Rules Compliant with the Fundamental Freedoms ? EC Tax Review, Vol. 30, Issue 3, 2021

still be appropriate to analyze whether an EU Directive on Pillar One should completely follow the OECD blueprint –either with the original approach or with the newly defined scope– or could deviate from it in specific aspects, with regard to both the design of Pillar One and its administration.

This contribution (without any claim to exhaust the topic) intends suggesting potential responses to this open issue.

1. Pillar One vs. the State aid provisions: a comparison between the two approaches (ADS and CGF vs. all sectors Pillar One)

The idea –underlying Pillar One– whereby the jurisdictions of customers' location ought to be allocated taxing rights for corporate taxation purposes is not a new one: well before the OECD Pillar One elaboration, hypothesis for a «destination-based cash flow tax» (DBCFT) and for a «destination-based corporation tax» (DBCT) had already been elaborated[11]. In particular, proponents of the DBCT highlighted the need to overcome both residence-based taxation and source-based taxation, and to choose the location of customers as a new connecting factor for taxing rights.

Unlike these previous suggestions, Pillar One does not intend to completely replace the existing rules on residence-based taxation and source-based taxation: in fact, the OECD stated that the new taxing right derived from Pillar One «would be an overlay to the existing rules and profit allocation rules»[12].

Businesses would have an interest –in terms of legal certainty and easier tax compliance– to minimize this overlay with the existing rules; for this purpose, the scope of Pillar One is deemed to be the decisive factor.

The scoping rules of Pillar One, in its first formulation set out in the OECD blueprint, exclude the cases of market revenue below 10% of profit or € 25.000.000 in a certain jurisdiction and, above that threshold, cover ADS (Automated Digital Services) and CFB (Consumer Facing Businesses). ADS include online advertising services; sales or other alienation of user data; online search engines; social media platforms; online intermediation platforms; digital content services. CFB include business supplying goods or services of a type commonly sold to consumers, i.e. which are designed primarily for sale to consu-

11 E.g., R. Avi-Yonah, «Globalization, Tax Competition, and the Fiscal Crisis of the Welfare State» (2000) Harvard Law Review 113(7), 1573-1676, at 1670-1671; S. Bond and M.P. Devereux. «Cash flow taxes in an open economy» (2002) Centre for Economic Policy Research Discussion Pa*per se*ries, Discussion Paper 3401; M.P. Devereux and P. Birch Sorensen, «The Corporate Income Tax: international trends and options for fundamental reform» (2006) European Commission Economic Papers 264; European Economic Advisory Group, The EEAG Report on the European Economy (CESifo Group Munich, 2007), Chapter 5, 121-32; A. Auerbach, M.P. Devereux and H. Simpson, «Taxing Corporate Income» in J. Mirrlees et al (eds.), Dimensions of Tax Design: The Mirrlees Review (Oxford: Oxford University Press, 2010), 837-893; A. Auerbach, «A Modern Corporate Tax», The Hamilton Project (2010); A. Auerbach and M.P. Devereux, «Consumption and Cash-Flow Taxes in an International Setting» (2012) Oxford University Centre for Business Taxation Working Pa*per se*ries, WP 12/14; M.P. Devereux, «Issues in the Design of Taxes on Corporate Profit» (2012) National Tax Journal 65(3), 709-730; M.Devereux & R.de la Feria, Designing and Implementing a destination-based corporation tax, WP 14/07, May 2014.

12 OECD blueprint, cit., at p. 11

mers, which are made available in ways capable of being for personal consumption, and are developed by multinationals to be regularly, repeatedly or ordinarily supplied to customers. CFB are exemplified by pharmaceuticals, *franchising* and licensing activities, dual use finished goods/ services and dual use intermediate products/components. In all cases of ADS and of CFB, the penetration in a market different from the market of the residence State of the supplier is the key element justifying –in the OECD's blueprint for Pillar One– the allocation of taxing rights.

As academic literature has already highlighted with regard to this first approach to Pillar One, the exclusion of business obtaining «market revenue» below a certain threshold, and the focus on ADS and CFB, could give rise to a conflict both with the prohibition of State aid under Ar. 107(1) of the TFEU and with the prohibition of discriminatory taxation under Art. 49 and 63 TFEU: in fact, on the one hand a State aid would end up being granted to those businesses falling outside the scope of Pillar One, and on the hand only non-resident business falling within Pillar One, which would be subject to this taxation under the new market-related nexus rule, would face indirect discrimination[13]. The same literature[14] has, however, acknowledged that issues concerning a conflict with State aid prohibition under Art. 107(1) TFEU can be regarded as overcome after the recent ECJ rulings[15] at least with regard to the exemption for ADS and CFB obtaining revenues –in the market jurisdiction– *below* a certain threshold, since these ECJ rulings have found Member States to be free to introduce steeply progressive trade tax rates exempting from taxation small and medium taxpayers. As regards the focus on ADS and CFB, this literature[16] highlighted the competitive advantage which would be gained by businesses operating in sectors different from ADS and CFB, i.e. by businesses operating in the traditional and tangible business sectors, due to their being excluded from taxation under Pillar One regardless of their market revenues.

The risk of conflict with State aid provisions –in case of adoption of this first approach and of the € 25.000.000 profit threshold– could materialize for another reason too. According to available data, 99% of all businesses in the EU are SMEs[17], which means they are businesses falling within specific thresholds: annual turnover not higher than € 50.000.000, or annual balance sheet amount not higher than € 43.000.000, and number of employees not exceeding 250[18]. An enterprise cannot be considered an SME if 25% or more of the capital or voting rights are directly or indirectly controlled, jointly or individually, by another enterprise, i.e. if it is a «linked enterprise».

As a result, if the threshold for Pillar One taxation were established at € 25.000.000 profit in a Member State different from the residence State, the

13 Cecile Brokelind, An Overview of Legal Issues Arising from the Implementation in the European Union of the OECD's Pillar One and Pillar Two Blueprint, Bulletin for International Taxation, cit., p. 214-216.
14 Id.
15 Case C-562/19 Commission v. Republic of Poland, Hungary, decided on 16 March 2021.
16 Cecile Brokelind, An Overview of Legal Issues Arising from the Implementation in the European Union of the OECD's Pillar One and Pillar Two Blueprint, cit., at 215.
17 European Parliament, Statistical Notes on the EU, 2021
18 Commission Recommendation 2003/361/CE, in OJEU L 124/36, Annex, Art. 2

concerned businesses would end up including those ADS and CFB businesses falling within the SMEs threshold –e.g., export-oriented SMEs with annual turnover below € 50.000.000, number of employees not exceeding 250– but with profit of € 26.000.000 derived from a market jurisdiction different from their residence State. Equally, the choice of the second alternative proposed threshold –i.e., 10% of profit before tax gained in a certain market jurisdiction– could end up affecting export-oriented SMEs having part of their market in EU jurisdiction(s) other than the residence State. The focus on ADS and CFB businesses, including SMEs carrying out activities in these sectors, would end up placing non-resident SMEs of similar size but operating in other sectors (i.e., excluded from Pillar One) in a competitively advantaged position in the same market jurisdiction, and it would equal a selective tax exemption granted to these other SMEs, i.e. it would end up creating a State aid falling within Art. 107(1). It could well be noted that this outcome would be, at political level, completely inconsistent with the objectives which were indicated in the Small Business Act[19], which highlighted the need to create a favorable environment for all SMEs irrespective of the business sector. At legal level, this outcome could be avoided only if the tax advantage gained by SMEs falling outside Pillar One amounted to no more than the allowed «de minimis» state aids (i.e., to no more than € 200.000 in a three year period), which are regarded[20] as compatible with State Aids rules.

Admittedly, the concerns about a breach of Art. 107(1) could be overcome by the adoption of a secondary EU legislation measure –such as a Directive in the intention anticipated by the Commission– *provided that* the ECJ were to recognize, in the event of alleged breach of Art. 107(1), that national legislations implementing the Directive, due to their very nature of measures implementing an EU Directive, would not be in breach of the TFEU. In this respect, literature has exhaustively showed that this issue –i.e., the question as to whether or not the ECJ would strike down national measures implementing a Directive which, in itself, would appear to be inconsistent with a primary EU law provision such as Art. 107(1)– cannot yet be regarded as solved[21].

Conversely, if a Directive introducing Pillar One were to follow the latest, alternative approach, i.e. if it were to cover only «*multinational enterprises (MNEs) with a global turnover above 20 billions euros and profitability above 10% (i.e. profit before tax/revenue)*» and it were to include within its scope *all* business sectors (with the only exceptions of regulated financial services and extractives), such a choice would obviously eliminate any risk of resulting in a selective competitive advantage for specific sectors. As a result, it would eliminate any risk of contrast with the prohibition of State aid set out under Art. 107(1) TFEU.

In fact, owing to 99% of EU businesses being SMEs, the exemption for multinational businesses with a global turnover below € 20 billions –instead of € 25 million indicated in the first draft– and/or with profitability below 10%, would

19 Commission Communication COM(2008)394.

20 Under Commission Regulation (EU) Nº 1407/2013 of 18 December 2013 on the application of Articles 107 and 108 of the Treaty on the Functioning of the European Union to de minimis aid, Art. 3

21 R.Szudoczky, The relationship between primary, secondary and national law, Research Handbook on European Union Taxation Law, EE, C.HJI Panayi, W.Haslehner, E.Traversa, 2020, 93-118.

exclude from the application of Pillar One the greatest majority of EU businesses of *all* sectors.

In light of the two cumulative conditions of a global turnover over € 20 billions and profitability over 10%, the application of Pillar One would therefore be restricted to a very small minority of EU businesses, e.g., presumably, less than 1% of EU businesses, because those conditions would end up excluding both (almost) all SMEs[22] and those larger businesses which, despite exceeding the SMEs threshold, would fall below Pillar One application threshold.

As a result, the exemption from Pillar One application could arguably be regarded –from the State aid perspective– as equivalent to a measure *of general character*, and as such would be outside State aid provisions. On the other hand, the admissibility –according to the latest ECJ case law already cited– of a steeply progressive taxation, would apply to an even greater extent in the case at stake.

Ultimately, from the *perspective of State aids provision*s, a comparison between the two proposed approaches suggest that, to minimize both the overlay with existing rules and the risk of conflict with Art. 107(1) TFEU (with the resulting situation of legal uncertainty that would arise until the time of an ECJ ruling on the matter), a Directive introducing Pillar One should deviate from the scope originally set out in the OECD blueprint, and it should follow the latest 2021 Statement approach.

2. Pillar One vs. the fundamental freedoms: the two possible situations at stake

In addition to State aid provisions, the scrutiny of Pillar One needs to be carried out under fundamental freedom because the penetration of businesses into markets different from the residence jurisdiction lies at the very core of the EU single market. On the bases of ECJ case-law, literature has convincingly argued that any national measure falling within the scope of a direct tax directive –given the lack of exhaustive harmonization in the direct taxation area– would be subject to review in light of the fundamental freedoms[23]. Accordingly, even national measures implementing an EU Directive introducing Pillar One would need to be compatible with fundamental freedoms, consistently with the realization that, under settled ECJ case-law, even measures adopted by EU institutions, just as Member States» measures, are subject to TFEU's free movement provisions[24].

22 Except for unlikely cases of SMEs which have annual balance sheet not higher than € 43 millions and number of employees lower than 250 –and, as such, falling within the SMEs definition irrespective of the turnover– but a turnover over € 20 billions and profitability over 10%.

23 R. Szudoczky, *The relationship between primary, secondary and national law*, cit., at p. 115.

24 Inter alia: Case C-434/02, *Arnold André*, ECR [2004] I-11825, para. 57; Case C-108/01*, Consorzio del Prosciutto di Parma, Salumificio S.Rita,* ECR [2003]I-05121, para. 53; Case C-169/99, *Schwarzkopf*, ECR [2001] I-5901, para. 37; Case C-114/96*, Kieffer and Thill*, ECR [1997] I-3629,, para. 27; Case 15/83, *Denkavit Nederland*, ECR [1984] 2171,, para. 15; Case C 51/93, *Meyhu*i [1994] ECR I-3879, para. 11.

In the OECD 2020 statement, Pillar One seeks to expand the market user/jurisdiction rights where there is «an active and sustained participation of a business in the economy of that jurisdiction through activities *in*, or *remotely directed at*, that jurisdiction»[25]. The objective of expanding market/user jurisdiction rights –as literally stated– is therefore to be achieved in two different situations (..»or»).

The first situation would be the case of an active and sustained participation of a business in the economy of the market jurisdiction through activities *in* that jurisdiction, i.e. through a *presence* in that jurisdiction.

The second situation would be the case of an active and sustained participation of a business in the economy of the market jurisdiction through activities *remotely directed at* that jurisdiction, i.e. *without* a presence in that jurisdiction.

As a result, at least three fundamental freedoms require the scrutiny of Pillar One, both with regard to the originally proposed approach targeting ADS and CFB and with regard to the latest approach targeting businesses of all sectors exceeding higher turnover and profitability thresholds. Specifically, Pillar One would need to be scrutinized only under the free movement of goods and the free movement of services in the event of lack of a physical presence of the non-resident supplier in the market jurisdiction; it would need to be scrutinized under the freedom of establishment, for those services or goods which could be offered, at the suppliers 's choice, through the creation of forms of secondary establishment indicated by the TFEU.

Whilst in the latest approach the free movement of services as well as the free movement of goods would concern –subject only to their exceeding the thresholds– businesses of all sectors (with the only exceptions of financial services and extractives), in the originally proposed approach the different nature of ADS and CFB would require scrutiny under different freedoms. ADS –given their own definition– would fall under the freedom to provide services; CFB, in light of its own definition («..supplying goods or services of a type commonly sold to consumers, i.e. which are designed primarily for sale to consumers, which are made available in ways capable of being for personal consumption, and are developed by multinationals to be regularly, repeatedly or ordinarily supplied to customers»), would fall under either the freedom to provide goods or the freedom to provide services. In any case, should the ADS and/or CFB supplier offer the concerned goods or services through a physical presence taking the form of a secondary establishment in the market jurisdiction, the freedom of establishment would be involved.

The free movement of capitals does not appear to be relevant on its own, to the extent that it can result in a direct investment by business or by individuals in companies resident in other Member States, or in properties located in other Member States, *without* a market penetration in these other States.

25 OECD (2020), OECD/G20 Base Erosion and Profit Shifting Project, Statement by the OECD/G20 Inclusive Framework on BEPS on the Two Pillar Approaches to Address the Tax Challenges Arising from The Digitalization of the Economy – January 2020 OECD/G20 Inclusive Framework on BEPS, OECD, Paris (As Approved by the OECD/G20 Inclusive Framework on BEPS on 29-30 January 2020), at p. 8

3. Pillar One vs. the freedom of establishment

The purpose of the freedom of establishment –as stated by the ECJ in its case--law– consists of allowing a national or a company of Member State to carry out its activities in another Member State, i.e. «to participate, on a stable and continuing base, in the economic life of a Member State other than its State of origin and to profit therefrom»[26]. As the freedom of establishment presupposes an actual establishment of the company concerned in the host Member State and the pursuit of a genuine economic activity there[27], the case of sustained participation in the economy of the market jurisdiction through activities carried out in that jurisdiction would by definition achieve the purpose of the freedom of establishment, since a business would generate profit in a Member State, other than its Member State of origin, to the extent that its activity –be it an industrial or a commercial one– and its market were both located there.

In light of the settled ECJ case-law on the freedom of establishment, which has requested that the tax treatment in the host country be neutral between branches and subsidiaries[28], a key condition can be identified for Pillar One taxation to be *ex ante* compatible with the freedom of establishment: the presence of a subsidiary or of a branch in a host Member State, which is also market jurisdiction, should determine no difference, for the concerned MNE parent and for the group as a whole, in terms of tax on Amount A to be paid to this Member State. Amount A is the new taxing right whose determination would be based on the MNE group consolidated financial statement[29].

According to the 2020 OECD blueprint, the allocation of residual profit to the market jurisdictions would be made by identifying those MNE group entities that would generate the residual profit, i.e. those MNE entities that earn above a routine return, and which would be «paying entities»[30] in charge of paying the tax on Amount A to the market jurisdiction. The tax liability of the paying entities in the market jurisdictions would depend on the local company tax rate applicable to Amount A.

The OECD blueprint expressly equates subsidiaries and permanent establishments (PE) with regard to Amount B, which would be the remuneration for subsidiaries resident in, and PE located in, market jurisdictions, where they perform baseline marketing and distribution activities («distributing entities») for the distribution of products for the MNE group[31]. However, it only refers generically to «paying entities» as regards Amount A[32]. Moreover, the blueprint

26 Case C-55/94, *Gebhard* [1995] ECR I-4165, para.25; Case C-196/04, *Cadbury Schweppes* [2006] ECR I-07995, para. 53.

27 Case C-196/04, *Cadbury Schweppes*, cit., para. 54

28 Since Case 270/1983, *Commission v. France (avoir fiscal)*, [1986] ECR 273, para. 22. In literature, among others, W.Schon, *The Free Choice between the Right to Establish and Branch and to Set-up a Subsidiary – A Principle of European Business Law*, 2001 European Business Organization Law Review, 2, 339-364.

29 OECD (2020), OECD/G20 Base Erosion and Profit Shifting Project, Statement by the OECD/G20 Inclusive Framework on BEPS on the Two Pillar Approaches to Address the Tax Challenges Arising from The Digitalization of the Economy, cit., p. 13; OECD blueprint., cit., p. 11

30 2020 OECD blueprint, p. 139.

31 Id., p. 162-163

32 Id., p. 140-141

specifies that «an entity should only bear an Amount A tax liability that relates to a market jurisdiction(s) in which it is engaged»[33], and, with regard to the methods for elimination of double taxation, it would appear to be able to generate a difference in treatment to the disadvantage of local subsidiaries in the market jurisdiction, in comparison with branches in the same jurisdiction.

Specifically, with regard to the elimination of double taxation, the OECD blueprint first states the objective of ensuring that a paying entity is not subject to tax twice on the same profits in different jurisdictions, once under the existing tax rules and once under Amount A[34]. After stressing that entities which earn residual profits under existing rules are designed as «paying entities», the OECD blueprint highlights that «paying entities are potentially subject to tax on the profits reflected in Amount A by both their jurisdiction of residence under existing tax rules and by the market jurisdiction which is given a new taxing right with respect to Amount A»[35].

To overcome this result, it submits that either the credit method or the exemption method could be used, by the residence jurisdiction, to eliminate double taxation if the MNE group does not have a subsidiary in the market jurisdiction, whereas it leaves scope for a «reallocation method» if the MNE group has a subsidiary in the market jurisdiction. Under such a reallocation method, which –from the OECD blueprint viewpoint– would be justifiable for this subsidiary if it such entity owns those profits, «the Amount A profit allocated to a market jurisdiction would be deemed to arise in the local subsidiary and an upward adjustment to its profits would be made for tax purposes, resulting in the local subsidiary being liable to pay Amount A. Double taxation would be relieved by providing a deduction or downward adjustment to the profits of the relieving entity. This deemed transfer of Amount A profits between these two entities would be similar to the economic double taxation relief mechanism under Article 9(2). For the relieving jurisdiction, this would deliver an equivalent outcome to the exemption method». [36]

In this scenario, if a MNE parent company A, resident in Member State X, had a subsidiary B in Member State Y which is also the market jurisdiction, and where the subsidiary earning residual profits would be the «paying entity» for Amount A tax, there would be an increased tax charge on the subsidiary B –in comparison with a scenario in which only current rules applied– which would be offset by a reduction of the tax charge on the parent company A under an economic double taxation relief similar to transfer pricing adjustments under Art. 9(2) of current DTCs. However, if the company tax rate of Member State Y were higher than the company tax rate of Member State X, the choice of having a subsidiary in Member State Y would result in a disadvantageous treatment, for the parent company A and for the MNE as a whole (taxation of the subsidiary profits under existing rules plus taxation of the same subsidiary under Amount A), in comparison with the choice of not having the subsidiary in the market jurisdiction. In fact, if the parent company A had a branch in Member State Y,

33 Id., p. 142.
34 Id., p. 154
35 Id.
36 Id.

instead of a subsidiary, in the scenario set out by the blueprint the parent company itself would appear to be the «paying entity» for Amount A tax, as a branch is not a legal entity on its own.

In turn, the parent company –due to its paying Amount A tax to the market jurisdiction– would be relieved from juridical double taxation by its residence jurisdiction. The parent company would therefore bear the higher corporate tax rate of the market jurisdiction *only* on Amount A, whereas it would benefit from the lower corporate tax rate of its residence jurisdiction *on the other part of its overall profit*. Moreover, it would also benefit from either a tax credit or an exemption for the tax paid by the branch, under current national rules and DTCs rules (Art. 7 of DTCs based on the OECD Model), in the host State/ market jurisdiction.

Conversely, if the «reallocation method» referred to in the blueprint were adopted in case of existence of a subsidiary in the market jurisdiction, the subsidiary would bear the higher tax rate of the market jurisdiction *both* on Amount A *and* on its overall profits as tax resident of the market jurisdiction itself. The higher the profit earned by the subsidiary, the higher the possibility that the economic double relief contemplated in the «reallocation method» be insufficient for the MNE group, to generate the same outcome as the relief from juridical double taxation that would be granted to the parent company in the event of absence of a subsidiary.

Should the «reallocation method» treatment envisaged by the OECD blueprint be introduced by an EU Directive on Pillar One, the outcome could therefore be –in the concrete situations– that of making it *less attractive* the creation and the maintaining of subsidiaries (rather than of branches) in the market jurisdiction. The neutrality between branches and subsidiaries, requested by the ECJ case-law on the application of the freedom of establishment to direct taxation, could therefore be jeopardized by domestic legislations implementing a Pillar One Directive.

To avoid this outcome, a Directive introducing Pillar One in the EU should either diverge from the OECD blueprint and not adopt the «reallocation method», or adopt the «reallocation method» even in case of existence of a branch in the host State/market jurisdiction should the branch earn the residual profit. This second choice would imply (fictitiously) considering the branch too as a «paying entity», but it would be consistent with the realization that the branch is already considered, in the OECD blueprint itself, as a possible «distributing entity» together with a subsidiary.

A further aspect of Pillar One under EU law could be noted, with regard to the situation where Amount A would be allocated to market jurisdiction without the existence of either a PE or a subsidiary, i.e. in the case of sales activities remotely directed at a jurisdiction. This situation corresponds, in essence, to the suggestions for a «virtual permanent establishment» (virtual PE) that were already considered by the OECD[37]. Without creating a PE and, therefore, without

37 OECD, Are the Current Treaty Rules for Taxing Business Profits Appropriate for E-Commerce? Final Report, TPA, 2005, p. 44-46;

exercising the freedom of establishment in one of the forms indicated by the TFEU, a company based in a Member State would therefore face tax consequences comparable –in terms of a tax liability arising toward a market jurisdiction – to the tax liability toward a (fictitious) host Member State. As the ECJ case-law has been consistently stressing the need for a «freedom of choice» between the different forms of secondary establishment[38] –which attract consequences in terms of tax liability toward the host Member States– the issue may well be raised as to whether a tax liability arising toward a fictitious host Member State *without an underlying free choice* between forms of establishments would be consistent, or not, with the ultimate goal of the *freedom* of establishment. In fact, the *freedom* of establishment, by its very meaning could not be regarded as equivalent, from businesses perspective, to a *fictitious* (due to its being virtual) and «forced» (due to the unintended tax consequences) establishment.

4. Pillar One vs. the free movement of goods

With regard to the free movement of goods, Art. 28, Art. 30, Art. 34 and Art. 110 of the TFEU prohibit not only customs duty, but also all charges having equivalent effect to customs duties[39], all measures having equivalent effect to quantitative restrictions[40], and any internal taxation of any kind in excess on products from other Member States in excess of that imposed directly or indirectly on similar domestic products or such as to afford direct or indirect protection to other products[41]. The ECJ has specified that the term «goods» includes «products that can be valued in money and which are capable, as such, of forming the subject of commercial transactions»[42]. The ECJ case-law, well settled in the area, has also provided very broad definitions of «measures having equivalent effects» and of «internal taxation». The former include a charge unilaterally imposed «whatever it is called and whatever its mode of application», which, if imposed on a product from another Member State to the exclusion of similar domestic products, «has, by altering its price, the same effect upon the free movement of products as a customs duty»[43], and the ECJ has also specified that «any pecuniary charge –however small– imposed on goods by reason that they cross a frontier constitutes an obstacles to the movement of such goods»[44]. In turn, internal taxation includes any measure which does not guarantee complete neutrality as regards competition between domestic products and products from other Member States[45], i.e. any measure which has the effect of disadvantaging –in a Member State market– products coming from other Member States.

The broad definitions of goods and of prohibited tax or other measures capable of hindering their free movement –and the allocation under Pillar One to the

38 Id., note 28
39 Art. 28(1) TFEU.
40 Art. 34 TFEU
41 Art. 110 TFEU.
42 Case 7/68, *Commission v. Italy* [1968] ECR 423, para.1.
43 Joined Cases 2/62 and 3/62, *Commission v. Luxembourg and Belgium* [1962] ECR 425, para. 4.
44 Joined Cases 2/69 and 3/69, *Sociaal Fonds voor de Diamantarbeiders v. Sa Ch Brach & feld Sons* [1969] ECR 211, para. 11/14.
45 Case 171/78, *Commission v. Denmark* [1980] ECR 447, para. 4

market jurisdictions of taxing rights on part of the profit of non-resident businesses deriving from sales in their territories– make it clear a key aspect. For legal certainty of *ex ante* compatibility with the free movement of goods to exist, the application of Pillar One must in no way have the direct or indirect effect of causing an alteration of the complete neutrality –in the market jurisdiction– between the products of the non-resident businesses and similar products of domestic businesses. Although, as already noted in literature, the Pillar One related tax would not be a two-steps tax, so that it would not be an indirect tax and it would not breach the VAT Directive[46], in light of the ECJ case-law it could be argued that Pillar One application would still end up conflicting with the free movement of goods *if* it (indirectly) caused products sold by the non-resident business, in the market jurisdiction, to become less competitive than similar domestic products. This scenario would materialize if, in the event of a substantially higher tax rate in the market jurisdiction than in the residence state, the allocation of taxing power on Amount A to the market jurisdiction determined a reduction of the overall after tax profit of the non-resident MNE, and this business was induced to increase the price of its products to try to recover(part of) its after-tax profit. In a similar situation, the business would translate on consumers –including consumers in the market jurisdiction– its higher tax burden, and the price of products sold by the non-resident business may become, in the market jurisdiction (considerably) higher than the price of similar domestic products. In such a situation, the Pillar One- related taxation which would be triggered by consumption in the market jurisdiction, despite its not being an indirect taxation, would indirectly prevent complete neutrality between products of the non-resident business and similar domestic products in the market jurisdiction.

As such, Pillar One outcome would end up contrasting with the free movement of goods. This risk of Pillar One generating an effect in contrast with the free movement of goods could be minimized only by choosing –between the originally proposed approach limited to producers of goods falling within CFB and the latest all-sectors approach applying to MNEs having a higher profitability threshold– the one which would cover the lowest number of businesses. Should CFB be mainly produced by MNEs exceeding the higher profitability thresholds (20 billions €, 10% profitability), the latest approach proposed in the OECD blueprint, due to its being extended to *all* sectors for these MNEs, and therefore due to its going beyond CFB, would be more at risk of creating contrasts with the free movement of goods than the original approach –limited to CFB– indicated in the OECD blueprint.

5. Pillar One vs. the free movement of services

Services fall within the scope of Art. 57 of the TFEU when they are normally provided for remuneration, and in so far as they are not governed by the provisions on the free movement of goods, capitals and persons. According to the ECJ case-law, the essential characteristic of remuneration lies in its constituting

46 C.Brokelind, *An Overview of Legal Issues Arising from the implementation in the European Union of the OECD's Pillar One and Pillar Two Blueprint*, cit., at p. 214.

compensation for the service[47], although the payment of this compensation does not need to be necessarily made by those to whom the service is provided, but can be made by others[48]. Moreover, the ECJ case-law has specified that there must be an economic link for services to come within the provisions of the Treaty, i.e. that there is no service in case of distribution of information about a certain service, provided by a third party for no remuneration[49]. The ECJ also stated that the prohibition of restriction to the freedom to provide services, include all requirements imposed on the person providing the service due to its not residing in the Member State where the service is provided[50].

With these premises, the application of Pillar One, due to its very being triggered by revenues from services offered in the market jurisdiction, would obviously involve services falling within Art. 57 TFEU, either if it was adopted in the EU by following the originally proposed approach (ADS and CFB) or if it was adopted by following the latest (all sectors) approach covering MNEs above higher turnover and profitability threshold. It would also be compatible with the freedom to provide services if it did not make the provision of services from the non-resident business, in the market jurisdiction, more difficult than the provision of services in this jurisdiction by a resident business.

In itself, any national measure of the market/users jurisdiction restricting or hindering the freedom to provide services would therefore fall within the prohibition of restriction set out by Art. 56 TFEU, and would not be objectively justified if it were not to pass the four steps-*test* set out by the ECJ case-law (discriminatory nature on the grounds of nationality or place of residence or establishment of the service provider; pursuance of a legitimate objective; appropriateness/coherence with the objective; proportionate).

The first issue would therefore be whether the taxation by a Member State B of a service provider resident in Member State A on a share of the profit made in Member State B, would risk creating a restriction to the freedom to provide services. The ECJ case-law indicates that tax legislation of a Member State may constitute a restriction to provide services when it imposes providers, which are not resident in that Member State, to meet administrative obligations which are not imposed on resident providers of similar services[51]. Accordingly, in assessing whether the implementation of Pillar One would create a restriction on the freedom of a provider resident in Member State A to offer services in Member State B, the issue would be whether the implementation of Pillar One would require this service provider to meet administrative obligations in Member State B, which are not imposed on providers of similar services resident in Member State B itself.

47 Case C-263/86, *Belgium v. Humbel*, [1988] ECR 05365, para. 17; Case C-157/99, *Geraets-Smit,* [2001] ECR I-5473, para. 58.
48 Case C-157/99, B.S.H. *Geraets-Smit,* [2001] ECR I-05473, para. 57 and 58.
49 Case C-159/90, *SPUC v. Grogan* [1991] I-04685, para. 22 to 27.
50 Case C-33/74, *Van Binsbergen*,[1974] ECR I-01299, para. 10
51 Case C-678/11 *Commission v. Spain* [2014], with regard to the obligation imposed by a Member State, to pension schemes and funds resident in other Member States, to appoint a tax representative resident in that Member State.

The 2020 OECD blueprint and the latest 2021 Statement, in advocating a «single paying entity» approach[52], do not offer a response to this issue.

A restriction would arise in a situation in which the non-resident service providers (non-resident single paying entities), by assumption, are requested to pay Amount A- related tax to the Member State B tax authority and, for this purpose, to appoint a local tax representative in the market jurisdiction (and bear the related costs), whereas resident service providers would not need to meet this requirement. Again, in case of administrative obligations imposed only on non--resident businesses, the approach originally proposed in the 2020 OECD blueprint, due to its being limited to ADS and CFB, may result in a lower number of cases of restrictions than the latest all sectors approach.

Although in the event of a restriction the ECJ would assess whether this restriction would be justified in light of a public interest –and could end up considering the allocation of taxing power on Amount A to the market jurisdiction to be in the public interest, or could regard the restriction as being justified in light of the freedom of Member States to allocate taxing powers as between themselves– the subsequent issue would be whether a less restrictive route were available to achieve the same purpose.

This aspect would involve considering how the administrative requirement for the implementation of Pillar One could be minimized. With a view to the introduction of Pillar One and of its smooth working, this aspect would be important for avoiding or minimizing restrictions to both the freedom to provide services and the free movement of goods.

6. A possible route to minimize the administrative requirements for the to implementation of Pillar One.

The OECD blueprint envisages a simplified administration process, which would be designed to centralize the computation of Amount A and related tax compliance in a single entity, possibly the ultimate parent entity, as required by Country-by-country Reporting (CbCR) under BEPS Action 13[53]. The blueprint considers the development of a new multilateral convention to ensure consistency in the application and operation of Amount A[54], and it states that «Centralising the process of applying Amount A through a single entity should generate a material reduction in compliance costs. It could also reduce the burden this process would create for tax administrations, which would be provided with a single coherent Amount A tax return, a standardised documentation package and possibly a single Amount A payment from each MNE group. Provisions may be needed within the planned multilateral instrument and/or domestic law to allow this more centralised process (e.g. to allow a domestic tax liability to be satisfied by a single tax payment made by a non-resident entity in another jurisdiction)»[55]. With regard to the development of a standardized Amount A self-

52 OECD blueprint, pp. 206-208; OECD 2021 statement, p. 3
53 OECD blueprint, pp. 206-208
54 Id. p. 207
55 Id.

assessment return/documentation package and *centralized filing*, the OECD blueprint also specifies that: «To minimise the burden on MNE groups and ensure the same information is available to all relevant tax administrations, an Amount A co-ordinating entity within an MNE group will file a single selfassessment return and documentation package on behalf of the entire MNE group, with its lead tax administration, by an agreed filing deadline»[56] and that, in the majority of cases, the «lead tax administration» will be the jurisdiction where the ultimate parent company of a MNE group is resident and that, in cases where such tax administration may be unable to act or where another tax administration may be more suitable, an approach will be developed to identify a «surrogate lead tax administration» for the MNE group[57]. The 2021 Statement, in turn, stresses that «The tax compliance will be streamlined (including filing obligations) and allow MNEs to manage the process through a single entity»[58].

The OECD envisages therefore a single paying entity for Amount A-related tax and a «*one-stop-shop*» approach for meeting the filing requirement, to the extent that this entity would file a single self-assessment tax return on behalf of the MNE group with only one national tax authority, i.e. either with the lead tax administration or with a surrogate lead tax administration, and all other concerned tax administration would be able to access this single self-assessment tax return. This one-*stop*-shop approach, by its very nature of allowing the concerned business to interact only with one tax authority, would also be consistent with the longer term prospect of a single corporate tax return for a group as a BEFIT- related development, a prospect indicated by the Commission in its Communication[59].

The OECD blueprint –when specifying that those MNE entities that earn above a routine return would be «paying entities»[60] in charge of *paying the tax on Amount A to the market jurisdiction*– appears to suggest, however, that the single reporting entity should be able to deal with only one national tax authority only for the filing, but not for the payment of Amount A-related tax. In other words, the OECD appears to suggest that the «one-*stop*-shop» approach for the filing would not extend to the payment, *in situ*ations where no subsidiary exists in the market jurisdictions[61].

With regard to the case of an MNE parent company resident in Member State A which would need to pay the Amount A related tax to a Member State B, the market jurisdiction, where by assumption this MNE parent would also generate the residual profit without having a subsidiary there, two alternative routes could arguably be considered for the payment:

a) *a «one-stop-shop» in Member State A for the payment obligations too*, in which case this company would not only file on behalf of the MNE group with Member State A tax authority as «lead tax administration», but would

56 Id, p. 177
57 Id., p. 178
58 OECD 2021 statement, 1 July 2021, p. 3
59 COM(2021) 251 final, cit., p. 12.
60 2020 OECD blueprint, p. 139.
61 Should a subsidiary exist in a market jurisdiction and be the entity earning the residual profit, the paying entity would be the subsidiary itself: see paragraph 3 above.

also pay Amount A related tax in Member State A and Member State A would transmit to Member State B the amount of this tax on Amount A (so that this tax would initially be collected by Member State A on behalf of Member State B); *or,* alternatively,

b) autonomous payment of the related tax, by the company resident in Member State A as a «paying entity», to Member State B tax authority.

The OECD blueprint impliedly suggests a choice for solution *b*), which, however –as already mentioned[62]– might not necessarily be the preferable solution (depending on whether particular requirements were imposed for the payment of Amount A tax) from the perspective of free movement provisions.

An EU Directive implementing Pillar One, which aimed at simplifying tax compliance (and ensuring *ex ante* compatibility with fundamental freedoms), would therefore need to opt for the modality which would make it easier –and less cumbersome from the administrative viewpoint– for the non-resident businesses, to comply with all tax obligations connected with Member State B new taxing rights, i.e. to comply with both tax reporting and tax payment obligations regarding Amount A-related tax.

As the concerned company would already have tax reporting and tax payment obligations regarding its overall profit toward its residence state, i.e. toward Member State A, the proper route to minimize additional tax compliance would be –for the company at stake– to have Member State A tax authority[63] acting as a *«one-stop-shop» for meeting* not only its tax reporting (as a «lead tax administration»), but also *its tax payment obligation (regarding Amount A-related tax), toward the market jurisdiction (Member State B) too.*

In turn, such a solution would give rise to the issue as to whether the tax Recovery Assistance Directive (RAD), i.e. Directive 2010/24/EU –which applies to «all taxes and duties of any kind levied by or on behalf of a Member State»[64] and which, therefore, in principle would cover Amount A too– would already provide proper instruments or would need to be amended. The current recovery assistance procedure relies on a request for recovery submitted by the applicant authority of a Member State to the (requested) tax authority of another Member State, it covers claims «which are subject to an instrument permitting enforcement in the applicant Member State»[65], and it is subject to limits to the requested authority's obligations[66]: in this last respect, the requested authority needs to inform the applicant authority of the grounds for refusing a request for assistance. Owing to these features, the current tax recovery assistance procedure could not be reasonably made applicable to Amount A-related tax which would need to be paid to market jurisdictions under a Pillar One Directive. In fact, in the event of application of the current tax recovery assistance procedure in a context in which the concerned businesses would interact only with the tax aut-

62 See paragraph 5, above.
63 At least in the absence of tax residence conflicts concerning the business at stake, i.e. of dual residents companies.
64 Council Directive 2010/24/EU, in OJ L 84, 31.03.2010, Art. 1.
65 Council Directive 2010/24/EU, cit., Art. 10
66 Id., Art. 18.

hority of the residence state as a «one-*stop*-shop» for meeting Amount A payment obligations too, the tax authority of the market jurisdiction would be the applicant tax authority and the tax authority of the residence jurisdiction would be the requested authority, but there would be three outcomes which would be inconsistent both with the rationale of the RAD and with Pillar One. Firstly, the applicant tax authority would need to bear the onus to file a request for recovery assistance every year. Secondly, it would need to do so for a claim which would not subject to an instrument permitting enforcement in the market jurisdiction (due to the concerned taxpayers interacting only with their residence jurisdictions) in contrast with the scope of the procedure as set out in Art. 10 of the RAD. Thirdly, if the residence state, as requested authority, were to refuse to grant tax recovery assistance to the market jurisdiction as applicant state, the very purpose of Pillar One in terms of allocating taxing rights and tax revenues to the market jurisdiction would be jeopardized.

Consequently, the RAD –to be able to ensure tax revenues to market jurisdictions where a non-resident business had no physical presence– would need to be amended by the Directive introducing Pillar One in the EU, by inserting in the RAD a new specific provision concerning the payment of Amount A-related tax. This amendment would need to consist in a *new automatic transfer of tax revenues corresponding to Amount A-related tax* from the residence state to the market jurisdiction state. This transfer would need to take place within the tax year subsequent to the tax year the reported market revenues refer to, to ensure that the market jurisdictions get each year the tax revenues corresponding to their new Pillar One taxing rights.

7. Conclusions

Although the Commission in its Communication stated at the outset that the concepts of tax residence and source are outdated, the introduction of a Directive implementing Pillar One along the lines of OECD development would imply adopting market location, for in-scope MNE, as an *additional* connecting nexus, rather than as a *replacement* of the current connecting nexus.

In this overlap with existing connecting factors, the introduction of a Directive implementing Pillar One would arguably need to be guided by three objectives: to avoid contrast with State aids rules; to be *ex ante* consistent with fundamental freedoms, by avoiding the risk of making their exercise less attractive and the risk of distorting the choices between subsidiaries and branches in the market jurisdictions; to simplify (minimize) tax compliance requirements, by adopting a «one-*stop*-shop» approach for in-scope MNE concerning both the filing and the payment, which would mean –in this last respect– going beyond the OECD blueprint in the tax compliance simplification approach.

In light of the previous analysis about possible avenues to achieve these three objectives, it could therefore be noted that, although the work which is being undertaken at OECD level can provide useful inputs, a Directive introducing Pillar One should deviate from the 2020 OECD blueprint in at least three specific aspects, i.e.: the scoping rule which should avoid creating contrasts with State

aids provisions, the treatment of paying entities creating subsidiaries vs. the treatment of paying entities setting up braches in the host States/market jurisdictions, and the one-*stop*-shop approach.

Elaborating autonomous solutions about these aspects, whilst accepting the OECD blueprint as a general guideline on the whole, would not conflict with that search by the Commission of an alignment with OECD solutions which would be consistent with Art. 220(1) of the TFEU, but it would imply a useful «cherry--picking» from this blueprint –by the Commission– to make the alignment *subject to the goal of rendering a Directive* on Pillar One *an optimal* medium-term targeted measure, with a view to the longer term goal of introduction of a common tax base under the BEFIT initiative (and of its underlying rationale of simplifying cross-border tax compliance within the EU).

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