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REPORT FROM THE COMMISSION TO THE COUNCIL

Implementation report on the review of the DRM Directive

1. Introduction

Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union[1] ('DRM Directive') sets out a framework to resolve disputes between Member States arising from the interpretation and application of agreements and conventions between Member States that provide for the elimination of double taxation of income and, where applicable, capital.

Although before the adoption of the DRM Directive mechanisms or instruments were available to resolve certain disputes provided for under tax treaties or the Arbitration Convention (90/436/EEC)[2], these instruments might not achieve the effective resolution of such disputes in all cases in terms of scope and/or in a timely or binding manner.

The DRM Directive ensures an effective mechanism to resolve disputes covering a wider scope, in a timely and enforceable manner by envisaging a three-step approach. First, any person (individual or company) whose taxation is directly affected by a question in dispute is entitled to submit a complaint to each of the Member States concerned, requesting the resolution of such dispute. Second, the Member States concerned should then endeavour to resolve the question in dispute through a mutual agreement procedure. Third, in case of rejection of the complaint by a Member State or failure in resolving a dispute during the mutual agreement procedure stage, the Directive envisages the establishment of an advisory commission to take a decision on the rejection or issue an opinion on the dispute.

In accordance with Article 21 of the DRM Directive the Commission shall evaluate the implementation of the Directive and present a report to the Council. However, limited evidence is currently available on the application of the Directive and not all Member States have obtained sufficient experience with applying its rules. None of the Member State have complaints, submitted by the taxpayers, that have reached the dispute resolution stage. The main reason is that the DRM Directive applies to tax years commencing on or after 1 January 2018. Member States have different compliance rules in terms of filing requirements and finalising assessments, statute of limitation rules and compliance strategies (e.g. when to start an audit or which tax years to cover). For example, the tax return for the tax year 2018 would be filed at the earliest in 2019. A tax audit covering the tax year 2018 might only be closed in 2023, thus a complaint could be filed from then on and within 3 years (at the latest in 2026). As a result, disputes that could be dealt with under the DRM Directive have only started to arise in the most recent years.

This implementation report covers the period from the initial entry into force of the DRM Directive to date. It is based on data gathered through a consultation which ran from 12 March to 10 May 2024 on the website of the Commission services responsible for Taxation and Customs Union as well as input received from Member States under the Statistical Framework for the DRM Directive for the tax years 2020-2023 and a targeted consultation to Member States which ran from 14 March to 10 May 2024. A fully-fledged evaluation of the DRM Directive should be conducted once more

[1] OJ L 265, 14.10.2017, p. 1–14

[2] Convention on the elimination of double taxation in connection with the adjustment of profits of associated enterprises OJ L 225, 20/08/1990, p. 10.

information on and experience with real cases is available, including with cases that have reached the dispute resolution stage. The DRM Directive is also within the scope of an ongoing ECA audit on harmful tax competition in the EU.

2. Description of the DRM Directive

The DRM Directive offers a coordinated and flexible framework for Member States and reinforces mandatory binding dispute resolution in the European Union compared to purely national rules and/or rules set in bilateral or multilateral agreements and conventions.

It allows for a mutual agreement procedure ('MAP') initiated by a complaint of the taxpayer under which the Member States must cooperate and reach an agreement on the double taxation dispute within 2 years. The decision is binding on the competent authorities and enforceable by the affected taxpayer(s). If the MAP fails because Member States have not managed to reach to an agreement, it automatically leads to a dispute resolution procedure (arbitration phase) with the issuance of a final binding decision by the competent authorities of the Member States involved.

The figure below summarises the three key procedural stages of the DRM Directive:



Figure 1: Three key procedures

Summary of each step:

1. Complaint

The DRM Directive applies to disputes between Member States arising from different interpretations and applications of agreements and conventions that provide for the elimination of double taxation of income and, where applicable, capital, such as bilateral tax treaties and the Arbitration Convention, leading to double taxation. In light of this, any affected person, including individuals, is entitled to submit a complaint on a question in dispute to each of the competent authorities of the Member States concerned with the aim of a resolution.

The deadline for the submission is 3 years from the receipt of the first notification of the action resulting in double taxation. Each Member State's competent authority concerned is obliged to acknowledge receipt of the complaint within 2 months from its receipt and inform the other concerned Member States thereof. The affected person is required to submit information according to Article 3(3) of the DRM Directive. The competent authorities concerned may request additional information within 3 months from the receipt of the complaint. In turn, the affected person needs to reply within 3 months of receiving the request. The decision on the acceptance or rejection of the complaint has to be taken within 6 months of the receipt thereof or within 6 months of

the receipt of additional information, whichever is later, and the affected person and the competent authorities of the other concerned Member States have to be informed thereof without delay.

Within this 6-month period, the concerned Member State may resolve the question in dispute on a unilateral basis, resulting in the closure of the procedure under the DRM Directive.

2. MAP

If the dispute has not been resolved under the complaint stage, the Member States concerned, where they have accepted a complaint, enter into a mutual agreement procedure. In case of a mutual agreement procedure, Member States must endeavour to conclude it within 2 or 3 years starting from the last notification of the decision to accept the complaint.

Recital 6 encourages Member States to use alternative non-binding dispute resolution options, such as mediation or conciliation, during the final stages of the mutual agreement procedure period. If Member States concerned are able to resolve the dispute, the decision becomes binding on the Member States subject to the taxpayer(s)' agreement and renouncing the right to any other remedy. In the absence of an agreement within the indicated time frame, the case should be submitted to a dispute resolution procedure.

3. Dispute resolution

The affected person may request the competent authorities to set up an advisory commission where, (a) the complaint submitted by such affected person was rejected under article 5(1) by at least one, but not all of the competent authorities of Member States concerned; or (b) the competent authorities of the Member States concerned had accepted the complaint that was submitted by the affected person but failed to reach an agreement on how to resolve the question in dispute by mutual agreement within the time limit provided for in article 4(1), in which case the advisory commission must deliver an opinion on how to resolve the question in dispute. The DRM Directive allows flexibility to Member States to set up an advisory commission that may differ regarding composition, form, arbitration process to be used and/or might be of a permanent nature.

The advisory commission must deliver its opinion to the competent authorities of the Member States concerned no later than 6 months, which can be extended by another 3 months, after the date on which it was set up. The opinion is taken on the basis of a simple majority of its members. Where a majority cannot be reached, the vote of the chair shall determine the final opinion and be communicated to the competent authorities.

A final decision needs to be taken by the competent authorities, following the notification of the opinion of the advisory commission. The competent authorities concerned have 6 months to agree on how to resolve the question in dispute. During these 6 months, the competent authorities may make a deviating decision compared to the one provided by the advisory commission.

The final decision is binding on the Member States concerned in relation to the affected persons and does not constitute a precedent. It must be implemented subject to the

affected person(s) accepting the final decision and renouncing the right to any domestic remedy within 60 days from the date when the final decision was notified, where applicable.

3. Overview of the implementation

a. Transposition checks

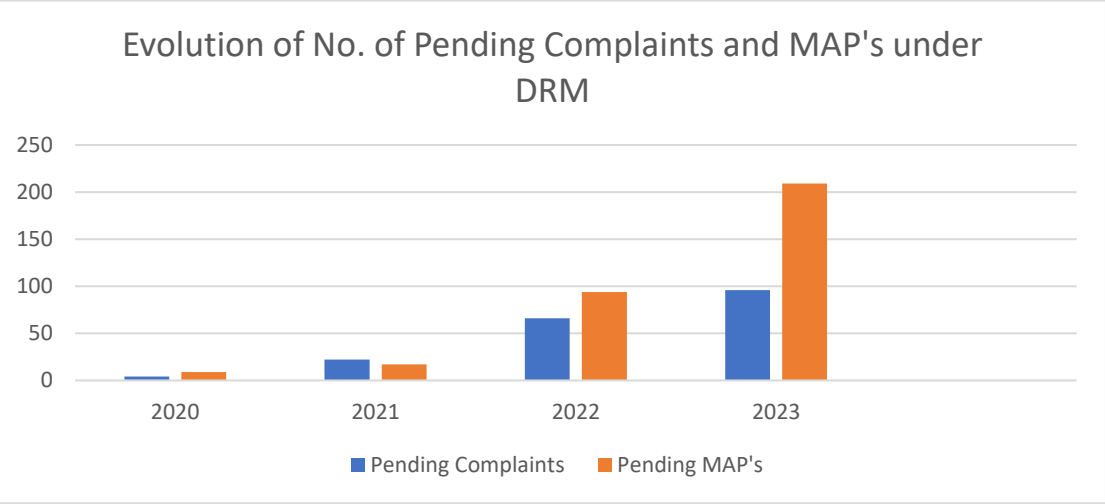
All Member States have now correctly transposed the DRM Directive. In the case of Spain, an infringement procedure for an incorrect transposition was launched[3]. Spain has subsequently addressed the issues raised in the infringement procedure, which was closed on 23 May 2024[4].

b. Review of Statistical Framework

Under the Statistical Framework for the DRM Directive, Member States are required to submit on an annual basis the following statistics to the Commission[5]:

(i) Complaints submitted to the competent authority.
(ii) MAPs being administered by the competent authority.
(iii) Complaints being handled under the dispute resolution stage (arbitration phase).
(iv) The implementation of MAP Decisions and Final Decisions.

The following table indicates the number of cases under (i) and (ii) submitted by Member States that are pending at the end of each reporting year:



Complaints submitted

Depending on the position taken by the competent authorities of a concerned Member State regarding the submitted complaint, taxpayers may have to file an appeal to the

[3] INFR(2022)2096
[4] See Commission's Public Registry of Infringement Decisions https://ec.europa.eu/atwork/applying-eu-law/infringements-proceedings/infringement_decisions/?lang_code=en
[5] See for the data the Commission website: Resolution of tax disputes in the European Union - European Commission (europa.eu)

national courts under Article 5(3) to gain access to the MAP or the dispute resolution stages of the DRM. Based on the information received from Member States, there is only one appeal submitted in relation to a rejection made by 2 Member States. The low number of complaints under appeal relative to the total number of complaints submitted might indicate that the number of cases that have been rejected by all Member States are low up until now.

Instead, any disputes that remain at the complaint stage are passed to the MAP stage. One key statistical indicator is the average time for a complaint to be closed by the Member States submitted either through the complaint being resolved by the Member States or being passed to the MAP stage or dispute resolution stage. The results for years 2020-23 are indicated below.

Year	Number of MS reporting	Complaint closed (in months) – EU average	Maximum (months)	Minimum (months)
2020	2	1.25	1.5	1
2021	6	4.1	12	0.2
2022	12	3.9	6.2	1.8
2023	11	3.9	6	0.8

Therefore, based on data submitted by Member States, a large majority of cases are being closed by Member States within 6 months as required by the DRM Directive. Going forward data submission of time taken to close a complaint is essential to monitor the effectiveness of the DRM Directive.

Complaints handled under the MAP stage

Although the number of both complaints and MAPs has increased during the period 2020-2023, they remain significantly below the number of MAPs currently under the Arbitration Convention for the same time period[6]. There may be several reasons to explain this low number. The DRM Directive is only directly applicable for disputes arising as from a tax year commencing on or after 1 January 2018, therefore older cases cannot be handled under the DRM Directive[7]. Nevertheless, there has been a decrease in the number of disputes submitted under the Arbitration Convention: the number of cases submitted in 2023 under the Arbitration Convention has decreased to 649 from 854 in 2022. However, this may just be a temporary effect with data from future years required to confirm a long-term trend.

Further, given the time it takes to undertake an audit and to issue a final audit decision to the taxpayer, a number of years would elapse before the taxpayer would be in a position to submit a complaint. Finally, the taxpayer has three years as from the date the decision has been issued to lodge a complaint, therefore this could also explain the time lapse between the occurrence of a dispute and its submission under the DRM Directive.

[6] MAP and APA statistics: https://taxation-customs.ec.europa.eu/taxation/statistics-apas-and-maps-eu_en

[7] Member States could have used the possibility to accept cases in relation to disputes arising before 1 January 2018 covering earlier tax years. In the consultation with Member States, only two Member States have indicated to allow for this.

When asked in the Member States' consultation whether they have noticed a shift to the DRM Directive from the Arbitration Convention, most Member States responded that they did not have data to answer the question. They confirmed that the Arbitration Convention is still being used by their taxpayers.

As with the complaint stage, Member States were requested to indicate the number of months it takes to resolve a dispute under the MAP procedure[8]. The results for the years 2020 to 2023 are indicated below.

Year	Number of MS reporting	Map closed (in months) – EU average	Maximum (months)	Minimum (months)
2020	N/A	N/A	N/A	N/A
2021	4	7	12.5	3.3
2022	2	9.3	10.1	8.5
2023	9	10.9	21.5	3

Based on data submitted by Member States, MAP cases are being closed within 24 months, as required under the DRM Directive. However, given the low number of cases actually being closed under the MAP stage so far, it would be premature to draw conclusions. A targeted consultation with a Member State indicated that most of the cases submitted under the DRM Directive were from individuals which normally can be resolved more quickly in contrast to disputes involving companies. The latter generally involves transfer pricing disputes which are more complex and require more time to resolve. As with the complaint phase, it is essential that data is submitted by Member States to allow effective monitoring regarding the timeliness to close a MAP case.

Complaints being handled under the dispute resolution stage

So far, no complaints have advanced to the dispute resolution stage (arbitration phase), therefore it is not possible to assess it. Further, given that the majority of MAP cases have been submitted in 2022 and 2023 and not all decisions have been issued by Member States, it is expected the number of cases that would be passed to this stage will be limited in the coming years. Nevertheless, monitoring of this phase is essential to ensure that taxpayers have a right to challenge the rejection of a MAP case.

The implementation of MAP Decisions and Final Decisions

Member States are required to report the number of MAP Decisions and Final Decisions not yet implemented by the competent authorities.

As of 31 December 2023, Member States reported having three MAP decisions that still needed to be implemented by the competent authorities.

[8] Number of complaints accepted to proceed to a MAP under Article 4 (1) during the reference year and the number of MAP decisions accepted by the affected person under Article 4 (2) during the reference year are shown in the statistical data at the Commission's website referred in footnote 5.

c. Preliminary feedback on the application

According to the results of the consultation undertaken with Member States and the consultation conducted with stakeholders[9], the DRM Directive does provide for an improvement in terms of efficiency and effectiveness compared to the situation before its implementation. This stems from the fact that the DRM Directive provides for clear and defined timelines, it offers improved opportunities for recourse for the taxpayer(s) and has a broader scope covering not only disputes regarding transfer pricing or attribution of profits to permanent establishment but any dispute that arises from the interpretation and application of agreements and conventions that provide for the elimination of double taxation of income.

However, both Member States and stakeholders indicated in their responses that the experience with the rules of the DRM Directive is limited as the first cases of double taxation that fall under the scope of the DRM Directive are only now emerging, because of the closing of tax audits covering tax years commencing on or after 2018. So, limited or no feedback could be provided on all the aspects of the DRM Directive and more specifically on the dispute resolution stage as, at the time of writing of this report, no advisory commission was set up.

Nevertheless, suggestions were already made to further improve certain aspects of the DRM Directive in terms of providing further clarity on the interpretation and application of certain rules or definitions to ensure a common approach. It was further suggested to extend the scope of the DRM Directive and to use the resolution mechanism to resolve disputes related to other directives in the direct and indirect tax area. A revised statistical framework by indicating the number of complaints submitted and rejected during the reference year might prove to be useful for monitoring purposes.

4. Conclusions and future work

All Member States have fully implemented the DRM Directive. The preliminary feedback is positive in that the DRM Directive seems to meet the objectives that were set at the time of the adoption. The DRM Directive provides for a mechanism for dispute resolution that is comprehensive, effective and sustainable. The enhanced position of the taxpayer(s) to have the double taxation resolved in a binding manner contributes to a fairer tax environment.

However, based on the statistical data collected by the Commission under the Statistical Framework for the DRM Directive and the feedback received both from the public and the Member States, the conclusion drawn is that there is still limited experience with the application of the DRM Directive. Once more experience is acquired, the Commission services should carry out a fully-fledged evaluation and, if appropriate, make proposals to improve the DRM Directive.

[9] See: Resolution of tax disputes in the European Union - European Commission (europa.eu)