

The Fundamental Freedoms and the EU Directive on Global Minimum Taxation

Country A Not implemented the GIOBE Rules	1	EU Directive on global minimum taxation Council Directive 2022/2523 of 14 December 2022
Country B Implemented the GloBE Rules 100% B Co1 10% B Co2 10% 5% Country C Not Implemented the GloBE Rules Country C Country C		Taxation of multinational enterprise (MNE) groups and large-scale domestic groups under the:
		I. Income Inclusion Rule (IIR)II. Undertaxed Profits Rule (UTPR)
	2	EU Fundamental freedoms
		- Primary EU law <i>vis-a-vis</i> secondary EU law &
12		- The free movement of capital (art. 63 TFEU) in light of the ECJ case law
Country A Not important the click Fulse A Co	3	Clashes between the free movement of capital and the EU Directive?
Country B Country B Implemented the GloBE Rules 100%	- 1	- Art. 63 TFEU <i>vis-a-vis</i> IIR? - Art. 63 TFEU <i>vis-a-vis</i> UTPR?
B Co3 IIR/UTPR B Co1 B Co2/D Co1 IIR UTPR 10% 90%		Incompatibilities may arise: - at the level of the intermediates and other constituent entities - within the EU and/or with regard to third countries
Country C Not implemented the GlobE Rules Low-Tex Jurisdiction	4	Possible solution and outcome
IIR = Country A + Country B + Country C UTPR = Country A + Country B + Country D	4	Action for the annulment of the Directive (art. 263 TFEU) before the ECJ: - private parties (i.e. intermediates and other
COURT OF JUSTICE OF THE EUROPEAN UNION	- 1	constituent entities) - direct and individual adverse effects (i.e. violation of art. 63 TFEU)
		Therefore, partial annulment of the Directive

Some critical aspects:

- primacy of primary EU law
- article 63 TFEU vis-a-vis third countries
- the role of the control within a group & consolidation
- justification & proportionality
- annulment of an EU Directive on tax matters