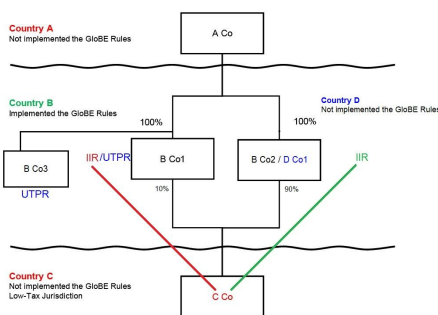
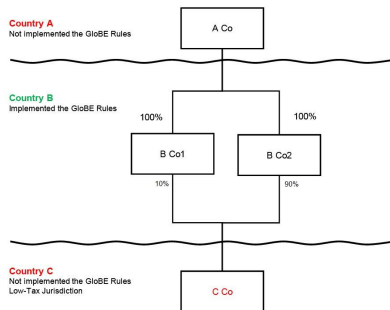
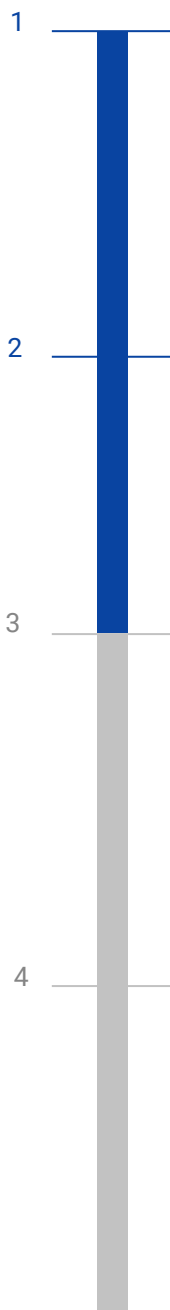


The Fundamental Freedoms and the EU Directive on Global Minimum Taxation



IIR = Country A + Country B + Country C
 UTPR = Country A + Country B + Country C + Country D



1 EU Directive on global minimum taxation Council Directive 2022/2523 of 14 December 2022

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 *vis-a-vis* secondary EU law &
- The free movement of capital (art. 63 TFEU) in light of the ECJ case law

3 Clashes between the free movement of capital and the EU Directive?

- Art. 63 TFEU *vis-a-vis* IIR?
- Art. 63 TFEU *vis-a-vis* UTPR?

Incompatibilities may arise:

- at the level of the intermediates and other constituent entities
- within the EU and/or with regard to third countries

4 Possible solution and outcome

Action for the annulment of the Directive (art. 263 TFEU) before the ECJ:

- private parties (i.e. intermediates and other 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