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Implementation of the Global Minimum Tax in Belgium and Luxembourg

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Abstract

This article examines the implementation of the OECD Pillar Two global minimum tax in Belgium and Luxembourg following its transposition through the EU Pillar Two Directive. While both jurisdictions closely follow the OECD Model Rules, the analysis reveals divergent domestic choices regarding legislative technique and administrative design. The article further explores emerging legal uncertainties, focusing on the pending referral by the Belgian Constitutional Court to the Court of Justice of the European Union on the Undertaxed Profit Rule and broader doubts concerning the European Union's competence to legislate in the field of direct taxation.

Keywords: International taxation; EU tax law; OECD Pillar Two; GloBE; Global Minimum Taxation; Belgium and Luxembourg.

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1. Introduction

1.1. Background on the OECD Model Rules

In December 2021, the OECD released the Global Anti-Base Erosion Model Rules (the OECD Model Rules) under its Pillar Two framework.[1] These rules aim to ensure that large multinational enterprises (MNEs) pay a minimum level of tax in every jurisdiction where they operate. If an MNE's effective tax rate (ETR) in a given jurisdiction falls below the agreed minimum rate of 15%, a so-called "top-up tax" is levied to bring the ETR up to the minimum. More broadly, the Pillar Two framework seeks to reduce harmful tax competition and limit incentives for profit shifting to low-tax jurisdictions.[2]

In March 2022, the OECD supplemented the OECD Model Rules with an official Commentary and Examples.[3] Since then, the OECD has issued successive waves of Administrative Guidance to clarify and refine a range of technical aspects, such as currency conversion, the treatment of tax credits, and safe harbours. In addition, the OECD published a Consolidated Commentary in April 2024,[4] updated in May 2025,[5] which compiles the OECD Model Rules and all agreed guidance to date into a single document. According to the OECD, this iterative guidance ensures consistent application across jurisdictions, even as the framework evolves.

Although the OECD Model Rules are not legally binding, more than 135 jurisdictions have endorsed them as "common approach", meaning that jurisdictions are free to adopt them or not, but if they do, they must implement and administer them in a manner consistent with the agreed framework.[6]

Within the European Union, the OECD Model Rules were transposed almost verbatim through

1. OECD (2021), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two): Inclusive Framework on BEPS, OECD Publishing, Paris, https://doi.org/10.1787/782bac33-en; For a detailed overview of the Pillar Two rules, see e.g., V. Bendlinger, *The OECD's Global Minimum Tax and its Implementation in the EU: A Legal Analysis of Pillar Two in the Light of Tax Treaty and EU Law*, Vienna, WU, 2023, 599 pp.; D. Bettens, *The OECD'S Global Minimum Tax as a Solution to 21st Century Taxation*, Mechelen, Kluwer, KULeuven Research Series on Tax Law, 2025, 814 pp.

2. In this respect, see the book published by the former director of the Centre for Tax Policy and Administration at the OECD: P. Saint-Amans, *Paradis fiscaux. Comment on a change le cours de l'histoire*, Paris, Seuil, 320 pp.

3. OECD (2022), Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two), First Edition: Inclusive Framework on BEPS, OECD Publishing, Paris, https://doi.org/10.1787/1e0e9cd8-en.

4. OECD (2024), Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2023): Inclusive Framework on BEPS, OECD Publishing, Paris, https://doi.org/10.1787/b849f926-en.

5. OECD (2025), Tax Challenges Arising from the Digitalisation of the Economy – Consolidated Commentary to the Global Anti-Base Erosion Model Rules (2025): Inclusive Framework on BEPS, OECD Publishing, Paris, https://doi.org/10.1787/a551b351-en (OECD, Consolidated Commentary 2025).

6. OECD, Consolidated Commentary 2025, point 1.

Council Directive (EU) 2022/2523 of 14 December 2022 (EU Pillar Two Directive).[7] Only limited changes were made to ensure compatibility with EU primary law, in particular the freedoms protected by the Treaty on the Functioning of the European Union (TFEU). Importantly, unlike the OECD's non-binding soft law instruments, the Directive is legally binding on all 27 Member States and seeks to maintain a level playing field within the internal market.

Belgium and Luxembourg have now enacted domestic legislation implementing the EU Pillar Two Directive. While both jurisdictions closely follow the OECD and EU framework, their approaches reveal subtle differences (e.g., in how optional elements are applied, how the rules integrate with national tax systems, and how each jurisdiction interprets the evolving administrative guidance of the OECD). This article highlights how two Member States operating under the same framework have nevertheless made distinct domestic policy and design choices.

1.2. Background on the EU Pillar Two Directive

The Directive applies to constituent entities, located in a Member State, that are part of either an MNE group, or a large-scale domestic group, which has an annual revenue of at least EUR 750 million, in the consolidated financial statements of the ultimate parent entity (UPE) in at least two of the four fiscal years immediately preceding the tested fiscal year.[8]

In line with the OECD Model Rules, the Directive introduces a jurisdictional top-up tax mechanism if the ETR in a given jurisdiction falls below the agreed 15% minimum.

The following steps apply to calculate the ETR in a given jurisdiction, determine whether a top-up tax is due and how it is allocated:

- *Step 1:* Identify constituent entities and determine their location.
- *Step 2:* Determine the income of each constituent entity within a jurisdiction based on a common set of rules (GloBE income). The starting point is the profit (or loss) after tax, as it appears from the financial accounts (which are in principle based on the accounting standard used to prepare the consolidated accounts), to which specific adjustments are made. The GloBE income of each constituent entity within a jurisdiction is aggregated.
- *Step 3:* Calculate the taxes paid by each constituent entity within a jurisdiction based on a common set of rules (Adjusted Covered Taxes). The starting point is the tax expense, as it appears in the financial accounts (which are in principle based on the accounting standard used to prepare the consolidated accounts), to which specific adjustments are made. The Adjusted Covered Taxes of each constituent entity within a jurisdiction are aggregated.
- *Step 4:* Calculate the ETR per jurisdiction. This is done by dividing the Adjusted Covered Taxes of all constituent entities in a jurisdiction by the aggregated GloBE income of those entities.
- *Step 5:* Calculate the top-up tax of a jurisdiction if the ETR is below the 15% minimum.
- *Step 6:* Allocate the top-up tax to specific constituent entities.

The top-up tax is in principle collected through two interlocking rules, namely the Income Inclusion Rule (IIR) and the Undertaxed Profit Rule (UTPR).

- The IIR applies first. Under this rule, the top-up tax is imposed on a parent entity with an ownership interest in the low-taxed constituent entity. The top-up tax under the IIR is allocated to a specific parent entity. The IIR is in principle primarily levied in the hands of the UPE (in proportion to its share in the profits of the low-taxed entity). However, in case a

7. Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union, OJ L 328, 22.12.2022, pp. 1–58.

8. Pillar Two Directive, Article 2.

parent entity qualifies as a Partially-Owned Parent Entity (POPE),[9] the top-up tax under the IIR is allocated to the POPE (in proportion to its share in the profits of the low-taxed entity).

- The UTPR serves as a backstop to the IIR. If there is any residual amount of top-up tax that remains unallocated after applying the IIR, the UTPR results in a liability to top-up tax in the jurisdictions that introduced the UTPR. Unlike the IIR, the top-up tax under the UTPR is allocated to a jurisdiction and not to a group entity. The residual amount of top-up tax is allocated among the UTPR jurisdictions by applying a two-factor allocation key based on (i) tangible assets held and (ii) the number of employees employed in a jurisdiction. Each UTPR jurisdiction to which top-up tax is allocated determines which group company in its jurisdiction should bear the top-up tax under the UTPR.

The Directive allows Member States to introduce a Qualified Domestic Top-up Tax (QDMTT) on the low-taxed constituent entities in that Member State. This allows Member States to collect additional taxes themselves on low-taxed constituent entities operating within their borders, before any allocation under the IIR or UTPR. The QDMTT must be calculated in a way that is consistent with the rules laid down in the Directive. If a Member State levies sufficient QDMTT, the IIR and UTPR are no longer applicable.

2. Implementation Status

2.1. Belgium

Belgium transposed the EU Pillar Two Directive into domestic law through the Law of 19 December 2023 (Belgian Pillar Two Law),[10] which entered into force on 31 December 2023. The IIR and QDMTT apply to fiscal years starting on or after 31 December 2023,[11] while the UTPR applies to fiscal years starting on or after 31 December 2024.[12]

The Belgian Pillar Two Law was amended by the Law of 12 May 2024,[13] which incorporates the OECD's Administrative Guidance issued in February, July, and December 2023.[14] These amendments apply to fiscal years beginning on or after 31 December 2023. Further technical amendments were introduced by the Law of 19 December 2025.[15]

The Belgian tax administration also published a 400-page Circular Letter providing practical guidance on the Belgian Pillar Two rules.[16] This circular complements the statutory framework and provides detailed practical guidance, notably on compliance obligations and the calculation of the QDMTT.

9. A POPE is defined as a constituent entity (not being a UPE, PE or Investment Entity) that (a) owns (directly or indirectly) an ownership interest in another constituent entity of the same group; and (b) has more than 20% of the ownership interests in its profits held directly or indirectly by persons that are not constituent entities of the group.

10. Law of 19 December 2023, *Belgian State Gazette,* 28 December 2023 (in French: "*Loi portant l'introduction d'un impôt minimum pour les groupes d'entreprises multinationales et les groupes nationaux de grande envergure*"; in Dutch: "*Wet houdende de invoering van een minimumbelasting voor multinationale ondernemingen en omvangrijke binnenlandse groepen*") For further details on the Belgian implementation, see J.-P. Van West and H. Schoepen, *De invoering van een minimumbelasting voor multinationale ondernemingen in het Belgisch Recht*, Algemeen Fiscaal Tijdschrift, 2024/9, pp. 8-39.

11. Law of 19 December 2023, Article 68, § 1.

12. Law of 19 December 2023, Article 68, § 2.

13. Law of 12 May 2024, *Belgian State Gazette,* 29 May 2024, Articles 29-46.

14. Law of 12 May 2024, *Belgian State Gazette,* 29 May 2024, Articles 29-46.

15. Law of 19 December 2025, *Belgian State Gazette,* 31 December 2025.

16. Circular Letter 2025/C/58 of 22 October 2025, available at http://www.minfin.fgov.be.

2.2. Luxembourg

Luxembourg transposed the EU Pillar Two Directive into domestic law through the Law of 22 December 2023 on the Global Minimum Tax (Luxembourg Pillar Two Law), which entered into force on 31 December 2023. The law applies to fiscal years starting on or after that date, mirroring the transposition timeline adopted in most EU Member States. The IIR and QDMTT apply to fiscal years beginning on or after 31 December 2023, while the UTPR applies to fiscal years beginning on or after 31 December 2024.

On 14 May 2024, Luxembourg adopted a Grand-Ducal Regulation detailing the technical computation and reporting framework under the law, notably integrating the OECD Administrative Guidance of February, July, and December 2023.[17] The Ministry of Finance announced that further updates will be made periodically to align with subsequent OECD publications, in particular the Consolidated Commentary (May 2025 edition).

A draft amending law, submitted to the Chamber of Deputies on 30 September 2025, seeks to clarify certain technical points related to deferred tax accounting and the treatment of permanent establishments. The bill also aims to introduce administrative simplifications for constituent entities with limited local operations. The legislative process remains ongoing at the time of writing.

3. Domestic Specificities

3.1. Belgium

Belgium implemented the global minimum tax into domestic law through the Belgian Pillar Two Law, which closely follows the EU Pillar Two Directive and the OECD Model Rules.

- Implementation – Belgium implemented the rules in a standalone law, rather than incorporating them into the existing Income Tax Code 1992 (ITC). This approach, unlike that of many other countries, aims to ensure clarity and flexibility. By keeping the rules separate, Belgium aims to more easily update them in line with evolving OECD guidance without disrupting the wider tax system.[18] The explanatory memorandum of the Belgian implementation law specifies that it must be interpreted in accordance with the principles established by the OECD.[19]
- Scope – The Belgian rules apply to both MNE groups and large domestic groups, consistent with the Directive.[20] Belgium defines a "group" based on accounting consolidation principles, including entities excluded for materiality reasons.[21]
- Reporting and Administrative Framework – Belgium requires each in-scope group to obtain a unique registration number (CBE number) to facilitate communication with the tax authorities and the filing of returns. Belgian constituent entities must also file a specific form declaring the top-up tax, if applicable. The Belgian government may adopt lists of qualifying jurisdictions and technical rules by decree, allowing rapid administrative adaptation.[22]

17. Bill of law [8396] https://www.chd.lu/fr/dossier/8396 (Bill) amends and complements the Luxembourg law of 22 December 2023 (Luxembourg Pillar Two Law) implementing Council Directive (EU) [2022/2523] https://eur-lex.europa.eu/eli/dir/2022/2523/oj of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

18. J.-P. Van West and H. Schoepen, *De invoering van een minimumbelasting voor multinationale ondernemingen in het Belgisch Recht*, Algemeen Fiscaal Tijdschrift, 2024/9, p. 12.

19. Explanatory memorandum of the Law of 19 December 2023, Ch., 2023-2024, *Doc. Parl.,* 55-3678/001, pp. 9 and following.

20. Belgian Pillar Two Law, Art. 5, §1.

21. Belgian Pillar Two Law, Art. 3, 3°.

22. Belgian Pillar Two Law, Art. 3, 28° and Arts. 58-59.

Importantly, taxpayers cannot obtain advance tax rulings on Pillar Two matters.[23]

- Calculation of the Top-Up Tax – Belgium applies the jurisdictional blending approach of the OECD Model Rules.[24] The effective tax rate is determined on a country-by-country basis using the accounting data as a starting point, with specific adjustments.[25] For example, Belgium allows optional adjustments for excluded dividends, foreign exchange differences, debt waivers under insolvency, and capital gains effectively taxed in Belgium, provided these adjustments do not cause material distortions.

- Qualified Domestic Top-Up Tax – Belgium introduced a domestic top-up tax qualifying under the OECD standards.[26] It applies to low-taxed Belgian entities before foreign jurisdictions apply the IIR or the UTPR. The Belgian QDMTT may be calculated under the UPE's accounting standard or an approved local standard, provided adjustments avoid material distortions. In line with OECD's Administrative Guidance, the Belgian QDMTT excludes taxes paid abroad under CFC regimes or by main entities for permanent establishments, ensuring taxation aligns with the jurisdiction where the income arises. Belgium also excludes taxes on hybrid entities' income under specific conditions and includes Belgian withholding taxes on dividends in the local top-up tax base where the income is taxed locally. Small groups with average qualifying revenue below EUR 10 million and qualifying income below EUR 1 million over three years remain exempt.[27] This mirrors OECD Model Rules.[28]

- Safe Harbours – Belgium adopted permanent and temporary safe harbours. Permanent safe harbours include the *de minimis* exclusion[29] and the QDMTT safe harbour for jurisdictions with a qualified QDMTT.[30] Temporary safe harbours (which apply to fiscal years starting after 30 December 2023 and ending before 30 June 2028[31]) include transitional CbCR safe harbours and the UTPR safe harbour for parent jurisdictions with a nominal tax rate of at least 20%,[32] along with anti-abuse provisions.[33] The Non-Material Constituent Entity (NMCE) safe harbour also allows simplified calculations for smaller entities.

- It can be expected that Belgium will adopt domestic legislation in 2026 to implement the OECD's Side-by-Side Safe Harbor for MNE groups who have their ultimate parent entity located in a jurisdiction that applies both an eligible domestic tax regime and an eligible worldwide tax regime, such as the US.[34] Once implemented, these MNE groups will not be subject to the IIR or the UTPR, but the QDMTT should remain applicable.

- Interaction with Belgian Domestic Law – Belgium amended existing tax provisions to take into account the global minimum tax rules. For example:
  - Top-up taxes are non-deductible for corporate income tax purposes;[35]

23. Belgian Pillar Two Law, Art. 62.
24. OECD Model Rules, Art. 5.1; Belgian Pillar Two Law, Art. 21.
25. Belgian Pillar Two Law, Art. 9.
26. Belgian Pillar Two Law, Arts. 28-29.
27. Belgian Pillar Two Law, Art. 28, §3.
28. OECD Model Rules, Art. 5.5.
29. Belgian Pillar Two Law, Art. 25.
30. Law of 12 May 2024, Art. 62/1.
31. Belgian Pillar Two Law, Art. 64.
32. Law of 12 May 2024, Art. 42.
33. Law of 12 May 2024, Art. 41.
34. See OECD (2026), Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar Two), Side-by-Side Package: Inclusive Framework on BEPS, OECD Publishing, Paris, https://doi.org/10.1787/b849f926-en.
35. Belgian Pillar Two Law, Art. 70, referring to Art. 198, 18° and 190 of the ITC.

  - Internal recharges of top-up tax liabilities are treated as tax-neutral;[36]
  - R&D incentives have been redesigned to comply with Pillar Two standards (notably the refundable R&D tax credit[37] and the innovation income deduction convertible into a credit[38]).

- Legal and Constitutional Considerations – Like in other jurisdictions, the Belgian implementation is technically complex and requires frequent updates to reflect OECD administrative guidance. In this respect, the Belgian Council of State raised concerns about relying on the OECD guidance not yet incorporated into EU or domestic law. A legal challenge was also filed before the Belgian Constitutional Court against the Belgian transposition of the UTPR provisions contained in the EU Pillar Two Directive. As will be explained below, the Constitutional Court referred preliminary questions to the European Court of Justice.

In conclusion, Belgium's approach closely follows the EU and OECD frameworks but includes a few national adaptations. These adaptations mainly aim to protect the Belgian tax base and maintain the effectiveness of domestic tax incentives, while managing the complexity of the new global tax environment.

3.2. Luxembourg

Luxembourg's implementation of the global minimum tax framework follows the EU Pillar Two Directive closely, reflecting its commitment to international tax coordination and regulatory predictability. Nonetheless, several domestic adaptations were made to align the new regime with Luxembourg's domestic corporate tax system and administrative practice.

- Implementation Approach – Luxembourg opted for a standalone legislative framework, codified separately from the Income Tax Law (ITL) of 1967. This approach ensures greater legislative clarity and flexibility, allowing updates through Grand-Ducal Regulations without the need for full parliamentary amendment.
- Scope – The Luxembourg rules apply to all in-scope MNE Groups and large domestic groups meeting the EUR 750 million revenue threshold, consistent with the Directive. Luxembourg follows the accounting consolidation approach for identifying Constituent Entities, using IFRS or the accounting standards of the Ultimate Parent Entity. In this respect, Article 1(2) of the Luxembourg Pillar Two Law confirms that the scope covers all those Constituent Entities included in a consolidated group, without excluding regulated investment entities or securitisation vehicles.
- Administrative and Reporting Framework – The Luxembourg Tax Administration (*Administration des Contributions Directes* – ACD) is responsible for administering the global minimum tax in Luxembourg. Each in-scope MNE Group shall register electronically via the portal and designate a filing entity in Luxembourg. The ACD has published draft administrative circulars outlining the procedures for filing the GloBE Information Return (GIR) and the content of the top-up tax return. The Law provides for penalties up to EUR 250,000 for non-compliance, in line with Luxembourg's general administrative sanctioning framework.
- Calculation of the Top-Up Tax – Luxembourg adopts the jurisdictional blending approach, using consolidated accounting results as a starting point. Adjustments follow the OECD Model Rules, with specific clarifications regarding hybrid entities, branch structures, and intragroup financing. Luxembourg permits optional adjustments for foreign exchange differences, excluded dividends, and capital gains already effectively taxed in Luxembourg. The Explanatory Memorandum and commentary confirm that deferred tax assets derived from

36. Belgian Pillar Two Law, Art. 69, referring to Art. 194*septies* of the ITC.

37. Belgian Pillar Two Law, Art. 71, referring to Art. 292*bis,* §1, first limb of the ITC.

38. *Ibid.*

the participation exemption regime (*régime d'exonération des participations*) are recognised only insofar as they relate to taxable items under the GloBE computation.

- Qualified Domestic Top-Up Tax (QDMTT) – Luxembourg introduced a QDMTT applicable to low-taxed entities localised in Luxembourg. The QDMTT follows OECD guidance and is designed to ensure that Luxembourg collects top-up taxes before foreign jurisdictions apply the IIR (or the UTPR). The Luxembourg QDMTT allows the use of Lux GAAP or IFRS, provided both produce materially equivalent results. Article 18(2) of the Luxembourg Pillar Two Law excludes foreign taxes covered under Controlled Foreign Companies (CFC) regimes or foreign PE taxation, ensuring the tax aligns with domestic economic activity. Pursuant to Article 25 of the Luxembourg Pillar Two Law, the QDMTT is non-deductible for corporate income tax purposes and is not creditable against any other Luxembourg tax.
- Safe Harbours – Luxembourg adopted both the temporary transitional safe harbours (CbCR-based) and the permanent safe harbours foreseen by the OECD and the EU Directive. The transitional safe harbours apply to fiscal years beginning on or after 31 December 2023 and ending before 30 June 2028. According to Article 20(3) of the Luxembourg Pillar Two Law, a QDMTT safe harbour is established, exempting jurisdictions with a qualified QDMTT from further top-up taxation. A *de minimis* exclusion applies where average revenue is below EUR 10 million and average GloBE income is below EUR 1 million, consistent with OECD standards.
- Interaction with Domestic Tax Law – Luxembourg's implementation required targeted adjustments to ensure coordination with its domestic tax incentives and corporate tax framework. Specifically:
  - top-up taxes are non-deductible under Article 168 ITL;
  - intra-group recharges of top-up tax amounts are tax neutral;
  - refundable R&D tax credits and the participation exemption remain unaffected, subject to compliance with OECD carve-out conditions.

The Luxembourg Pillar Two Law also clarifies that Pillar Two obligations do not alter the treatment of tax losses, and carry-forward provisions under domestic law remain applicable for local CIT purposes.

- Legal and Constitutional Considerations – No constitutional challenges have been filed to date.

4. Specific Themes

4.1. Belgian Constitutional Court Referral to the CJEU about the UTPR

On 17 July 2025, the Belgian Constitutional Court delivered judgment No. 104/2025 concerning the constitutionality of Articles 35 and 36 of the Belgian Pillar Two Law, which transpose the UTPR under the EU Pillar Two Directive.[39]

The case was brought by a U.S.-based non-profit representing American business interests. The organization sought annulment of the Belgian UTPR provisions, arguing essentially that they require Belgian entities (part of U.S.-headed groups) to pay a top-up tax on low-taxed profits of foreign affiliates, regardless of their own financial capacity. The challenge was based on alleged violations by the UTPR of:

39. See e.g., J.-P. Van West, *Belgian Court Refers UTPR Challenge to EU's Highest Court*, Tax Notes International, 21 July 2025, available at http://www.taxnotes.com; B. Peeters, *Le Pilier 2 avec son impôt minimal pour les multinationales sous pression ?,* Fiscologue International, 2025, No. 499, 31 July 2025, pp. 5 and following.

- the right to property,[40] as it imposes disproportionate burdens on Belgian entities that have no control over the profits taxed abroad, which could potentially threaten their viability;
- the freedom to conduct a business,[41] as it restricts how group resources may be used and undermines legal certainty;
- the principle of equality and non-discrimination,[42] as it treats Belgian entities with different financial capacities in the same way; and
- the principle of fiscal territoriality,[43] as it subjects Belgian entities to tax on profits earned abroad.

The Constitutional Court held that Belgium's UTPR provisions implement the EU Pillar Two Directive and, as such, the validity of these national provisions depends on the validity of the relevant provisions of the Directive itself. Consequently, the Constitutional Court referred preliminary questions to the CJEU, asking whether it is compatible with EU fundamental rights to impose top-up tax obligations on EU-based entities for profits earned by foreign group members, without considering the paying entity's financial position.

This case is currently pending before the CJEU.

If the CJEU were to invalidate the UTPR provisions of the Directive, this would have a spill-over effect on other Member States, which would likely no longer be required to enforce their national provisions related to the UTPR. The exact consequences will depend on the legal basis for invalidity:[44]

- If the CJEU finds a violation of EU primary law (such as Charter rights or internal market freedoms), national Courts would be obliged to disapply their UTPR laws under the principle of EU law primacy;
- If invalidity is based solely on customary international law (e.g., fiscal territoriality), the outcome would vary by Member State, depending on how each ranks international law in its domestic legal hierarchy, since EU law does not grant primacy to customary international norms.

The referral triggers a full CJEU procedure: written submissions, an oral hearing, and an eventual Opinion from the Advocate General. Given the complexity of the issues, the ruling may take longer than the average 17-month CJEU timeline. At the time of writing, we understand that Advocate General Kokott will be appointed for this case, along with the judge Koen Lenaerts.

Until the CJEU issues its judgment, the Directive remains binding, and Member States, including Belgium, must continue to apply the UTPR. However, the CJEU's decision will be pivotal: its ruling will bind all EU Member States and could reshape, limit, or even dismantle the UTPR mechanism within the EU's implementation of Pillar Two.

4.1.1. Advocate General Kokott's Doubts on EU Competence May Also Undermine the Pillar Two Directive

In *Commission v. Belgium* (C-524/23), Advocate General Kokott was asked to examine whether Belgium breached its obligations under the Anti-Tax Avoidance Directive (ATAD) by failing to transpose Article 8(7) thereof, which provides for a deduction of foreign tax under the CFC rules. Before

40. Article 17 EU Charter and Article 1 Protocol No. 1 ECHR
41. Articles 15-16 EU Charter and Articles 49 and 56 TFEU.
42. Articles 10-11 Belgian Constitution and Articles 20-21 EU Charter.
43. Articles 170 and 172 of the Constitution and recognised in EU and customary international law.
44. See e.g., M. Vergouwen, *The reference for a preliminary ruling on the compatibility of the UTPR with primary EU law and customary international law: a comment*, Kluwer International Tax Blog, 10 September 2025, available at http://www.legalblogs.wolterskluwer.com/international-tax-law-blog/.

addressing that question, she raised a more fundamental issue: whether the European Union had the competence to adopt such a directive at all.

Direct taxation traditionally falls under the authority of the Member States, and the EU may legislate in this field only when national tax differences directly affect the functioning of the internal market. In the case at hand, the Advocate General observed that the ATAD was adopted on the basis of Article 115 TFEU, which allows harmonisation only where national differences *directly affect the functioning of the internal market*.

Kokott questioned whether this threshold was met. She noted that the ATAD does not remove barriers to the internal market, but instead imposes uniform anti-avoidance measures, which may actually restrict companies freedom of establishment. In her view, harmonization without a clear link to internal market correction is not enough to justify EU action. While the Court could not decide this issue in an infringement case, Kokott expressed serious doubts about the legal foundation of the ATAD under Article 115 TFEU.

This line of reasoning could apply, *mutatis mutandis*, to the Pillar Two Directive. Like the ATAD, it was adopted under Article 115 TFEU and transposes OECD standards into EU law, not to eliminate obstacles to the internal market, but to enforce a globally coordinated minimum tax. If Kokott's critique were extended to Pillar Two, it could cast doubt on the EU's competence to legislate in this area as well. This raises constitutional questions about the Directive's legal basis and, by extension, its long-term validity under EU law.

4.2. Interpretative Challenges under the Pillar Two Framework

The domestic implementation of the Pillar Two rules generates significant interpretative difficulties.[45] These include determining the entities within scope, calculating the effective tax rate, applying the substance-based carve-out, and navigating the safe-harbour rules. None of these concepts is defined exclusively in national law; all require interpretation in light of the EU Pillar Two Directive and the OECD Model Rules.

In principle, the method for interpreting a national legislation that transposes an EU directive is well established: under the doctrine of "conforming interpretation", national law must be interpreted, as far as possible, in a manner consistent with the Directive. This principle follows from the primacy of EU law and is supported by consistent case law from the CJEU.[46]

However, applying this interpretive method in the Pillar Two context presents two major complications.

- First, the EU Pillar Two Directive and the OECD Model Rules are almost identical. The Directive reproduces the OECD language almost verbatim, with only minor adjustments to ensure compatibility with EU treaty freedoms. Moreover, the recitals of the Directive state that OECD Commentaries and Administrative Guidance should be used as a source of illustration and interpretation, which can be seen as an implicit delegation to the OECD for the interpretation of EU law. In some instances (e.g., Article 32 of the Directive on safe harbors), there is even an explicit reference that EU law is defined by the OECD Administrative Guidance. This situation blurs the line between EU law and non-binding international standards, complicating the legal basis for interpretation. It also raises concerns under the *Meroni* case law,[47] which prohibits the delegation of discretionary normative power to external bodies that

45. In this respect, see D. Gutmann, *Pillar Two: A Challenge to the French Legal System*, in A. Van de Vijver and S. De Raedt (eds.), *Liber Amicorum Bruno Peeters,* Herenthals, Knops, 2025, pp. 499-516.

46. See e.g., CJEU, 10 April 1984, Von Colson and Kamann, C-14/83; 13 November 1990, Marleasing, C-106/89, § 8; 23 February 1999, BMW, C-63/97, § 22; 27 June 2000, Océano Grupo Editorial and Salvat Editores, C-240/98-C-244/98, § 30; 23 October 2003, Adidas-Salomon and Adidas Benelux, C408/01, § 21.

47. CJEU, 13 June 1958, C-9/56, Meroni, EU:C:1958:7.

fall outside EU Treaty control. In short: national authorities and courts are effectively asked to interpret EU law by reference to a framework that has no legal force under EU law.

- Second, the OECD rules continue to evolve at unprecedented speed. Since their publication, the OECD has issued multiple waves of Administrative Guidance and consolidated commentaries, each refining or modifying earlier interpretations: a Commentary in March 2022, followed by several pieces of Administrative Guidance in February, July, and December 2023, and a Consolidated Commentary in April 2024, later revised in May 2025. Domestic legislatures and courts are therefore not interpreting a stable text, but a moving target: national legislation must be interpreted in conformity with an EU directive, whose own meaning depends on successive OECD documents that are not only non-binding, but also in constant evolution. The result is a fragile and unstable hierarchy of norms.

This dynamic produces a fragile hierarchy of norms. Courts are expected to interpret binding domestic law by reference to an EU directive whose substantive content is defined by non-binding and continuously updated international material. The limits of conforming interpretation are quickly reached. In some cases, interpretation may become impossible without undermining legal certainty and constitutional principles such as the separation of powers. Pillar Two therefore poses not merely technical tax questions, but a structural legal challenge for any jurisdiction seeking to reconcile domestic and EU obligations with a rapidly evolving international tax standard.

5. Conclusion

The implementation of the Global Minimum Tax in Belgium and Luxembourg demonstrates both convergence and divergence under a shared international framework. While both countries closely follow the OECD Model Rules and the EU Pillar Two Directive, their legislative choices reflect distinct legal traditions, policy priorities, and administrative capacities. Belgium has taken a proactive, highly technical approach with strong integration into its domestic tax system and early engagement with OECD guidance. Luxembourg, in turn, has emphasized legal clarity, administrative efficiency, and alignment with its established corporate tax regime.

However, as the UTPR faces legal scrutiny and the interpretative reliance on evolving OECD guidance challenges established norms of EU and constitutional law, the stability of the entire Pillar Two framework remains uncertain. The outcome of the Belgian Constitutional Court's referral to the CJEU—and broader questions about the EU's legislative competence—could significantly reshape the legal landscape. Pillar Two is no longer about tax competition—it is a test for constitutional and legal coherence, sovereignty, and the balance between global standards and national authority.