

Transfer Pricing Documentation in the EU: Courtroom Battles and Tax Authorities' Scrutiny

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1. Introduction

Transfer pricing (TP) documentation has been a focal point of disputes between multinational enterprises (MNEs) and tax authorities across the European Union. Recent court rulings, such as the Danish Supreme Court's decision in the [Accenture case](#) of 9 January 2025, highlight the evolving judicial stance on the adequacy of TP documentation (TPD) and on the burden of proof in TP disputes.

This note outlines the key landmark cases and major challenges tax authorities and MNEs face in the European Union regarding TPD. It explores how courts interpret compliance requirements, evidentiary standards and the consequences of inadequate TPD. Additionally, it examines the increasing scrutiny by tax authorities, particularly regarding the application of the arm's length principle and the role of the [OECD Transfer Pricing Guidelines](#) (hereinafter OECD Guidelines) in dealing with TPD.

The main ideas of this note are summarized below:

- ▶ courts are increasingly requiring tax authorities to present substantive evidence when challenging TPD;
- ▶ MNEs must ensure their documentation aligns with the OECD Guidelines and includes detailed economic justifications; and
- ▶ legal precedents are shaping a more structured approach to transfer pricing disputes, yet tax authorities continue to adopt a rigorous stance in scrutinizing MNEs' practices.

2. EU Courts' Interpretation of TP Documentation Requirements

European courts have increasingly emphasized the importance of TPD. Tax authorities require more and more that MNEs present substantive evidence as part of their TPD (besides the Local File, Master File, country-by-country reporting (CbCR) and TP returns referring also to records, emails, supportive evidence, etc.). Recent rulings indicate a growing reluctance by courts to accept broad or unfounded tax authority claims without detailed justifications.

For example, in the [Adecco](#) and [Microsoft](#) cases, the Danish Ministry of Taxation failed to prove deficiencies in the taxpayer's TPD, which led to rulings in favour of the MNEs.

Similarly, in the [Accenture case](#), the Danish Supreme Court ruled in favour of Accenture A/S in a transfer pricing case against the Danish Ministry of Taxation, overturning the High Court's previous decision. The case concerned intra-group employee secondments and royalty payments in which the Danish Ministry of Taxation challenged Accenture DK's provided TPD and applied pricing methods. The Supreme Court found that Accenture DK's TPD complied with OECD Guidelines and was not deficient, meaning the Danish Ministry of Taxation failed to justify its

discretionary income adjustments.

This decision reinforces that tax authorities bear the burden of proving non-compliance when taxpayers provide adequate TPD, marking another instance when the Danish Ministry of Taxation failed to meet this burden in a transfer pricing case.

3. The Role of OECD Transfer Pricing Guidelines in Compliance

The OECD Guidelines, though not always incorporated into national legislation, serve as key supporting guidance in EU TP disputes, with courts often assessing compliance by measuring whether documentation aligns with these guidelines, particularly regarding functional and risk analyses, economic justifications and benchmarking studies.

As an example, in a landmark decision on 16 July 2024, the [Italian Supreme Court](#) upheld the use of loss-making comparables under the transactional net margin method in a benchmark, aligning with OECD Guidelines. The use of such comparables is a debated topic in TP, as it can be argued that loss-making companies may not reflect typical market conditions. However, the OECD Guidelines acknowledge that they may be relevant if their strategies aim for future profitability (e.g. market penetration), rather than warranting automatic rejection. At the same time, the OECD Guidelines allow for the rejection of companies such as start-ups or companies in bankruptcy when they are not considered appropriate comparables. The decision stresses the need for thorough functional analysis and robust TP documentation as enforcement tightens.

While many EU countries have implemented [OECD BEPS Action 13](#), variations in enforcement persist, as sometimes countries impose additional requirements that go beyond the purposes implied by the OECD. For instance, Germany mandates detailed local files even for smaller transactions, while France enforces stricter rules on profit-split methods and CbCR thresholds. Poland requires TPD for certain domestic transactions, exceeding OECD standards, and Italy imposes extra reporting obligations for penalty protection. Spain also goes beyond the OECD Guidelines, demanding extensive justifications for business restructurings and intangible valuations. These discrepancies create compliance challenges for MNEs operating across multiple jurisdictions.

On 12 September 2023, the European Commission proposed an [EU TP Directive](#) to harmonize TP rules across Member States, reducing inconsistencies and unilateral measures. Until the EU TP Directive is adopted and effective, businesses face varying TP requirements, raising administrative burdens and tax dispute risks.

4. Increased Tax Authority Scrutiny on Intercompany Transactions

Tax authorities across the European Union are intensifying their scrutiny over intercompany transactions, particularly regarding intangibles, financial dealings and restructurings, to ensure pricing reflects economic substance. Many EU Member States have tightened regulations, issued circulars and reinforced compliance measures.

Germany, for example, enforced stringent TPD requirements under section 90(3) of the General Tax Code (AO), with penalties for non-compliance, focusing on intercompany financing and intangibles. From 1 January 2025, a transaction matrix is required, detailing parties, volumes and TP methods, among others transaction types. Similarly, Belgium's [three Royal Decrees](#) of 16 June 2024 introduced revised TPD forms with added obligations, effective for financial years starting 1 January 2025.

EU-wide, tax authorities are not just reviewing pricing but ensuring profit allocations reflect economic reality. The rise of APAs, MAPs, proactive audits and real-time compliance highlights the need for MNEs to maintain robust TPD to mitigate risks of adjustments, penalties and reputational harm.

5. The Burden of Proof in TP Disputes: Shifting Dynamics

A key trend in EU case law is the shifting burden of proof in TP disputes. While MNEs are expected to maintain comprehensive documentation, tax authorities must present substantive evidence when challenging TP arrangements.

For instance, the [Italian Supreme Court's decision](#) of 18 January 2022 addressed the allocation of the burden of proof in transfer pricing disputes under article 110, paragraph 7 of the Italian Income Tax Code (TUIR). In that case, the Italian Supreme Court reaffirmed that it is the responsibility of the tax authorities to demonstrate that the price applied in an intercompany transaction deviate from the arm's length principle.

This evolving judicial stance indicates a more balanced approach between tax authorities and taxpayers, requiring the former to substantiate their claims with rigorous argumentation.

6. Consequences of Inadequate TP Documentation

Failing to provide sufficient TPD can lead to considerable consequences, including (but not limited to) tax adjustments, penalties and reputational damage.

For example, in December 2023 in the context of a notable case involving a [major tobacco manufacturer](#), a Dutch court fined a tobacco firm EUR 107 million for inadequate TP documentation and improper pricing, resulting in major tax adjustments.

Further, in [X GmbH & Co. KG v Finanzamt Bremen](#), the ECJ upheld Germany's TPD requirements and related sanctions. In this case, the German tax authorities found the documentation X used to justify its cross-border transactions with a Dutch related entity to be insufficient and as a result they imposed a 5% tax surcharge. X challenged this position by evoking article 49 of the Treaty on the Functioning of the European Union (infringement of freedom of establishment). The ECJ recognized a restriction on freedom of establishment but justified it in the public interest, essentially ruling that the penalties imposed by Germany (5-10% of excess income, min. EUR 5,000) were proportionate and lawful. In addition, recent EU TP developments show a trend towards stricter documentation requirements and increased penalties; a testament to this is France's EUR 50,000 minimum fine per audited year and Poland's severe fines and personal penal liability.

These developments stress even more the need for accurate TPD to avoid significant financial and reputational risks.

7. Best Practices for MNEs in Light of Judicial Trends

Given the heightened scrutiny and evolving case law, MNEs are invited to abide by the following best practices to mitigate any TP-related risks:

- > **ensure comprehensive documentation:** maintain detailed functional and risk analyses, economic justifications, and benchmarking studies, ensuring that documentation is contemporaneous where required;
- > **align with OECD Guidelines:** structure TPD to comply not only with the applicable domestic rules but also with the OECD Guidelines, emphasizing the need for timely and accurate record-keeping to support the arm's length principle;
- > **anticipate tax authority challenges:** proactively assess TP risks, prepare robust counterarguments and ensure compliance with evolving legal standards;

- > **monitor evolving case law:** stay informed about judicial trends to align TP policies with emerging legal standards;
- > **engage in proactive compliance reviews:** conduct internal audits to ensure TPD meets regulatory expectations; and
- > **leverage the importance of operational TP (OTP):** implement OTP processes to ensure real-time monitoring and alignment of intercompany transactions with TP policies, reducing compliance risks and audit exposure.

Given the growing complexity of TPD, digitalization is essential. MNEs rely on software to process data efficiently, automate analyses and ensure consistency. However, automation must be tailored to local requirements, as tax authorities, such as in the United Kingdom, have cautioned against overly generic documentation.

8. Conclusion

As courts across the European Union adopt a more structured approach to TP disputes, they have repeatedly confirmed that the burden of proof in challenging TPD lies with the tax authorities – i.e. it is their responsibility to present substantive evidence supporting their claim. However, MNEs should be aware that the responsibility remains on businesses to ensure their TP policies are well-documented, economically justified and aligned with OECD Guidelines.

IBFD references:

- > EU tax law developments are reported on the daily IBFD [Tax News Service](#) page.
- > For an overview of legislative initiatives at the EU level on direct tax matters (inclusive of the TP Directive), see the [EU Direct Tax Law Initiatives Dossier](#).
- > For details on TP documentation requirements, see [Transfer Pricing, Country Tax Guides IBFD \(Section 13\)](#).
- > R. Ökten & G. Koeveringe, [Burden of Proof and Transfer Pricing Documentation: When One Approach Does Not Fit All – A Comparative Analysis of the Rules in Germany, Italy, the Netherlands and the United States](#), 76 Bull. Intl. Taxn. 8 (2022), Journal Articles & Opinion Pieces IBFD.