



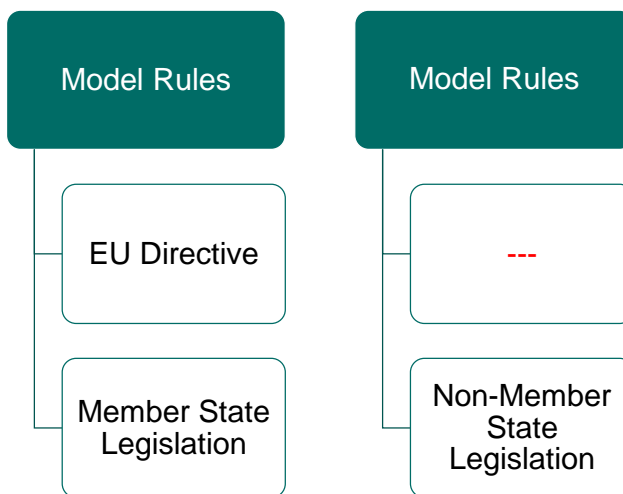
**PILLAR 2 – GLOBAL, EU
AND NATIONAL RULES**

Wolfgang Schön



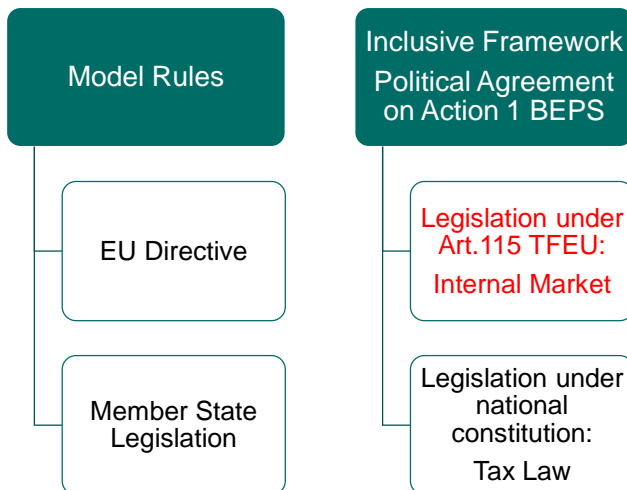
VIENNA BUSINESS UNIVERSITY
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PILLAR 2 – GLOBAL, EU AND NATIONAL RULES: TWO OR THREE LEVELS?

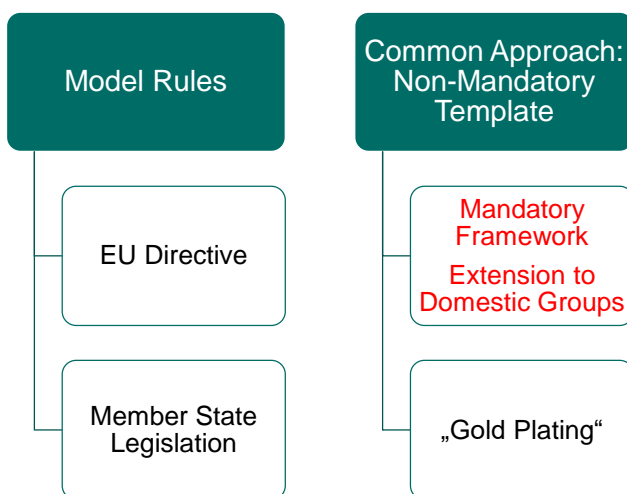




PILLAR 2 – GLOBAL, EU AND NATIONAL RULES: BASIS OF LEGISLATION

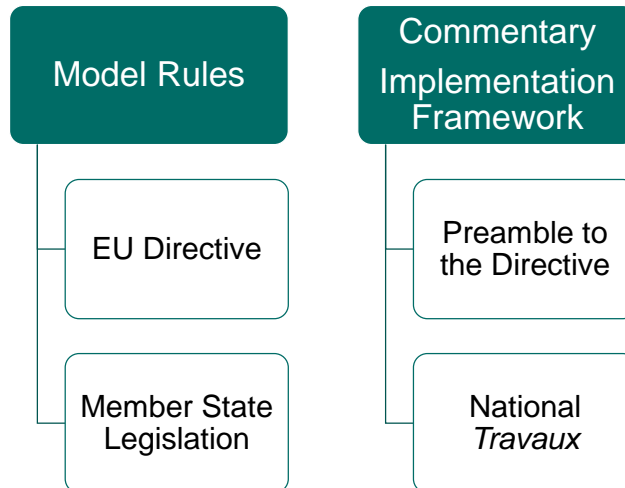


PILLAR 2 – GLOBAL, EU AND NATIONAL RULES: EXTENSIONS UNDER EU LAW





PILLAR 2 – GLOBAL, EU AND NATIONAL RULES: SOURCES OF INTERPRETATION



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PILLAR 2 – GLOBAL, EU AND NATIONAL RULES: INTERPRETATION BETWEEN OECD AND EU LAW?

Preamble to the Global Minimum Tax Directive:

„(24) In implementing this Directive, Member States should use the OECD Model Rules and the explanations and examples in the Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules (Pillar Two) released by the OECD/G20 Inclusive Framework on BEPS, as well as the GloBE Implementation Framework, including its safe harbor rules, as a source of illustration or interpretation in order to ensure consistency in application across Member States to the extent that those sources are consistent with this Directive and Union law. Such safe harbour rules should be of relevance as regards MNE groups as well as large domestic groups.“

- Global Consistency with Non-EU-Members of the Inclusive Framework?
- Relevance of Internal Market Goals (Freedom of Establishment)?
- Narrow View of “Economic Substance“-Concept in the Context of the Substance Carve-out?

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PILLAR 2 – GLOBAL, EU AND NATIONAL RULES: COPING WITH FUTURE ISSUES

Relevance of Changes to the Commentary to the Model Rules?

- Ambulatory versus Static Interpretation of the Directive?
- Ambulatory versus Static Interpretation of National Legislation?
- What happens if the Directive is subject to Ambulatory Interpretation but the National Legislation is not?
- What happens if Interpretation inside the EU moves away from interpretation outside the EU?



PILLAR 2 – GLOBAL, EU AND NATIONAL RULES: COPING WITH FUTURE ISSUES

Possibility of Changes to the Model Rules?

- Political Agreement at the Level of the Inclusive Framework will neither change EU Law nor National Law automatically
- Any Modification of the Directive requires a formal Amendment to the Directive und Unanimity.
- Any Modification of National Laws requires a Full Legislative Procedure under Domestic Law

Who negotiates in Paris? Given the full Harmonisation under the Directive, it should be the European Commission.



PILLAR 2 – GLOBAL, EU AND NATIONAL RULES: DISPUTE RESOLUTION

Who is the Judge in Matters of Pillar 2?

For the Interpretation of the Model Rules etc. there does not exist any International Dispute Resolution; the existing international mechanisms refer to cases of double taxation and transfer pricing.

For the Interpretation of the EU Directive, the Jurisdiction of the CJEU is a given.

For the Interpretation of National Legislation Domestic Courts are Competent.

What Role for the CJEU in International Dispute Resolution? What happens if the CJEU's Interpretation differs from the Interpretation given by Courts in Non-EU Member States?