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Decision-making in the implementation of the BEPS 4 minimums standards

Cubillos González, J.

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Decision-making in the implementation of the BEPS 4 minimum standards

Juliana Cubillos

GLOBTAXGOV Project - Leiden University

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GLOBTAXGOV
A NEW MODEL OF GLOBAL GOVERNANCE IN INTERNATIONAL TAX LAW MAKING



European Research Council
Established by the European Commission

Research questions

Main research questions

- What forces (interests, institutions, traditions) influence BEPS four minimum standards implementation?
- How does the implementation process operates?
- Why does the implementation process differs between countries?

In this chapter

- What does the implementation of the BEPS 4 minimum standards say about tax sovereignty?
- How can the core value of autonomy be used to clarify the tax sovereign choices made by Australia, Spain, the Netherlands, and Mexico when implementing the BEPS 4 minimum standards?

Hypotheses

The whole research

- Reinforce the tax system – Creative compliance.
- Implementation will follow country's interests (not only economic).
- Institutional settings and power dynamics affect the implementation.

In this chapter

- Not defined as a concept, but profited from it.
- Circular approach – Is being lost but shall be gained by states on their own.

Before BEPS

Forum on Tax Administrations (FTA) – Concern for aggressive tax planning and OECD.



Need to map out actors, practices and raise awareness about transparency – Continued work afterwards.

Practices
know how,
financial products,
selling of ATP
schemes, day-to-
day business,
behavior.

Organization for Economic Cooperation and Development

Policy Issues
Loss of
sovereignty
Loss of revenue
Loss of fairness

Put all the countries on the same starting point.

What is tax sovereignty?

2013 Addressing Base Erosion and Profit Shifting

BEPS takes place and constitutes a threat in terms of tax sovereignty and revenue loss

Every state is free to set up its corporate tax system.

Sovereignty to implement.

No distortion of cross-border trade.

Tax sovereignty

Autonomy?
Agency?
Authority?
Control?

Understood as: Ability of a state to design and enact its tax policy

Autonomy – Right of self-government

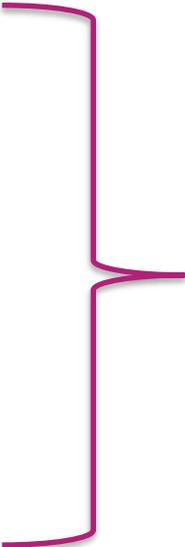
Tax Sovereignty – BEPS minimum standards

Action 5 – Harmful Tax Practices

Action 6 – Prevention of Tax Treaty Abuse

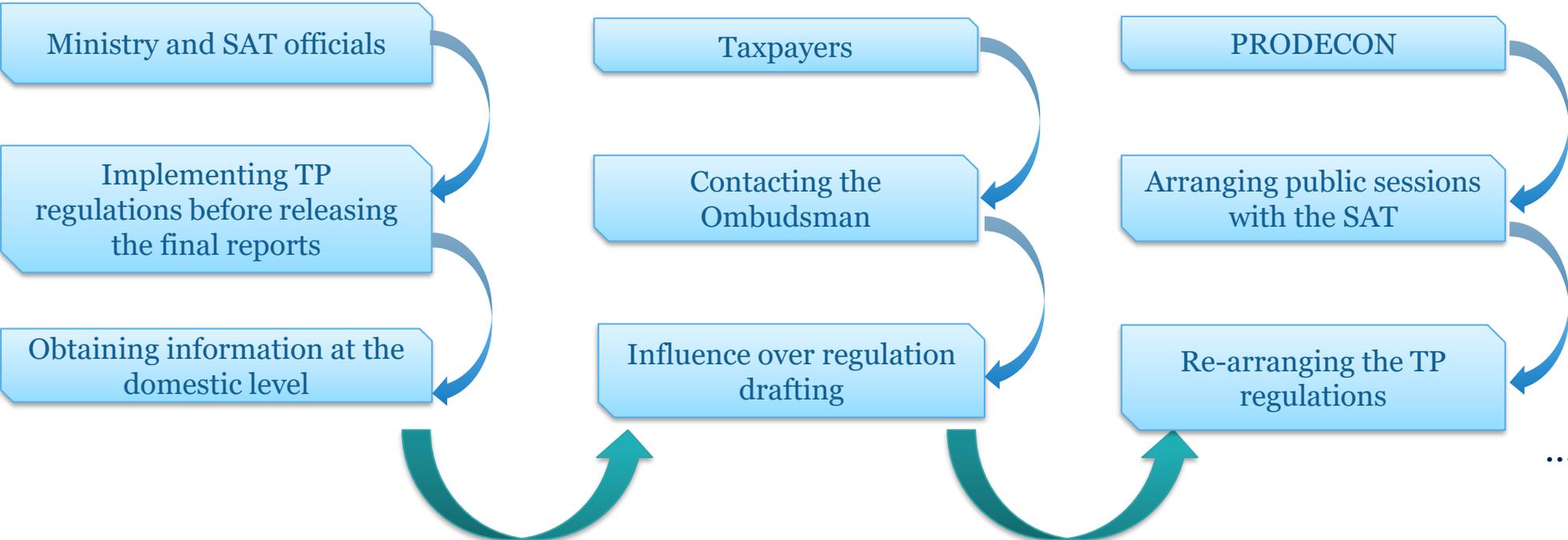
Action 13 – CbC reporting

Action 14 – Dispute resolution / Arbitration

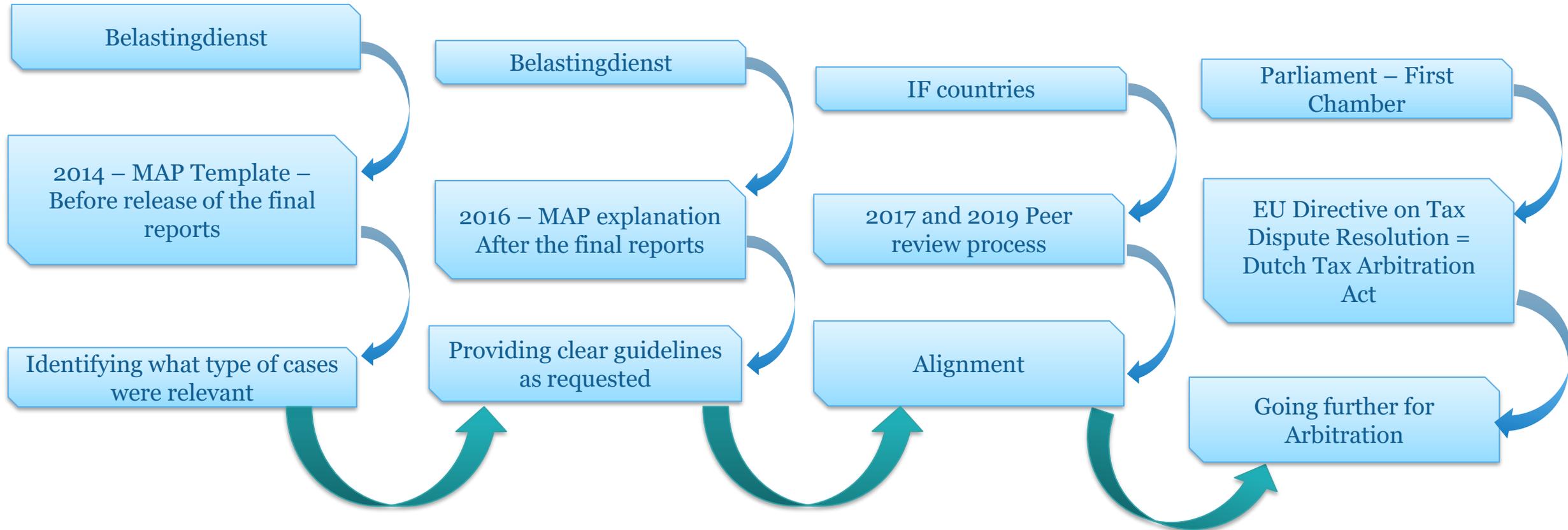
- 
- Easy to get support
 - Background framework (limiting the taxpayer and the state)
 - Clarifying processes

How are these standards going to be appropriated by the countries?

Mexico - Action 13



The Netherlands – Action 14



Results

- There is no autonomy without a **legal order**. Internationally this legal order is being adapted in a progressive manner, trying at the most to respect the policymaker's choices.
- There is indeed an observable change in the purview of the tax sovereignty assertion, because countries have understood that their autonomy in fiscal matters is **constrained** by the **necessity to adapt to international tax standards**.
- Countries have **learned how to look for that autonomy outside of the borders of the standards**.
- Either by **creating additional regulations** ahead of the standards scope or action (e.g. enhancing the mutual agreement procedure and adopting rules for arbitration).
- Or by implementing only those features that could contribute to the state's benefit (**selective implementation**), and developing a **formal compliance or mock compliance** of the remaining standards

Thank you for your attention

j.cubillos.gonzalez@law.leidenuniv.nl

Twitter: @JulianaCubG

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