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Preliminary Feedback on the IMF Task Force on Special Purpose Entities (TF-SPE) Definition

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1. Introduction

At its meeting on 1-2 July 2019 the WG External Statistics held a thematic session on the identification and measurement of SPEs in Europe. The structure of the session reflected reports from five countries on their level of implementation and observation of SPEs, followed by small group discussions around several aspects of the IMF TF SPEs (TF-SPE) definition and typology. Although much of the material provided did refer to existing practices, the participants, several of whom members of the TF-SPE reflected a variety of opinions as regards the measurement and delineation of SPEs in the external account. Some of this can be attributed to the natural heterogeneity as regards SPEs themselves, on how SPEs and in which domains they are observed, but to a large degree also the heterogeneity of the countries themselves and the interpretation of the guidance.

Several aspects of the TF-SPE definition were examined by the countries, either from the viewpoint of clarity of formulation, or from the viewpoint of applicability. Specific issues raised were related to clarifying the size criteria, the balance sheet criteria, the criteria related to the purpose of SPEs and the relationship of SPEs to the host economy. Of particular concern were the criteria dealing with indirect control and those describing the structure of the balance sheet.

These findings highlight the fact that (at least the European) countries are different, not only in the type of SPEs (if any) that are operating in the country, but also in the type of entities that countries would like to recognise as SPEs. This argues for the need of a greater clarity in the implementation of the definitions and supporting decision tree and typology.

This note first reviews the TF SPEs definition, subsequently summarises the experiences and plans of 5 countries (CH, IE, NL, LU, UK) and reviews points that emerged from the thematic discussion. It concludes in highlighting several aspects of the definition that may require further clarification or very

concrete implementation guidance. Some of the more substantive questions related to the challenges in implementing the definition are elaborated in the annex to this paper.

2. Elements of the definition

The 2018 BOPCOM discussed and approved the definition of SPEs proposed by the IMF TF-SPE final report,¹ reproduced below. We briefly review these criteria, and qualify how these criteria should best be implemented. One aspect of the BOPCOM definition that should be mentioned is that it targets external sector statistics (ESS) explicitly, and thus some of the criteria provided would need to be reviewed in the broader context of national accounts.²

In several aspects the definition breaks new grounds. In particular as in determining what SPEs are in the context of ESS all of the criteria in the definition need to be met; thus the definition is necessarily more restrictive than the current looser formulations in BPM6 and SNA2008 that allowed compilers much more freedom to adjust to local circumstances, causing lack of comparability across countries.

IMF TF-SPE definition:

- An SPE, resident in an economy, is a formally registered and/or incorporated legal entity recognized as an institutional unit, with no or little employment up to a maximum of five employees, no or little physical presence, and no or little physical production in the host economy.
- SPEs are directly or indirectly controlled by non-residents.
- SPEs are established to obtain specific advantages provided by the host jurisdiction with an objective to (i) grant its owner(s) access to capital markets or sophisticated financial services; and/or (ii) isolate owner(s) from financial risks; and/or (iii) reduce regulatory and tax burden; and/or (iv) safeguard confidentiality of their transactions and owner(s).
- SPEs transact almost entirely with non-residents and a large part of their financial balance sheet typically consists of cross-border claims and liabilities.

¹ For more details please consult <https://www.imf.org/external/pubs/ft/bop/2018/pdf/18-03.pdf>.

² This is currently under discussion within the subgroup on Globalization.

A key aspect of the definition follows from the observation that SPEs are by necessity legal entities registered/incorporated in the economic territory to be recognized as institutional units, yet do not have a physical presence to speak of, do not engage in physical production, and have no or little employment. These elements of the definition are mutually reinforcing. Physical presence, output and employment are grounds for an entity to be considered a resident unit *per se*, as they contribute to establish a centre of predominant economic interest. It should be noted however that as regards corporations the country of (legal) incorporation is the decisive criterion to establish residence according to BPM6 and SNA2008.

The second element in the definition, states that the entity is under direct or indirect control by non-residents. A foreign parent is considered in BPM6 as a sufficient condition for an entity to be recognized as an institutional unit. This part of the definition does not preclude resident direct or indirect control, if the entity would pass the institutional unit test in BPM6. The formulation used in TF-SPE final report is borrowed from the FDI literature, extends the concept of a direct foreign parent to direct and indirect control (i.e. a majority vote in the shareholders meeting). It matches the FDI concept of subsidiary to the SPE definition.

A novelty in the definition is that it integrates four sets of reasons why an entity can be considered to possess a 'special purpose', rather than referring to it in supporting text. These four reasons are helpful in the identification of SPEs by also scrutinizing whether specific host countries would fulfil the necessary conditions for hosting SPEs. They are however the most difficult part to operationalise, because it is as much a criterion describing the particularities of the jurisdiction of the host economy as it is an aspect of the entities themselves. This issue is explored further in the next section.

The final part of the definition focusses strongly on the ESS by formulating the requirement that a large part of the balance sheet of the entity is typically vis-à-vis non-residents, i.e. that SPEs transact almost entirely with non-residents. This aspect of the definition may be prone to an overly restrictive interpretation by countries based on the recognition given by the TF-SPE report to a broadened scope of SPEs to include other functional categories and non-financial assets in the balance sheet. However, it is well known that SPEs also have liabilities where the exact holder cannot be identified; this is the case of debt securities issued by conduits on behalf of a non-resident corporate groups. Moreover, certain SPEs may have assets vis-à-vis residents as it is the case of FVC. Furthermore, SPEs may also have non-financial assets (intangibles, mobile equipment).

The IMF TF-SPE definition is proposed in the context of ESS, which is acknowledged in the report. For the domestic context, the treatment of entities will need to be clarified that by convention or otherwise are recognised as institutional units irrespective of the economic territory of residence of the parent entity. For instance, legal entities established and controlled by households are considered separate institutional units from the household, including household trusts. Likewise securitization vehicles (or special purpose

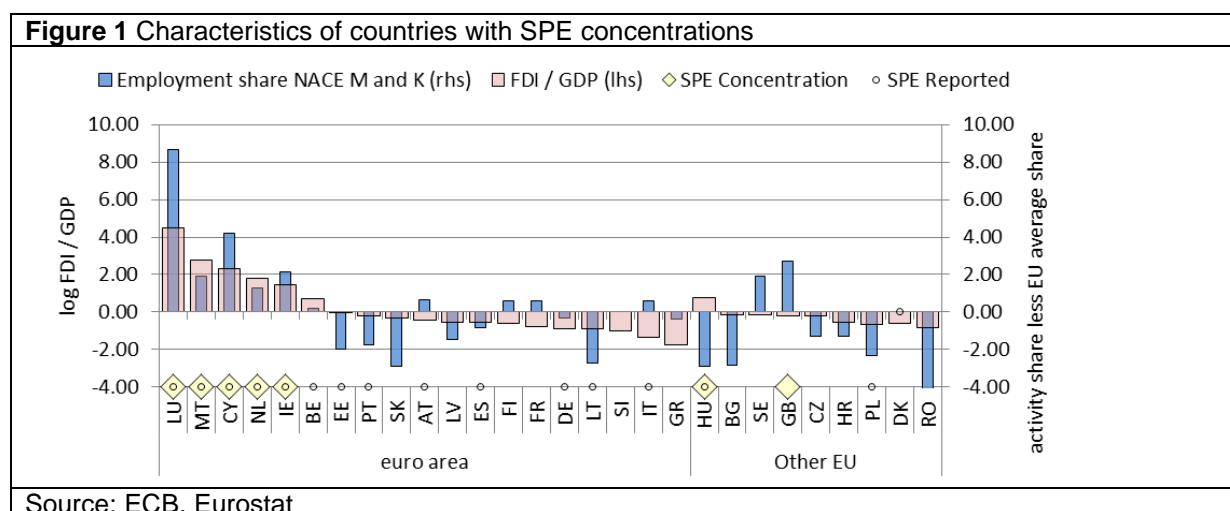
vehicles) are legal entities that are distinct from their nominal parent independently of its residence. They are considered separate institutional units classified as other financial intermediaries (S125).

Finally, it may be necessary to draw a distinction between jurisdictions and economic territories, as it is the jurisdiction that provides the specific incentive to incorporate special purpose entities. It may be the case, say in countries with a federal structure, or countries that have off shore locations as part of their economic territory, that there are differences between the various jurisdictions within an economic territory to create sufficient incentives for the creation of SPEs and SPE like entities.

3. SPEs, country specialization and Europe

With pervasive globalization worldwide, a geographical specialisation of business functions related to the production and distribution of goods and services by large multinational corporations has been accompanied by a geographical specialisation of corporate financial functions. Off-shore jurisdictions provide both, corporations and private persons, with sophisticated financial services and an attractive fiscal environment. The economic weight of the EU single market and the attraction of a single currency provides to non-European multinationals ample incentive to establish subsidiaries in the EU. A highly sophisticated financial sector is able to provide specialized financing products; hence countries have incentives to specialize to attract investors. MNE's likewise specialize by fragmenting their different business functions across EU member states. As a result the burden of statistically observing SPEs falls mostly on a limited number of European countries specialized in hosting them.

An ECB stocktaking on the presence and characteristics of SPEs by end-2016 [ECB (2017)] established that 16 out of the 22 responding EU countries identified the presence of SPEs, and that 11 countries claim to comprehensively cover SPEs in the context of ESS. Most do so in the context of FDI, but a significant number also report SPEs engaging in both, portfolio (PI) and other investment (OI). Likewise, 9 countries report SPEs having non-financial assets on the balance sheet. As regards the sector classification, 14 countries report SPEs to be mostly classified as captive financial institutions (S127), yet countries also identify SPEs in the subsector other financial intermediation (S125), Insurance corporations (S128) and non-financial corporations (S11). There are several countries that are a priori likely to have significant SPE populations, these are CY, IE, NL, MT, LU in the euro area and HU and GB in the other EU. In the remainder of this paper we refer to these as SPE concentrating countries. These countries typically show a larger financial balance sheet vis-à-vis the rest of the world in relation to GDP. One expression of this could be a FDI size indicator, as shown in Figure 1, which is calculated as the natural logarithm of the ratio of total FDI liability positions to GDP. Positive numbers indicate that FDI liabilities exceed GDP; this can be observed for seven countries. In Figure 1 the SPE concentrating countries are labelled by a diamond and countries that reported the presence of SPEs [ECB (2017)] are labelled by a small circle.



In a European context, the establishment of SPEs structured to manage the tax liabilities and/or financing requirement of large MNE's requires highly specialised services. These are typically provided by legal professionals, tax consultants, specializing in international, European and home country law as well as financial sector specialists. Often these are provided by multinational consulting firms, with international staff, able to call on national expertise as and when needed. It is therefore of interest to consider whether SPE hosting countries would have a well-developed legal, financial and consulting services sector. Figure 1 shows the share of employment in financial and professional services as percentage of total employment. The indicator has been normalised against the EU average of 8.5%, countries with negative scores have less than the EU average, and countries with positive scores exceed the European average. All of the countries that we associate with concentrations of SPEs have positive scores exceeding 1, with the exception of Hungary³. From the OECD restrictiveness indicator [OECD 2019a] we learn that European SPE concentrating countries do not place restrictions with regards to FDI in financial and professional services activities⁴.

One very compelling reason why European countries may attract SPEs, and the first cited reason in the macro-economic statistics manuals (see BPM6 par 4.50), is the provision of tax advantages. Often, these tax advantages are available to large corporations through the establishment of complex corporate legal

³ Hungary SPEs mainly participate in intercompany credit granting and holding activity, in fact these activities might not need extra employment in financial and professional services.

⁴ FDI restrictiveness is an OECD index assessing the extent to which individual countries impose restrictions on foreign direct investment (FDI). The index assesses four main types of restrictions: foreign equity restrictions; discriminatory screening or approval mechanisms; restrictions on key foreign personnel and operational restrictions.

structures in several countries in combination, rather than in single countries in isolation. Nonetheless, overall corporate income tax rates provide corporations with incentives to seek to generate corporate income in those countries where their tax liability would be minimised. The OECD tax database [OECD2019b] provides relevant data, comparing corporate income tax rates of individual OECD countries, and tracing these over time. Table 1 summarises the available information for 2010 and 2018, with the same country grouping as presented earlier.

Table 1 OECD Countries. Median Combined Statutory Corporate Income tax rates

		2010	2018	Change 2010-2018	2018 Minimum	2018 Maximum
European Union	SPE Concentrating countries	22.3	18.8	-3.5	9.0	26.0
	Other	25.0	22.0	-3.0	15.0	34.4
OECD less EU	United States	39.2	25.8	-13.4		
	Japan	39.5	29.7	-9.8		
	Other OECD	25.0	25.0	0.0		

Source : OECD

The table conveys several messages. First, a number of countries have considered it necessary to significantly lower their corporate income tax rates since 2010, which will have a potential impact on corporate tax strategies. Not only the US with its recent tax reform, but also Japan and European countries have significantly lower corporate tax rates in 2018 compared to 2010. Second, EU SPE concentrating countries differ strongly, some clearly adopted a low tax strategy (as have some non-SPE concentrating countries) whereas others are above median values of non-SPE concentrating countries. Headline income tax rates do not seem to be the unique responsible factor for concentrations of SPEs in Europe.

4. National experiences on SPEs

The identification of SPEs is approached by the countries from different perspectives.

The UK until now has not positively identified SPEs. The approach currently under investigation is to use the existing inward FDI survey to identify SPEs. As the survey frame does not include balance sheet information, turnover is used to identify entities meeting the requirement of no physical presence. A sensitivity analysis is provided with regards to the employment criterion.

A key complication reported by the Office for National Statistics (ONS) is the use of enterprise group as the statistical unit, in which resident enterprise subsidiaries are consolidated with headquarters. Thus, resident enterprises potentially meeting the SPE criteria are not identified as resident SPEs. In addition, there is the potential for further under reporting of SPE's as the sampling design does not differentiate between SPEs and non-SPEs, and is stratified by employment size. The UK approach emphasises that

SPEs are FDI related units by exploring only the inward FDI survey. It is noteworthy that the ONS has adapted the TF-SPE decision tree by removing specific non-observable elements.

Based on the results of this first assessment, SPEs account for roughly 9 percent of the UK external sector liability positions.

Ireland likewise does not report yet on SPEs. The Central Bank of Ireland (CBI) reported on its data collections, one of which is aimed at identifying financial vehicle corporations (FVC) in the context of the relevant ESCB regulation on securitization vehicles⁵. The CBI complemented this information with a separate collection on SPVs, in order to address the data collection gap on other financial institutions (OFI). This second collection is still inspired by the concepts and language used in the context of the data collection on FVCs, and less so by the language inherent to the FDI literature. As a consequence entities are observed meeting SPE criteria that have a variety of functions, and require a much more detailed characterisation than is usually the case in FDI statistics. The Irish findings emphasise (1) a variety in entities and functions, (2) confirm the existence of entities meeting general SPE criteria where the parent entity is co-resident with the SPE entity, (3) suggests that SPEs are established in conjunction with other SPEs elsewhere, in order to secure the desired benefits.

Both surveys have defined their reporting population in relation to the company registrations act, section 110, defining a class of entities that provide their owners with specific targeted benefits. Many of these entities have significant portions of the balance sheet devoted to securities vis-à-vis residents, and cannot be limited to non-resident holdings only. The discussion with regards to Irish SPEs is by necessity broader as it does not focus on FDI populations and surveys only. These two surveys capturing FVC and SPEs identify entities with domestic sponsors, raising the question of whether the entity should be consolidated with its sponsor (these are sometimes characterised as charitable foundations, i.e. as non-profit organisation serving households). A separate exercise, not reported on yet, but envisaged by the Irish Central Statistical Office, which similarly to the ONS effort described earlier, will attempt to identify SPEs using the criteria laid out in the TF-SPE definition, starting from the FDI reporting population.

Switzerland reported on the significance of SPEs to the Swiss economy. One outstanding feature of the Swiss economy is the preponderance of pass through capital (42% of total IIP liabilities of finance and holding companies), and the relatively minor role SPEs play as regards pass through (9% of total IIP liabilities of finance and holding companies). It is important to note that the Swiss National Bank (SNB) collects data in the context of FDI using the concept of local enterprise groups (BD4), implying consolidation of resident entities belonging to the same group. SNB also reported on the challenges of

⁵ Regulation ECB/2013/40.

adjusting the current decision tree to distinguish SPEs to take into account the TF-SPE decision tree. The SNB has amended its definition to approximate as much as possible that of the TF-SPE decision tree, with the following provisos. As regards the absence of physical presence, the only criterion used is employment. As regards to direct and indirect control, the SNB definition refers to the concept of ultimate control by a non-resident company. The SNB also notes that the criterion of 'transacting almost exclusively with non-residents' is overly restrictive and may need to be relaxed in the context of the Swiss economy. SNB foresees updating its definition by 2021.

Luxembourg, hosting a large SPEs population, reported on the interpretation and applicability of the TF-SPE definition to the LU situation. Luxembourg hosts a vibrant financial sector which is extensively covered. Luxembourg surveys in a harmonized way the institutional sub-sectors: Investment Funds (S124), Other Financial Intermediaries (S125), Captive Financial Institutions (S127) and Insurance Corporations (S.128).

Luxembourg reports that most S.124 and S.125 (i.e. market oriented units) and all S.128 entities are subject to supervision (an aspect not considered in the TF-SPE definition) and that S.127 entities are not supervised.

Luxembourg considers that resident entities that transact assets and the liabilities on open markets provide "standard" financial services. In other words, Luxembourg considers that such entities do not meet the SPEs definition. On the other hand Luxembourg considers that entities where both assets and liabilities are not transacted on markets (to be classified as captive financial institutions) are considered to potentially meet the SPE definition.

As regards entities where the balance sheet has a market orientation on either the asset or the liability side, Luxembourg considers the outcome less clear cut. Luxembourg, in the absence of further operational guidance in the TF report, decided that LU SPEs from the financial industry would be found in the S.127 (Captive Financial Institutions) institutional sector along with some S.128 (Insurance corporations), but would exclude all entities classified in S.124 (Investment Funds) and S.125 (Other Financial Intermediaries).

Luxembourg also reported that MNEs typically do not set up a single unit but instead a network of financial institutions in the country. Those institutions, as a whole, take external liabilities and hold approximately a similar amount of external assets (capital "in transit"). Thus, they need to be taken together for corresponding checking operations. Luxembourg currently performs this "grouping of units" through internal sources. Luxembourg considers the Eurogroup Register (EGR), a collaborative register by European NSI's covering large multinationals operating in Europe, a promising tool. However the EGR currently covers roughly only 50% of the captive financial institutions operating in Luxembourg. Finally,

Luxembourg has attempted to apply the typology from the TF-SPE to distinguish between different types, and found most of the entities involved in pure holding and intra group lending.

The Netherlands reported on their transition from the SFI (Specialised Financial Institutions) category to the SPE concept, as described in the SNA2008 and BPM6. The reporting on these entities is at the level of the legal entity, rather than at the group consolidated level. A reporting template was established at the monthly and quarterly frequencies for the largest entities, combined with an annual census for the entire population. A separate reporting is established for SPE-services (e.g. entities that provide non-financial services). A key component in the Dutch reporting system is that at the micro data level several a-priori accounting constraints are imposed on the data by limiting the impact of SPEs on macro-economic aggregates such as GNI, the Current Account and the Net International Investment Position. In short, SPEs are assumed to have zero net operational surplus, zero net savings (with adjustments for resident subsidiaries of SPEs) and zero net external assets. These constraints however only apply with regards to entities that have their entire financial balance sheet vis-à-vis non-residents, and would not have non-financial assets. This statistical approach precludes the accumulation of income by SPEs in the Netherlands, *a-priori* defining the NL as a conduit country rather than a sink country in the terminology used by [Garcia-Bernardo et al. \(2017\)](#)⁶.

5. Implementation challenges

Common threads emerged from the different presentations. First, the necessity to observe SPEs as separate legal units rather than attempt to have them reported at the enterprise group level. Also, data sharing initiatives would be more efficient if legal entities were identified by an international standard, which would be the Legal Entity Identifier (LEI). LEI could accommodate (in the medium run) SPE/non SPE characteristic of entities.

Secondly, the TF-SPE recognized the need to keep an open mind to the types of SPEs emerging, by providing a broad qualitative scope in terms of the types of SPEs that could be distinguished, and by delineating clearly in quantitative terms what could be considered an SPE and what not. Therefore a strict limit was imposed on the size of employment and the absence of physical activity and presence. Consciously the TF-SPE did not attempt to introduce measures related to the size of the balance sheet and to the physical presence, and also avoided the discussion on regular corporations also fulfilling SPE-like functions, as the focus was on ESS. The impact of this, as reported by Switzerland, is that the population and balance sheet impact of holding corporations could be much larger than that of entities that can be classified as SPEs.

⁶ For more details see: <https://www.nature.com/articles/s41598-017-06322-9>

Financial intermediation sub-sector (S125) is statistically well covered in the euro area by means of an ECB Regulation covering securitization vehicles. Clear operational rules could be established by the IMF as regards their inclusion in the SPEs population. Similar questions would then be raised as regards entities classified as insurance corporations or non-financial corporations that according to the definition would be classified as SPEs.

This discussion obviously also touched on the content of the balance sheet. Whereas the balance sheet of the majority of the traditional SPEs (holding corporations and conduits) would consist of FDI equity or debt on the asset side and liability side (eventually in some cases also of portfolio debt securities on the liability side), it is not excluded that there would be also elements of other investment and / or non-financial assets (intangibles and mobile equipment). In the discussions, countries hosting SPEs indicated having to work around the criterion touching on the balance sheet orientation to non-residents. Specifically Ireland emphasised that in its reporting many domestically owned entities exist that cannot be distinguished from entities with foreign parents, however that would not be possible to consolidate with their parent entity, as the latter may not be a corporate entity, but rather entities classified as charitable foundations. Also Ireland emphasised that whenever a significant part of the balance sheet would be composed of portfolio investment instruments, it would be impossible to make assumptions about the residence of the counterparties. Some WG members expressed the opinion that the reference to a large part of the balance sheet should be replaced by a numerical criterion. The issue was raised how to treat chains of SPE's within the same economy, leading to a discussion about the concept of institutional unit. The TF-SPE report suggests that such chains should be recognised as SPE's, yet these cases would need an exemption from the constraint of having assets and/or liabilities vis-à-vis non-residents.

An area that would need to be further clarified in the operational guidance is the reference in the definition to direct and indirect foreign control, in bridging concepts proposed by the OECD Benchmark Definition 4 (BD4), and the Balance of Payments Manual (BPM6). The control can be exercised directly, or indirectly. Indirect foreign control in this sense means that control is effective through two or more non-resident subsidiaries placed at the same level in the hierarchy. This creates a tension, as the Ultimate controlling parent (UCP) may in fact be present in the same economic territory as the direct investment enterprise being reported on (e.g. round tripping). The formulation in the TF-SPE definition therefore speaks of directly or indirectly controlled by a non-resident enterprise, thus ensuring that the DI enterprise is considered as a separate institutional unit, as the control is directly exercised through a non-resident entity. SNA 2008 employs the term parent corporation in this context. The concept of ultimate control however extends also to entities that are directly controlled by resident entities, whereas the concept of indirect and direct foreign control does not.

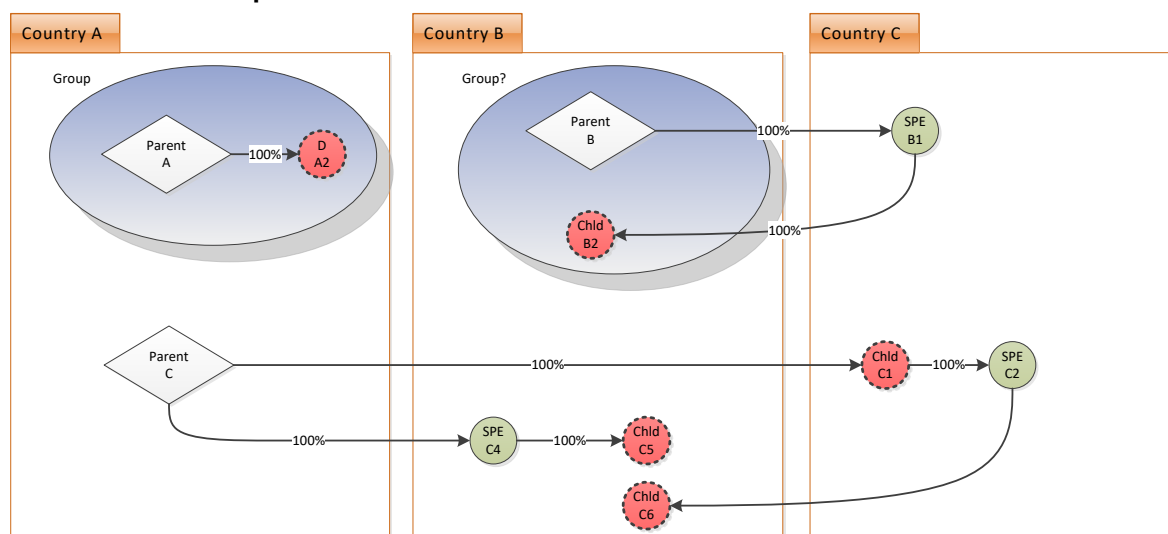
The discussion on ultimate control and direct / indirect control is intimately connected to another element of the SPE definition put forward by the TF-SPE, namely that SPEs must be recognized as institutional

units. A sufficient criterion for this is that the direct parent of the entity is non-resident, and on the face of it, by limiting the definition of SPEs to entities that have a non-resident parent, would be equivalent to having an entity that is directly controlled by a non-resident. The underlying assumption is that SPEs by themselves do not have autonomy of decision, and therefore would not exist (or would be consolidated) if the parent would be a resident institutional unit. The ESS-centric definition does not address this assumption and the question whether SPEs could meet the institutional unit test in the context of resident parent corporations would need to be explored further in the context of national accounts. As reported by Ireland, entities are observed with direct national parents. Such units cannot always be consolidated (without reclassification), as they are primarily classified in different institutional sectors.

The TF-SPE definition has introduced a criterion listing four purposes to which SPEs are employed. It is clear from the discussion around so-called near-SPEs that also entities that will not be considered SPEs may answer to these purposes, potentially not exclusively so. Countries are looking to an operationalisation of these criteria. Here international organisations and countries' efforts need to be directed towards documenting the infrastructure that countries offer in terms of provisions made in law or practice to accommodate these special purposes, rather than attempting to obtain responses from the entities themselves.

The presence of highly specialised law and tax firms, the presence of a strong international oriented financial sector and special tax regimes are all positive indicators for the presence of SPEs that should be used when applying this criterion. Moreover, in multi-jurisdictional economic territories such as the EU, or federal states such as the US, there will be an economic incentive for specific countries or states to specialize in hosting SPE type enterprises.

Annex 1: Some specific cases discussed



Case #1. Consolidation and statistical units.

It is well understood that SPEs are observed as legal entities and that they constitute separate institutional units. In the context of the external sector statistics (ESS) this is mostly because they would have a non-resident parent, and thus by convention become resident institutional units in the country where they are incorporated. Some countries apply however the concept of enterprise group rather than the concept of enterprise as institutional unit, having a material effect on the recording of SPEs in the external account. In Europe (and eventually worldwide), this links to discussions in the field of business statistics and the application of profiling techniques. In the first example, it is seen that a fully owned daughter company (A2) (an enterprise that has autonomy of decision, is consolidated with its parent company (A), because they both constitute an enterprise group. Often however, such structures are made involving non-resident passive holding corporations abroad. Such entities meet the SPE classification criteria, and are recognised as institutional units, as the parent is non-resident. In our second example, parent B indirectly controls daughter enterprise B2, through non-resident holding SPE B1. Both legs of the investment between countries B and C are relevant, and they make it impossible to consolidate parent B and (grand) daughter B2, otherwise external transactions would be ignored.

Note that the practice of consolidating out SPEs is part and parcel of the recommendations of the OECD in the context of the extended directional principle.

Case #2. Upward consolidation.

The second case deals with the frequent occurrence of the top of a resident direct investment chain being constituted by a passive holding corporation, with substantive subsidiaries. In the example, parent C, located in country A, has a fully owned passive holding (C4) in country B, which itself has a resident

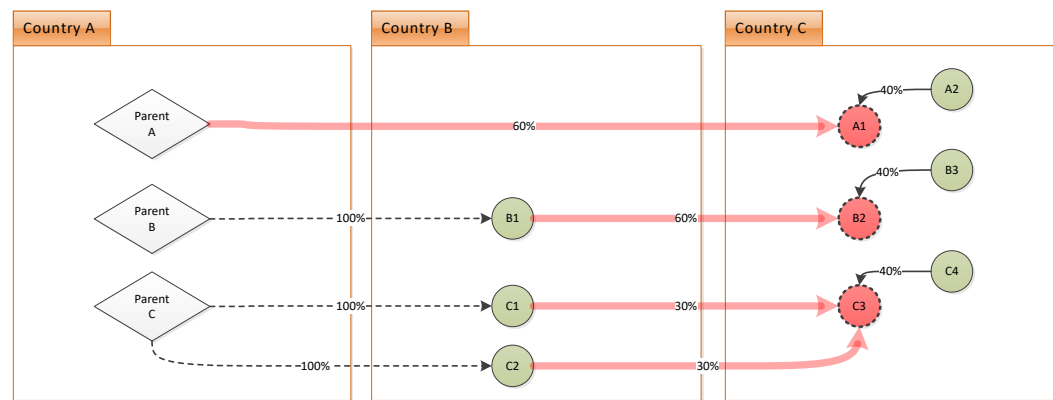
subsidiary with economic substance (C5). C4, by convention, is an institutional unit, because parent C is non-resident. Daughter C5 is an institutional unit as it has all the attributes including autonomy of decision as regards its local operations. SPE C4 is however controlled by parent C, and C5 does not control SPE C4. In the discussions the point was raised why not to consolidate C4 and C5 to constitute a single institutional unit.

Case #3. Service providers or empty legal structures.

Assume that a corporation is established in a country and makes use of the legal provisions of that country as regards labour law, by making all non-resident staff legally employed by that corporation. The corporation however does not have any physical presence in the host country. The salary administration is conducted from another location. The case focusses on the question whether these 'legal' employees should be recognised as contributing towards the SPE size criterion, or whether employees counting towards the SPE size criterion need to be resident and the employment contract under the law of the country of incorporation.

Annex 2: Parentage and Control

Examples of control



Cases for clarification with regards to foreign control

- Ultimate control is exercised by parents A,B,C?
- Immediate control is exercised by Parent A on subsidiary A1
- Immediate control is exercised by subsidiary B1 on subsidiary B2.
- Subsidiary C3 is not immediately controlled by either subsidiary C1 or C2.
- Subsidiaries A1 and B1 are directly controlled by Parent A and subsidiary B1 respectively
- Subsidiary C3 is indirectly controlled by parent C through C1 and C2
- B2 is indirectly controlled by parent B, C3 is indirectly controlled by parent C?

Subsidiaries A1, B2 and C3 are institutional units of country C:

- because their **direct** parents are non-resident (BPM6 4.18)
- because each of them has **owners** in two or more economies (BPM6 4.18)
- or because they may satisfy the institutional unit test with respect to autonomy of decision

