



2016/0339(CNS)

8.3.2017

AMENDMENTS

31 - 87

Draft report

Olle Ludvigsson

(PE597.532v01-00)

Hybrid mismatches with third countries

Proposal for a directive

(COM(2016)0687 – C8-0464/2016 – 2016/0339(CNS))

Amendment 31
Neena Gill CBE

Draft legislative resolution
Citation 5 a (new)

Draft legislative resolution

Amendment

- *having regard to its resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect^{1a},*

^{1a} *Texts adopted, P8_TA(2015)0408.*

Or. en

Amendment 32
Anneliese Dodds

Draft legislative resolution
Citation 5 a (new)

Draft legislative resolution

Amendment

- *having regard to its resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect^{1a},*

^{1a} *Texts adopted, P8_TA(2015)0408.*

Or. en

Amendment 33
Anneliese Dodds

Draft legislative resolution
Citation 5 b (new)

Draft legislative resolution

Amendment

- ***having regard to its resolution of 16 December 2015 with recommendations to the Commission on bringing transparency, coordination and convergence to corporate tax policies in the Union^{1a},***

^{1a} ***Texts adopted, P8_TA(2015)0457.***

Or. en

Amendment 34
Anneliese Dodds

Draft legislative resolution
Citation 5 c (new)

Draft legislative resolution

Amendment

- ***having regard to its resolution of 6 July 2016 on tax rulings and other measures similar in nature or effect^{1a},***

^{1a} ***Texts adopted, P8_TA(2015)0310.***

Or. en

Amendment 35
Anneliese Dodds

Draft legislative resolution
Citation 5 d (new)

Draft legislative resolution

Amendment

- ***having regard to the Commission's decision of 30 August 2016 on State aid SA.38373 (2014/C) (ex 2014/NN) (ex 2014/CP) implemented by Ireland to Apple, and to the Commission's open***

investigations into Luxembourg's alleged aid to McDonald's and Amazon,

Or. en

Amendment 36
Anneliese Dodds

Draft legislative resolution
Citation 5 e (new)

Draft legislative resolution

Amendment

– *having regard to the ongoing work of its Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion,*

Or. en

Amendment 37
Matt Carthy

Proposal for a directive
Recital 1

Text proposed by the Commission

Amendment

(1) It is imperative to restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. Therefore, the Organisation for Economic Co-operation and Development (OECD) has issued concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS).

(1) It is imperative to ***stop tax avoidance by multinational corporations,*** restore trust in the fairness of tax systems and allow governments to effectively exercise their tax sovereignty. Therefore, the Organisation for Economic Co-operation and Development (OECD) has issued concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS).

Or. en

Amendment 38

Eva Joly

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) Directive (EU) 2016/1164 provides for a framework to tackle hybrid mismatch arrangements.

Amendment

(4) Directive (EU) 2016/1164 provides for a framework to tackle hybrid mismatch arrangements, ***which does not comprehensively and systematically eliminate hybrid mismatches and has its scope limited to the European Union.***

Or. en

Amendment 39

Nils Torvalds

Proposal for a directive

Recital 4

Text proposed by the Commission

(4) Directive (EU) 2016/1164 provides for a framework to tackle hybrid mismatch arrangements.

Amendment

(4) Directive (EU) 2016/1164 provides for a ***first*** framework to tackle hybrid mismatch arrangements.

Or. en

Amendment 40

Pirkko Ruohonen-Lerner

Proposal for a directive

Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) Underlying the BEPS initiative is also the declaration of G20 Leaders at their meeting in Saint Petersburg on 5-6 September 2013, expressing their wish to ensure that profits are taxed where

economic activities deriving the profits are performed and where value is created. In practice, this would have required the introduction of unitary taxation with formulary apportionment of tax revenues to states. That goal has not been achieved.

Or. en

Amendment 41

Matt Carthy

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) It is necessary to establish rules that neutralise hybrid mismatches in a comprehensive manner. Considering that Directive (EU) 2016/1164 only covers hybrid mismatch arrangements that arise in the interaction between the corporate tax systems of Member States, the ECOFIN Council issued a statement on 20 June 2016 requesting the Commission to put forward by October 2016 a proposal on hybrid mismatches involving third countries in order to provide for rules consistent with and no less effective than the rules recommended by the OECD BEPS report on Action 2, with a view to reaching an agreement by the end of 2016.

Amendment

(5) It is necessary to establish rules that neutralise hybrid mismatches **and branch mismatches** in a comprehensive manner. Considering that Directive (EU) 2016/1164 only covers hybrid mismatch arrangements that arise in the interaction between the corporate tax systems of Member States, the ECOFIN Council issued a statement on 20 June 2016 requesting the Commission to put forward by October 2016 a proposal on hybrid mismatches involving third countries in order to provide for rules consistent with and no less effective than the rules recommended by the OECD BEPS report on Action 2, with a view to reaching an agreement by the end of 2016.

Or. en

Amendment 42

Nils Torvalds

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) It is **necessary** to establish rules

Amendment

(5) It is **of absolute importance** to

that neutralise hybrid mismatches in a **comprehensive** manner. Considering that Directive (EU) 2016/1164 only covers hybrid mismatch arrangements that arise in the interaction between the corporate tax systems of Member States, the ECOFIN Council issued a statement on 20 June 2016 requesting the Commission to put forward by October 2016 a proposal on hybrid mismatches involving third countries in order to provide for rules consistent with and no less effective than the rules recommended by the OECD BEPS report on Action 2, with a view to reaching an agreement by the end of 2016.

establish rules that neutralise hybrid mismatches in a **comprehensive** manner. Considering that Directive (EU) 2016/1164 only covers hybrid mismatch arrangements that arise in the interaction between the corporate tax systems of Member States, the ECOFIN Council issued a statement on 20 June 2016 requesting the Commission to put forward by October 2016 a proposal on hybrid mismatches involving third countries in order to provide for rules consistent with and no less effective than the rules recommended by the OECD BEPS report on Action 2, with a view to reaching an agreement by the end of 2016.

Or. en

Amendment 43

Eva Joly

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 5

Text proposed by the Commission

(5) It is necessary to establish rules that neutralise hybrid mismatches in a **comprehensive** manner. Considering that Directive (EU) 2016/1164 only covers hybrid mismatch arrangements that arise in the interaction between the corporate tax systems of Member States, the ECOFIN Council issued a statement on 20 June 2016 requesting the Commission to put forward by October 2016 a proposal on hybrid mismatches involving third countries in order to provide for rules consistent with and no less effective than the rules recommended by the OECD BEPS report on Action 2, with a view to reaching an agreement by the end of 2016.

Amendment

(5) It is necessary to establish rules that neutralise hybrid mismatches in a **comprehensive** manner. Considering that Directive (EU) 2016/1164 only covers hybrid mismatch arrangements that arise in the interaction between the corporate tax systems of Member States, the ECOFIN Council issued a statement on 20 June 2016 requesting the Commission to put forward by October 2016 a proposal on hybrid mismatches involving third countries in order to provide for rules consistent with and no less effective than the rules recommended by the OECD BEPS report on Action 2, with a view to reaching an agreement by the end of 2016.

Or. en

Amendment 44
Pirkko Ruohonen-Lerner
on behalf of the ECR Group

Proposal for a directive
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) *The effects of hybrid mismatch arrangements should also be considered from the viewpoint of developing countries, and the Union and its Member States should aim to support developing countries in tackling such effects.*

Or. en

Amendment 45
Matt Carthy

Proposal for a directive
Recital 6

Text proposed by the Commission

Amendment

(6) Considering that[, amongst others, it is stated in Recital (13) of Directive (EU) 2016/1164 that] it is critical that further work is undertaken on other hybrid mismatches such as those involving permanent establishments, it is essential that hybrid permanent establishment mismatches are addressed in that Directive as well.

(6) Considering that[, amongst others, it is stated in Recital (13) of Directive (EU) 2016/1164 that] it is critical that further work is undertaken on other hybrid mismatches such as those involving permanent establishments, ***including disregarded permanent establishments***, it is essential that hybrid permanent establishment mismatches are addressed in that Directive as well. ***In addressing such mismatches regard should be had to the recommended rules included in the OECD's Public Discussion Draft of 22 August 2016 concerning BEPS Action 2 - Branch Mismatch Structures.***

Or. en

Amendment 46

Matt Carthy

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) In order to provide for a comprehensive framework consistent with to OECD BEPS report on hybrid mismatch arrangements it is essential that Directive (EU) 2016/1164 would also include rules on hybrid transfers, imported mismatches and dual resident mismatches, in order to prevent taxpayers from exploiting remaining loopholes.

Amendment

(7) In order to provide for a comprehensive framework consistent with to OECD BEPS report on hybrid mismatch arrangements it is essential that Directive (EU) 2016/1164 would also include rules on hybrid transfers, imported mismatches and dual resident mismatches, in order to prevent taxpayers from exploiting remaining loopholes. ***Those rules should be standardised and coordinated to the maximum extent possible between Member States. Member States should consider the introduction of sanctions against taxpayers that exploit hybrid mismatches.***

Or. en

Amendment 47

Neena Gill CBE

Proposal for a directive

Recital 7

Text proposed by the Commission

(7) In order to provide for a ***comprehensive framework*** consistent with to OECD BEPS report on hybrid mismatch arrangements it is essential that Directive (EU) 2016/1164 would also include rules on hybrid transfers, imported mismatches and ***dual resident mismatches***, in order to prevent taxpayers from exploiting remaining loopholes.

Amendment

(7) In order to provide for a ***framework that is*** consistent with ***and no less effective than the*** OECD BEPS report on hybrid mismatch arrangements, it is essential that Directive (EU) 2016/1164 would also include rules on hybrid transfers ***and*** imported mismatches and ***addresses the full range of double deduction outcomes***, in order to prevent taxpayers from exploiting remaining loopholes.

Or. en

Amendment 48
Anneliese Dodds

Proposal for a directive
Recital 7

Text proposed by the Commission

(7) In order to provide for a **comprehensive framework** consistent with **to** OECD BEPS report on hybrid mismatch arrangements it is essential that Directive (EU) 2016/1164 would also include rules on hybrid transfers, imported mismatches and **dual resident mismatches**, in order to prevent taxpayers from exploiting remaining loopholes.

Amendment

(7) In order to provide for a **framework that is** consistent with **and no less effective than the** OECD BEPS report on hybrid mismatch arrangements it is essential that Directive (EU) 2016/1164 would also include rules on hybrid transfers **and** imported mismatches and **addresses the full range of double deduction outcomes**, in order to prevent taxpayers from exploiting remaining loopholes.

Or. en

Amendment 49
Marco Valli

Proposal for a directive
Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) Rules need to be laid down in order to put a stop to the use of different tax accounting periods in individual jurisdictions, which is resulting in mismatches in tax outcomes. Member States must ensure that taxpayers declare payments in all the jurisdictions involved within a reasonable period of time. The national authorities must, furthermore, look into all the reasons behind hybrid mismatches and must close any loopholes and prevent aggressive tax planning, rather than focusing solely on collecting tax revenue.

Or. it

Amendment 50

Pirkko Ruohonen-Lerner

on behalf of the ECR Group

Proposal for a directive

Recital 8

Text proposed by the Commission

(8) Given that Directive (EU) 2016/1164 includes rules on hybrid mismatches between Member States, it is appropriate to include rules on hybrid mismatches with third countries in that Directive. Consequently, those rules should apply to all taxpayers that are subject to corporate tax in a Member State including permanent establishments of entities resident in third countries. It is necessary to cover all hybrid *mismatch* arrangements where at least one of the parties involved is a corporate taxpayer in a Member State.

Amendment

(8) Given that Directive (EU) 2016/1164 includes rules on hybrid mismatches between Member States, it is appropriate to include rules on hybrid mismatches with third countries in that Directive. Consequently, those rules should apply to all taxpayers that are subject to corporate tax in a Member State including permanent establishments of entities resident in third countries. It is necessary to cover all hybrid *mismatches or related* arrangements where at least one of the parties involved is a corporate taxpayer in a Member State.

Or. en

Amendment 51

Marco Valli

Proposal for a directive

Recital 8 a (new)

Text proposed by the Commission

Amendment

(8a) If the rules on hybrid mismatches are to be effective, it is essential for taxation policy to be pursued on a basis of parity and fairness throughout the world. This is the only way of ensuring that the directive under consideration can realise its full potential and that EU Member States do not become less attractive than less regulated markets outside the EU.

Or. it

Amendment 52
Neena Gill CBE

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) Rules on hybrid mismatches should address mismatch situations which **are the result of conflicting tax rules of two (or more) jurisdictions**. However, those rules should not affect the general features of the tax system of a jurisdiction.

Amendment

(9) Rules on hybrid mismatches should address mismatch situations which **result from double deductions, conflicts in the legal characterisation of financial instruments, payments and entities, or conflicts in the allocation of payments. As hybrid mismatches could lead to a double deduction or to a deduction without inclusion, it is necessary to lay down** rules whereby the Member State concerned either denies the deduction of a payment, expenses or losses or requires the taxpayer to include the payment in its taxable income. However, those rules should not affect the general features of the tax system of a jurisdiction.

Or. en

Amendment 53
Anneliese Dodds

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) Rules on hybrid mismatches should address mismatch situations which **are the result of conflicting tax rules of two (or more) jurisdictions**. However, those rules should not affect the general features of the tax system of a jurisdiction.

Amendment

(9) Rules on hybrid mismatches should address mismatch situations which **result from double deductions, conflicts in the legal characterisation of financial instruments, payments and entities, or conflicts in the allocation of payments. As hybrid mismatches could lead to a double deduction or to a deduction without inclusion, it is necessary to lay down** rules whereby the Member State concerned

either denies the deduction of a payment, expenses or losses or requires the taxpayer to include the payment in its taxable income. However, those rules should not affect the general features of the tax system of a jurisdiction.

Or. en

Amendment 54

Eva Joly

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) Rules on hybrid mismatches should address mismatch situations which are the result of conflicting tax rules of two (or more) jurisdictions. ***However, those rules should not affect the general features of the tax system of a jurisdiction.***

Amendment

(9) Rules on hybrid mismatches should address mismatch situations which are the result of conflicting tax rules of two (or more) jurisdictions.

Or. en

Amendment 55

Pirkko Ruohonen-Lerner

on behalf of the ECR Group

Proposal for a directive

Recital 9

Text proposed by the Commission

(9) Rules on hybrid mismatches should address mismatch situations which are the result of conflicting tax rules of two (or more) jurisdictions. However, those rules should not affect the general features of the tax system of a jurisdiction.

Amendment

(9) Rules on hybrid mismatches should address mismatch situations which are the result of conflicting tax rules of two (or more) jurisdictions. However, those rules should not affect the general features of the tax system of a jurisdiction ***and proportionality should be ensured.***

Or. en

Amendment 56
Matt Carthy

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) Rules on hybrid mismatches should ***address mismatch situations which are the result of conflicting tax rules of two (or more) jurisdictions***. However, those rules should not affect the general features of the tax system of a jurisdiction.

Amendment

(9) Rules on hybrid mismatches should ***apply automatically whenever a payment comes across the border having been deducted at the paying end, without having to prove a tax avoidance motive***. However, those rules should not affect the general features of the tax system of a jurisdiction.

Or. en

Amendment 57
Nils Torvalds

Proposal for a directive
Recital 9

Text proposed by the Commission

(9) Rules on hybrid mismatches ***should*** address mismatch situations which are the result of conflicting tax rules of two (or more) jurisdictions. However, those rules should not affect the general features of the tax system of a jurisdiction.

Amendment

(9) ***It is essential that*** rules on hybrid mismatches address mismatch situations which are the result of conflicting tax rules of two (or more) jurisdictions. However, those rules should not affect the general features of the tax system of a jurisdiction.

Or. en

Amendment 58
Eva Joly
on behalf of the Verts/ALE Group

Proposal for a directive
Recital 9 a (new)

(9 a) Permanent establishment mismatches occur where differences in the rules for allocating income and expenditure between different parts of the same entity in the permanent establishment jurisdiction and those in the residence jurisdiction give rise to a mismatch in tax outcomes, including cases where a mismatch outcome arises due to the fact that a permanent establishment is disregarded as a result of the application of the laws of the branch jurisdiction. Those mismatch outcomes could lead to non-taxation without inclusion, a double deduction or a deduction without inclusion, and should therefore be eliminated. In the case of disregarded permanent establishments, the Member State in which the taxpayer is resident should include the income that would otherwise be attributed to the permanent establishment.

Or. en

Amendment 59

Marco Valli

Proposal for a directive

Recital 10

Text proposed by the Commission

Amendment

(10) In order to ensure proportionality it is necessary to address only the cases where there is a substantial risk of avoiding taxation through the use of hybrid mismatches. It is therefore appropriate to cover hybrid mismatch arrangements between the taxpayer and its associated enterprises and hybrid mismatches resulting from a structured arrangement involving a taxpayer.

deleted

Amendment 60

Matt Carthy

Proposal for a directive

Recital 10

Text proposed by the Commission

Amendment

(10) *In order to ensure proportionality it is necessary to address only the cases where there is a substantial risk of avoiding taxation through the use of hybrid mismatches. It is therefore appropriate to cover hybrid mismatch arrangements between the taxpayer and its associated enterprises and hybrid mismatches resulting from a structured arrangement involving a taxpayer.* **deleted**

Or. en

Amendment 61

Matt Carthy

Proposal for a directive

Recital 11

Text proposed by the Commission

Amendment

(11) *In order to provide for a sufficiently comprehensive definition of ‘associated enterprise’ for the purposes of the rules on hybrid mismatches, that definition should also comprise an entity that is part of the same consolidated group for accounting purposes, an enterprise in which the taxpayer has a significant influence in the management and reversely, an enterprise that has a significant influence in the management of the taxpayer.* **deleted**

Or. en

Amendment 62
Matt Carthy

Proposal for a directive
Recital 11

Text proposed by the Commission

(11) *In order to provide for a sufficiently comprehensive definition of ‘associated enterprise’ for the purposes of the rules on hybrid mismatches, that definition should also comprise an entity that is part of the same consolidated group for accounting purposes, an enterprise in which the taxpayer has a significant influence in the management and reversely, an enterprise that has a significant influence in the management of the taxpayer.*

Amendment

(11) *The concept and threshold for control in ‘associated enterprises’ are open to abuse and not useful for the purposes of the rules on hybrid mismatches.*

Or. en

Amendment 63
Matt Carthy

Proposal for a directive
Recital 12

Text proposed by the Commission

(12) *Mismatches that particularly pertain to the hybridity of entities should be addressed only where one of the associated enterprises has – at a minimum - effective control over the other associated enterprises. Consequently, in those cases, it should be required that an associated enterprise be held by, or hold, the taxpayer or another associated enterprise through a participation in terms of voting rights, capital ownership or entitlement to received profits of 50 percent or more.*

Amendment

deleted

Amendment 64
Nils Torvalds

Proposal for a directive
Recital 15

Text proposed by the Commission

(15) As hybrid entity mismatches involving third countries **may** lead to a double deduction or to a deduction without inclusion, it is necessary to lay down rules whereby the Member State concerned either denies the deduction of a payment, expenses or losses or requires the taxpayer to include the payment in its taxable income, as the case may be.

Amendment

(15) As hybrid entity mismatches involving third countries **in several cases** lead to a double deduction or to a deduction without inclusion, it is necessary to lay down rules whereby the Member State concerned either denies the deduction of a payment, expenses or losses or requires the taxpayer to include the payment in its taxable income, as the case may be.

Or. en

Amendment 65
Pirkko Ruohonen-Lerner
 on behalf of the ECR Group

Proposal for a directive
Recital 17

Text proposed by the Commission

(17) Hybrid transfers may give rise to a difference in tax treatment if, as a result of a transfer of a financial instrument under a structured arrangement, the underlying return on that instrument is treated as derived simultaneously by more than one of the parties to the arrangement. The underlying return is the income related to and derived from the transferred instrument. This difference in tax treatment may lead to a deduction without inclusion or to a tax credit in two different jurisdictions for the same tax withheld at

Amendment

(17) Hybrid transfers may give rise to a difference in tax treatment if, as a result of a transfer of a financial instrument under a structured arrangement **or without it**, the underlying return on that instrument is treated as derived simultaneously by more than one of the parties to the arrangement. The underlying return is the income related to and derived from the transferred instrument. This difference in tax treatment may lead to a deduction without inclusion or to a tax credit in two different jurisdictions for the same tax withheld at

source. Such mismatches should therefore be eliminated. In case of a deduction without inclusion the same rules should apply as for neutralising a hybrid financial instrument or hybrid entity mismatch leading to a deduction without inclusion. In case of a double tax credit, the Member State concerned should limit the benefit of the tax credit in proportion to the net taxable income with respect to the underlying return.

source. Such mismatches should therefore be eliminated. In case of a deduction without inclusion the same rules should apply as for neutralising a hybrid financial instrument or hybrid entity mismatch leading to a deduction without inclusion. In case of a double tax credit, the Member State concerned should limit the benefit of the tax credit in proportion to the net taxable income with respect to the underlying return.

Or. en

Amendment 66
Pirkko Ruohonen-Lerner
on behalf of the ECR Group

Proposal for a directive
Recital 19

Text proposed by the Commission

(19) Imported mismatches shift the effect of a hybrid mismatch between parties in third countries into the jurisdiction of a Member State through the use of a non-hybrid instrument thereby undermining the effectiveness of the rules that neutralise hybrid mismatches. A deductible payment in a Member State can be used to fund expenditure under a structured arrangement involving a hybrid mismatch between third countries. To counter such imported mismatches, it is necessary to include rules that disallow the deduction of a payment if the corresponding income from that payment is set-off, directly or indirectly, against a deduction that arises under a hybrid mismatch arrangement giving rise to a double deduction or a deduction without inclusion between third countries.

Amendment

(19) Imported mismatches shift the effect of a hybrid mismatch between parties in third countries into the jurisdiction of a Member State through the use of a non-hybrid instrument thereby undermining the effectiveness of the rules that neutralise hybrid mismatches. A deductible payment in a Member State can be used to fund expenditure under a structured arrangement involving a hybrid mismatch between third countries. To counter such imported mismatches, it is necessary to include rules that disallow the deduction of a payment if the corresponding income from that payment is set-off, directly or indirectly, against a deduction that arises under a hybrid mismatch *or related* arrangement giving rise to a double deduction or a deduction without inclusion between third countries.

Or. en

Amendment 67

Marco Valli

Proposal for a directive

Recital 20 a (new)

Text proposed by the Commission

Amendment

(20a) All Member States should be able to impose financial penalties on any taxpayers who take advantage of hybrid mismatch arrangements, with a view to combating such practices.

Or. it

Amendment 68

Alfred Sant

Proposal for a directive

Recital 21

Text proposed by the Commission

Amendment

(21) The objective of this Directive is to improve the resilience of the internal market as a whole against hybrid **mismatch arrangements**. This cannot be sufficiently achieved by the Member States acting individually, given that national corporate tax systems are disparate and that independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. **It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. This would thus result in a lack of coordination.** That objective can rather, due to the cross-border nature of hybrid **mismatch arrangements** and the need to adopt solutions that function for the internal market as a whole, be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European

(21) The objective of this Directive is to improve the resilience of the internal market as a whole against hybrid **mismatches**. **Although** this cannot be sufficiently achieved by the Member States acting individually, given that national corporate tax systems are disparate and that independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation, **fighting** inefficiencies and distortions **should not come at the cost of compromising the Member States' flexibility in setting their tax policies.** Yet, **the objective of coordination** can rather, due to the cross-border nature of hybrid **mismatches** and the need to adopt solutions that function for the internal market as a whole, be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union.

Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective. By setting the required level of protection for the internal market, this Directive only aims to achieve the essential degree of coordination within the Union that is necessary to achieve its objectives.

In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective. By setting the required level of protection for the internal market, this Directive only aims to achieve the essential degree of coordination within the Union that is necessary to achieve its objectives.

Or. en

Amendment 69

Eva Joly

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 21

Text proposed by the Commission

(21) The objective of this Directive is to improve the resilience of the internal market as a whole against hybrid mismatch arrangements. This cannot be sufficiently achieved by the Member States acting individually, given that national corporate tax systems are disparate and that independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. This would thus result in a lack of coordination. That objective can rather, due to the cross-border nature of hybrid mismatch arrangements and the need to adopt solutions that function for the internal market as a whole, be better achieved at Union level. The Union *may* therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is

Amendment

(21) The objective of this Directive is to improve the resilience of the internal market as a whole against hybrid mismatch arrangements. This cannot be sufficiently achieved by the Member States acting individually, given that national corporate tax systems are disparate and that independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. This would thus result in a lack of coordination. That objective can rather, due to the cross-border nature of hybrid mismatch arrangements and the need to adopt solutions that function for the internal market as a whole, be better achieved at Union level. The Union *should* therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union, *including moving from a separate entity approach to a unitary approach regarding the taxation of multinational*

necessary in order to achieve that objective. By setting the required level of protection for the internal market, this Directive only aims to achieve the essential degree of coordination within the Union that is necessary to achieve its objectives.

enterprises. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective. By setting the required level of protection for the internal market, this Directive only aims to achieve the essential degree of coordination within the Union that is necessary to achieve its objectives.

Or. en

Amendment 70

Pirkko Ruohonen-Lerner

on behalf of the ECR Group

Proposal for a directive

Recital 21

Text proposed by the Commission

(21) The objective of this Directive is to improve the resilience of the internal market as a whole against hybrid **mismatch arrangements**. This cannot be sufficiently achieved by the Member States acting individually, given that national corporate tax systems are disparate and that independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. This would thus result in a lack of coordination. That objective can rather, due to the cross-border nature of hybrid mismatch arrangements and the need to adopt solutions that function for the internal market as a whole, be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article,

Amendment

(21) The objective of this Directive is to improve the resilience of the internal market as a whole against hybrid **mismatches**. This cannot be sufficiently achieved by the Member States acting individually, given that national corporate tax systems are disparate and that independent action by Member States would only replicate the existing fragmentation of the internal market in direct taxation. It would thus allow inefficiencies and distortions to persist in the interaction of distinct national measures. This would thus result in a lack of coordination. That objective can rather, due to the cross-border nature of **hybrid mismatches or** hybrid mismatch arrangements and the need to adopt solutions that function for the internal market as a whole, be better achieved at Union level. The Union may therefore adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of

this Directive does not go beyond what is necessary in order to achieve that objective. By setting the required level of protection for the internal market, this Directive only aims to achieve the essential degree of coordination within the Union that is necessary to achieve its objectives.

proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective. By setting the required level of protection for the internal market, this Directive only aims to achieve the essential degree of coordination within the Union that is necessary to achieve its objectives.

Or. en

Amendment 71

Pirkko Ruohonen-Lerner

on behalf of the ECR Group

Proposal for a directive

Recital 21 a (new)

Text proposed by the Commission

Amendment

(21a) To ensure clear and effective implementation, consistency with the OECD report on Neutralising the Effects of Hybrid Mismatch Arrangements, Action 2 - 2015 should be highlighted.

Or. en

Amendment 72

Marco Valli

Proposal for a directive

Recital 23

Text proposed by the Commission

Amendment

(23) The Commission should evaluate the implementation of this Directive ***four years after*** its entry into force ***and report to the Council thereon.*** Member States should ***communicate to the Commission all information necessary for this evaluation,***

(23) The Commission should evaluate the implementation of this Directive ***every year, starting from the year following*** its entry into force. ***That evaluation should include the drafting of a comprehensive report on the state of implementation of the Directive in all the Member States and the overall situation as regards hybrid mismatch arrangements around the***

world. That report should then be submitted to the Council and the European Parliament.

Or. it

Amendment 73

Eva Joly

on behalf of the Verts/ALE Group

Proposal for a directive

Recital 23

Text proposed by the Commission

(23) The Commission should evaluate the implementation of this Directive **four** years after its entry into force and report to the Council thereon. Member States should communicate to the Commission all information necessary for this evaluation,

Amendment

(23) The Commission should evaluate the implementation of this Directive **three** years after its entry into force and report to the Council thereon. Member States should communicate to the Commission all information necessary for this evaluation,

Or. en

Amendment 74

Marco Valli

Proposal for a directive

Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) Member States should be required to share all relevant confidential information and best practices with a view to combating tax mismatches and ensuring that the Directive is implemented in a uniform manner.

Or. it

Amendment 75

Nils Torvalds

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point b

Directive (EU) 2016/1164

Article 2 – point 9 – subparagraph 1 – introductory part

Text proposed by the Commission

(9) ‘hybrid mismatch’ means a situation between a taxpayer and ***an associated enterprise or a structured arrangement between parties in different tax jurisdictions*** where any of the following outcomes is attributable to differences in the legal characterisation of a financial instrument or entity, or in the ***treatment*** of a commercial presence as a permanent establishment:

Amendment

(9) ‘hybrid mismatch’ means a situation between a taxpayer and ***another entity*** where any of the following outcomes is attributable to differences in the legal characterisation of a financial instrument or ***a payment made under it or is the result of differences in the recognition of payments made to, or payments, expenses or losses incurred by, a hybrid entity, or permanent establishment or the result of differences in the recognition of a deemed payment made between two parts of the same taxpayer or in the recognition*** of a commercial presence as a permanent establishment:

Or. en

Amendment 76

Sirpa Pietikäinen

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point b

Directive (EU) 2016/1164

Article 2 – point 9 – subparagraph 1 – introductory part

Text proposed by the Commission

(9) ‘hybrid mismatch’ means a situation between a taxpayer and ***an associated enterprise or a structured arrangement between parties in different tax jurisdictions*** where any of the following outcomes is attributable to differences in the legal characterisation of a financial instrument or entity, or in the ***treatment*** of a commercial presence as a permanent establishment:

Amendment

(9) ‘hybrid mismatch’ means a situation between a taxpayer and ***another entity*** where any of the following outcomes is attributable to differences in the legal characterisation of a financial instrument or ***a payment made under it or is the result of differences in the recognition of payments made to, or payments, expenses or losses incurred by, a hybrid entity, or permanent establishment or the result of differences in the recognition of a deemed payment***

made between two parts of the same taxpayer or in the recognition of a commercial presence as a permanent establishment:

Or. en

Amendment 77

Pirkko Ruohonen-Lerner

on behalf of the ECR Group

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point b

Directive (EU) 2016/1164

Article 2 – point 9 – subparagraph 3 – introductory part

Text proposed by the Commission

A hybrid mismatch also includes the transfer of a financial instrument under a structured arrangement involving a taxpayer where the underlying return on the transferred financial instrument is treated for tax purposes as derived simultaneously by more than one of the parties to the arrangement, who are resident for tax purposes in different jurisdictions, giving rise to any of the following outcomes:

Amendment

A hybrid mismatch also includes the transfer of a financial instrument under a structured arrangement *or without one* involving a taxpayer where the underlying return on the transferred financial instrument is treated for tax purposes as derived simultaneously by more than one of the parties to the arrangement, who are resident for tax purposes in different jurisdictions, giving rise to any of the following outcomes:

Or. en

Amendment 78

Matt Carthy

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point c

Directive (EU) 2016/1164

Article 2 – point 11

Text proposed by the Commission

(11) ‘structured arrangement’ *means an arrangement involving a hybrid mismatch where the mismatch is priced into the*

Amendment

(11) ‘structured arrangement’ *covers any payers that have entered into transaction forms with the expectation of*

terms of the arrangement or an arrangement that has been designed to produce a hybrid mismatch outcome, unless the taxpayer or an associated enterprise could not reasonably have been expected to be aware of the hybrid mismatch and did not share in the value of the tax benefit resulting from the hybrid mismatch.;

some amount of economic benefit from inappropriate payee tax effects; in any case where the payer's tax authority becomes aware of a payee having used a D/NI arrangement, the burden of proof that there is no structured arrangement must be on the payer;

Or. en

Amendment 79

Eva Joly

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 1 – point c a (new)

Directive (EU) 2016/1164

Article 2 – point 11 a (new)

Text proposed by the Commission

Amendment

(ca) the following point is added:

'(11a) 'payer jurisdiction' means the jurisdiction where a hybrid entity or a permanent establishment is established or where a payment is treated as made;'

Or. en

Amendment 80

Nils Torvalds

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2016/1164

Article 9 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Amendment

To the extent that a hybrid mismatch *between Member States* results in a double deduction of the same payment, expenses or losses, the deduction shall be *given only*

To the extent that a hybrid mismatch results in a double deduction of the same payment, expenses or losses, the deduction shall be *denied* in the Member State *that is*

in the Member State *where such payment has its source, the expenses are incurred or the losses are suffered.*

the investor jurisdiction.

Or. en

Amendment 81

Matt Carthy

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2016/1164

Article 9 – paragraph 1 – subparagraph 2

Text proposed by the Commission

To the extent that a hybrid mismatch involving a third country results in a double deduction of the same payment, expenses or losses, the Member State concerned shall deny the deduction of such payment, expenses or losses, unless the third country has already done so.

Amendment

To the extent that a hybrid mismatch involving a third country results in a double deduction of the same payment, expenses or losses, the Member State concerned shall deny the deduction of such payment, expenses or losses, unless the third country has already done so. ***The burden of proof of demonstrating that a deduction has been denied by the third country shall be on the taxpayer.***

Or. en

Amendment 82

Eva Joly

on behalf of the Verts/ALE Group

Proposal for a directive

Article 1 – paragraph 1 – point 3

Directive (EU) 2016/1164

Article 9 – paragraph 2 – subparagraph 1

Text proposed by the Commission

To the extent that a hybrid mismatch between Member States results in a deduction without inclusion, the Member State *of the payer shall deny the deduction of such* payment.

Amendment

To the extent that a hybrid mismatch between Member States results in a deduction without inclusion, the ***deduction shall be denied in the member State that is the payer jurisdiction of such payment.***

Where the deduction is not denied in the payer jurisdiction, the Member State concerned shall require the tax payer to include the amount of the payment that would otherwise give rise to a mismatch in the income in the payee jurisdiction.

Or. en

Amendment 83
Sirpa Pietikäinen

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2016/1164
Article 9 – paragraph 4

Text proposed by the Commission

4. To the extent that a payment by a taxpayer to an **associated enterprise** in a third country is set off directly or indirectly against a payment, expenses or losses which due to a hybrid mismatch are deductible in two different jurisdictions outside the Union, the Member State of the taxpayer shall deny the deduction of the payment by the taxpayer **to an associated enterprise** in a third country from the taxable base, unless one of the third countries involved has already denied the deduction of the payment, expenses or losses that would be deductible in two different jurisdictions.

Amendment

4. To the extent that a payment by a taxpayer to an **entity** in a third country is set off directly or indirectly against a payment, expenses or losses which due to a hybrid mismatch are deductible in two different jurisdictions outside the Union, the Member State of the taxpayer shall deny the deduction of the payment by the taxpayer in a third country from the taxable base, unless one of the third countries involved has already denied the deduction of the payment, expenses or losses that would be deductible in two different jurisdictions.

Or. en

Amendment 84
Nils Torvalds

Proposal for a directive
Article 1 – paragraph 1 – point 3
Directive (EU) 2016/1164
Article 9 – paragraph 4

Text proposed by the Commission

4. To the extent that a payment by a taxpayer to an **associated enterprise** in a third country is set off directly or indirectly against a payment, expenses or losses which due to a hybrid mismatch are deductible in two different jurisdictions outside the Union, the Member State of the taxpayer shall deny the deduction of the payment by the taxpayer to an **associated enterprise** in a third country from the taxable base, unless one of the third countries involved has already denied the deduction of the payment, expenses or losses that would be deductible in two different jurisdictions.

Amendment

4. To the extent that a payment by a taxpayer to an **entity** in a third country is set off directly or indirectly against a payment, expenses or losses which due to a hybrid mismatch are deductible in two different jurisdictions outside the Union, the Member State of the taxpayer shall deny the deduction of the payment by the taxpayer to an **entity** in a third country from the taxable base, unless one of the third countries involved has already denied the deduction of the payment, expenses or losses that would be deductible in two different jurisdictions.

Or. en

Amendment 85
Matt Carthy

Proposal for a directive
Article 1 – paragraph 1 – point 4
Directive (EU) 2016/1164
Article 9a – paragraph 1

Text proposed by the Commission

To the extent that a payment, expenses or losses of a taxpayer who is resident for tax purposes in both a Member State and a third country, in accordance with the laws of that Member State and that third country, are deductible from the taxable base in both jurisdictions and that payment, those expenses or losses can be set-off in the Member State of the taxpayer against taxable income that is not included in the third country, the Member State of the taxpayer shall deny the deduction of the payment, expenses or losses, unless the third country has already done so.

Amendment

To the extent that a payment, expenses or losses of a taxpayer who is resident for tax purposes in both a Member State and a third country, in accordance with the laws of that Member State and that third country, are deductible from the taxable base in both jurisdictions and that payment, those expenses or losses can be set-off in the Member State of the taxpayer against taxable income that is not included in the third country, the Member State of the taxpayer shall deny the deduction of the payment, expenses or losses, unless the third country has already done so. ***This covers situations where a taxpayer is 'stateless' for tax purposes. The burden of***

proof of demonstrating that the third country has denied the deduction of the payment, expense or loss shall be on the taxpayer.

Or. en

Amendment 86

Marco Valli

Proposal for a directive

Article 1 – paragraph 1 – point 4 a (new)

Directive (EU) 2016/1164

Article 10 – paragraph 1

Present text

“1. The Commission *shall* evaluate the implementation of this Directive, in *particular* the *impact* of *Article 4, by 9 August 2020* and report to the Council *thereon*. The report by the Commission shall, if appropriate, be accompanied by a legislative proposal.

Amendment

(4a) in Chapter II, Article 10, paragraph 1, is amended as follows:

“1. The Commission *is required to* evaluate the implementation of this Directive *every year, starting from the year following its entry into force, in a report on the state of implementation of the Directive in all the Member States and the overall situation as regards hybrid mismatch arrangements around the world. That report shall be submitted to the Council and the European Parliament.* The report by the Commission shall, if appropriate, be accompanied by a legislative proposal.”

Or. it

Amendment 87

Marco Valli

Proposal for a directive

Article 1 – paragraph 1 – point 4 b (new)

Directive (EU) 2016/1164

Article 11 a (new)

(4b) in Chapter III, the following article is added:

“Article 11a

Penalties

All States may impose financial penalties on any taxpayers who take advantage of hybrid mismatch arrangements, with a view to guarding against and combating such practices; those financial penalties may be set at a level at least three times higher than the financial gains made or losses avoided.”

Or. it