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*Plenary sitting*

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**A9-0066/2024**

1.3.2024

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# **REPORT**

on the proposal for a Council directive on transfer pricing  
(COM(2023)0529 – C9-0339/2023 – 2023/0322(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Kira Marie Peter-Hansen

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a Council directive on transfer pricing  
(COM(2023)0529 – C9-0339/2023 – 2023/0322(CNS))

(Special legislative procedure – consultation)

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2023)0529),
  - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C9-0339/2023),
  - having regard to Rule 82 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0066/2024),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### Amendment 1

**Proposal for a directive**  
**Recital 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***(2a) Base erosion and profit shifting (BEPS) refers to tax planning strategies used by multinational enterprises that exploit gaps and mismatches in tax rules***

*to avoid paying tax. Transfer pricing, while currently needed to determine where profits are reported, has also been misused for reducing the tax liabilities of firms in countries with higher tax rates leading to profit shifting. The arm's length principle should be applied in Member States, and by taxpayers, in a manner that guarantees greater tax certainty for taxpayers and minimises opportunities for profit shifting.*

## Amendment 2

### Proposal for a directive Recital 2 b (new)

*Text proposed by the Commission*

*Amendment*

*(2b) The long-term solution to effectively address tax avoidance and guarantee a minimum level of effective taxation for MNE groups should be a system of formulary apportionment for the benefit of all Member States.*

## Amendment 3

### Proposal for a directive Recital 3

*Text proposed by the Commission*

*Amendment*

(3) Where Member States apply or interpret the arm's length principle *differently*, they create situations that could harm the internal market. Inconsistency in applicable transfer pricing rules not only could lead to double taxation but also allow for profit shifting and tax avoidance. Such *inconsistency is* a serious *tax obstacle* for businesses operating across borders, *is* likely to cause economic distortions and inefficiencies and *has* a negative impact on cross-border investment *and growth*.

(3) Where Member States apply or interpret the arm's length principle in a *significantly different way*, they create situations that could harm the internal market *and lead to unnecessary costs for businesses in the case of disputes, as well as instigate harmful tax competition, attract aggressive tax avoidance structures, form illegal state aid and reduce revenues from Member States*. Inconsistency in applicable transfer pricing rules not only could lead to double taxation but also allow for profit shifting tax avoidance *and double non-taxation*. Such

***significant inconsistencies can present a serious threat to tax revenues, tax morale and the limited capacities of tax administrations. In addition, such inconsistencies lead to obstacles for businesses, especially SMEs, operating across borders and are likely to cause economic distortions and inefficiencies and have a negative impact on cross-border investment. Furthermore, the Commission should ensure that this Directive does not create any inconsistency with the latest OECD guidelines, including the Amount A and Amount B of Pillar One that aim to simplify existing transfer pricing rules.***

#### **Amendment 4**

##### **Proposal for a directive Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***(3a) Tax administrations, however, should consider that associated enterprises may be genuine in accurately determining a market price in the absence of market forces or when adopting a particular commercial strategy.***

#### **Amendment 5**

##### **Proposal for a directive Recital 3 b (new)**

*Text proposed by the Commission*

*Amendment*

***(3b) At the beginning of the BEPS project in 2013, OECD estimated, while acknowledging the methodological and data limitations, that the scale of global corporate income tax revenue losses due to BEPS practices, including transfer pricing manipulation, could be between USD 100 to 240 billion annually<sup>1a</sup>.***

## Amendment 6

### Proposal for a directive

#### Recital 4

##### *Text proposed by the Commission*

(4) This Directive lays down rules to ensure a common application of the arm's length principle across the Union with the aim of increasing tax certainty **and** reducing occurrences of double taxation as well as double **non** taxation.

##### *Amendment*

(4) This Directive lays down rules to ensure a common application of the arm's length principle across the Union with the aim of increasing tax certainty, reducing occurrences of double **non**-taxation as well as double taxation, **reducing tax compliance costs and litigation especially for taxpayers that operate cross-border within the Union, and avoiding tax abuse.**

## Amendment 7

### Proposal for a directive

#### Recital 6

##### *Text proposed by the Commission*

(6) To ensure the mitigation of double taxation, Member States should have adequate mechanisms in place to enable them, when a primary adjustment is made in another Member State or third country jurisdiction, to make a corresponding adjustment. In particular, Member States should have the possibility to perform corresponding adjustments and should not limit the granting of such an adjustment in the context of mutual agreement procedures (MAPs) but also as a result of: (i) a "fast-track" procedure to be concluded in 180 days without the need to open a MAP when there is no doubt that the primary adjustment is well founded; or (ii) joint audits or other forms of international cooperation such as multilateral risk assessment programs like the European

##### *Amendment*

(6) To ensure the mitigation of double taxation, Member States should have adequate mechanisms in place to enable them, when a primary adjustment is made in another Member State or third country jurisdiction, to make a corresponding adjustment. In particular, Member States should have the possibility to perform corresponding adjustments and should not limit the granting of such an adjustment in the context of mutual agreement procedures (MAPs) but also as a result of: (i) a "fast-track" procedure to be concluded in 180 days without the need to open a MAP when there is no doubt that the primary adjustment is well founded; or (ii) joint audits or other forms of international cooperation such as multilateral risk assessment programs like the European

Trust and Cooperation Approach (ETACA)  
and the International Compliance  
Assurance Programme (ICAP).

Trust and Cooperation Approach (ETACA)  
and the International Compliance  
Assurance Programme (ICAP). *To that  
end, Member States should use all  
procedures and arrangements provided by  
the Directive on administrative  
cooperation (DAC), especially the third  
and sixth revision that cover the exchange  
of information related to Advance Pricing  
Arrangements and the exchange of  
information on reportable cross-border  
arrangements which have been reported  
by intermediaries or by the relevant  
taxpayer.*

## Amendment 8

### Proposal for a directive Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

*(6a) Owing to the potential increase in  
litigation, this Directive requires the  
introduction of fast-track mechanisms  
which can respond to all demands. The  
arbitration system needs to be quick so  
that agreements can be reached, thereby  
avoiding problems and disputes that may  
arise.*

## Amendment 9

### Proposal for a directive Recital 6 b (new)

*Text proposed by the Commission*

*Amendment*

*(6b) The presence of accessible dispute  
resolution mechanisms is of vital  
importance for cross-border trade, thus  
ensuring tax certainty and eliminating  
double taxation for taxpayers.  
Strengthening the use of Mutual  
Agreement Procedures (MAPs) as  
outlined in the EU Arbitration  
Convention can speed up the resolution of*



*cases within shorter timeframes. To that end, Member States are invited to allocate adequate resources so that deadlines are met and MAPs can become an effective tool to eliminate double taxation.*

## Amendment 10

### Proposal for a directive

#### Recital 7

##### *Text proposed by the Commission*

(7) There may be legitimate reasons as to why a corresponding adjustment is not given or is less than the primary adjustment. In particular, Member States should not grant corresponding adjustments if: (i) the primary adjustment is not considered to be consistent with the arm's length principle; (ii) the primary adjustment does not result in the taxation of an amount of profits in another jurisdiction on which the associated enterprise in the relevant Member State has already been subject to tax; and (iii) when a third country jurisdiction is involved, there is no tax treaty in place. In the absence of a primary adjustment, Member States may perform a downward adjustment only if: (i) the downward adjustment is consistent with the arm's length principle; (ii) an amount equal to the downward adjustment is included in the profit of the associated enterprise in the other jurisdiction and therein subject to tax; and (iii) a communication on the intention to perform a downward adjustment has been sent to the relevant jurisdiction. The aim of the previous provisions is to ensure that: (i) Member States can preserve the right to assess whether the primary adjustment is at arm's length; and (ii) there is neither double taxation nor double non-taxation. Member States should not create situations of double non-taxation.

##### *Amendment*

(7) There may be legitimate reasons as to why a corresponding adjustment is not given or is less than the primary adjustment. In particular, Member States should not grant corresponding adjustments if: (i) the primary adjustment is not considered to be consistent with the arm's length principle; (ii) the primary adjustment does not result in the taxation of an amount of profits in another jurisdiction on which the associated enterprise in the relevant Member State has already been subject to tax; and (iii) when a third country jurisdiction is involved, there is no tax treaty in place. In the absence of a primary adjustment, Member States may perform a downward adjustment only if: (i) the downward adjustment is consistent with the arm's length principle **and not leading to double non-taxation**; (ii) an amount equal to the downward adjustment is included in the profit of the associated enterprise in the other jurisdiction and therein subject to tax; and (iii) a communication on the intention to perform a downward adjustment has been sent to the relevant jurisdiction. The aim of the previous provisions is to ensure that: (i) Member States can preserve the right to assess whether the primary adjustment is at arm's length; and (ii) there is neither double taxation nor double non-taxation. Member States should not create situations of double non-taxation.

## Amendment 11

### Proposal for a directive Recital 13

#### *Text proposed by the Commission*

(13) In order to minimise disputes and ensure a common approach across the Union, this Directive further provides that a taxpayer should not be subject to adjustment when its results fall within the interquartile range unless the tax administration or the taxpayer proves that a specific different positioning in the range is justified by the facts and circumstances of the specific case. When the results of a controlled transaction fall outside the arm's length range, tax administrations should be required to make an adjustment to the median of all the results unless the taxpayer or the tax administration proves that any other point of the range determines a more reliable arm's length price in a given case.

#### *Amendment*

(13) In order to minimise disputes, ***reduce related costs to businesses***, and ensure a common approach across the Union, this Directive further provides that a taxpayer should not be subject to adjustment when its results fall within the interquartile range unless the tax administration or the taxpayer proves that a specific different positioning in the range is justified by the facts and circumstances of the specific case. When the results of a controlled transaction fall outside the arm's length range, tax administrations should be required to make an adjustment to the median of all the results unless the taxpayer or the tax administration proves that any other point of the range determines a more reliable arm's length price in a given case.

## Amendment 12

### Proposal for a directive Recital 14

#### *Text proposed by the Commission*

(14) In order to lower the compliance burden for taxpayers that operate cross-border within the Union a common approach towards the documentation on transfer pricing should further be introduced. One standard template, rules on content and linguistic arrangements, timeframes and which taxpayers should be in scope would bring simplicity and potential cost savings taking into account chapter V 'Documentation' of the OECD Transfer Pricing Guidelines and the Code

#### *Amendment*

(14) In order to lower the compliance burden for taxpayers that operate cross-border within the Union, ***as well as to address the risk of tax avoidance***, a common approach towards the documentation on transfer pricing should further be introduced. One standard template, rules on content and linguistic arrangements, timeframes and which taxpayers should be in scope would bring simplicity and potential cost savings taking into account chapter V 'Documentation' of

of conduct on transfer pricing documentation for associated enterprises in the European Union<sup>33</sup>.

the OECD Transfer Pricing Guidelines and the Code of conduct on transfer pricing documentation for associated enterprises in the European Union<sup>33</sup>. ***Harmonised interpretation of those terms at Union level is also necessary to facilitate application of this Directive by tax administrations and businesses. Therefore, Member States should empower their tax administrations to deal efficiently with the common documentation efforts on transfer pricing.***

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<sup>33</sup> Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, of 27 June 2006 on a code of conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD), 2006/C 176/01, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C\\_.2006.176.01.0001.01.ENG&toc=OJ%3AC%3A2006%3A176%3AFULL](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2006.176.01.0001.01.ENG&toc=OJ%3AC%3A2006%3A176%3AFULL)

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<sup>33</sup> Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, of 27 June 2006 on a code of conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD), 2006/C 176/01, [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C\\_.2006.176.01.0001.01.ENG&toc=OJ%3AC%3A2006%3A176%3AFULL](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2006.176.01.0001.01.ENG&toc=OJ%3AC%3A2006%3A176%3AFULL)

## Amendment 13

### Proposal for a directive

#### Recital 16

##### *Text proposed by the Commission*

(16) In order to create more certainty for taxpayers and mitigate the risk of double taxation, ***the possibility*** to establish further common transfer pricing binding rules ***by way of implementing acts is provided in this Directive***. Those ***implementing*** acts should provide taxpayers with a clear view of what tax authorities in the Union would consider to be acceptable to be used for specified transactions and provide so-called ‘safe harbours’ that bring down the compliance burden and the number of disputes. ***In view of the*** potential impact of such measures on national executive and enforcement power regarding direct

##### *Amendment*

(16) In order to create more certainty for taxpayers and mitigate the risk of ***double non-taxation and*** double taxation ***and having regard to*** the potential impact of relevant measures on national executive and enforcement power regarding direct taxation, the exercising of taxing rights allocated under bilateral or multilateral tax conventions that prevent double taxation or double non-taxation and in view of potential impact on Member States’ tax bases, ***the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the***

taxation, the exercising of taxing rights allocated under bilateral or multilateral tax conventions that prevent double taxation or double non-taxation and in view of potential impact on Member States' tax bases, ***implementing powers to adopt decisions under this Directive should be conferred on the Council, acting on a proposal from the Commission.***

***Commission in order*** to establish further common transfer pricing binding rules. Those ***delegated*** acts should provide taxpayers with a clear view of what tax authorities in the Union would consider to be acceptable to be used for specified transactions and provide so-called 'safe harbours' that bring down the compliance burden and the number of disputes.

#### **Amendment 14**

##### **Proposal for a directive Recital 16 a (new)**

*Text proposed by the Commission*

*Amendment*

***(16a) As transfer pricing is a matter that evolves over time, it will be essential to continuously monitor the need for adjustments of this Directive with the objective of guaranteeing the uniformity of transfer pricing methodologies within the Union and on the global stage.***

#### **Amendment 15**

##### **Proposal for a directive Recital 16 b (new)**

*Text proposed by the Commission*

*Amendment*

***(16b) The EU Joint Transfer Pricing Forum has offered practical solutions to the challenges posed by transfer pricing practices in all Member States. The re-establishment of that forum with a broader mandate allows national experts from the Member States, together with representatives of the business community, academics and civil society, to support the Commission, which may result in legislation capable of achieving the stated objective of increasing security for business in the Union. A joint view of taxpayers and tax authorities provides a more comprehensive point of view when it***

*comes to finding practical solutions.*

## **Amendment 16**

### **Proposal for a directive**

#### **Recital 17**

*Text proposed by the Commission*

(17) In order to evaluate the effectiveness of the new rules set out in this Directive, the Commission should prepare an evaluation on the basis of the information provided by Member States and other available data.

*Amendment*

(17) In order to evaluate the effectiveness ***and the impact*** of the new rules set out in this Directive the Commission should prepare an evaluation on the basis of the information provided by Member States and other available data, ***accompanied by a legislative proposal, if appropriate.***

## **Amendment 17**

### **Proposal for a directive**

#### **Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

***(17a) The Commission should review the application of this Directive for MNE groups that fall under the scope of the proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT).***

## **Amendment 18**

### **Proposal for a directive**

#### **Recital 18**

*Text proposed by the Commission*

(18) To allow businesses to directly enjoy the benefits of the internal market without incurring an unnecessary additional administrative burden, information on the tax provisions set out in this Directive should be made accessible through the Single Digital Gateway

*Amendment*

(18) To allow businesses to directly enjoy the benefits of the internal market without incurring an unnecessary additional administrative burden, information on the tax provisions set out in this Directive should be made accessible through the Single Digital Gateway

(‘SDG’) in accordance with Regulation (EU) 2018/1724<sup>34</sup>. The SDG provides a one-stop-shop for cross-border users for the online provision of information, procedures and assistance services relevant to the functioning of the internal market.

(‘SDG’) in accordance with Regulation (EU) 2018/1724<sup>34</sup>. The SDG provides a one-stop-shop for cross-border users for the online provision of information, procedures and assistance services relevant to the functioning of the internal market.

***That one-stop shop should be intuitive, easy to access and equipped with the necessary tools so that it does not create a new bureaucratic barrier for businesses. The positive experience of the one-stop shop for Value Added Tax (VAT) is a good example of how such a shop should be designed to work properly.***

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<sup>34</sup> Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

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<sup>34</sup> Regulation (EU) 2018/1724 of the European Parliament and of the Council of 2 October 2018 establishing a single digital gateway to provide access to information, to procedures and to assistance and problem-solving services and amending Regulation (EU) No 1024/2012 (OJ L 295, 21.11.2018, p. 1).

## Amendment 19

### Proposal for a directive Recital 21

#### *Text proposed by the Commission*

(21) In order to lower the administrative burden for taxpayers, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the transfer pricing documentation, by laying down common templates, setting linguistic requirements, defining the type of taxpayer to abide by these templates and the timeframes to be covered. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down

#### *Amendment*

(21) In order to lower the administrative burden for taxpayers ***and the risk of tax avoidance***, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the transfer pricing documentation, by laying down common templates, setting linguistic requirements, defining the type of taxpayer to abide by these templates and the timeframes to be covered. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance

in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

## **Amendment 20**

### **Proposal for a directive Article 1 – paragraph 1**

#### *Text proposed by the Commission*

This Directive lays down rules to harmonise transfer pricing rules of Member States and to ensure a common application of the arm's length principle within the Union.

#### *Amendment*

This Directive lays down rules to harmonise transfer pricing rules of Member States and to ensure a common application of the arm's length principle within the Union ***with the objective of simplifying compliance for companies whilst ensuring enforcement of tax rules within the Union.***

## **Amendment 21**

### **Proposal for a directive Article 3 – paragraph 1 – point 1**

#### *Text proposed by the Commission*

(1) 'arm's length principle' means the international standard that prescribes that associated enterprises must transact with each other as if they were independent third parties. In other words, the transactions between two associated enterprises should reflect the outcome that would have been achieved if the parties were not related i.e. if the parties were independent of each other and the outcome (price or margins) was determined by

#### *Amendment*

(1) 'arm's length principle' means the international standard ***pursuant to Article 9 of the OECD Model Tax Convention*** that prescribes that associated enterprises must transact with each other as if they were independent third parties. In other words, the transactions between two associated enterprises should reflect the outcome that would have been achieved if the parties were not related i.e. if the parties were independent of each other and the outcome



(open) market forces.

(price or margins) was determined by (open) market forces.

## Amendment 22

### Proposal for a directive

#### Article 3 – paragraph 1 – point 18

*Text proposed by the Commission*

(18) ‘OECD Transfer Pricing Guidelines’ means the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022, endorsed by the OECD Council pursuant to the OECD Council Recommendation of the Council on the Determination of Transfer Pricing between Associated Enterprises [C(95)126/Final], and as amended in January 20, 2022 and included in Annex I, and any further amendments to these OECD Transfer Pricing Guidelines that the **Union** approved in the context of the OECD Committee on Fiscal Affairs via the adoption of a Union position under **218(9)** TFEU;

*Amendment*

(18) ‘OECD Transfer Pricing Guidelines’ means the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022, endorsed by the OECD Council pursuant to the OECD Council Recommendation of the Council on the Determination of Transfer Pricing between Associated Enterprises [C(95)126/Final], and as amended in January 20, 2022 and included in Annex I, and any further amendments to these OECD Transfer Pricing Guidelines that the **Member States** approved in the context of the OECD Committee on Fiscal Affairs **or the Union approved** via the adoption of a Union position under **Article 218** TFEU;

## Amendment 23

### Proposal for a directive

#### Article 3 – paragraph 1a (new)

*Text proposed by the Commission*

*Amendment*

***The Commission shall be empowered to adopt delegated acts in accordance with Article 18 in order to incorporate any further amendments to OECD Transfer Pricing Guidelines, as defined in point (18) of this Article, that the Member States approved in the context of the OECD Committee on Fiscal Affairs or the Union approved via the adoption of a Union position under Article 218 TFEU.***

## Amendment 24



**Proposal for a directive**  
**Article 5 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) a person participates in the management of another person by being in a position to exercise a significant influence over *ethe* other person;

*Amendment*

(a) a person participates in the management of another person by being in a position to exercise a significant influence over *the* other person;

**Amendment 25**

**Proposal for a directive**  
**Article 6 – paragraph 3 – point a – point i**

*Text proposed by the Commission*

(i) indicate all factual and legal circumstances necessary to evaluate, under the arm's length principle, the primary adjustment performed in the other jurisdiction;

*Amendment*

(i) indicate all factual and legal circumstances necessary to evaluate, under the arm's length principle, the primary adjustment performed in the other jurisdiction, *including relevant transfer pricing documentation communicated to the Member States*;

**Amendment 26**

**Proposal for a directive**  
**Article 6 – paragraph 3 – point a – point ii a (new)**

*Text proposed by the Commission*

*Amendment*

*(ii) communicate, for each Member State concerned by the adjustment, the effective tax rate calculated within the meaning of Council Directive (EU) 2022/2523<sup>1a</sup>;*

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<sup>1a</sup> *Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union (OJ L 328, 22.12.2022, p. 1).*

## Amendment 27

### Proposal for a directive Article 6 – paragraph 3 – point b

*Text proposed by the Commission*

(b) Member States shall declare the request admissible within **30** days by virtue of a notification to the taxpayer if all the information provided in paragraph 3, point (a), has been submitted. In the same timeframe, Member States shall notify the taxpayer of the lack of any necessary information and grant at least **30** days to provide it. If the taxpayer does not provide the requested information within the assigned deadline, the request *may* be rejected as inadmissible.

*Amendment*

(b) Member States shall declare the request admissible within **40** days by virtue of a notification to the taxpayer if all the information provided in paragraph 3, point (a), has been submitted. In the same timeframe, Member States shall notify the taxpayer of the lack of any necessary information and grant at least **40** days to provide it. If the taxpayer does not provide the requested information within the assigned deadline, the request *shall* be rejected as inadmissible.

## Amendment 28

### Proposal for a directive Article 6 – paragraph 3 – point c

*Text proposed by the Commission*

(c) Member States shall ensure that when the double taxation arises from a primary adjustment made in another Member State, the procedure is concluded within **180** days from the receipt of the taxpayer's request with a reasoned act of acceptance or rejection.

*Amendment*

(c) Member States shall ensure that when the double taxation arises from a primary adjustment made in another Member State, the procedure is concluded within **200** days from the receipt of the taxpayer's request with a reasoned act of acceptance or rejection. *The procedure can be extended once by a period of 100 days if the tax payer and the Member States concerned all agree to such extension.*

## Amendment 29

### Proposal for a directive Article 6 – paragraph 3 – point d

*Text proposed by the Commission*

(d) In the case of acceptance, Member

*Amendment*

(d) In the case of acceptance, Member

States shall communicate to the tax authority of the other relevant jurisdiction the recognition of the corresponding adjustment.

States shall communicate *immediately* to the tax authority of the other relevant jurisdiction the recognition of the corresponding adjustment.

### Amendment 30

#### Proposal for a directive Article 6 – paragraph 3 a (new)

*Text proposed by the Commission*

*Amendment*

**3a.** *For the purpose of paragraphs 1, 2 and 3, Member States shall use all available procedures and arrangements provided by the Directive on Administrative Cooperation (DAC).*

### Amendment 31

#### Proposal for a directive Article 6 – paragraph 5 – point a a (new)

*Text proposed by the Commission*

*Amendment*

**(aa)** *the downward adjustment does not lead to double non-taxation meaning the downward adjustment is included in the taxable profits of the associated enterprise in the other jurisdiction;*

### Amendment 32

#### Proposal for a directive Article 11 – paragraph 3 – point a

*Text proposed by the Commission*

*Amendment*

(a) none of the differences (if any) between the transactions being compared or between the enterprises undertaking those transactions could materially affect the price in the open market;

(a) none of the differences (if any) between the transactions being compared or between the enterprises undertaking those transactions could materially affect the price *or margin* in the open market;

## Amendment 33

### Proposal for a directive Article 14 – paragraph 2

*Text proposed by the Commission*

2. The **Council may** lay down further rules, consistent with the **OECD** Transfer Pricing Guidelines, on how the arm's length principle and the other provisions laid down in Chapter II of this Directive are to be applied in specific transactions to ensure more tax certainty and mitigate the risk of double taxation. **Those specific transactions or dealings are the following:**

**(a) transfer of intangibles asset or rights in intangible assets between associated enterprises, including hard-to-value intangibles;**

**(b) the provision of services between associated enterprises, including the provision of marketing and distribution services;**

**(c) cost contribution arrangements between associated enterprises;**

**(d) transactions between associated enterprises in the context of business restructurings;**

**(e) financial transactions;**

**(f) dealings between the head office and its permanent establishments.**

*Amendment*

2. The **Commission shall be empowered to adopt delegated acts in accordance with Article 18 to** lay down further rules, consistent with the **latest internationally recommended** Transfer Pricing Guidelines, **from either the OECD or the United Nations**, on how the arm's length principle and the other provisions laid down in Chapter II of this Directive are to be applied in specific transactions to ensure more tax certainty and mitigate the risk of double **non-taxation and double taxation, and reduce tax disputes and tax abuse.**

## Amendment 34

### Proposal for a directive Article 14 – paragraph 2 a (new)

*Text proposed by the Commission*

*Amendment*

**2a. The Commission may adopt delegated acts in accordance with Article 18 to lay down further rules, such as the introduction of safe harbours, to simplify the application of the arm's length principle in the Union, to ensure more tax certainty and mitigate the risk of double non-taxation and double taxation, and to reduce tax disputes and tax abuse.**

## Amendment 35

### Proposal for a directive Article 14 – paragraph 2 b (new)

*Text proposed by the Commission*

*Amendment*

**2b. The Commission may adopt a delegated act in accordance with Article 18 laying down rules to integrate in this Directive the proposed simplified approach to transfer pricing compliance for distribution and manufacturing activities as referred to in Council Directive XX/XX/EU on Business in Europe: Framework for Income Taxation (BEFIT).**

## Amendment 36

### Proposal for a directive Article 14 – paragraph 3

*Text proposed by the Commission*

*Amendment*

**3. The rules referred to in paragraphs 2 shall be taken by means of Council implementing acts based on a proposal from the Commission.**

**deleted**

## **Amendment 37**

### **Proposal for a directive Article 14 a (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 14a**

#### ***Re-establishment of the EU Joint Transfer Pricing Forum***

- 1. The Commission shall establish and chair the European Forum on Transfer Pricing (EFTP). The EFTP shall provide advice and assistance to the committee within the meaning of Article 17, notably to assess the need for any adjustment to this Directive with the objective of guaranteeing the continuous uniformity of transfer pricing methodologies within the Union and on the global stage, most importantly taking into account developments at OECD or UN level.***
- 2. The EFTP shall be composed of representatives of Members States and a balanced representation of tax payers, academics and civil society. The European Parliament shall be a member of the EFTP as an observer. The conditions for membership shall be decided by the committee as referred to in Article 17.***

## **Amendment 38**

### **Proposal for a directive Article 14 b (new)**

*Text proposed by the Commission*

*Amendment*

#### **Article 14b**

#### ***Extension of the European Trust and Co-operation Approach (ETACA) initiative***

- 1. The scope of the European Trust***

*and Cooperation Approach (ETACA) shall include transfer pricing reviews of specific intra-Union flows by participating Member States and not only low value-added transactions, as is currently the case.*

*2. Member States are invited to establish a link between the ETACA and APAs to ensure the ETACA acts as a fast-track for finding stable solutions when problems arise during the review process.*

## Amendment 39

### Proposal for a directive Article 15 – paragraph 1

*Text proposed by the Commission*

1. The Commission shall examine and evaluate the application of this Directive **every 5** years and submit a report on its evaluation to the European Parliament and to the Council. The first report shall be submitted by 31 December **2031**.

*Amendment*

1. **Every three years**, the Commission shall examine and evaluate the application, **the impact as well as the interplay** of this Directive **with the latest OECD or UN guidelines** and submit a report on its evaluation to the European Parliament and to the Council, **to be accompanied, if appropriate, by a legislative proposal**. The first report shall be submitted by 31 December **2029**. **The Commission may deviate from those timelines when new guidelines on Transfer Pricing are agreed at OECD or UN level.**

## Amendment 40

### Proposal for a directive Article 15 – paragraph 2

*Text proposed by the Commission*

2. Member States shall communicate to the Commission relevant information for the evaluation of this Directive with a view to improving the application of the arm's length principle, to reducing double

*Amendment*

2. Member States shall communicate to the Commission relevant information for the evaluation of this Directive with a view to improving the application of the arm's length principle, to reducing double **non-**

taxation as well as to combatting tax abuse, in accordance with paragraph 3.

taxation **and double taxation** as well as to combatting tax abuse **and tax disputes**, in accordance with paragraph 3.

#### **Amendment 41**

##### **Proposal for a directive Article 15 – paragraph 5**

###### *Text proposed by the Commission*

5. Information communicated to the Commission by a Member State under paragraph 2, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. The information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

###### *Amendment*

5. Information communicated to the Commission by a Member State under paragraph 2, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States **and the European Parliament**. The information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

#### **Amendment 42**

##### **Proposal for a directive Article 16 – paragraph 2**

###### *Text proposed by the Commission*

2. Information, including personal data, processed in accordance with this Directive shall be retained only for as long as necessary to achieve the purposes of this Directive, in accordance with each data controller's national law on statute of limitations, but in any case no longer than 10 years.

###### *Amendment*

2. Information, including personal data, processed in accordance with this Directive shall be retained only for as long as necessary to achieve the purposes of this Directive, in accordance with each data controller's national law on statute of limitations, but in any case no longer than 10 years **as of the moment when personal data are processed for the purposes of this Directive**.

#### **Amendment 43**

##### **Proposal for a directive Article 18 – paragraph 1**



*Text proposed by the Commission*

1. The power to adopt the delegated act referred to in Article 13 shall be conferred on the Commission subject to the conditions laid down in this Article.

*Amendment*

1. The power to adopt the delegated acts referred to in **Article 3, second subparagraph, Article 13 and Article 14(2), (2a) and (2b)** shall be conferred on the Commission subject to the conditions laid down in this Article.

**Amendment 44**

**Proposal for a directive  
Article 18 – paragraph 2**

*Text proposed by the Commission*

2. The delegation of power referred to in Article 13 may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of the delegated act if already in force.

*Amendment*

2. The delegation of power referred to in **Article 3, second subparagraph, Article 13 and Article 14(2), (2a) and (2b)** may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of the delegated act if already in force.

**Amendment 45**

**Proposal for a directive  
Article 18 – paragraph 3**

*Text proposed by the Commission*

3. Before adopting the delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement on better law making of 13 April 2016.

*Amendment*

3. Before adopting the delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement on better law making of 13 April 2016. **The European Forum on Transfer Pricing referred to in Article 14a shall serve as the relevant expert body.**

## **Amendment 46**

### **Proposal for a directive Article 19 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***The European Parliament may attend as an observer the international negotiations on Transfer Pricing Guidelines in the relevant international fora.***

## **Amendment 47**

### **Proposal for a directive Article 19 a (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 19a***

##### ***Review***

***The Commission shall review the application of this Directive for MNE groups that fall under the scope of the proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), once that Directive enters into force.***

## **Amendment 48**

### **Proposal for a directive Article 19b (new)**

*Text proposed by the Commission*

*Amendment*

#### ***Article 19b***

##### ***Amendment to Directive 2011/16/EU***

***In Directive 2011/16/EU, point (i) of Article 8a(6) is replaced by the following:***

***‘(i) the identification of the method used for determination of the transfer pricing or other valuation methods and techniques to estimate the arm’s length price as defined in Article 9 of Directive [2024/XX/XX on transfer pricing], and***

*the reasoning behind applying such method, or the transfer price itself in the case of an advance pricing arrangement;'*

#### **Amendment 49**

##### **Proposal for a directive**

##### **Article 20 – paragraph 1 – subparagraph 1**

###### *Text proposed by the Commission*

Member States shall adopt and publish, by [31 December **2025**] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

###### *Amendment*

Member States shall adopt and publish, by [31 December **2024**] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

#### **Amendment 50**

##### **Proposal for a directive**

##### **Article 20 – paragraph 1 – subparagraph 2**

###### *Text proposed by the Commission*

They shall apply those provisions from [1 January **2026**].

###### *Amendment*

They shall apply those provisions from [1 January **2025**].

## EXPLANATORY STATEMENT

The rapporteur recognises the problems put forward by the European Commission and fully subscribes to the objectives of the directive. The rapporteur does regret that the European Commission has not properly consulted stakeholders on this specific proposal.

Taking into account the above, the rapporteur has opted in its report to simplify the directive and align as closely as possible to the latest OECD Transfer Pricing Guidelines, both to provide certainty to tax payers and Member States. The rapporteur believes the European Commission made in certain areas choices which have been insufficiently justified. However, the rapporteur supports a stronger future role for the European Commission in seeking a more harmonised approach in the EU on applying the OECD Transfer Pricing Guidelines, in the same vein the rapporteur supports the coordination amongst Member States ahead of OECD negotiations on the future guidelines and towards third countries.

The proposed simplification has led to the rapporteur's suggestion to shorten the entry into force of the directive, as most Member States already introduced the arm's length principle in domestic legislation.

The rapporteur also wishes to emphasise the risks with the current transfer pricing status quo in the EU of double non-taxation, illegal state aid, aggressive tax planning and significant losses of tax revenues. The rapporteur feels these issues have been too little recognized in the proposed directive.

The objectives enshrined in articles 6 and 7, reducing tax disputes and avoiding double non taxation through unilateral downward adjustments, are supported by the rapporteur.

The rapporteur defends a stronger role for the European Parliament. The European Parliament could act as an observer in the future Transfer Pricing negotiations at EU and OECD level.

Finally, and most importantly, the rapporteur recognizes the significant limitations of the arm's length principle and the OECD Transfer Pricing Guidelines. The rapporteur supports the idea of phasing out the application of the arm's length principle and instead introduce group-wide consolidation and formulary apportionment as a means of fairly allocating profits in-between countries and recognizing the operational reality of a multinational company. The rapporteur welcomes the important developments in this direction through the OECD Pillar 1 proposal, also known as the Multilateral Convention, and the European Commission's proposed BEFIT directive. Although the rapporteur recognizes that in the meantime there is a need for a proper and consistent application of the arm's length principle in the EU.

To this end, the rapporteur has included a sunset clause in this directive. The directive should first cease to apply for those companies in scope of the BEFIT directive, known as the BEFIT groups, as of 2035. Going further, the directive should cease to exist for all multinational groups operating in the EU as of 2040, except for their transactions with third countries.

To conclude the rapporteur proposes to align the directive with the opinion provided by the European Data Protection Board.

**ANNEX: ENTITIES OR PERSONS  
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

Pursuant to Article 8 of Annex I to the Rules of Procedure, the rapporteur declares that she has received input from the following entities or persons in the preparation of the report, until the adoption thereof in committee:

<b>Entity and/or person</b>
PWC
Finans Danmark, Bruxelles
BEPS monitoring Group
Tax Justice Network
Permanent Representatives from France, Netherlands, Belgium and Denmark
Accountancy Europe
Representatives of DG Taxud
Prof. Joachim Englisch from University of Law Munster Germany

The list above is drawn up under the exclusive responsibility of the rapporteur.

## PROCEDURE – COMMITTEE RESPONSIBLE

<b>Title</b>	Transfer pricing
<b>References</b>	COM(2023)0529 – C9-0339/2023 – 2023/0322(CNS)
<b>Date Parliament was consulted</b>	14.11.2023
<b>Committee responsible</b> Date announced in plenary	ECON 11.12.2023
<b>Rapporteurs</b> Date appointed	Kira Marie Peter-Hansen 19.9.2023
<b>Discussed in committee</b>	4.12.2023                      14.2.2024
<b>Date adopted</b>	22.2.2024
<b>Result of final vote</b>	+:                      28 –:                      3 0:                      2
<b>Members present for the final vote</b>	Anna-Michelle Asimakopoulou, Gilles Boyer, Valentino Grant, Claude Gruffat, Eero Heinäluoma, Michiel Hoogeveen, Danuta Maria Hübner, Stasys Jakeliūnas, Othmar Karas, Georgios Kyrtos, Aurore Lalucq, Philippe Lamberts, Pedro Marques, Caroline Nagtegaal, Luděk Niedermayer, Lefteris Nikolaou-Alavanos, Piernicola Pedicini, Lídia Pereira, Sirpa Pietikäinen, Antonio Maria Rinaldi, Alfred Sant, Aušra Seibutyté, Paul Tang, Irene Tinagli
<b>Substitutes present for the final vote</b>	Andželika Anna Mozdżanowska, René Repasi, Eleni Stavrou
<b>Substitutes under Rule 209(7) present for the final vote</b>	João Albuquerque, Jordi Cañas, Deirdre Clune, Bernard Guetta, Nacho Sánchez Amor, Michal Wiezik
<b>Date tabled</b>	1.3.2024

## FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

28	+
PPE	Anna-Michelle Asimakopoulou, Deirdre Clune, Danuta Maria Hübner, Othmar Karas, Luděk Niedermayer, Lídia Pereira, Sirpa Pietikäinen, Aušra Seibutytė, Eleni Stavrou
Renew	Gilles Boyer, Jordi Cañas, Bernard Guetta, Georgios Kyrtzos, Caroline Nagtegaal, Michal Wiezik
S&D	João Albuquerque, Eero Heinäluoma, Aurore Lalucq, Pedro Marques, René Repasi, Nacho Sánchez Amor, Alfred Sant, Paul Tang, Irene Tinagli
Verts/ALE	Claude Gruffat, Stasys Jakeliūnas, Philippe Lamberts, Piernicola Pedicini

3	-
ECR	Michiel Hoogeveen, Andżelika Anna Mozdżanowska
NI	Lefteris Nikolaou-Alavanos

2	0
ID	Valentino Grant, Antonio Maria Rinaldi

**Key to symbols:**

- + : in favour
- : against
- 0 : abstention