



**2021/0434(CNS)**

8.9.2022

# **AMENDMENTS**

## **31 - 200**

**Draft report**

**Lídia Pereira**

(PE731.794v01-00)

Laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU

Proposal for a directive

(COM(2021)0565 – C9-0041/2022 – 2021/0434(CNS))



## Amendment 31

Gilles Boyer, Olivier Chastel, Caroline Nagtegaal, Engin Eroglu, Stéphanie Yon-Courtin

### Proposal for a directive

#### Recital 1

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

(1) Ensuring fair and effective taxation in the internal market and tackling tax avoidance and evasion remain high political priorities in the Union. While recent years saw important progress in this area, especially with the adoption of Council Directive 2016/1164<sup>10</sup> concerning anti-tax avoidance and the expansion of scope of Council Directive 2011/16/EU<sup>11</sup> on administrative cooperation, further measures are necessary to tackle specifically identified practices of tax avoidance and evasion, which are not fully captured by the existing legal framework of the Union. In particular, multinational groups often create undertakings with no minimal substance, to lower their overall tax liability, including by shifting profits away from certain high-tax Member States in which they carry out economic activity and create value for their business. This proposal complements the progress achieved in corporate transparency through requirements concerning beneficial ownership information introduced by the anti-money laundering framework, which address situations where undertakings are created to conceal true ownership, whether of the undertakings themselves or of the assets they manage and own, such as real estate or property of high value.

##### *Amendment*

(1) Ensuring fair and effective taxation in the internal market and tackling tax avoidance and evasion remain high political priorities in the Union. While recent years saw important progress in this area, especially with the adoption of Council Directive 2016/1164<sup>10</sup> concerning anti-tax avoidance and the expansion of scope of Council Directive 2011/16/EU<sup>11</sup> on administrative cooperation ***in the field of taxation***, further measures are necessary to tackle specifically identified practices of tax avoidance and evasion ***including through the misuse of shell entities***, which are not fully captured by the existing legal framework of the Union. ***In this regard, the Pandora Papers' revelations reported on the creation of shell companies with the purpose of moving money between bank accounts, avoiding taxes and carrying out financial crimes, including money laundering, and circumventing EU sanctions for Russian oligarchs.*** In particular, multinational groups often create undertakings with no minimal substance, to lower their overall tax liability, including by shifting profits away from certain high-tax Member States in which they carry out economic activity and create value for their business. This proposal complements the progress achieved in corporate transparency through requirements concerning beneficial ownership information introduced by the anti-money laundering framework, which address situations where undertakings are created to conceal true ownership, whether of the undertakings themselves or of the assets they manage and own, such as real estate or property of high value.

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<sup>10</sup> Council Directive 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

<sup>11</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

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<sup>10</sup> Council Directive **(EU)** 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

<sup>11</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

Or. en

**Amendment 32**  
**Michiel Hoogeveen**

**Proposal for a directive**  
**Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) The lack of an international instrument on the misuse of shell entities for tax purposes creates a significant loophole in the global efforts to combat tax fraud and evasion and aggressive tax planning. The absence of such an instrument confirms the importance of the legal standards laid down in this Directive. It is essential to guarantee that the obligations provided for in this Directive are proportionate, effective and neutral from a taxation point of view, preserving the competitiveness of European undertakings.***

Or. en

**Amendment 33**  
**Isabel Benjumea Benjumea, Lúcia Pereira**

**Proposal for a directive**  
**Recital 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***(1a) The lack of an international instrument on the misuse of shell entities for tax purposes creates potential compliance, defence and overall tax costs for businesses that genuinely use entities with less substance to structure their investments according to geography, business divisions, or markets.***

Or. en

**Amendment 34**  
**Michiel Hoogeveen**

**Proposal for a directive**  
**Recital 1 b (new)**

*Text proposed by the Commission*

*Amendment*

***(1b) The misuse of shell entities for tax purposes leads to a reduction in tax liability and the tax loss within the Union, which is estimated at around EUR 20 billion per year. It is therefore essential that this Directive set ambitious and proportionate standards for the definition of common minimum substance requirements, for the improvement of exchange of information between national tax administrations and for the dissuasion of the use of shell entities promoted by certain intermediaries.***

Or. en

*Justification*

*Changed €23 billion to €20 billion as the latter seems to be the most cited figure. Source for €23 billion?*

**Amendment 35**  
**Michiel Hoogeveen**

**Proposal for a directive**  
**Recital 2**

*Text proposed by the Commission*

(2) It is acknowledged that undertakings with no minimal substance may be set up in a Member State with the main objective of obtaining a tax advantage, notably by eroding the tax base of another Member State. While some Member States have developed a legislative or administrative framework to protect their tax base from such schemes, the relevant rules often have a limited effect, as they only apply in the territory of a single Member State and do not effectively capture situations that involve more than one Member State. Furthermore, the national rules that apply in this field significantly differ across the Union while some Member States have no rules at all, to tackle the misuse of undertakings with no or minimal substance for tax purposes.

*Amendment*

(2) It is acknowledged that undertakings with no minimal substance may be set up in a Member State with the main objective of obtaining a tax advantage, notably by eroding the tax base of another Member State. While some Member States have developed a legislative or administrative framework to protect their tax base from such schemes, the relevant rules often have a limited effect, as they only apply in the territory of a single Member State and do not effectively capture situations that involve more than one Member State. Furthermore, the national rules that apply in this field significantly differ across the Union while some Member States have no rules at all, to tackle the misuse of undertakings with no or minimal substance for tax purposes. ***It is therefore important to create a Union-wide legal approach to ensure a framework for loyal and fair tax competition and safeguard the integrity of the internal market.***

Or. en

**Amendment 36**  
**Mick Wallace, José Gusmão, Manon Aubry**

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

*Text proposed by the Commission*

*Amendment*

***(2a) This Directive should be implemented consistently with other areas of the EU acquis. The same artificial constructions used for the purpose of obtaining a tax advantage can also be relied upon to minimise or evade social***

*security and cross-border labour law obligations. In particular, EU posting and social security rules require substance and evidence of habitual work in the Member State of alleged establishment for an undertaking to enjoy the benefits of free provision of services.*

Or. en

**Amendment 37**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Recital 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*(2a) This Directive should be implemented consistently with other areas of the EU acquis. The same artificial constructions used for the purpose of obtaining a tax advantage can also be relied upon to minimise or evade social security and cross-border labour law obligations. In particular, EU posting and social security rules require substance and evidence of habitual work in the Member State of alleged establishment for an undertaking to enjoy the benefits of free provision of services.*

Or. en

**Amendment 38**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Recital 3**

*Text proposed by the Commission*

*Amendment*

(3) It is necessary to lay down a

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common framework, in order to strengthen Member States' resilience against practices of tax avoidance and evasion linked to the use of undertakings which do not perform an economic activity even if presumably they are engaged with economic activity and therefore do not have any or have only minimal substance for tax purposes. This is done in order to ensure that undertakings lacking minimal substance are not used as instruments of tax evasion or tax avoidance. As those undertakings may be established in one Member State but may be used with the effect of eroding the tax base of another Member State, it is critical to agree on a common set of rules for determining what should be considered as insufficient substance for tax purposes in the internal market as well as for delineating specific tax consequences linked to such insufficient substance. Where an undertaking has been found to have sufficient substance under this Directive, this should not prevent the Member States from continuing to operate anti-tax avoidance and evasion rules, provided that these are consistent with Union law.

common framework, in order to strengthen Member States' resilience against practices of tax avoidance and evasion linked to the use of undertakings which do not perform an economic activity even if presumably they are engaged with economic activity and therefore do not have any or have only minimal substance for tax purposes. This is done in order to ensure that undertakings lacking minimal substance are not used as instruments of tax evasion or tax avoidance. As those undertakings may be established in one Member State but may be used with the effect of eroding the tax base of another Member State, it is critical to agree on a common set of rules for determining what should be considered as insufficient substance for tax purposes in the internal market as well as for delineating specific tax consequences linked to such insufficient substance. Where an undertaking has been found to have sufficient substance under this Directive, this should not prevent the Member States from continuing to operate ***more stringent minimum substance rules and other*** anti-tax avoidance and evasion rules, provided that these are consistent with Union law.

Or. en

**Amendment 39**  
**Michiel Hoogeveen**

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

*Text proposed by the Commission*

*Amendment*

***(3a) Taking into consideration the real risk of low capacity of Member States' tax administrations and the risk that the existing administrative cooperation may at this point be inadequate for the purpose of this Directive, it is of utmost importance that the capacities of tax***

*administrations be reinforced and that the exchange of information be improved across the Union. It is necessary that Member States share the relevant information to which they have access, implement systems supporting the exchange of that information and as a final step, enforce proposed sanctions against non-complying entities. In support of this Directive, the Commission should suggest specific activities within the Fiscalis programme.*

Or. en

#### **Amendment 40**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

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

##### **Recital 4**

*Text proposed by the Commission*

(4) To ensure a comprehensive approach, the rules should apply to all undertakings in the Union which are taxable in a Member State, regardless of their legal form and status, *as long as they have their residence for tax purposes in a Member State and are eligible to obtain a certificate of tax residence in that Member State.*

*Amendment*

(4) To ensure a comprehensive approach, the rules should apply to all undertakings in the Union which are taxable in a Member State, regardless of their legal form and status.

Or. en

#### **Amendment 41**

**Alfred Sant**

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

##### **Recital 4**

*Text proposed by the Commission*

(4) To ensure a comprehensive approach, the rules should apply to *all*

*Amendment*

(4) To ensure a comprehensive *and proportionate* approach, the rules should

undertakings in the Union which are taxable in a Member State, regardless of their legal form and status, as long as they have their residence for tax purposes in a Member State and are eligible to obtain a certificate of tax residence in that Member State.

apply to undertakings in the Union which are taxable in a Member State, regardless of their legal form and status, as long as they have their residence for tax purposes in a Member State and are eligible to obtain a certificate of tax residence in that Member State.

Or. en

#### **Amendment 42**

**Lídia Pereira, Isabel Benjumea Benjumea**

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

##### **Recital 4**

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

(4) To ensure a comprehensive approach, the rules should apply to all undertakings in the Union which are taxable in a Member State, regardless of their legal form and status, as long as they have their residence for tax purposes in a Member State and are eligible to obtain a certificate of tax residence in that Member State.

###### *Amendment*

(4) To ensure a comprehensive approach, the rules should apply to all undertakings in the Union which are taxable in a Member State, regardless of their legal form and status, as long as they have their residence for tax purposes in a Member State and are eligible to obtain a certificate of tax residence in that Member State. ***This broad scope is, therefore, mitigated by a set of standards regarding the economic activity of the undertakings comprehended in this Directive.***

Or. en

#### **Amendment 43**

**Gilles Boyer, Olivier Chastel, Caroline Nagtegaal, Engin Eroglu, Stéphanie Yon-Courtin**

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

##### **Recital 4 a (new)**

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

###### *Amendment*

***(4a) To ensure the effective implementation of the Directive, the rules must be proportional to avoid excessive administrative burden on companies with***

*legitimate activities, especially SMEs, while avoiding that shell-entities fall through the cracks; the quality and completeness of data are therefore essential in order to reap the greatest benefits from this Directive.*

Or. en

#### **Amendment 44**

**Gilles Boyer, Olivier Chastel, Caroline Nagtegaal, Engin Eroglu, Stéphanie Yon-Courtin**

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

#### **Recital 4 b (new)**

*Text proposed by the Commission*

*Amendment*

*(4b) Given the increased flow of reported-information this Directive will generate in addition to the data currently transmitted by companies, Member States should ensure that national tax administrations have the capabilities to process that information in the most efficient way.*

Or. en

#### **Amendment 45**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

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

#### **Recital 5**

*Text proposed by the Commission*

*Amendment*

(5) To ensure the proper functioning of the internal market, the proportionality and effectiveness of potential rules, it would be desirable to limit their scope to undertakings which are at risk of being found to lack minimal substance and used with the main objective of obtaining a tax advantage. It would therefore be important to establish a gateway criterion, in the form

(5) To ensure the proper functioning of the internal market, the proportionality and effectiveness of potential rules, it would be desirable to limit their scope to undertakings which are at risk of being found to lack minimal substance and used with the main objective of obtaining a tax advantage. It would therefore be important to establish a gateway criterion, in the form

of ***a set of three*** cumulative, indicative conditions, in order to conclude which undertakings are sufficiently at risk as aforementioned to justify that they be subjected to reporting requirements. A first condition should enable the identification of undertakings presumably engaged mainly in geographically mobile economic activities, as the place where such activities are actually carried out is usually more challenging to identify. Such activities normally give rise to important passive income flows. Hence, undertakings, which income consists predominantly of passive income flows would meet this condition. It should also be taken into account that entities holding assets for private use, such as real estate, yachts, jets, artworks, or equity alone, may have no income for longer periods of time, but still enable significant tax benefits by way of owning those assets. As purely domestic situations would not pose a risk for the good functioning of the internal market and would be best addressed at domestic level, a second condition should focus on undertakings engaged in cross-border activities. Engagement in cross-border activities should be established having regard, on the one hand, to the nature of the transactions of the undertaking, domestic or foreign, and on the other, to its property, given that entities that only hold assets for private, non-business, use may not engage in transactions for a considerable time. ***Additionally, a third condition should point out to those undertakings which have no or inadequate own resources to perform core management activities. In this regard, undertakings that do not have adequate own resources tend to engage third party providers of administration, management, correspondence and legal compliance services or enter into relevant agreements with associated enterprises for the supply of such services in order to set up and maintain a legal and tax presence. Outsourcing of certain ancillary services only, such as bookkeeping services alone,***

of ***two*** cumulative, indicative conditions, in order to conclude which undertakings are sufficiently at risk as aforementioned to justify that they be subjected to reporting requirements. A first condition should enable the identification of undertakings presumably engaged mainly in geographically mobile economic activities, as the place where such activities are actually carried out is usually more challenging to identify. Such activities normally give rise to important passive income flows. Hence, undertakings, which income consists predominantly of passive income flows would meet this condition. It should also be taken into account that entities holding assets for private use, such as real estate, yachts, jets, artworks, or equity alone, may have no income for longer periods of time, but still enable significant tax benefits by way of owning those assets. As purely domestic situations would not pose a risk for the good functioning of the internal market and would be best addressed at domestic level, a second condition should focus on undertakings engaged in cross-border activities. Engagement in cross-border activities should be established having regard, on the one hand, to the nature of the transactions of the undertaking, domestic or foreign, and on the other, to its property, given that entities that only hold assets for private, non-business, use may not engage in transactions for a considerable time.

*while core activities remain with the undertaking, would not suffice in itself for an undertaking to meet this condition. While such service providers might be regulated for other, non-tax purposes, their obligations for such other purposes cannot always mitigate the risk that they enable the set up and maintenance of undertakings misused for tax avoidance and evasion practices.*

Or. en

**Amendment 46**  
**Michiel Hoogeveen**

**Proposal for a directive**  
**Recital 5**

*Text proposed by the Commission*

(5) To ensure the proper functioning of the internal market, the proportionality and effectiveness of potential rules, it would be desirable to limit their scope to undertakings which are at risk of being found to lack minimal substance and used ***with the main objective of obtaining*** a tax advantage. It would therefore be important to establish a gateway criterion, in the form of a set of three cumulative, indicative conditions, in order to conclude which undertakings are sufficiently at risk as aforementioned to justify that they be subjected to reporting requirements. A first condition should enable the identification of undertakings presumably engaged mainly in geographically mobile economic activities, as the place where such activities are actually carried out is usually more challenging to identify. Such activities normally give rise to important passive income flows. Hence, undertakings, which income consists predominantly of passive income flows would meet this condition. It should also be taken into account that entities holding assets for private use, such

*Amendment*

(5) To ensure the proper functioning of the internal market, the proportionality and effectiveness of potential rules, it would be desirable to limit their scope to undertakings which are at risk of being found to lack minimal substance and used ***mainly to obtain*** a tax advantage. It would therefore be important to establish a gateway criterion, in the form of a set of three cumulative, indicative conditions, in order to conclude which undertakings are sufficiently at risk as aforementioned to justify that they be subjected to reporting requirements. ***Undertakings should do the gateway test themselves in the form of a self-assessment.*** A first condition should enable the identification of undertakings presumably engaged mainly in geographically mobile economic activities, as the place where such activities are actually carried out is usually more challenging to identify. Such activities normally give rise to important passive income flows. Hence, undertakings, which income consists predominantly of passive income flows would meet this condition. It

as real estate, yachts, jets, *artworks*, or equity alone, may have no income for longer periods of time, but still enable significant tax benefits by way of owning those assets. As purely domestic situations would not pose a risk for the good functioning of the internal market and would be *best* addressed at domestic level, a second condition should focus on undertakings engaged in cross-border activities. Engagement in cross-border activities should be established having regard, on the one hand, to the nature of the transactions of the undertaking, domestic or foreign, and on the other, to its property, given that entities that only hold assets for private, *non-business*, use may not engage in transactions for a considerable time. Additionally, a third condition should point out to those undertakings which have no or inadequate own resources to perform core management activities. In this regard, undertakings that do not have adequate own resources tend to engage third party providers of administration, management, correspondence and legal compliance services or enter into relevant agreements with associated enterprises for the supply of such services in order to set up and maintain a legal and tax presence. Outsourcing of certain ancillary services only, such as bookkeeping services *alone*, while core activities remain with the undertaking, would not suffice in itself for an undertaking to meet this condition. While such service providers might be regulated for other, non-tax purposes, their obligations for such other purposes cannot always mitigate the risk that they enable the set up and maintenance of undertakings misused for tax avoidance and evasion practices.

should also be taken into account that entities holding assets for private use, such as real estate, yachts, jets, *art*, or equity alone, may have no income for longer periods of time, but still enable significant tax benefits by way of owning those assets. As purely domestic situations would not pose a risk for the good functioning of the internal market and would be addressed at domestic level, a second condition should focus on undertakings engaged in cross-border activities. Engagement in cross-border activities should be established *as* having regard, on the one hand, to the nature of the transactions of the undertaking, domestic or foreign, and on the other, to its property, given that entities that only hold assets for private use may not engage in transactions for a considerable time. Additionally, a third condition should point out to those undertakings which have no or inadequate own resources to perform core management activities. In this regard, undertakings that do not have adequate own resources tend to engage third party providers of administration, management, correspondence and legal compliance services or enter into relevant agreements with associated enterprises for the supply of such services in order to set up and maintain a legal and tax presence. Outsourcing of certain ancillary services only, such as bookkeeping services, while core activities remain with the undertaking, would not suffice in itself for an undertaking to meet this condition. While such service providers might be regulated for other, non-tax purposes, their obligations for such other purposes cannot always mitigate the risk that they enable the set up and maintenance of undertakings misused for tax avoidance and evasion practices.

Or. en

## Amendment 47

Ernest Urtasun

on behalf of the Verts/ALE Group

### Proposal for a directive

#### Recital 5

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

(5) To ensure the proper functioning of the internal market, the proportionality and effectiveness of potential rules, it would be desirable to limit their scope to undertakings which are at risk of being found to lack minimal substance and used with the main objective of obtaining a tax advantage. It would therefore be important to establish a gateway criterion, in the form of a set of **three cumulative**, indicative conditions, in order to conclude which undertakings are sufficiently at risk as aforementioned to justify that they be subjected to reporting requirements. A first condition should enable the identification of undertakings presumably engaged mainly in geographically mobile economic activities, as the place where such activities are actually carried out is usually more challenging to identify. Such activities normally give rise to important passive income flows. Hence, undertakings, which income consists predominantly of passive income flows would meet this condition. It should also be taken into account that entities holding assets for private use, such as real estate, yachts, jets, artworks, or equity alone, may have no income for longer periods of time, but still enable significant tax benefits by way of owning those assets. As purely domestic situations would not pose a risk for the good functioning of the internal market and would be best addressed at domestic level, a second condition should focus on undertakings engaged in cross-border activities. Engagement in cross-border activities should be established having regard, on the one hand, to the nature of the transactions of the undertaking, domestic

##### *Amendment*

(5) To ensure the proper functioning of the internal market, the proportionality and effectiveness of potential rules, it would be desirable to limit their scope to undertakings which are at risk of being found to lack minimal substance and used with the main objective of obtaining a tax advantage. It would therefore be important to establish a gateway criterion, in the form of a set of **four**, indicative conditions, in order to conclude which undertakings are sufficiently at risk as aforementioned to justify that they be subjected to reporting requirements. A first condition should enable the identification of undertakings presumably engaged mainly in geographically mobile economic activities, as the place where such activities are actually carried out is usually more challenging to identify. Such activities normally give rise to important passive income flows. Hence, undertakings, which income consists predominantly of passive income flows would meet this condition. It should also be taken into account that entities holding assets for private use, such as real estate, yachts, jets, artworks, or equity alone, may have no income for longer periods of time, but still enable significant tax benefits by way of owning those assets. As purely domestic situations would not pose a risk for the good functioning of the internal market and would be best addressed at domestic level, a second condition should focus on undertakings engaged in cross-border activities. Engagement in cross-border activities should be established having regard, on the one hand, to the nature of the transactions of the undertaking, domestic

or foreign, and on the other, to its property, given that entities that only hold assets for private, non-business, use may not engage in transactions for a considerable time. Additionally, a third condition should point out to those undertakings which have no or inadequate own resources to perform core management activities. In this regard, undertakings that do not have adequate own resources tend to engage third party providers of administration, management, correspondence and legal compliance services or enter into relevant agreements with associated enterprises for the supply of such services in order to set up and maintain a legal and tax presence. Outsourcing of certain ancillary services only, such as bookkeeping services alone, while core activities remain with the undertaking, would not suffice in itself for an undertaking to meet this condition. While such service providers might be regulated for other, non-tax purposes, their obligations for such other purposes cannot always mitigate the risk that they enable the set up and maintenance of undertakings misused for tax avoidance and evasion practices.

or foreign, and on the other, to its property, given that entities that only hold assets for private, non-business, use may not engage in transactions for a considerable time. Additionally, a third condition should point out to those undertakings which have no or inadequate own resources to perform core management activities. In this regard, undertakings that do not have adequate own resources tend to engage third party providers of administration, management, correspondence and legal compliance services or enter into relevant agreements with associated enterprises for the supply of such services in order to set up and maintain a legal and tax presence. Outsourcing of certain ancillary services only, such as bookkeeping services alone, while core activities remain with the undertaking, would not suffice in itself for an undertaking to meet this condition. While such service providers might be regulated for other, non-tax purposes, their obligations for such other purposes cannot always mitigate the risk that they enable the set up and maintenance of undertakings misused for tax avoidance and evasion practices. ***Finally, a fourth condition should look at the profitability and productivity rates at the level of the undertaking. High rates could be indicative of a lack of substance.***

Or. en

#### **Amendment 48**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

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

##### **Recital 6**

*Text proposed by the Commission*

***(6) It would be fair to exclude from the envisaged rules undertakings whose activities are subject to an adequate level***

*Amendment*

***deleted***

*of transparency and therefore do not present a risk of lacking substance for tax purposes. Companies having a transferable security admitted to trading or listed on a regulated market or multilateral trading facility as well as certain financial undertakings which are heavily regulated in the Union, directly or indirectly, and subject to increased transparency requirements and supervision, should equally be excluded from the scope of this Directive. Pure holding undertakings which are situated in the same jurisdiction as the operational subsidiary and their beneficial owner(s) are not likely to serve the objective of obtaining a tax advantage either. Similar is the case of sub-holding undertakings which are situated in the same jurisdiction as their shareholder or ultimate parent entity. On this basis, they should also be excluded. Undertakings that engage an adequate number of persons, full-time and exclusively, in order to carry out their activities should equally not be considered to lack minimal substance. While they are not reasonably expected to pass the gateway criterion, they should be excluded explicitly for purposes of legal certainty.*

Or. en

#### **Amendment 49**

**Mick Wallace, José Gusmão, Manon Aubry**

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

#### **Recital 6**

*Text proposed by the Commission*

*Amendment*

*(6) It would be fair to exclude from the envisaged rules undertakings whose activities are subject to an adequate level of transparency and therefore do not present a risk of lacking substance for tax purposes. Companies having a*

*deleted*

*transferable security admitted to trading or listed on a regulated market or multilateral trading facility as well as certain financial undertakings which are heavily regulated in the Union, directly or indirectly, and subject to increased transparency requirements and supervision, should equally be excluded from the scope of this Directive. Pure holding undertakings which are situated in the same jurisdiction as the operational subsidiary and their beneficial owner(s) are not likely to serve the objective of obtaining a tax advantage either. Similar is the case of sub-holding undertakings which are situated in the same jurisdiction as their shareholder or ultimate parent entity. On this basis, they should also be excluded. Undertakings that engage an adequate number of persons, full-time and exclusively, in order to carry out their activities should equally not be considered to lack minimal substance. While they are not reasonably expected to pass the gateway criterion, they should be excluded explicitly for purposes of legal certainty.*

Or. en

## **Amendment 50**

**Lídia Pereira, Isabel Benjumea Benjumea**

### **Proposal for a directive**

#### **Recital 6**

*Text proposed by the Commission*

(6) It *would be fair* to exclude from the envisaged rules undertakings whose activities are subject to an adequate level of transparency and therefore do not present a risk of lacking substance for tax purposes. Companies having a transferable security admitted to trading or listed on a regulated market or multilateral trading facility as well as certain financial undertakings

*Amendment*

(6) It *is fair and proportionate* to exclude from the envisaged rules undertakings whose activities are subject to an adequate level of transparency and therefore do not present a risk of lacking substance for tax purposes. Companies having a transferable security admitted to trading or listed on a regulated market or multilateral trading facility as well as

which are heavily regulated in the Union, directly or indirectly, and subject to increased transparency requirements and supervision, should equally be excluded from the scope of this Directive. Pure holding undertakings which are situated in the same jurisdiction as the operational subsidiary and their beneficial owner(s) are not likely to serve the objective of obtaining a tax advantage either. Similar is the case of sub-holding undertakings which are situated in the same jurisdiction as their shareholder or ultimate parent entity. On this basis, they should also be excluded. Undertakings that engage an adequate number of persons, full-time and exclusively, in order to carry out their activities should equally not be considered to lack minimal substance. While they are not reasonably expected to pass the gateway criterion, they should be excluded explicitly for purposes of legal certainty.

certain financial undertakings which are heavily regulated in the Union, directly or indirectly, and subject to increased transparency requirements and supervision, should equally be excluded from the scope of this Directive. Pure holding undertakings which are situated in the same jurisdiction as the operational subsidiary and their beneficial owner(s) are not likely to serve the objective of obtaining a tax advantage either. Similar is the case of sub-holding undertakings which are situated in the same jurisdiction as their shareholder or ultimate parent entity. On this basis, they should also be excluded. Undertakings that engage an adequate number of persons, full-time and exclusively, in order to carry out their activities should equally not be considered to lack minimal substance. While they are not reasonably expected to pass the gateway criterion, they should be excluded explicitly for purposes of legal certainty.

Or. en

## **Amendment 51**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

### **Proposal for a directive**

#### **Recital 6**

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

(6) It would be fair to exclude from the envisaged rules undertakings whose activities are subject to an adequate level of transparency and therefore do not present a risk of lacking substance for tax purposes. Companies having a transferable security admitted to trading or listed on a regulated market or multilateral trading facility as well as certain financial undertakings which are heavily regulated in the Union, directly or indirectly, and subject to increased transparency requirements and supervision, should equally be excluded

##### *Amendment*

(6) It would be fair to exclude from the envisaged rules undertakings whose activities are subject to an adequate level of transparency **and tax supervision** and therefore do not present a risk of lacking substance for tax purposes. Companies having a transferable security admitted to trading or listed on a regulated market or multilateral trading facility as well as certain financial undertakings which are heavily regulated in the Union, directly or indirectly, and subject to increased transparency requirements and supervision,

from the scope of this Directive. Pure holding undertakings which are situated in the same jurisdiction as the operational subsidiary and their beneficial owner(s) are not likely to serve the objective of obtaining a tax advantage either. Similar is the case of sub-holding undertakings which are situated in the same jurisdiction as their shareholder or ultimate parent entity. On this basis, they should also be excluded. Undertakings that engage an adequate number of persons, full-time and exclusively, in order to carry out their activities should equally not be considered to lack minimal substance. While they are not reasonably expected to pass the gateway criterion, they should be excluded explicitly for purposes of legal certainty.

should equally be excluded from the scope of this Directive. Pure holding undertakings which are situated in the same jurisdiction as the operational subsidiary and their beneficial owner(s) are not likely to serve the objective of obtaining a tax advantage either. Similar is the case of sub-holding undertakings which are situated in the same jurisdiction as their shareholder or ultimate parent entity. On this basis, they should also be excluded. Undertakings that engage an adequate number of persons, full-time and exclusively, in order to carry out their activities should equally not be considered to lack minimal substance. While they are not reasonably expected to pass the gateway criterion, they should be excluded explicitly for purposes of legal certainty.

***Exclusion from the envisaged rules should however only apply to undertakings that do not benefit from the Parent Subsidiary Directive and the Royalties and Interest Directive.***

Or. en

## **Amendment 52**

**Lídia Pereira, Isabel Benjumea Benjumea**

### **Proposal for a directive**

#### **Recital 8**

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

(8) To facilitate implementation of this Directive, undertakings at risk of being found to lack substance and used with the main objective of obtaining a tax advantage should declare, in their annual tax return, that they possess a minimum level of resources ***such as*** people and premises in the Member State of tax residence and provide documentary evidence ***if that is the case***. While it is recognised that different activities may require a different level or type of

##### *Amendment*

(8) To facilitate implementation of this Directive, undertakings ***comprehended in the scope of this Directive and*** at risk of being found to lack substance and used with the main objective of obtaining a tax advantage should declare, in their annual tax return, that they possess a minimum level of resources, ***namely*** people and premises in the Member State of tax residence, and provide documentary evidence ***when necessary and adequate***. While it is recognised that different

resources, a common minimum level of resources would be expected under all circumstances. This assessment should solely aim at identifying the substance of undertakings for tax purposes and does not question the role that “trust or company service providers”, as defined in Directive (EU) 2015/849 of the European Parliament and of the Council<sup>12</sup>, have in the identification of money laundering, its predicate offences and terrorist financing. Conversely, the absence of a minimum level of resources may be considered to indicate a lack of substance where an undertaking is already at risk of being found to lack substance for tax purposes. To ensure compatibility with relevant international standards, a common minimum level should draw on the existing Union and international standards on substantial economic activity in the context of preferential tax regimes or in the absence of corporate taxation<sup>13</sup>, as developed in the context of the Forum on Harmful Tax Practices. It is necessary to provide for submission of documentary evidence with the tax return in support of the declaration of the undertaking that it disposes a minimum of resources. It is also necessary in order to allow the administration to form a view based on the facts and circumstances of the undertaking and decide whether to initiate an audit procedure.

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<sup>12</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015,

activities may require a different level or type of resources, a common minimum level of resources would be expected under all circumstances. This assessment should solely aim at identifying the substance of undertakings for tax purposes and does not question the role that “trust or company service providers”, as defined in Directive (EU) 2015/849 of the European Parliament and of the Council<sup>12</sup>, have in the identification of money laundering, its predicate offences and terrorist financing. Conversely, the absence of a minimum level of resources may be considered to indicate a lack of substance where an undertaking is already at risk of being found to lack substance for tax purposes. To ensure compatibility with relevant international standards, a common minimum level should draw on the existing Union and international standards on substantial economic activity in the context of preferential tax regimes or in the absence of corporate taxation<sup>13</sup>, as developed in the context of the Forum on Harmful Tax Practices. It is necessary to provide for submission of documentary evidence with the tax return in support of the declaration of the undertaking that it disposes a minimum of resources. It is also necessary in order to allow the administration to form a view based on the facts and circumstances of the undertaking and decide whether to initiate an audit procedure, ***when such diligence is legally necessary and proportionate.***

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<sup>12</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015,

p. 73).

<sup>13</sup> General Secretariat of the Council, 9637/18 FISC 241 ECOFIN 555, Code of Conduct (Business Taxation), Guidance on the interpretation of the third criterion; OECD/G20 Base Erosion and Profit Shifting Project, Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5: Final Report.

p. 73).

<sup>13</sup> General Secretariat of the Council, 9637/18 FISC 241 ECOFIN 555, Code of Conduct (Business Taxation), Guidance on the interpretation of the third criterion; OECD/G20 Base Erosion and Profit Shifting Project, Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5: Final Report.

Or. en

## Amendment 53

Alfred Sant

### Proposal for a directive

#### Recital 8

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

(8) To facilitate implementation of this Directive, undertakings at risk of being found to lack substance and used with the main objective of obtaining a tax advantage should declare, in their annual tax return, that they possess a minimum level of resources such as people and premises in the Member State of tax residence and provide documentary evidence if that is the case. While it is recognised that different activities may require a different level or type of resources, a common minimum level of resources would be expected under all circumstances. This assessment should solely aim at identifying the substance of undertakings for tax purposes and does not question the role that “trust or company service providers”, as defined in Directive (EU) 2015/849 of the European Parliament and of the Council<sup>12</sup>, have in the identification of money laundering, its predicate offences and terrorist financing. Conversely, the absence of a minimum level of resources may be considered to

##### *Amendment*

(8) To facilitate implementation of this Directive, undertakings at risk of being found to lack substance and used with the main objective of obtaining a tax advantage should declare, in their annual tax return, that they possess a minimum level of resources such as people and premises in the Member State of tax residence and provide documentary evidence if that is the case. ***The requirement relating to premises in a Member State has to take into account the growing prevalence of remote working, for which legitimate enterprises downscale their premises and move away from retaining exclusive premises.*** While it is recognised that different activities may require a different level or type of resources, a common minimum level of resources would be expected under all circumstances. This assessment should solely aim at identifying the substance of undertakings for tax purposes and does not question the role that “trust or company service providers”, as defined in Directive

indicate a lack of substance where an undertaking is already at risk of being found to lack substance for tax purposes. To ensure compatibility with relevant international standards, a common minimum level should draw on the existing Union and international standards on substantial economic activity in the context of preferential tax regimes or in the absence of corporate taxation<sup>13</sup>, as developed in the context of the Forum on Harmful Tax Practices. It is necessary to provide for submission of documentary evidence with the tax return in support of the declaration of the undertaking that it disposes a minimum of resources. It is also necessary in order to allow the administration to form a view based on the facts and circumstances of the undertaking and decide whether to initiate an audit procedure.

(EU) 2015/849 of the European Parliament and of the Council<sup>12</sup>, have in the identification of money laundering, its predicate offences and terrorist financing. Conversely, the absence of a minimum level of resources may be considered to indicate a lack of substance where an undertaking is already at risk of being found to lack substance for tax purposes. To ensure compatibility with relevant international standards, a common minimum level should draw on the existing Union and international standards on substantial economic activity in the context of preferential tax regimes or in the absence of corporate taxation<sup>13</sup>, as developed in the context of the Forum on Harmful Tax Practices. It is necessary to provide for submission of documentary evidence with the tax return in support of the declaration of the undertaking that it disposes a minimum of resources. It is also necessary in order to allow the administration to form a view based on the facts and circumstances of the undertaking and decide whether to initiate an audit procedure.

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<sup>12</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

<sup>13</sup> General Secretariat of the Council, 9637/18 FISC 241 ECOFIN 555, Code of Conduct (Business Taxation), Guidance on the interpretation of the third criterion; OECD/G20 Base Erosion and Profit Shifting Project, Countering Harmful Tax Practices More Effectively, Taking into

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<sup>12</sup> Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).

<sup>13</sup> General Secretariat of the Council, 9637/18 FISC 241 ECOFIN 555, Code of Conduct (Business Taxation), Guidance on the interpretation of the third criterion; OECD/G20 Base Erosion and Profit Shifting Project, Countering Harmful Tax Practices More Effectively, Taking into

#### **Amendment 54**

**Lídia Pereira, Isabel Benjumea Benjumea**

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

#### **Recital 9**

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

(9) To ensure tax certainty, it is imperative to lay down common rules on the content of undertakings' declarations. Undertakings that pass the gateway criterion and are consequently subject to reporting requirements should be presumed not to have sufficient substance for tax purposes if they also declare not to possess one or more of the elements that cumulatively constitute a minimum level of substance, or do not provide the required supporting evidence. Undertakings that declare to possess all the elements of the minimum level of substance and provide the required supporting documentation should instead be presumed to have minimal substance for tax purposes and should incur no further obligations and consequences under this Directive. This, however, should be without prejudice to any applicable law and the right of the administration to perform an audit, including on the basis of the supporting documentation, **and possibly, arrive at a different conclusion.**

##### *Amendment*

(9) To ensure tax certainty **and stability**, it is imperative to lay down common rules on the content of undertakings' declarations. Undertakings that pass the gateway criterion and are consequently subject to reporting requirements should be presumed not to have sufficient substance for tax purposes if they also declare not to possess one or more of the elements that cumulatively constitute a minimum level of substance, or do not provide the required supporting evidence. Undertakings that declare to possess all the elements of the minimum level of substance and provide the required supporting documentation should instead be presumed to have minimal substance for tax purposes and should incur no further obligations and consequences under this Directive. This, however, should be without prejudice to any applicable law and the right of the administration to perform an audit, including on the basis of the supporting documentation.

#### **Amendment 55**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Recital 9**

*Text proposed by the Commission*

(9) To ensure tax certainty, it is imperative to lay down common rules on the content of undertakings' declarations. Undertakings that pass the gateway criterion and are consequently subject to reporting requirements should be presumed not to have sufficient substance for tax purposes if they also declare not to possess one *or more* of the elements that cumulatively constitute a minimum level of substance, or do not provide the required supporting evidence. Undertakings that declare to possess all the elements of the minimum level of substance and provide the required supporting documentation should instead be presumed to have minimal substance for tax purposes and should incur no further obligations and consequences under this Directive. This, however, should be without prejudice to any applicable law and the right of the administration to perform an audit, including on the basis of the supporting documentation, and possibly, arrive at a different conclusion.

*Amendment*

(9) To ensure tax certainty, it is imperative to lay down common rules on the content of undertakings' declarations. Undertakings that pass the gateway criterion and are consequently subject to reporting requirements should be presumed not to have sufficient substance for tax purposes if they also declare not to possess one of the elements that cumulatively constitute a minimum level of substance, or do not provide the required supporting evidence. Undertakings that declare to possess all the elements of the minimum level of substance and provide the required supporting documentation should instead be presumed to have minimal substance for tax purposes and should incur no further obligations and consequences under this Directive. This, however, should be without prejudice to any applicable law and the right of the administration to perform an audit, including on the basis of the supporting documentation, and possibly, arrive at a different conclusion. ***To allow Member States to efficiently allocate tax administration's resources, Member States may consider for a period of three years that the undertaking is presumed to have minimum substance on the condition that the factual and legal circumstances of the undertaking remain unchanged during this period.***

Or. en

**Amendment 56**  
**Lídia Pereira, Isabel Benjumea Benjumea**

**Proposal for a directive**  
**Recital 10**

*Text proposed by the Commission*

(10) It is **recognised** that whether an undertaking is actually performing economic activities for tax purposes or serves mainly tax avoidance or evasion purposes is ultimately a matter of facts and circumstances. This should be assessed on a case by case basis in respect of each specific undertaking. Therefore, undertakings presumed not to have minimal substance for tax purposes should be entitled to prove the contrary, including to prove that they do not serve primarily tax objectives, and rebut such presumption. After fulfilling their reporting obligations under this Directive, they should provide **additional** information to the administration of the Member State where they reside for tax purposes. While they may provide any additional information that they deem appropriate, it is essential to set common requirements of what may constitute appropriate additional evidence and should thus be required in all cases. Where the Member State, based on such additional evidence, considers that an undertaking has rebutted a presumption of lack of substance in a satisfactory manner, it should be able to issue a decision to certify that the undertaking has minimal substance for tax purposes in accordance with this Directive. Such decision may remain valid for the period during which factual and legal circumstances of the undertaking remain unchanged and up to 6 years from the time the decision is issued. This will allow to limit the resources allocated to cases that have been evidenced not to be a shell for the purposes of the Directive.

*Amendment*

(10) It is **natural to consider** that whether an undertaking is actually performing economic activities **relevant** for tax purposes or serves mainly tax avoidance or evasion purposes, **but such evaluation** is ultimately a matter of facts and circumstances. This should be assessed on a case by case basis in respect of each specific undertaking. Therefore, undertakings presumed not to have minimal substance for tax purposes should be entitled to prove the contrary, including to prove that they do not serve primarily tax objectives, and rebut such presumption. After fulfilling their reporting obligations under this Directive, they should provide **the necessary** information to the administration of the Member State where they reside for tax purposes, **in accordance with the national legal tax framework**. While they may provide any additional information that they deem appropriate, it is essential to set common requirements of what may constitute appropriate additional evidence and should thus be required in all cases. Where the Member State, based on such additional evidence, considers that an undertaking has rebutted a presumption of lack of substance in a satisfactory manner, it should be able to issue a decision to certify that the undertaking has minimal substance for tax purposes in accordance with this Directive. Such decision may remain valid for the period during which factual and legal circumstances of the undertaking remain unchanged and up to 6 years from the time the decision is issued. This will allow to limit the resources allocated to cases that have been evidenced not to be a shell for the purposes of the Directive.

Or. en

## **Amendment 57**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

### **Proposal for a directive**

#### **Recital 10**

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

(10) It is recognised that whether an undertaking is actually performing economic activities for tax purposes or serves mainly tax avoidance or evasion purposes is ultimately a matter of facts and circumstances. This should be assessed on a case by case basis in respect of each specific undertaking. Therefore, undertakings presumed not to have minimal substance for tax purposes should be entitled to prove the contrary, including to prove that they do not serve primarily tax objectives, and rebut such presumption. After fulfilling their reporting obligations under this Directive, they should provide additional information to the administration of the Member State where they reside for tax purposes. While they may provide any additional information that they deem appropriate, it is essential to set common requirements of what may constitute appropriate additional evidence and should thus be required in all cases. Where the Member State, based on such additional evidence, considers that an undertaking has rebutted a presumption of lack of substance in a satisfactory manner, it should be able to issue a decision to certify that the undertaking has minimal substance for tax purposes in accordance with this Directive. Such decision may remain valid for the period during which factual and legal circumstances of the undertaking remain unchanged and up to 6 years from the time the decision is issued. This will allow to limit the resources allocated to cases that have been evidenced not to be a shell for the purposes of the Directive.

##### *Amendment*

(10) It is recognised that whether an undertaking is actually performing economic activities for tax purposes or serves mainly tax avoidance or evasion purposes is ultimately a matter of facts and circumstances. This should be assessed on a case by case basis in respect of each specific undertaking. Therefore, undertakings presumed not to have minimal substance for tax purposes should be entitled to prove the contrary, including to prove that they do not serve primarily tax objectives, and rebut such presumption. After fulfilling their reporting obligations under this Directive, they should provide additional information to the administration of the Member State where they reside for tax purposes. While they may provide any additional information that they deem appropriate, it is essential to set common requirements of what may constitute appropriate additional evidence and should thus be required in all cases. Where the Member State, based on such additional evidence, considers that an undertaking has rebutted a presumption of lack of substance in a satisfactory manner, it should be able to issue a decision to certify that the undertaking has minimal substance for tax purposes in accordance with this Directive. Such decision may remain valid for the period during which factual and legal circumstances of the undertaking remain unchanged and up to 3 years from the time the decision is issued. This will allow to limit the resources allocated to cases that have been evidenced not to be a shell for the purposes of the Directive.

**Amendment 58**  
**Lídia Pereira, Isabel Benjumea Benjumea**

**Proposal for a directive**  
**Recital 11**

*Text proposed by the Commission*

(11) As the objective of this Directive is to prevent tax avoidance and evasion ***that are likely to flourish*** through actions by undertakings without minimal substance, and in order to ensure tax certainty and enhance the proper functioning of the internal market, it is paramount to provide for a possibility of exemptions for undertakings which meet the gateway criterion but yet whose interposition has no actual advantageous impact on the overall tax position of the undertaking's group or of the beneficial owner(s). For that reason, such undertakings should be entitled to request the administration of the Member State, where they reside for tax purposes, to issue a decision which exempts them from complying with the proposed rules altogether and upfront. Such exemption should also be limited in time, to allow the administration to verify on a regular basis that the factual and legal circumstances justifying the exemption decision remain valid. At the same time a potential extended duration of such decision will allow to limit the resources allocated to cases that should be exempt from the scope of the Directive.

*Amendment*

(11) As the objective of this Directive is to prevent tax avoidance and evasion through actions by undertakings without minimal substance, and in order to ensure tax certainty and enhance the proper functioning of the internal market, it is paramount to provide for a possibility of exemptions for undertakings which meet the gateway criterion but yet whose interposition has no actual advantageous impact on the overall tax position of the undertaking's group or of the beneficial owner(s). For that reason, such undertakings should be entitled to request the administration of the Member State where they reside for tax purposes to issue a decision which exempts them from complying with the proposed rules altogether and upfront. Such exemption should also be limited in time, to allow the administration to verify on a regular basis that the factual and legal circumstances justifying the exemption decision remain valid. At the same time a potential extended duration of such decision will allow to limit the resources allocated to cases that should be exempt from the scope of the Directive.

**Amendment 59**  
**Markus Ferber**

**Proposal for a directive**  
**Recital 11**

*Text proposed by the Commission*

(11) As the objective of this Directive is to prevent tax avoidance and evasion that are likely to flourish through actions by undertakings without minimal substance, and in order to ensure tax certainty and enhance the proper functioning of the internal market, it is paramount to provide for a possibility of exemptions for undertakings which meet the gateway criterion but yet whose interposition has no actual advantageous impact on the overall tax position of the undertaking's group or of the beneficial owner(s). For that reason, such undertakings should be entitled to request the administration of the Member State, where they reside for tax purposes, to issue a decision which exempts them from complying with the proposed rules altogether and upfront. Such exemption should also be limited in time, to allow the administration to verify on a regular basis that the factual and legal circumstances justifying the exemption decision remain valid. At the same time a potential extended duration of such decision will allow to limit the resources allocated to cases that should be exempt from the scope of the Directive.

*Amendment*

(11) As the objective of this Directive is to prevent tax avoidance and evasion that are likely to flourish through actions by undertakings without minimal substance, and in order to ensure tax certainty and enhance the proper functioning of the internal market, it is paramount to provide for a possibility of exemptions for undertakings which meet the gateway criterion but yet whose interposition has no actual advantageous impact on the overall tax position of the undertaking's group or of the beneficial owner(s). For that reason, such undertakings should be entitled to request the administration of the Member State, where they reside for tax purposes, to issue a decision which exempts them from complying with the proposed rules altogether and upfront. Such exemption should also be limited in time, to allow the administration to verify on a regular basis that the factual and legal circumstances justifying the exemption decision remain valid. At the same time a potential extended duration of such decision will allow to limit the resources allocated to cases that should be exempt from the scope of the Directive. ***A Member State administration may decide to award the exemption without requiring the undertaking to perform the substance test provided that it is sufficiently confident that the award of said exemption is justified.***

Or. en

*Justification*

*Provides clarity that passing the substance test is not a necessary requirement to obtain an exemption.*

## **Amendment 60**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

### **Proposal for a directive**

#### **Recital 11**

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

(11) As the objective of this Directive is to prevent tax avoidance and evasion that are likely to flourish through actions by undertakings without minimal substance, and in order to ensure tax certainty and enhance the proper functioning of the internal market, it is paramount to provide for a possibility of exemptions for undertakings which meet the gateway criterion *but* yet whose interposition has no actual advantageous impact on the overall tax position of the undertaking's group or of the beneficial owner(s). For that reason, such undertakings should be entitled to request the administration of the Member State, where they reside for tax purposes, to issue a decision which exempts them from complying with the proposed rules altogether and upfront. Such exemption should also be limited in time, to allow the administration to verify on a regular basis that the factual and legal circumstances justifying the exemption decision remain valid. At the same time a potential extended duration of such decision will allow to limit the resources allocated to cases that should be exempt from the scope of the Directive.

##### *Amendment*

(11) As the objective of this Directive is to prevent tax avoidance and evasion that are likely to flourish through actions by undertakings without minimal substance, and in order to ensure tax certainty and enhance the proper functioning of the internal market, it is paramount to provide for a possibility of exemptions for undertakings which meet the gateway criterion, *but fail on only one of the minimum substance criteria*, yet whose interposition has no actual advantageous impact on the overall tax position of the undertaking's group or of the beneficial owner(s). For that reason, such undertakings should be entitled to request the administration of the Member State, where they reside for tax purposes, to issue a decision which exempts them from complying with the proposed rules altogether and upfront. Such exemption should also be limited in time, *3 years*, to allow the administration to verify on a regular basis that the factual and legal circumstances justifying the exemption decision remain valid. At the same time a potential extended duration of such decision will allow to limit the resources allocated to cases that should be exempt from the scope of the Directive.

Or. en

## **Amendment 61**

**Mick Wallace, José Gusmão, Manon Aubry**

### **Proposal for a directive**

#### **Recital 13**

*Text proposed by the Commission*

(13) To ensure effectiveness of the proposed framework, it is necessary to establish appropriate tax consequences for undertakings that do not have minimal substance for tax purposes. Undertakings that have crossed the gateway criterion and are presumed to be lacking substance for tax purposes while, additionally, have not provided evidence to the contrary or evidence that they do not serve the objective of obtaining a tax advantage, should ***not be allowed to benefit from the provisions of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, to which the Member State of their tax residence is a party and from any other agreements, including provisions in international agreements for the promotion and protection of investments, with equivalent purpose or effect. Such undertakings should not be allowed to benefit from Council Directive 2011/96/EU<sup>14</sup> and Council Directive 2003/49/EC<sup>15</sup>. To this effect, those undertakings should not be entitled to a certificate of tax residence to the extent that this serves to obtain those benefits.*** The Member State where the undertaking is ***resident for tax purposes should therefore deny to issue a certificate of tax residence. Alternatively, that Member State should be able to issue such certificate while indicating, by means of a warning, that it should not be used by the undertaking to obtain tax benefits as above. This denial of a certificate of tax residence, or alternatively the issue of a special certificate of tax residence, should not set aside the national rules of the Member State of the undertaking with regard to the tax residence and relevant obligations linked thereto. It would rather serve to communicate to other Member States, and third countries, that no relief or refund should be granted with regard***

*Amendment*

(13) To ensure effectiveness of the proposed framework, it is necessary to establish appropriate tax consequences for undertakings that do not have minimal substance for tax purposes. Undertakings that have crossed the gateway criterion and are presumed to be lacking substance for tax purposes while, additionally, have not provided evidence to the contrary or evidence that they do not serve the objective of obtaining a tax advantage, should ***be denied the*** certificate of tax residence ***from*** the Member State where the undertaking is residence.

***to transactions involving this undertaking based on any treaty with the Member State of the undertaking or Union directives, if applicable.***

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<sup>14</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

<sup>15</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

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<sup>14</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

<sup>15</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

Or. en

## **Amendment 62** **Michiel Hoogeveen**

### **Proposal for a directive** **Recital 13**

#### *Text proposed by the Commission*

(13) To ensure effectiveness of the proposed framework, it is necessary to establish appropriate tax consequences for undertakings that do not have minimal substance for tax purposes. Undertakings that have crossed the gateway criterion and are presumed to be lacking substance for tax purposes while, ***additionally, have not provided evidence to the contrary or evidence that they do not serve the objective of obtaining*** a tax advantage, should not be allowed to benefit from ***the provisions of agreements and conventions that provide for*** the elimination of double taxation of income, and where applicable, capital, ***to which the Member State of their tax residence is a party and*** from any

#### *Amendment*

(13) To ensure effectiveness of the proposed framework, it is necessary to establish appropriate tax consequences for undertakings that do not have minimal substance for tax purposes. Undertakings that have crossed the gateway criterion and are presumed to be lacking substance for tax purposes while ***also not having disproven*** that they ***are attempting to obtain*** a tax advantage should not be allowed to benefit from the elimination of double taxation of income and, where applicable, capital. ***These undertakings may neither benefit from provisions stipulated by relevant international agreements for the promotion and protection of investments, nor may they***

other agreements, including provisions in international agreements for the promotion and protection of investments, with equivalent purpose or effect. Such undertakings should not be allowed to benefit from Council Directive 2011/96/EU<sup>14</sup> and Council Directive 2003/49/EC<sup>15</sup>. To this effect, those undertakings should not be entitled to a certificate of tax residence to the extent that this serves to obtain those benefits. The Member State where the undertaking is resident for tax purposes should therefore *deny* to issue a certificate of tax residence. ***Alternatively, that Member State should be able to issue such certificate while indicating, by means of a warning, that it should not be used by the undertaking to obtain tax benefits as above.*** This denial of a certificate of tax residence, ***or alternatively the issue of a special certificate of tax residence,*** should not set aside the national rules of the Member State of the undertaking with regard to the tax residence and relevant obligations linked thereto. It would rather serve to communicate to other Member States, and third countries, that no relief or refund should be granted with regard to transactions involving this undertaking based on any treaty with the Member State of the undertaking or Union directives, if applicable.

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<sup>14</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

<sup>15</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

***benefit*** from any other agreements, including provisions in international agreements for the promotion and protection of investments, with equivalent purpose or effect. Such undertakings should not be allowed to benefit from Council Directive 2011/96/EU<sup>14</sup> and Council Directive 2003/49/EC<sup>15</sup>. To this effect, those undertakings should not be entitled to a certificate of tax residence to the extent that this serves to obtain those benefits. The Member State where the undertaking is resident for tax purposes should therefore *refuse* to issue a certificate of tax residence ***and*** issue a warning ***statement detailing the grounds on which the decision was based.*** This denial of a certificate of tax residence should not set aside the national rules of the Member State of the undertaking with regard to the tax residence and relevant obligations linked thereto. It would rather serve to communicate to other Member States, and third countries, that no relief or refund should be granted with regard to transactions involving this undertaking based on any treaty with the Member State of the undertaking or Union directives, if applicable.

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<sup>14</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

<sup>15</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

**Amendment 63****Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive****Recital 13***Text proposed by the Commission*

(13) To ensure effectiveness of the proposed framework, it is necessary to establish appropriate tax consequences for undertakings that do not have minimal substance for tax purposes. Undertakings that have crossed the gateway criterion and are presumed to be lacking substance for tax purposes while, additionally, have not provided evidence to the contrary or evidence that they do not serve the objective of obtaining a tax advantage, should not be allowed to benefit from the provisions of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, to which the Member State of their tax residence is a party and from any other agreements, including provisions in international agreements for the promotion and protection of investments, with equivalent purpose or effect. Such undertakings should not be allowed to benefit from Council Directive 2011/96/EU<sup>14</sup> and Council Directive 2003/49/EC<sup>15</sup>. To this effect, those undertakings should not be entitled to a certificate of tax residence to the extent that this serves to obtain those benefits. The Member State where the undertaking is resident for tax purposes should therefore deny to issue a certificate of tax residence. ***Alternatively, that Member State should be able to issue such certificate while indicating, by means of a warning, that it should not be used by the undertaking to obtain tax benefits as***

*Amendment*

(13) To ensure effectiveness of the proposed framework, it is necessary to establish appropriate tax consequences for undertakings that do not have minimal substance for tax purposes. Undertakings that have crossed the gateway criterion and are presumed to be lacking substance for tax purposes while, additionally, have not provided evidence to the contrary or evidence that they do not serve the objective of obtaining a tax advantage, should not be allowed to benefit from the provisions of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, to which the Member State of their tax residence is a party and from any other agreements, including provisions in international agreements for the promotion and protection of investments, with equivalent purpose or effect. Such undertakings should not be allowed to benefit from Council Directive 2011/96/EU<sup>14</sup> and Council Directive 2003/49/EC<sup>15</sup>. To this effect, those undertakings should not be entitled to a certificate of tax residence to the extent that this serves to obtain those benefits. The Member State where the undertaking is resident for tax purposes should therefore deny to issue a certificate of tax residence ***and issue a statement regarding the grounds on which the decision was based.*** This denial of a certificate of tax residence should not set aside the national rules of the Member State of the

*above*. This denial of a certificate of tax residence, *or alternatively the issue of a special certificate of tax residence*, should not set aside the national rules of the Member State of the undertaking with regard to the tax residence and relevant obligations linked thereto. It would rather serve to communicate to other Member States, and third countries, that no relief or refund should be granted with regard to transactions involving this undertaking based on any treaty with the Member State of the undertaking or Union directives, if applicable.

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<sup>14</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

<sup>15</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

undertaking with regard to the tax residence and relevant obligations linked thereto. It would rather serve to communicate to other Member States, and third countries, that no relief or refund should be granted with regard to transactions involving this undertaking based on any treaty with the Member State of the undertaking or Union directives, if applicable.

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<sup>14</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

<sup>15</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

Or. en

**Amendment 64**  
**Mick Wallace, José Gusmão, Manon Aubry**

**Proposal for a directive**  
**Recital 13**

*Text proposed by the Commission*

(13) To ensure effectiveness of the proposed framework, it is necessary to establish appropriate tax consequences for undertakings that do not have minimal substance for tax purposes. Undertakings that have crossed the gateway criterion and are presumed to be lacking substance for

*Amendment*

(13) To ensure effectiveness of the proposed framework, it is necessary to establish appropriate tax consequences for undertakings that do not have minimal substance for tax purposes. Undertakings that have crossed the gateway criterion and are presumed to be lacking substance for

tax purposes while, additionally, have not provided evidence to the contrary or evidence that they do not serve the objective of obtaining a tax advantage, should not be allowed to benefit from the provisions of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, to which the Member State of their tax residence is a party and from any other agreements, including provisions in international agreements for the promotion and protection of investments, with equivalent purpose or effect. Such undertakings should not be allowed to benefit from Council Directive 2011/96/EU<sup>14</sup> and Council Directive 2003/49/EC<sup>15</sup>. To this effect, those undertakings should not be entitled to a certificate of tax residence to the extent that this serves to obtain those benefits. The Member State where the undertaking is resident for tax purposes should therefore deny to issue a certificate of tax residence. Alternatively, that Member State should be able to issue such certificate while indicating, by means of a warning, that it should not be used by the undertaking to obtain tax benefits as above. This denial of a certificate of tax residence, or alternatively the issue of a special certificate of tax residence, should not set aside the national rules of the Member State of the undertaking with regard to the tax residence and relevant obligations linked thereto. It would rather serve to communicate to other Member States, and third countries, that no relief or refund should be granted with regard to transactions involving this undertaking based on any treaty with the Member State of the undertaking or Union directives, if applicable.

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<sup>14</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent

tax purposes while, additionally, have not provided evidence to the contrary or evidence that they do not serve the objective of obtaining a tax advantage, should not be allowed to benefit from the provisions of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, to which the Member State of their tax residence is a party and from any other agreements, including provisions in international agreements for the promotion and protection of investments, with equivalent purpose or effect. Such undertakings should not be allowed to benefit from Council Directive 2011/96/EU<sup>14</sup> and Council Directive 2003/49/EC<sup>15</sup>. To this effect, those undertakings should not be entitled to a certificate of tax residence to the extent that this serves to obtain those benefits. The Member State where the undertaking is resident for tax purposes should therefore deny to issue a certificate of tax residence. Alternatively, that Member State should be able to issue such certificate while indicating, by means of a warning, that it should not be used by the undertaking to obtain tax benefits as above ***or to participate in public tenders in the Member State***. This denial of a certificate of tax residence, or alternatively the issue of a special certificate of tax residence, should not set aside the national rules of the Member State of the undertaking with regard to the tax residence and relevant obligations linked thereto. It would rather serve to communicate to other Member States, and third countries, that no relief or refund should be granted with regard to transactions involving this undertaking based on any treaty with the Member State of the undertaking or Union directives, if applicable.

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<sup>14</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent

companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

<sup>15</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

<sup>15</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

Or. en

## **Amendment 65**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

### **Proposal for a directive**

#### **Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

***(13a) In order to ease the administrative burden for Member State competent authorities it is important to implement a system that is easy to operate and control. This system would provide three sequential checks for undertakings that qualify for a carve-out, meet the reporting requirements and lack minimum substance. Simultaneously, it is imperative that competent authorities have an automatic notification system in place in order to provide tax authorities with adequate information about shell companies. This provides competent authorities the possibility allocate their resources effectively in the fight for the protection of the tax base.***

Or. en

## **Amendment 66**

**Gilles Boyer, Olivier Chastel, Caroline Nagtegaal, Engin Eroglu, Stéphanie Yon-Courtin**

**Proposal for a directive**  
**Recital 13 a (new)**

*Text proposed by the Commission*

*Amendment*

**(13a)** *The European Commission and Member States should make sure that these tax consequences are articulated in a consistent manner in relation to existing bilateral tax conventions concluded between Member States and third countries.*

Or. en

**Amendment 67**  
**Mick Wallace, José Gusmão, Manon Aubry**

**Proposal for a directive**  
**Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

**(14a)** *With a view to ensure an effective implementation of the EU acquis and to help the fight against unfair terms and conditions of employment, the competent authorities performing labour inspections and social security assessment should have timely access to the information pointing at possible lack of substance.*

Or. en

**Amendment 68**  
**Ernest Urtasun**  
on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

**(14a)** *With a view to ensure an effective implementation of the EU acquis and to*

*help the fight against unfair terms and conditions of employment, the competent authorities performing labour inspections and social security assessment should have timely access to the information pointing at possible lack of substance.*

Or. en

**Amendment 69**  
**Markus Ferber**

**Proposal for a directive**  
**Recital 14 a (new)**

*Text proposed by the Commission*

*Amendment*

*(14a) In order not to overburden Member States' tax authorities, it is essential to limit the exchange of information to the set of information that is strictly necessary to detect tax fraud.*

Or. en

**Amendment 70**  
**Gilles Boyer, Olivier Chastel, Caroline Nagtegaal, Engin Eroglu, Stéphanie Yon-Courtin**

**Proposal for a directive**  
**Recital 15**

*Text proposed by the Commission*

*Amendment*

(15) Directive 2011/16/EU should therefore be amended accordingly.

*(15) Considering that the Directive 2011/16/EU on Administrative Cooperation (DAC) laid down the rules and procedures for cooperation between Member States on the exchange of information between tax administrations of the Member States, notably the automatic exchange of information on income and assets, this Directive should therefore be amended accordingly allowing Member States to automatically exchange the information received in the framework*

*of this Directive.*

Or. en

**Amendment 71**  
**Michiel Hoogeveen**

**Proposal for a directive**  
**Recital 16**

*Text proposed by the Commission*

(16) In order to improve effectiveness, Member States should lay down penalties against the violation of the national rules that transpose this Directive. Such penalties should be effective, proportionate and dissuasive. To ensure tax certainty and a minimum level of coordination across all Member States, it is necessary to fix a minimum monetary penalty, also taking into account the situation of each specific undertaking. The envisaged rules rely on self-assessment by the undertakings *as regards* whether or not they meet the gateway criteria. To achieve effectiveness of the provisions, incentivising adequate compliance across the Union, and taking into account that a shell undertaking in one Member State may be used to erode the tax base of another Member State, it is important that any Member State has the right to request another Member State to conduct tax audits of undertakings at risk *for* not fulfilling minimum substance as defined in this Directive. Accordingly, to reinforce effectiveness, it is essential that the requested Member State has an obligation to carry out such audit and to share information on the outcome, even where there is no finding of ‘shell’ entity.

*Amendment*

(16) In order to improve effectiveness, Member States should lay down penalties against the violation of the national rules that transpose this Directive. Such penalties should be effective, proportionate and dissuasive. To ensure tax certainty and a minimum level of coordination across all Member States, it is necessary to fix a minimum monetary penalty, also taking into account the situation of each specific undertaking. The envisaged rules rely on *a* self-assessment *performed* by the undertakings *to determine* whether or not they meet the gateway criteria. To achieve effectiveness of the provisions, incentivising adequate compliance across the Union, and taking into account that a shell undertaking in one Member State may be used to erode the tax base of another Member State, it is important that any Member State has the right to request another Member State to conduct tax audits of undertakings at risk *of* not fulfilling minimum substance as defined in this Directive. Accordingly, to reinforce effectiveness, it is essential that the requested Member State has an obligation to carry out such *an* audit and to share information on the outcome, even where there is no finding of *a* ‘shell’ entity. *Joint audits allow for the pooling of expertise, thereby ensuring a complete picture of the facts and promoting acceptance of the audit results. Council Directive (EU) 2021/514<sup>1a</sup> created a uniform framework*

*for joint audits and where appropriate,  
this is the metric that may be used.*

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*<sup>1a</sup> Council Directive (EU) 2021/514 of 22  
March 2021 amending Directive  
2011/16/EU on administrative  
cooperation in the field of taxation (ABl.  
L 104 vom 25.3.2021, S. 1).*

Or. en

**Amendment 72**  
**Markus Ferber**

**Proposal for a directive**  
**Recital 16**

*Text proposed by the Commission*

(16) In order to improve effectiveness, Member States should lay down penalties against the violation of the national rules that transpose this Directive. Such penalties should be effective, proportionate and dissuasive. To ensure tax certainty and a minimum level of coordination across all Member States, it is necessary to fix a minimum monetary penalty, also taking into account the situation of each specific undertaking. The envisaged rules rely on self-assessment by the undertakings as regards whether or not they meet the gateway criteria. To achieve effectiveness of the provisions, incentivising adequate compliance across the Union, and taking into account that a shell undertaking in one Member State may be used to erode the tax base of another Member State, it is important that any Member State has the right to request another Member State to conduct tax audits of undertakings at risk for not fulfilling minimum substance as defined in this Directive. Accordingly, to reinforce effectiveness, it is essential that the requested Member State has an obligation to carry out such audit and to

*Amendment*

(16) In order to improve effectiveness, Member States should lay down penalties against the violation of the national rules that transpose this Directive. Such penalties should be effective, proportionate and dissuasive. To ensure tax certainty and a minimum level of coordination across all Member States, it is necessary to fix a minimum monetary penalty, also taking into account the situation of each specific undertaking. The envisaged rules rely on self-assessment by the undertakings as regards whether or not they meet the gateway criteria. To achieve effectiveness of the provisions, incentivising adequate compliance across the Union, and taking into account that a shell undertaking in one Member State may be used to erode the tax base of another Member State, it is important that any Member State has the right to request another Member State to conduct tax audits of undertakings at risk for not fulfilling minimum substance as defined in this Directive. Accordingly, to reinforce effectiveness, it is essential that the requested Member State has an obligation to carry out such audit and to

share information on the outcome, even where there is no finding of ‘shell’ entity.

share information on the outcome, even where there is no finding of ‘shell’ entity.

***Joint audits pool expertise allow for a more thorough examination determination of the case at hand and contribute to a higher acceptance and ownership of the audit results. Council Directive (EU) 2021/514 established the framework for effective joint audits. Member States should make use of the option of joint audits, where appropriate.***

Or. en

### **Amendment 73**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

### **Proposal for a directive**

#### **Recital 16**

#### *Text proposed by the Commission*

(16) In order to improve effectiveness, Member States should lay down penalties against the violation of the national rules that transpose this Directive. Such penalties should be effective, proportionate and dissuasive. To ensure tax certainty and a minimum level of coordination across all Member States, it is necessary to fix a minimum monetary penalty, also taking into account the situation of each specific undertaking. The envisaged rules rely on self-assessment by the undertakings as regards whether or not they meet the gateway criteria. To achieve effectiveness of the provisions, incentivising adequate compliance across the Union, and taking into account that a shell undertaking in one Member State may be used to erode the tax base of another Member State, it is important that any Member State has the right to request another Member State to conduct tax audits of undertakings at risk for not fulfilling minimum substance as defined in this Directive. Accordingly, to

#### *Amendment*

(16) In order to improve effectiveness, Member States should lay down penalties against the violation of the national rules that transpose this Directive. Such penalties should be effective, proportionate and dissuasive. To ensure tax certainty and a minimum level of coordination across all Member States, it is necessary to fix a minimum monetary penalty, also taking into account the situation of each specific undertaking. The envisaged rules rely on self-assessment by the undertakings as regards whether or not they meet the gateway criteria. To achieve effectiveness of the provisions, incentivising adequate compliance across the Union, and taking into account that a shell undertaking in one Member State may be used to erode the tax base of another Member State, it is important that any Member State has the right to request another Member State to conduct **joint** tax audits of undertakings at risk for not fulfilling minimum substance as defined in this Directive. Accordingly,

reinforce effectiveness, it is essential that the requested Member State has an obligation to carry out such audit and to share information on the outcome, even where there is no finding of ‘shell’ entity.

to reinforce effectiveness, it is essential that the requested Member State has an obligation to carry out such audit and to share information on the outcome, even where there is no finding of ‘shell’ entity.

Or. en

#### **Amendment 74**

**Lídia Pereira, Isabel Benjumea Benjumea**

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

##### **Recital 17**

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

(17) As the proper implementation and enforcement of the proposed rules in each Member State is critical for the protection of other Member States’ tax base, such implementation and enforcement should be monitored by the Commission. Member States should therefore communicate to the Commission on a regular basis, specific information, including statistics, on the implementation and enforcement in their territory of national measures adopted pursuant to this Directive.

###### *Amendment*

(17) As the proper implementation and enforcement of the proposed rules in each Member State is critical for the protection of other Member States’ tax base, such implementation and enforcement should be monitored by the Commission. Member States should therefore communicate to the Commission on a regular basis, specific information, including statistics, on the implementation and enforcement in their territory of national measures adopted pursuant to this Directive. ***This exchange of information must be performed with high standards of data protection.***

Or. en

#### **Amendment 75**

**Lídia Pereira, Isabel Benjumea Benjumea**

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

##### **Recital 19 a (new)**

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

###### *Amendment*

***(19a) The implementation of this Directive must pursue the goal of closing the window of opportunities for tax evasion and avoidance through the***

*misuse of shell entities; this objective must be fulfilled in full respect for the highest standards of accessibility, simplification and transparency; the additional tax obligations to be imposed through the implementation of this Directive must be proportionate and do not lead to overreporting, increasing the administrative burden and the compliance costs for European businesses.*

Or. en

#### **Amendment 76**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

#### **Proposal for a directive Article 2 – paragraph 1**

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

This Directive applies to all undertakings that are considered tax resident and are eligible to receive a tax residency certificate in a Member State.

##### *Amendment*

This Directive applies to all undertakings that are considered tax resident and are eligible to receive a tax residency certificate in a Member State ***including permanent establishments*** .

Or. en

##### *Justification*

*Permanent establishments do not have a tax residency but are used in tax avoidance structures. Therefore it is important to include permanent establishments in the scope.*

#### **Amendment 77**

**Mick Wallace, José Gusmão, Manon Aubry**

#### **Proposal for a directive Article 3 – paragraph 1 – point 5**

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

(5) ‘beneficial owner’ means beneficial owner *as defined in Article 3, point (6), of Directive (EU) 2015/849 of the European*

##### *Amendment*

(5) ‘beneficial owner’ ***for the purpose of this Directive*** means ***any natural person owning directly or indirectly at least 5% of***

*Parliament and of the Council;*

*the share of the undertaking;*

Or. en

**Amendment 78**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 3 – paragraph 1 – point 5**

*Text proposed by the Commission*

(5) ‘beneficial owner’ means beneficial owner *as defined in Article 3, point (6), of Directive (EU) 2015/849 of the European Parliament and of the Council;*

*Amendment*

(5) ‘beneficial owner’ means *any natural person owning directly or indirectly at least one share of the undertaking (or the equivalent minimum unit of interest in a legal person);*

Or. en

**Amendment 79**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**

**Article 3 – paragraph 1 – point 5**

*Text proposed by the Commission*

(5) ‘beneficial owner’ means beneficial owner as defined in Article 3, point (6), of Directive (EU) 2015/849 of the European Parliament and of the Council;

*Amendment*

(5) ‘beneficial owner’ means beneficial owner as defined in Article 1, point 4, of Directive 2003/49/EC;

Or. en

*Justification*

*The definition of a 'beneficial owner' as proposed by the commission refers to ALM legislation, in which the beneficial owner is defined as a natural person. However, the tax benefit might be attained by a legal entity. As it is the purpose of the directive to target pass-through entities it is better to refer to a definition of beneficial owner within tax law which refers to legal entities. Therefore we propose the definition of a 'beneficial owner' in the Interest and Royalties Directive.*

## Amendment 80

Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq

### Proposal for a directive

#### Article 3 – paragraph 1 – point 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) ‘tax benefit’ means a reduction in the obligatory liabilities of an undertaking to the government of tax residency including but not limited to corporate profit tax, withholding tax, and social contribution payments.***

Or. en

## Amendment 81

Ernest Urtasun

on behalf of the Verts/ALE Group

### Proposal for a directive

#### Article 6 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

1. Member States shall require that undertakings meeting the following criteria to report to the competent authorities of Member States in accordance with Article 7:

1. Member States shall require that undertakings meeting ***at least two of*** the following criteria to report to the competent authorities of Member States in accordance with Article 7:

Or. en

## Amendment 82

Lídia Pereira, Isabel Benjumea Benjumea

### Proposal for a directive

#### Article 6 – paragraph 1 – introductory part

*Text proposed by the Commission*

*Amendment*

1. Member States shall require that

1. Member States shall require that

undertakings meeting the following criteria to report to the competent authorities of Member States in accordance with Article 7:

undertakings meeting the following *cumulative* criteria to report to the competent authorities of Member States in accordance with Article 7:

Or. en

**Amendment 83**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 6 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) more than 75% of the revenues accruing to the undertaking in the preceding two tax years is relevant income;

*Amendment*

(a) more than 50% of the revenues accruing to the undertaking in the preceding two tax years is relevant income;

Or. en

**Amendment 84**

**Isabel Benjumea Benjumea**

**Proposal for a directive**

**Article 6 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) more than 75% of the revenues accruing to the undertaking in the preceding two tax years is relevant income;

*Amendment*

(a) more than 75% of the revenues accruing to the undertaking in the preceding two tax years is relevant income, *in accordance with Article 4 as from the entry into force of this Directive;*

Or. en

**Amendment 85**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**

**Article 6 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

(a) more than **75%** of the revenues accruing to the undertaking in the preceding two tax years is relevant income;

(a) more than **50%** of the revenues accruing to the undertaking in the preceding two tax years is relevant income;

Or. en

*Justification*

*50% is in line with the threshold for revenues accruing from passive income in the Common Reporting Standard.*

**Amendment 86**

**Isabel Benjumea Benjumea**

**Proposal for a directive**

**Article 6 – paragraph 1 – point b – point i**

*Text proposed by the Commission*

*Amendment*

(i) more than **60%** of the book value of the undertaking's assets that fall within the scope of Article 4, points (e) and (f), was located outside the Member State of the undertaking in the preceding two tax years;

(i) more than **55%** of the book value of the undertaking's assets that fall within the scope of Article 4, points (e) and (f), was located outside the Member State of the undertaking in the preceding two tax years ***as from the entry into force of this Directive;***

Or. en

**Amendment 87**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 6 – paragraph 1 – point b – point i**

*Text proposed by the Commission*

*Amendment*

(i) more than **60%** of the book value of the undertaking's assets that fall within the scope of Article 4, points (e) and (f), was located outside the Member State of the

(i) more than **50%** of the book value of the undertaking's assets that fall within the scope of Article 4, points (e) and (f), was located outside the Member State of the

undertaking in the preceding two tax years;

undertaking in the preceding two tax years;

Or. en

#### **Amendment 88**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

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

#### **Article 6 – paragraph 1 – point b – point i**

*Text proposed by the Commission*

*Amendment*

(i) more than **60%** of the book value of the undertaking's assets that fall within the scope of Article 4, points (e) and (f), was located outside the Member State of the undertaking in the preceding two tax years;

(i) more than **55%** of the book value of the undertaking's assets that fall within the scope of Article 4, points (e) and (f), was located outside the Member State of the undertaking in the preceding two tax years;

Or. en

#### **Amendment 89**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

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

#### **Article 6 – paragraph 1 – point b – point i a (new)**

*Text proposed by the Commission*

*Amendment*

***(ia) more than 50% percentage of the book value of the undertaking is derived directly or indirectly from immovable property;***

Or. en

#### **Amendment 90**

**Isabel Benjumea Benjumea**

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

#### **Article 6 – paragraph 1 – point b – point ii**

*Text proposed by the Commission*

(ii) at least **60%** of the undertaking's relevant income is earned **or paid out** via cross-border transactions;

*Amendment*

(ii) at least **65%** of the undertaking's relevant income is earned via cross-border transactions;

Or. en

**Amendment 91**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 6 – paragraph 1 – point b – point ii**

*Text proposed by the Commission*

(ii) at least **60%** of the undertaking's relevant income is earned or paid out via cross-border transactions;

*Amendment*

(ii) at least **50%** of the undertaking's relevant income is earned or paid out via cross-border transactions;

Or. en

**Amendment 92**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**

**Article 6 – paragraph 1 – point b – point ii**

*Text proposed by the Commission*

(ii) at least **60%** of the undertaking's relevant income is earned or paid out via cross-border transactions;

*Amendment*

(ii) at least **55%** of the undertaking's relevant income is earned or paid out via cross-border transactions;

Or. en

**Amendment 93**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**

**Article 6 – paragraph 1 – point c – introductory part**

*Text proposed by the Commission*

*Amendment*

- (c) ***in the preceding two tax years, the undertaking outsourced the administration of day-to-day operations and the decision-making on significant functions.*** ***deleted***

Or. en

*Justification*

*Assessing the outsourcing criteria is a time consuming process. In the first phase of the syphon it is important that the criteria are binary. This makes the self-assessment easier and less time consuming. As the criteria is still indicative for a shell entity it is moved to article 7.*

**Amendment 94**  
**Michiel Hoogeveen**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point c – introductory part**

*Text proposed by the Commission*

*Amendment*

- (c) in the preceding two tax years, the undertaking outsourced the administration of day-to-day operations and the decision-making on significant functions.

- (c) in the preceding two tax years, the undertaking outsourced the administration of day-to-day operations and the decision-making on significant functions ***to an entity that is not an associated enterprise within the same jurisdiction as the undertaking in question.***

Or. en

**Amendment 95**  
**Markus Ferber**

**Proposal for a directive**  
**Article 6 – paragraph 1 – point c – introductory part**

*Text proposed by the Commission*

*Amendment*

- (c) in the preceding two tax years, the undertaking outsourced the administration

- (c) in the preceding two tax years, the undertaking outsourced the administration

of day-to-day operations and the decision-making on significant functions.

of day-to-day operations and the decision-making on significant functions *to an undertaking outside its own jurisdiction*.

Or. en

*Justification*

*Tax-avoidance schemes usually involve outsourcing to parties in other jurisdictions. This should be reflected in the risk criteria.*

**Amendment 96**

**Gilles Boyer, Olivier Chastel, Caroline Nagtegaal, Engin Eroglu, Stéphanie Yon-Courtin**

**Proposal for a directive**

**Article 6 – paragraph 1 – point c – introductory part**

*Text proposed by the Commission*

(c) in the preceding two tax years, the undertaking outsourced the administration of day-to-day operations and the decision-making on significant functions.

*Amendment*

(c) in the preceding two tax years, the undertaking outsourced *to a third party* the administration of day-to-day operations and the decision-making on significant functions.

Or. en

**Amendment 97**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 6 – paragraph 1 – point c – paragraph 1**

*Text proposed by the Commission*

An undertaking which holds assets that can generate income falling within the scope of Article 4, points (e) and (f), shall also be deemed to meet the criterion set out in point (a) of the first subparagraph, irrespective of whether income from these assets has accrued to the undertaking in the preceding two tax years, if the book value of these assets is more than **75%** of the

*Amendment*

An undertaking which holds assets that can generate income falling within the scope of Article 4, points (e) and (f), shall also be deemed to meet the criterion set out in point (a) of the first subparagraph, irrespective of whether income from these assets has accrued to the undertaking in the preceding two tax years, if the book value of these assets is more than **50%** of the

total book value of the undertaking's assets.

total book value of the undertaking's assets.

Or. en

#### **Amendment 98**

**Mick Wallace, José Gusmão, Manon Aubry**

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

#### **Article 6 – paragraph 1 – point c – paragraph 1**

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

An undertaking which holds assets that can generate income falling within the scope of Article 4, points (e) and (f), shall also be deemed to meet the criterion set out in point (a) of the first subparagraph, irrespective of whether income from these assets has accrued to the undertaking in the preceding two tax years, if the book value of these assets is more than **75%** of the total book value of the undertaking's assets.

##### *Amendment*

An undertaking which holds assets that can generate income falling within the scope of Article 4, points (e) and (f), shall also be deemed to meet the criterion set out in point (a) of the first subparagraph, irrespective of whether income from these assets has accrued to the undertaking in the preceding two tax years, if the book value of these assets is more than **50%** of the total book value of the undertaking's assets.

Or. en

#### **Amendment 99**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

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

#### **Article 6 – paragraph 1 – point c – paragraph 2**

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

An undertaking which holds assets that can generate income falling within the scope of Article 4, point (c), shall also be deemed to meet the criterion set out in point (a) of the first subparagraph, irrespective of whether income from these assets has accrued to the undertaking in the preceding two tax years, if the book value of these assets is more than **75%** of the total book value of the

##### *Amendment*

An undertaking which holds assets that can generate income falling within the scope of Article 4, point (c), shall also be deemed to meet the criterion set out in point (a) of the first subparagraph, irrespective of whether income from these assets has accrued to the undertaking in the preceding two tax years, if the book value of these assets is more than **50%** of the total book value of the

assets of the undertaking.

assets of the undertaking.

Or. en

#### **Amendment 100**

**Mick Wallace, José Gusmão, Manon Aubry**

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

#### **Article 6 – paragraph 1 – point c – paragraph 2**

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

An undertaking which holds assets that can generate income falling within the scope of Article 4, point (c), shall also be deemed to meet the criterion set out in point (a) of the first subparagraph, irrespective of whether income from these assets has accrued to the undertaking in the preceding two tax years, if the book value of these assets is more than **75%** of the total book value of the assets of the undertaking.

##### *Amendment*

An undertaking which holds assets that can generate income falling within the scope of Article 4, point (c), shall also be deemed to meet the criterion set out in point (a) of the first subparagraph, irrespective of whether income from these assets has accrued to the undertaking in the preceding two tax years, if the book value of these assets is more than **50%** of the total book value of the assets of the undertaking.

Or. en

#### **Amendment 101**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

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

#### **Article 6 – paragraph 1 – point c a (new)**

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

##### *Amendment*

***(ca) in the preceding two tax years, the undertaking has not exceeded 3 times the average of the sector in the Union in the following categories:***

- (i) profitability per employee;***
- (ii) profitability of assets;***
- (iii) productivity per employee;***
- (iv) turnover on assets.***

**Amendment 102**  
**Markus Ferber**

**Proposal for a directive**  
**Article 6 – paragraph 1 – subparagraph 3a (new)**

*Text proposed by the Commission*

*Amendment*

***For the purposes of this Article, the first two tax year period shall start from 1 January 2024.***

Or. en

*Justification*

*The two-year-periods referred to in this article should be aligned with the transposition deadline of this Directive.*

**Amendment 103**  
**Mick Wallace, José Gusmão, Manon Aubry**

**Proposal for a directive**  
**Article 6 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**[...]**

***deleted***

Or. en

**Amendment 104**  
**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**  
**Article 6 – paragraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

2. By derogation from paragraph 1, Member States shall ensure that the undertakings falling within any of the

2. By derogation from paragraph 1, Member States shall ensure that the undertakings falling within any of the

following categories are not subject to requirements of Article 7:

following categories are not subject to requirements of Article 7, ***unless they benefit from the provisions of either Directive 2011/96/EU or Directive 2003/49/EC***:

Or. en

*Justification*

*Undertakings like 'financially regulated undertakings' might be under stricter supervision but that stricter supervision does not necessarily relate to taxes. Given that this directive aims to counter abuse of EU rules on intra EU capital flows, we propose that undertakings that benefit from EU agreements on double taxation remain in the subject to article 7.*

**Amendment 105**

**Gilles Boyer, Olivier Chastel, Caroline Nagtegaal, Engin Eroglu, Stéphanie Yon-Courtin**

**Proposal for a directive**

**Article 6 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) regulated financial undertakings; deleted**

Or. en

**Amendment 106**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 6 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) regulated financial undertakings; deleted**

Or. en

**Amendment 107**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**  
**Article 6 – paragraph 2 – point c**

*Text proposed by the Commission*

*Amendment*

**(c) undertakings that have the main activity of holding shares in operational businesses in the same Member State while their beneficial owners are also resident for tax purposes in the same Member State;** **deleted**

Or. en

**Amendment 108**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**  
**Article 6 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

**(d) undertakings with holding activities that are resident for tax purposes in the same Member State as the undertaking's shareholder(s) or the ultimate parent entity, as defined in Section I, point 7, of Annex III to Directive 2011/16/EU;** **deleted**

Or. en

**Amendment 109**

**Markus Ferber**

**Proposal for a directive**  
**Article 6 – paragraph 2 – point d**

*Text proposed by the Commission*

*Amendment*

**(d) undertakings with holding activities that are resident for tax purposes in the same Member State as the undertaking's shareholder(s) or the ultimate parent entity, as defined in Section I, point 7, of Annex**

**(d) undertakings with holding activities that are resident for tax purposes in the same Member State as *the majority of* the undertaking's shareholder(s) or the ultimate parent entity, as defined in Section**

III to Directive 2011/16/EU;

I, point 7, of Annex III to Directive 2011/16/EU;

Or. en

*Justification*

*As the definition of shareholders in Article 3 (6) includes everyone holding shares in the company, the exemption criteria might not be met if only a small group of shareholders representing a very small fraction of ownership does not reside in the same Member State as the holding company.*

**Amendment 110**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 6 – paragraph 2 – point e**

*Text proposed by the Commission*

*Amendment*

**(e) undertakings with at least five own full-time equivalent employees or members of staff exclusively carrying out the activities generating the relevant income;** **deleted**

Or. en

**Amendment 111**

**Mick Wallace, José Gusmão, Manon Aubry**

**Proposal for a directive**

**Article 6 – paragraph 2 – point e**

*Text proposed by the Commission*

*Amendment*

**(e) undertakings with at least five own full-time equivalent employees or members of staff exclusively carrying out the activities generating the relevant income;** **deleted**

Or. en

**Amendment 112**

**Gilles Boyer, Olivier Chastel, Caroline Nagtegaal, Engin Eroglu, Stéphanie Yon-Courtin**

**Proposal for a directive**

**Article 6 – paragraph 2 – point e**

*Text proposed by the Commission*

*Amendment*

**(e) undertakings with at least five own full-time equivalent employees or members of staff exclusively carrying out the activities generating the relevant income;** **deleted**

Or. en

**Amendment 113**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**

**Article 6 – paragraph 2 – point e**

*Text proposed by the Commission*

*Amendment*

**(e) undertakings with at least five own full-time equivalent employees or members of staff exclusively carrying out the activities generating the relevant income;** **deleted**

Or. en

**Amendment 114**

**Michiel Hoogeveen**

**Proposal for a directive**

**Article 6 – paragraph 2 – point e**

*Text proposed by the Commission*

*Amendment*

**(e) undertakings with at least five own full-time equivalent employees or members of staff exclusively carrying out** **(e) undertakings working in the jurisdiction where the undertaking is resident for tax purposes;**

*the activities generating the relevant income;*

Or. en

**Amendment 115**  
**Alfred Sant**

**Proposal for a directive**  
**Article 6 – paragraph 2 – point e**

*Text proposed by the Commission*

(e) undertakings with **at least five own full-time equivalent** employees or members of staff exclusively carrying out the activities generating the relevant income;

*Amendment*

(e) undertakings with **a reasonably adequate number of full-time** employees or members of staff exclusively carrying out the activities generating the relevant income;

Or. en

*Justification*

*The choice of five own full-time employees appears to be arbitrary, undertakings should engage an adequate number of persons.*

**Amendment 116**  
**Isabel Benjumea Benjumea, Lídia Pereira**

**Proposal for a directive**  
**Article 6 – paragraph 2 – point e**

*Text proposed by the Commission*

(e) undertakings with at least **five own** full-time equivalent employees or members of staff **exclusively** carrying out the activities generating the relevant income;

*Amendment*

(e) undertakings with at least **three** full-time equivalent employees or members of staff carrying out the activities generating the relevant income **or day-to-day activities of the undertaking;**

Or. en

**Amendment 117**

**Mick Wallace, José Gusmão, Manon Aubry**

**Proposal for a directive**

**Article 6 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

**[...]**

**deleted**

Or. en

**Amendment 118**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 6 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

**[...]**

**deleted**

Or. en

**Amendment 119**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**

**Article 6 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. By derogation from Article 6, Member States may ensure that the undertakings falling within any of the following categories are not subject to requirements of Article 7:**

**(a) undertakings that have the main activity of holding shares in operational businesses in the same Member State while their beneficial owners are also resident for tax purposes in the same Member State;**

**(b) undertakings with holding activities that are resident for tax purposes in the same Member State as the undertaking's shareholder(s) or the ultimate parent entity, as defined in Section I, point 7, of Annex III to Directive 2011/16/EU.**

Or. en

*Justification*

*There are domestic situations in which undertakings can use shell entities to erode their tax base in the same Member state. Member States should be able to include these categories of undertakings in the scope of the Directive.*

**Amendment 120**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 6 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**2a. The Commission shall be empowered to adopt delegated acts, after 2 years of the entry into force of this Directive, to extend the categories in scope of paragraph 2.**

Or. en

**Amendment 121**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**

**Article 7 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. Member States shall require that undertakings ***meeting the criteria laid down in Article 6(1)*** declare in their annual tax return, for each tax year, whether they

1. Member States shall require that undertakings ***within the scope of this Directive in accordance with Article 2*** declare in their annual tax return, for each

meet the following indicators of minimum substance:

tax year:

*(a) whether they fall within any of the categories laid down in Article 6(2), indicating which one;*

*(b) if the undertaking does not fall within any of the categories laid down in Article 6(2), whether they meet the criteria laid down in Article 6(1) in that year;*

*(c) if the undertaking meets the criteria laid down in Article 6(1), whether they meet the following indicators of minimum substance.*

Or. en

*Justification*

*This tick-the-box system eases the administrative burden of Tax Authorities*

**Amendment 122**

**Markus Ferber**

**Proposal for a directive**

**Article 7 – paragraph 1 – introductory part**

*Text proposed by the Commission*

1. Member States shall require that undertakings meeting the criteria laid down in Article 6(1) declare in their annual tax return, for each tax year, ***whether they*** meet the following indicators of minimum substance:

*Amendment*

1. Member States shall require that undertakings meeting the criteria laid down in Article 6(1) declare in their annual tax return, for each tax year, ***if they do not*** meet the following indicators of minimum substance:

Or. en

*Justification*

*Reduces administrative burdens.*

**Amendment 123**

**Lídia Pereira, Isabel Benjumea Benjumea**

**Proposal for a directive**  
**Article 7 – paragraph 1 – point a**

*Text proposed by the Commission*

(a) the undertaking has own premises in the Member State, **or** premises for its exclusive use;

*Amendment*

(a) the undertaking has own premises in the Member State, premises for its exclusive use **or premises shared with entities of the same group**;

Or. en

**Amendment 124**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**  
**Article 7 – paragraph 1 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

**(aa) in the preceding two tax years, the undertaking outsourced the administration of day-to-day operations and the decision-making on significant functions;**

Or. en

**Amendment 125**

**Isabel Benjumea Benjumea, Lúdia Pereira**

**Proposal for a directive**  
**Article 7 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

(b) the undertaking has at least one own **and active** bank account in the Union;

(b) the undertaking has at least one own bank account in the Union **through which the relevant income is received**;

Or. en

**Amendment 126**  
**Alfred Sant**

**Proposal for a directive**  
**Article 7 – paragraph 1 – point b**

*Text proposed by the Commission*

(b) the undertaking has at least one own and active bank account in the Union;

*Amendment*

(b) the undertaking has at least one own and active bank account **or e-money account** in the Union;

Or. en

*Justification*

*The requirement under article 7(1)(b) can prove difficult given that companies have no automatic right to a bank account. In small jurisdictions with limited competition in the banking sector it is increasingly difficult to open a bank account in sectors that banks consider to be outside of their typical risk appetite. This requirement should therefore be widened to include e-money institutions.*

**Amendment 127**  
**Mick Wallace, José Gusmão, Manon Aubry**

**Proposal for a directive**  
**Article 7 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) the majority of the full-time equivalent employees of the undertaking have their habitual place of work as defined by Regulation (EC) No 593/2008 in the Member State of the undertaking, and such employees are qualified to carry out the activities that generate relevant income for the undertaking;***

Or. en

**Amendment 128**  
**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**  
**Article 7 – paragraph 1 – point b a (new)**

*Text proposed by the Commission*

*Amendment*

***(ba) the profitability per employee on a full time equivalent basis and per assets and the turnover on assets are not exceeding 3 times the average of the sector in the EU Member State;***

Or. en

*Justification*

*This indicator can show outlier behaviour of a shell. This follows the rationale of Country by Country Reporting Directive.*

**Amendment 129**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 7 – paragraph 1 – point c – introductory part**

*Text proposed by the Commission*

*Amendment*

(c) ***one of*** the following indicators:

(c) the following indicators:

Or. en

**Amendment 130**

**Lídia Pereira, Isabel Benjumea Benjumea**

**Proposal for a directive**

**Article 7 – paragraph 1 – point c – point i – point 2**

*Text proposed by the Commission*

*Amendment*

(2) are ***qualified and*** authorised to take decisions in relation to the activities that generate relevant income for the undertaking or in relation to the undertaking's assets;

(2) are authorised to take decisions in relation to the activities that generate relevant income for the undertaking or in relation to the undertaking's assets;

**Amendment 131**  
**Markus Ferber**

**Proposal for a directive**  
**Article 7 – paragraph 1 – point c – point i – point 4**

*Text proposed by the Commission*

*Amendment*

**(4) are not employees of an enterprise that is not an associated enterprise and do not perform the function of director or equivalent of other enterprises that are not associated enterprises;** **deleted**

Or. en

*Justification*

*The requirements in point (1) - (3) already impose sufficient requirements to ensure that directors are independent and qualified.*

**Amendment 132**  
**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**  
**Article 7 – paragraph 1 – point c – point i – point 4**

*Text proposed by the Commission*

*Amendment*

**(4) are not employees of an enterprise that is not an associated enterprise and do not perform the function of director or equivalent of other enterprises that are not associated enterprises;**

**(4) are not employees of an enterprise that is not an associated enterprise and do not perform the function of director or equivalent of other enterprises that are not associated enterprises, *except under Article 5(1), point (a)*;**

Or. en

*Justification*

*Without this exception this point would allow one director to be the director of a thousand undertakings which are associated by virtue of him being the director of all of them.*

### Amendment 133

Mick Wallace, José Gusmão, Manon Aubry

#### Proposal for a directive

#### Article 7 – paragraph 1 – point c – point ii

*Text proposed by the Commission*

**(ii) the majority of the full-time equivalent employees of the undertaking are resident for tax purposes in the Member State of the undertaking, or at no greater distance from that Member States insofar as such distance is compatible with the proper performance of their duties, and such employees are qualified to carry out the activities that generate relevant income for the undertaking.**

*Amendment*

**deleted**

Or. en

### Amendment 134

Ernest Urtasun

on behalf of the Verts/ALE Group

#### Proposal for a directive

#### Article 7 – paragraph 1 – point c – point ii

*Text proposed by the Commission*

**(ii) the majority of the full-time equivalent employees of the undertaking are resident for tax purposes in the Member State of the undertaking, or at no greater distance from that Member States insofar as such distance is compatible with the proper performance of their duties, and such employees are qualified to carry out the activities that generate relevant income for the undertaking.**

*Amendment*

**(ii) the majority of the full-time equivalent employees of the undertaking have their habitual place of work as defined by Regulation (EC) No 593/2008 in the Member State of the undertaking and such employees are qualified to carry out the activities that generate relevant income for the undertaking.**

Or. en

### Amendment 135

Lídia Pereira, Isabel Benjumea Benjumea

**Proposal for a directive**  
**Article 7 – paragraph 1 – point c – point ii**

*Text proposed by the Commission*

(ii) ***the majority*** of the full-time equivalent employees of the undertaking are resident for tax purposes in the Member State of the undertaking, or at no greater distance from that Member States insofar as such distance is compatible with the proper performance of their duties, and such employees are ***qualified*** to carry out the activities that generate relevant income for the undertaking.

*Amendment*

(ii) ***more than 33%*** of the full-time equivalent employees of the undertaking are resident for tax purposes in the Member State of the undertaking, or at no greater distance from that Member States insofar as such distance is compatible with the proper performance of their duties, and such employees are ***entitled*** to carry out the activities that generate relevant income for the undertaking.

Or. en

**Amendment 136**  
**Mick Wallace, José Gusmão, Manon Aubry**

**Proposal for a directive**  
**Article 7 – paragraph 1 – point c – point ii a (new)**

*Text proposed by the Commission*

*Amendment*

***(iia) the profitability per employee and per assets, the productivity per employee and the turnover on assets are not exceeding three times the average of the sector in the EU. The European Commission shall estimate this average based on data provided by the undertakings the previous year.***

Or. en

**Amendment 137**  
**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**  
**Article 7 – paragraph 2 – introductory part**

*Text proposed by the Commission*

2. Undertakings referred to in paragraph 1 shall accompany their **tax return** declaration with documentary evidence. The documentary evidence shall include the following information:

*Amendment*

2. Undertakings **that fulfil the conditions** referred to in paragraph 1, **points (b) and (c)**, shall accompany their declaration **referred to in paragraph 1** with documentary evidence. The documentary evidence shall include the following information:

Or. en

**Amendment 138**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 7 – paragraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

**(aa) taxes paid in the Union, disaggregated by country and type of tax;**

Or. en

**Amendment 139**

**Evelyn Regner, Paul Tang**

**Proposal for a directive**

**Article 7 – paragraph 2 – point f**

*Text proposed by the Commission*

*Amendment*

(f) outsourced business activities;

(f) outsourced business activities, **such as accounting, sales, marketing, logistics, consulting etc.;**

Or. en

**Amendment 140**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**  
**Article 7 – paragraph 2 – point g**

*Text proposed by the Commission*

(g) bank account number, any mandates granted to access the bank account and to use or issue payment instructions and evidence of the account's activity.

*Amendment*

(g) bank account number, any mandates granted to access the bank account and to use or issue payment instructions and evidence of the account's activity ***such as aggregate inflows and outflows***;

Or. en

**Amendment 141**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**  
**Article 7 – paragraph 2 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

***(ga) an overview of the structure of the undertaking and associated enterprises and any significant outsourcing arrangements, including the rationale behind the structure;***

Or. en

**Amendment 142**

**Mick Wallace, José Gusmão, Manon Aubry**

**Proposal for a directive**  
**Article 7 – paragraph 2 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

***(ga) profitability per employee and per assets, the productivity per employee and the turnover on assets;***

Or. en

**Amendment 143**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 7 – paragraph 2 – point g a (new)**

*Text proposed by the Commission*

*Amendment*

**(ga) profitability and productivity rates as indicated in Article 6(1);**

Or. en

**Amendment 144**

**Mick Wallace, José Gusmão, Manon Aubry**

**Proposal for a directive**

**Article 7 – paragraph 2 – point g b (new)**

*Text proposed by the Commission*

*Amendment*

**(gb) entire entity structure from assets held to ultimate beneficial owners as well as a justification for this structure;**

Or. en

**Amendment 145**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**

**Article 7 – paragraph 2 – point g b (new)**

*Text proposed by the Commission*

*Amendment*

**(gb) profitability per employee and per asset class;**

Or. en

**Amendment 146**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 7 – paragraph 2 – point g b (new)**

*Text proposed by the Commission*

*Amendment*

**(gb) list of core income generating activities;**

Or. en

**Amendment 147**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

**Proposal for a directive**

**Article 7 – paragraph 2 – point g c (new)**

*Text proposed by the Commission*

*Amendment*

**(gc) a summary report of the documentary evidence submitted under this paragraph. This summary shall also include:**

- **a brief description of the nature of the activities of the undertaking;**
- **the number of employees on a full-time equivalent basis;**
- **the amount of profit or loss before and after taxes.**

Or. en

**Amendment 148**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 7 – paragraph 2 – point g c (new)**

*Text proposed by the Commission*

*Amendment*

**(gc) *entity structure and justification.***

Or. en

**Amendment 149**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 8 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1a. Member States may consider for a period of three years that the undertaking is presumed to have minimum substance as set out in paragraph 1 on the condition that the factual and legal circumstances of the undertaking remain unchanged during this period.***

Or. en

**Amendment 150**

**Lídia Pereira, Isabel Benjumea Benjumea**

**Proposal for a directive**

**Article 9 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

1. Member States shall take the ***appropriate*** measures to allow undertakings that are presumed not to have minimum substance under Article 8(2) to rebut this presumption by providing any additional supporting evidence of the business activities which they perform to generate relevant income.

1. Member States shall take the ***necessary*** measures to allow undertakings that are presumed not to have minimum substance under Article 8(2) to rebut this presumption, ***without undue delay and excessive administrative costs***, by providing any additional supporting evidence of the business activities which they perform to generate relevant income.

Or. en

**Amendment 151**  
**Isabel Benjumea Benjumea**

**Proposal for a directive**  
**Article 9 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) a document allowing to ascertain the **commercial** rationale behind the establishment of the undertaking;

*Amendment*

(a) a document allowing to ascertain the **business** rationale behind the establishment of the undertaking;

Or. en

**Amendment 152**  
**Lídia Pereira, Isabel Benjumea Benjumea**

**Proposal for a directive**  
**Article 9 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) a document allowing to ascertain the commercial rationale behind the establishment of the undertaking;

*Amendment*

(a) a document allowing to ascertain the commercial rationale behind the establishment of the undertaking **in the Member State where the activity is performed; or**

Or. en

**Amendment 153**  
**Lídia Pereira, Isabel Benjumea Benjumea**

**Proposal for a directive**  
**Article 9 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) information about the employee profiles, **including** the level of their experience, their decision-making power in the overall organisation, role and position in the organisation chart, the type of their

*Amendment*

(b) information about the employee profiles, **namely** the level of their experience, their decision-making power in the overall organisation, role and position in the organisation chart, the type of their

employment contract, their qualifications and duration of employment;

employment contract, their qualifications and duration of employment, ***safeguarding high levels of data protection and privacy; or***

Or. en

#### **Amendment 154**

**Evelyn Regner, Paul Tang**

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

#### **Article 9 – paragraph 2 – point b**

*Text proposed by the Commission*

(b) information about the employee profiles, including the level of their experience, their decision-making power in the overall organisation, role and position in the organisation chart, the type of their employment contract, their qualifications and duration of employment;

*Amendment*

(b) information about the ***full-time, part-time, and freelance*** employee profiles, including the level of their experience, their decision-making power in the overall organisation, role and position in the organisation chart, the type of their employment contract, their qualifications and duration of employment;

Or. en

#### **Amendment 155**

**Isabel Benjumea Benjumea, Lídia Pereira**

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

#### **Article 9 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. The Member State shall consider the request for the rebuttal of the presumption within a period of 6 months after the introduction of the request and it shall be considered as accepted in the absence of answer from the Member State after the 6-month period.***

Or. en

## **Amendment 156**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

### **Proposal for a directive**

#### **Article 9 – paragraph 4**

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

4. After the end of the tax year for which the undertaking rebutted the presumption successfully, in accordance with paragraph 3, a Member State may consider for a period of **five** years that the undertaking has rebutted the presumption on the condition that the factual and legal circumstances of the undertaking remain unchanged during this period.

##### *Amendment*

4. After the end of the tax year for which the undertaking rebutted the presumption successfully, in accordance with paragraph 3, a Member State may consider for a period of **three** years that the undertaking has rebutted the presumption on the condition that the factual and legal circumstances of the undertaking remain unchanged during this period.

Or. en

## **Amendment 157**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

### **Proposal for a directive**

#### **Article 10 – paragraph 1**

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

1. A Member State shall take the appropriate measures to allow an undertaking that **meets the criteria** laid down in Article 6(1) to request an exemption from its obligations under this Directive if the existence of the undertaking does not reduce the tax liability of its beneficial owner(s) or of the group, as a whole, of which the undertaking is a member.

##### *Amendment*

1. A Member State shall take the appropriate measures to allow an undertaking that **does not meet one of the minimum substance indicators** laid down in Article 7 to request an exemption from its obligations under this Directive if the existence of the undertaking does not reduce the tax liability of its beneficial owner(s) or of the group, as a whole, of which the undertaking is a member.

Or. en

## **Amendment 158**

**Lídia Pereira, Isabel Benjumea Benjumea**

**Proposal for a directive**  
**Article 10 – paragraph 1**

*Text proposed by the Commission*

1. A Member State shall take the **appropriate** measures to allow an undertaking that meets the criteria laid down in Article 6(1) to request an exemption from its obligations under this Directive if the existence of the undertaking does not reduce the tax liability of its beneficial owner(s) or of the group, as a whole, of which the undertaking is a member.

*Amendment*

1. A Member State shall take the **necessary** measures to allow an undertaking that meets the criteria laid down in Article 6(1) to request, **without undue delay and excessive administrative costs**, an exemption from its obligations under this Directive if the existence of the undertaking does not reduce the tax liability of its beneficial owner(s) or of the group, as a whole, of which the undertaking is a member.

Or. en

**Amendment 159**  
**Evelyn Regner, Paul Tang**

**Proposal for a directive**  
**Article 10 – paragraph 2**

*Text proposed by the Commission*

2. A Member State may grant that exemption for one tax year if the undertaking provides sufficient and objective evidence that its interposition does not lead to a tax benefit for its beneficial owner(s) or the group as a whole, as the case may be. That evidence shall include information about the structure of the group and its activities. That evidence shall allow to compare the amount of overall tax due by the beneficial owner(s) or the group as a whole, as the case may be, having regard to the interposition of the undertaking, with the amount that would be due under the same circumstances in the absence of the undertaking.

*Amendment*

2. A Member State may grant that exemption for one tax year if the undertaking provides sufficient and objective evidence that its interposition does not lead to a tax benefit for its beneficial owner(s) or the group as a whole, as the case may be. That evidence shall include information about the structure of the group and its activities, **including a list of its employees working on full-time equivalence**. That evidence shall allow to compare the amount of overall tax due by the beneficial owner(s) or the group as a whole, as the case may be, having regard to the interposition of the undertaking, with the amount that would be due under the same circumstances in the absence of the undertaking.

**Amendment 160**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 10 – paragraph 3**

*Text proposed by the Commission*

3. After the end of the tax year for which an exemption was granted in accordance with paragraph 2, a Member State may extend the validity of the exemption for **five** years on the condition that the factual and legal circumstances of the undertaking, including of the beneficial owner(s) and the group, as the case may be, remain unchanged in the relevant period.

*Amendment*

3. After the end of the tax year for which an exemption was granted in accordance with paragraph 2, a Member State may extend the validity of the exemption for **three** years on the condition that the factual and legal circumstances of the undertaking, including of the beneficial owner(s) and the group, as the case may be, remain unchanged in the relevant period.

**Amendment 161**

**Isabel Benjumea Benjumea, Lídia Pereira**

**Proposal for a directive**

**Article 10 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

**3a. The Member State shall consider the exemption request within a period of 6 months after the introduction of the request and it shall be considered as accepted in the absence of answer from the Member State after the 6-month period.**

## **Amendment 162**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

### **Proposal for a directive**

#### **Article 11 – paragraph 2 – introductory part**

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

2. The Member State of the undertaking's shareholder(s) shall tax the relevant income of the undertaking in accordance with its national law as if it had directly accrued to the undertaking's shareholder(s) and deduct any tax paid on such income at the Member State of the undertaking, where the following conditions are met:

##### *Amendment*

2. The Member State of the undertaking's shareholder(s) shall tax the relevant income *or assets* of the undertaking in accordance with its national law as if it had directly accrued to the undertaking's shareholder(s) and deduct any tax paid on such income at the Member State of the undertaking, where the following conditions are met:

Or. en

## **Amendment 163**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

### **Proposal for a directive**

#### **Article 11 – paragraph 2 – subparagraph 2**

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

Where the payer is not resident for tax purposes in a Member State, the Member State of the undertaking's shareholder(s) shall tax the relevant income accruing to the undertaking in accordance with its national law as if it had directly accrued to the undertaking's shareholder(s), without prejudice to any agreement or convention that provides for the elimination of double taxation of income, and where applicable, capital, in force between the Member State of the undertaking's shareholders and the third country jurisdiction of the payer;

##### *Amendment*

Where the payer is not resident for tax purposes in a Member State, the Member State of the undertaking's shareholder(s) shall tax the relevant income *or assets* accruing to the undertaking in accordance with its national law as if it had directly accrued to the undertaking's shareholder(s), without prejudice to any agreement or convention that provides for the elimination of double taxation of income, and where applicable, capital, in force between the Member State of the undertaking's shareholders and the third country jurisdiction of the payer;

Or. en

## Amendment 164

Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq

### Proposal for a directive

#### Article 11 – paragraph 2 – subparagraph 3

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

Where the undertaking's shareholder(s) is not resident for tax purposes in a Member State, the Member State of the payer of this income shall apply withholding tax ***in accordance with its national law***, without prejudice to any agreement or convention that provides for the elimination of double taxation of income, and where applicable, capital, in force with the third country jurisdiction of the undertaking's shareholder(s).

##### *Amendment*

Where the undertaking's shareholder(s) is not resident for tax purposes in a Member State, the Member State of the payer of this income shall apply ***a*** withholding tax, without prejudice to any agreement or convention that provides for the elimination of double taxation of income, and where applicable, capital, in force with the third country jurisdiction of the undertaking's shareholder(s).

Or. en

##### *Justification*

*It is important that a withholding is applied on monetary flows through shell entities.*

## Amendment 165

Ernest Urtasun

on behalf of the Verts/ALE Group

### Proposal for a directive

#### Article 12 – paragraph 1 – introductory part

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

Where an undertaking does not have minimum substance for tax purposes in the Member State where it is resident for tax purposes, that Member State shall ***take any of the following decisions***:

##### *Amendment*

Where an undertaking does not have minimum substance for tax purposes in the Member State where it is resident for tax purposes, that Member State shall ***deny any request for a certificate of tax residence to the undertaking for use outside the jurisdiction of this Member State***:

Or. en

**Amendment 166**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 12 – paragraph 1 – point a**

*Text proposed by the Commission*

*Amendment*

**(a) deny a request for a certificate of tax residence to the undertaking for use outside the jurisdiction of this Member State;** *deleted*

Or. en

**Amendment 167**

**Mick Wallace, José Gusmão, Manon Aubry**

**Proposal for a directive**

**Article 12 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) grant a certificate of tax residence which prescribes that the undertaking is not entitled to the benefits of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, and of international agreements with a similar purpose or effect and of Articles 4, 5 and 6 of Directive 2011/96/EU and Article 1 of Directive 2003/49/EC.** *deleted*

Or. en

**Amendment 168**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 12 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

**(b) grant a certificate of tax residence which prescribes that the undertaking is not entitled to the benefits of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, and of international agreements with a similar purpose or effect and of Articles 4, 5 and 6 of Directive 2011/96/EU and Article 1 of Directive 2003/49/EC.**

**deleted**

Or. en

### **Amendment 169**

**Mick Wallace, José Gusmão, Manon Aubry**

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

#### **Article 12 – paragraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

(b) grant a certificate of tax residence which prescribes that the undertaking is not entitled to the benefits of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, and of international agreements with a similar purpose or effect and of Articles 4, 5 and 6 of Directive 2011/96/EU and Article 1 of Directive 2003/49/EC.

(b) grant a certificate of tax residence which prescribes that the undertaking is not entitled to the benefits of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, and of international agreements with a similar purpose or effect and of Articles 4, 5 and 6 of Directive 2011/96/EU and Article 1 of Directive 2003/49/EC **and cannot participate in any public tenders in the Member State.**

Or. en

### **Amendment 170**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

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

#### **Article 12 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***When denying such certificate, the Member State shall issue an official statement duly justifying such decision and prescribing that the undertaking is not entitled to the benefits of agreements and conventions that provide for the elimination of double taxation of income, and, where applicable, capital, or of international agreements with a similar purpose or effect and of Articles 4, 5 and 6 of Directive 2011/96/EU and Article 1 of Directive 2003/49/EC.***

Or. en

**Amendment 171**

**Gilles Boyer, Olivier Chastel, Caroline Nagtegaal, Engin Eroglu, Stéphanie Yon-Courtin**

**Proposal for a directive**

**Article 12 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***In cooperation with Member States, the Commission shall ensure that those tax consequences are well articulated in relation to existing bilateral tax conventions with third countries so that they receive the information on the presumed shell-companies.***

Or. en

**Amendment 172**

**Michiel Hoogeveen**

**Proposal for a directive**

**Article 12 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***When denying a request for a certificate***

*of tax residence, the Member State shall issue an official document duly justifying such decision and prescribing that the undertaking is not entitled to the benefits of agreements and conventions that provide for the elimination of double taxation of income, and, where applicable, capital, or of international agreements with a similar purpose or effect and of Articles 4, 5 and 6 of Directive 2011/96/EU and Article 1 of Directive 2003/49/EC.*

Or. en

**Amendment 173**

**Mick Wallace, José Gusmão, Manon Aubry**

**Proposal for a directive**

**Article 13 – paragraph 1 – point 2**

Directive 2011/16/EU

Article 8ad – paragraph 2 – subparagraph 1 a (new)

*Text proposed by the Commission*

*Amendment*

*Such information may also be used for the assessment and enforcement of other taxes and duties covered by Article 2 of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, or for the assessment and enforcement of compulsory social security contributions and cross-border labour law obligations.*

Or. en

**Amendment 174**

**Markus Ferber**

**Proposal for a directive**

**Article 13 – paragraph 1 – point 2**

Directive 2011/16/EU  
Article 8ad – paragraph 4 – point b

*Text proposed by the Commission*

*Amendment*

**(b) the VAT number, where available, of the undertaking required to report pursuant to Article 6 of Directive [OP];** **deleted**

Or. en

*Justification*

*VAT is not covered under the DAC.*

### **Amendment 175**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

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

#### **Article 13 – paragraph 1 – point 2**

Directive 2011/16/EU

Article 8ad – paragraph 4 – point g

*Text proposed by the Commission*

*Amendment*

(g) summary of the evidence provided by the undertaking in accordance with Article 7(2).

(g) summary of **the declaration and, where appropriate** the evidence provided by the undertaking in accordance with Article 7(2).

Or. en

### **Amendment 176**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

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

#### **Article 13 – paragraph 1 – point 2**

Directive 2011/16/EU

Article 8ad – paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

**6a. Where the competent authority of a Member State pursuant to paragraph 1, 2 or 3 identifies other Member States**

*likely to be concerned by the reporting of the undertaking, the communication referred to in those paragraphs shall include a specific alert to those Member States deemed concerned.*

Or. en

*Justification*

*This enables relevant tax authorities to be up to date on possible abusive entities.*

**Amendment 177**

**Markus Ferber**

**Proposal for a directive**

**Article 13 – paragraph 1 – point 2**

Directive 2011/16/EU

Article 8ad – paragraph 9

*Text proposed by the Commission*

*Amendment*

**9. Information processed shall be retained for 5 years and in any case no longer than necessary to achieve the purposes of this Directive.** **deleted**

Or. en

*Justification*

*This point is in principle already addressed in the data protection section of Directive 2011/16/EU.*

**Amendment 178**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 13 – paragraph 1 – point 2 a (new)**

Directive 2011/16/EU

Article 16 – paragraph 1 – subparagraph 2

*Present text*

*Amendment*

Such information may also be used for the assessment and enforcement of other taxes and duties covered by Article 2 of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, or for the assessment and enforcement of compulsory social security contributions.

***(2a) in Article 16(1), the first subparagraph is replaced by the following:***

‘Such information may also be used for the assessment and enforcement of other taxes and duties covered by Article 2 of Council Directive 2010/24/EU of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures, or for the assessment and enforcement of compulsory social security contributions ***and cross-border labour law obligations.***’

Or. en

#### **Amendment 179**

**Mick Wallace, José Gusmão, Manon Aubry**

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

**Article 13 – paragraph 1 – point 4**

Directive 2011/16/EU

Article 21 – paragraph 5 – subparagraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***The competent authorities performing labour inspections and social security assessment shall have access to the information recorded under Article 8ad (1), (2) and (3) when this information is relevant for the assessment and enforcement of compulsory social security contributions and cross-border labour law obligations.***

Or. en

#### **Amendment 180**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 13 – paragraph 1 – point 4**  
Directive 2011/16/EU  
Article 21 – paragraph 5 – subparagraph 4 a (new)

*Text proposed by the Commission*

*Amendment*

***The competent authorities performing labour inspections and social security assessment shall have access to the information recorded under Article 8ad (1), (2) and (3) when this information is relevant for the assessment and enforcement of compulsory social security contributions and cross-border labour law obligations.***

Or. en

**Amendment 181**  
**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

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

*Text proposed by the Commission*

*Amendment*

Member States shall ensure that those penalties include an administrative pecuniary sanction of at least **5% of the undertaking's turnover** in the relevant tax year, if the undertaking that is required to report pursuant to Article 6 does not comply with such requirement for a tax year within the prescribed deadline **or** makes a false declaration in the tax return under Article 7.

Member States shall ensure that those penalties include an administrative pecuniary sanction of at least **one time the tax benefit obtained by the undertaking** in the relevant tax year, if the undertaking that is required to report pursuant to Article 6 does not comply with such requirement for a tax year within the prescribed deadline **and an administrative pecuniary sanction of at least 3 times the tax benefit obtained by the undertaking in the relevant tax year, if the undertaking that is required to report pursuant to Article 6 makes a false declaration in the tax return under Article 7. These pecuniary sanctions shall be in addition to the repayment of any tax benefit obtained.**

Or. en

### *Justification*

*The sanctions should be based on the tax benefit obtained, this is in line with sanctions in other tax legislation. Additionally a distinction should be made between fraud and missing a deadline.*

#### **Amendment 182**

**Markus Ferber**

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

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

Member States shall ensure that those penalties include an administrative pecuniary sanction of at least 5% of the undertaking's **turnover** in the relevant tax year, if the undertaking that is required to report pursuant to Article 6 does not comply with such requirement for a tax year within the prescribed deadline or makes a false declaration in the tax return under Article 7.

##### *Amendment*

Member States shall ensure that those penalties include an administrative pecuniary sanction of at least **2,5%** of the undertaking's **revenue** in the relevant tax year, if the undertaking that is required to report pursuant to Article 6 does not comply with such requirement for a tax year within the prescribed deadline or makes a false declaration in the tax return under Article 7.

Or. en

### *Justification*

*The term "revenue" is defined in Article 3 (3) of this Directive, while the term turnover is not.*

#### **Amendment 183**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

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

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

Member States shall ensure that those penalties include an administrative pecuniary sanction of at least 5% of the undertaking's turnover in the relevant tax year, if the undertaking that is required to report pursuant to Article 6 does not

##### *Amendment*

Member States shall ensure that those penalties include an administrative pecuniary sanction of at least 5% of the undertaking's turnover in the relevant tax year, if the undertaking that is required to report pursuant to Article 6 does not

comply with such requirement for a tax year within the prescribed deadline or makes a false declaration in the tax return under Article 7.

comply with such requirement for a tax year within the prescribed deadline or makes a false declaration in the tax return under Article 7. ***In case of zero or low turnover, defined as below 1 million EUR, the penalty should be based on the undertaking's total assets.***

Or. en

#### **Amendment 184**

**Gilles Boyer, Olivier Chastel, Caroline Nagtegaal, Engin Eroglu, Stéphanie Yon-Courtin**

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

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

Member States shall ensure that those penalties include an administrative pecuniary sanction of at least 5% of the undertaking's turnover in the relevant tax year, if the undertaking that is required to report pursuant to Article 6 does not comply with such requirement for a tax year within the prescribed deadline or makes a false declaration in the tax return under Article 7.

##### *Amendment*

Member States shall ensure that those penalties include an administrative pecuniary sanction of at least 5% of the undertaking's turnover ***or assets*** in the relevant tax year, if the undertaking that is required to report pursuant to Article 6 does not comply with such requirement for a tax year within the prescribed deadline or makes a false declaration in the tax return under Article 7.

Or. en

#### **Amendment 185**

**Markus Ferber**

#### **Proposal for a directive Article 15 – title**

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

Request for tax audits

##### *Amendment*

Request for ***joint*** tax audits

Or. en

**Amendment 186**  
**Markus Ferber**

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

*Text proposed by the Commission*

Where the competent authority of one Member State has reason to believe that an undertaking which is resident for tax purposes in another Member State has not met its obligations under this Directive, the former Member State may request the competent authority of the latter to conduct a tax audit of the undertaking.

*Amendment*

Where the competent authority of one Member State has reason to believe that an undertaking which is resident for tax purposes in another Member State has not met its obligations under this Directive, the former Member State may request the competent authority of the latter to conduct a **joint** tax audit of the undertaking **following the procedures laid out in Article 12a of Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation.**

Or. en

**Amendment 187**  
**Ernest Urtasun**  
on behalf of the Verts/ALE Group

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

*Text proposed by the Commission*

Where the competent authority of one Member State has reason to believe that an undertaking which is resident for tax purposes in another Member State has not met its obligations under this Directive, the former Member State may request the competent authority of the latter to conduct a tax audit of the undertaking.

*Amendment*

Where the competent authority of one Member State has reason to believe that an undertaking which is resident for tax purposes in another Member State has not met its obligations under this Directive, the former Member State may request the competent authority of the latter to conduct a **joint** tax audit of the undertaking **based on Article 12a of Council Directive (EU) 2021/514.**

Or. en

**Amendment 188**  
**Isabel Benjumea Benjumea**

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

*Text proposed by the Commission*

Where the competent authority of one Member State has reason to believe that an undertaking which is resident for tax purposes in another Member State has not met its obligations under this Directive, the former Member State may request the competent authority of the latter to conduct a tax audit of the undertaking.

*Amendment*

Where the competent authority of one Member State has reason to believe that an undertaking which is resident for tax purposes in another Member State has not met its obligations under this Directive, the former Member State may, ***upon detailing of such reasons***, request the competent authority of the latter to conduct a tax audit of the undertaking.

Or. en

**Amendment 189**  
**Ernest Urtasun**  
on behalf of the Verts/ALE Group

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

*Text proposed by the Commission*

The competent authority of the requested Member State shall initiate ***it*** within one month from the date of receipt of the request and conduct ***the tax audit***, in accordance with the rules governing tax audits in the requested Member State.

*Amendment*

***If the requesting competent authority cannot conduct a joint tax audit for legal reasons***, the competent authority of the requested Member State shall initiate ***an audit*** within one month from the date of receipt of the request and conduct ***it***, in accordance with the rules governing tax audits in the requested Member State.

Or. en

**Amendment 190**  
**Markus Ferber**

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

*Text proposed by the Commission*

The competent authority of the requested Member State shall initiate *it* within one month from the date of receipt of the request and conduct the tax audit, in accordance with the rules governing tax audits in the requested Member State.

*Amendment*

***Where the competent authority of the requesting Member State cannot request a joint tax audit due to legal considerations,*** the competent authority of the requested Member State shall initiate ***a national audit*** within one month from the date of receipt of the request and conduct the tax audit, in accordance with the rules governing tax audits in the requested Member State.

Or. en

**Amendment 191**

**Markus Ferber**

**Proposal for a directive**

**Article 16 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) number of audits to undertakings that meet the conditions laid down in Article 6(1),

*Amendment*

(f) number of audits to undertakings that meet the conditions laid down in Article 6(1), ***broken down into joint audits and regular audits,***

Or. en

**Amendment 192**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

**Proposal for a directive**

**Article 16 – paragraph 1 – point f**

*Text proposed by the Commission*

(f) number of audits to undertakings that meet the conditions laid down in Article 6(1),

*Amendment*

(f) number of ***audits and joint audits*** to undertakings that meet the conditions laid down in Article 6(1),

Or. en

### **Amendment 193**

**Mick Wallace, José Gusmão, Manon Aubry**

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

##### **Article 17 – paragraph 1**

*Text proposed by the Commission*

1. **By 31 December 2028**, the Commission shall present a report to the European Parliament and the Council on the implementation of this Directive.

*Amendment*

1. **Every year from the entry into force of this Directive**, the Commission shall present a report to the European Parliament and the Council on the implementation of this Directive.

Or. en

### **Amendment 194**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

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

##### **Article 17 – paragraph 1**

*Text proposed by the Commission*

1. **By 31 December 2028**, the Commission shall present a report to the European Parliament and the Council on the implementation of this Directive.

*Amendment*

1. **Every three years from the entry into force of this Directive**, the Commission shall present a report to the European Parliament and the Council on the implementation of this Directive.

Or. en

### **Amendment 195**

**Markus Ferber**

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

##### **Article 17 – paragraph 1**

*Text proposed by the Commission*

1. By 31 December 2028, the Commission shall present a report to the

*Amendment*

1. By 31 December 2028, the Commission shall present a report to the

European Parliament and the Council on the implementation of this Directive.

European Parliament and the Council on the implementation of this Directive. ***If appropriate, the report shall be accompanied by a legislative proposal amending this Directive.***

Or. en

#### **Amendment 196**

**Paul Tang, Evelyn Regner, René Repasi, Jonás Fernández, Aurore Lalucq**

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

#### **Article 17 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. By 31 December 2024, the Commission shall present a report on tax related reporting obligations for undertakings in the Union legislation. Where relevant this report shall be accompanied by legislative amendments. to streamline reporting obligations.***

Or. en

#### **Amendment 197**

**Ernest Urtasun**

on behalf of the Verts/ALE Group

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

#### **Article 17 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

2. When drawing up the report, the Commission shall take into account the information communicated by the Member States pursuant to Article **15**.

2. When drawing up the report, the Commission shall take into account the information communicated by the Member States pursuant to Article **16**.

Or. en

**Amendment 198**  
**Ernest Urtasun**  
on behalf of the Verts/ALE Group

**Proposal for a directive**  
**Article 17 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 17a*

*Review*

- 1. By ... [5 years after the entry into force of this Directive], the Commission shall review the application of this Directive and report to the Council on its operation. The report shall address whether there is a need to amend this Directive in view to increase the effectiveness this directive.*
- 2. The report shall in particular assess the impact of this Directive on tax revenues in Member States, on tax administration's capacities, and, amongst others, the need to expand the application of Article 6(2) and the need to review Articles 6 and 7.*

Or. en

**Amendment 199**  
**Markus Ferber**

**Proposal for a directive**  
**Article 18 – paragraph 1 – introductory part**

*Text proposed by the Commission*

*Amendment*

1. Member States shall adopt and publish, by [**30 June** 2023] 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.

1. Member States shall adopt and publish, by [**31 December** 2023] 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 200**  
**Markus Ferber**

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

*Text proposed by the Commission*

They shall apply those provisions from [1  
January **2024**].

*Amendment*

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