



**2023/0322(CNS)**

14.11.2023

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# **DRAFT REPORT**

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

Committee on Economic and Monetary Affairs

Rapporteur: Kira Marie Peter-Hansen

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

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

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

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

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

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

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

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

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

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

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

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

(Special legislative procedure – consultation)

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2023)0529),
  - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C9-0339/2023),
  - having regard to Rule 82 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2023),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### Amendment 1

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

*Text proposed by the Commission*

*Amendment*

***(2a) The arm's length principle should be applied in Member States, and by taxpayers, in a manner consistent with the latest Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations developed by the Organisation for Economic Co-operation***

## **Amendment 2**

### **Proposal for a directive**

#### **Recital 3**

*Text proposed by the Commission*

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

*Amendment*

(3) Where Member States apply or interpret the arm's length principle differently, they create situations that could harm the internal market, *instigate harmful tax competition, attract aggressive tax avoidance structures, form illegal state aid and reduce revenues from Member States*. Inconsistency in applicable transfer pricing rules not only could lead to double taxation but also allow for profit shifting, tax avoidance *and double non-taxation*. Such inconsistency is a serious *threat to tax revenues, tax morale and the limited capacities of tax administrations. Also such inconsistencies lead to obstacles* for businesses operating across borders, *and are* likely to cause economic distortions and inefficiencies and *have* a negative impact on cross-border investment.

## **Amendment 3**

### **Proposal for a directive**

#### **Recital 4**

*Text proposed by the Commission*

(4) This Directive lays down rules to ensure a *common* application of the arm's length principle across the Union with the

*Amendment*

(4) This Directive lays down rules to ensure a *better coordinated* application of the arm's length principle across the Union

aim of increasing tax certainty and reducing occurrences of double taxation as well as double *non* taxation.

with the aim of increasing tax certainty and reducing occurrences of double *non*-taxation as well as double taxation.

Or. en

#### Amendment 4

##### Proposal for a directive Recital 5

*Text proposed by the Commission*

**(5) To ensure that the arm's length principle is applied in a uniform way across the Union, Member States should apply a common definition of associated enterprises. In order to ensure equal treatment, a permanent establishment should be treated, for the purpose of this Directive, as an associated enterprise and thus the internal dealings between head office and permanent establishment should be determined in accordance with the arm's length principle.**

*Amendment*

*deleted*

Or. en

#### Amendment 5

##### Proposal for a directive Recital 7

*Text proposed by the Commission*

(7) There may be legitimate reasons as to why a corresponding adjustment is not given or is less than the primary adjustment. In particular, Member States should not grant corresponding adjustments if: (i) the primary adjustment is not considered to be consistent with the arm's length principle; (ii) the primary adjustment does not result in the taxation of an amount of profits in another

*Amendment*

(7) There may be legitimate reasons as to why a corresponding adjustment is not given or is less than the primary adjustment. In particular, Member States should not grant corresponding adjustments if: (i) the primary adjustment is not considered to be consistent with the arm's length principle; (ii) the primary adjustment does not result in the taxation of an amount of profits in another

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

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

Or. en

## Amendment 6

### Proposal for a directive

#### Recital 9

*Text proposed by the Commission*

***(9) To ensure that transfer pricing outcomes are determined in accordance with the actual conduct of related parties, this Directive requires careful delineation of the actual transaction between the associated enterprises by analysing the contractual relations between the parties in combination with the conduct of the parties. In this regard, the critical first step of the transfer pricing analysis should be to accurately define the intercompany transactions by analysing their economically relevant***

*Amendment*

***deleted***

*characteristics, as reflected not only in the contracts between the parties, but also their conduct and any other relevant facts. The contractual terms should be the starting point for the analysis and, to the extent that the conduct or other facts are inconsistent with the written contract, the parties' conduct (rather than the terms of the written contract) should be taken as the best evidence of the transaction(s) actually undertaken.*

Or. en

## Amendment 7

### Proposal for a directive Recital 10

#### *Text proposed by the Commission*

(10) Transfer pricing methods are used to establish the arm's length prices for transactions between associated enterprises. *The methods listed in this Directive are in line with Chapter III of the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022 ('OECD Transfer Pricing Guidelines')*. This Directive does not have a preference for any *of these* recognised transfer pricing methods. Instead, the most appropriate method rule provided for in *this Directive* should be applied and thus the most appropriate method should be chosen taking into consideration the facts and circumstances of the specific case. *This Directive further provides that a transfer pricing method other than the OECD recognised methods may be applied only where it can be demonstrated that: (i) none of the OECD recognised methods can be reasonably applied to determine arm's length conditions for the controlled transaction*

#### *Amendment*

(10) Transfer pricing methods are used to establish the arm's length prices for transactions between associated enterprises. This Directive does not have a preference for any recognised transfer pricing methods. Instead, the most appropriate method rule provided for in *the OECD Transfer Pricing Guidelines* should be applied and thus the most appropriate method should be chosen taking into consideration the facts and circumstances of the specific case.



*(i.e. the transaction between associated enterprises); and (ii) such other method produces a result consistent with the result which would be achieved by independent enterprises engaging in comparable uncontrolled transactions under comparable circumstances. The taxpayer, or the tax administration, that uses a method other than one of the OECD recognised methods should bear the burden of demonstrating that the requirements have been satisfied. When the conditions are fulfilled and an economic valuation technique is applied to identify an arm's length price, the content and recommendations of the Commission's 2017 EU Joint Transfer Pricing Forum Report on the use of economic valuation techniques in transfer pricing<sup>4</sup> should be taken into due consideration.*

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<sup>4</sup> *JTPF/003/2017/FINAL/EN, Meeting of 22 June 2017: [https://taxation-customs.ec.europa.eu/system/files/2017-10/2017\\_10\\_16\\_jtpf\\_003\\_2017\\_en\\_final\\_en.pdf](https://taxation-customs.ec.europa.eu/system/files/2017-10/2017_10_16_jtpf_003_2017_en_final_en.pdf)*

Or. en

## **Amendment 8**

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

*Text proposed by the Commission*

*Amendment*

*(11) The selection of the transfer pricing method should always aim at finding the most appropriate method for a particular case. The selection process of the most appropriate transfer pricing method should take account of (i) the respective strengths and weaknesses of the transfer pricing methods; (ii) the*

*deleted*

*appropriateness of the method considered in view of the nature of the controlled transaction, determined in particular through a functional analysis; (iii) the availability of reliable information (in particular on uncontrolled comparables) needed to apply the selected method or other methods; and (iv) the degree of comparability between controlled and uncontrolled transactions, including the reliability of comparability adjustments that may be needed to eliminate material differences between them. No one method is suitable in every possible situation, nor is it necessary to prove that a particular method is not suitable in a given set of circumstances. It should be noted that one-sided methods such as Resale Price, Cost Plus, Transactional Net Margin Method are not considered reliable if each party to a transaction makes unique and valuable contributions in relation to the controlled transaction, or where the parties engage in highly integrated activities. In such a case, the profit split method is the most appropriate method, since independent parties might effectively price the transaction in proportion to their respective contributions, in which case a two-sided method would be more appropriate. One-sided methods are appropriate where one of the parties makes all of the unique and valuable contributions involved in the controlled transaction, while the other party does not make any unique and valuable contribution. In such a case, the tested party, that is, the party to the controlled transaction for which a financial indicator is tested, should be the one to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparables can be found. The party that does not make any unique and valuable contributions in relation to the transaction will most often be the one to which a one-sided transfer pricing method*

*can be applied most reliably.*

Or. en

## Amendment 9

### Proposal for a directive Recital 12

*Text proposed by the Commission*

*Amendment*

*(12) In order to apply the arm's length principle, it is necessary to carry out a comparability analysis, which broadly consists of two key aspects: (i) identifying the commercial or financial relations between the associated enterprises and the conditions and economically relevant circumstances attached to those relations; and (ii) comparing the conditions and economically relevant circumstances of transactions between associated enterprises (controlled transactions) with those of comparable transactions between independent enterprises (comparable uncontrolled transactions). The comparability factors to be considered are (i) the contractual terms of the transaction, (ii) the functional analysis (the functions that each enterprise performs, taking into account assets used and risks assumed), (iii) the characteristics of the product or service which is the object of a transaction, (iv) the economic circumstances, and (v) the business strategies. Once the circumstances of the controlled transaction have been established, the actual comparison and assessment of whether the transaction is at arm's length should take place. For that, the conditions of the controlled transaction under examination should be compared to the conditions of a comparable uncontrolled transaction. A controlled and an uncontrolled transaction are regarded as comparable if the economically relevant*

*deleted*

*characteristics of the two transactions and the circumstances surrounding them are sufficiently similar to provide a reliable measure of an arm's length result. The two transactions do not have to be identical to be comparable. Instead, none of the differences between them should materially affect the arm's length price or profit; where such material differences exist, reasonably accurate adjustments should be made to eliminate their effect. In the search for comparable uncontrolled transactions, the recommendations contained in the Commission's 2016 EU Joint Transfer Pricing Forum Report on the use of comparables within the EU<sup>5</sup> should be taken into due consideration.*

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<sup>5</sup> *Commission's 2016 EU Joint Transfer Pricing Forum Report on the use of comparables in the EU (JTPF/007/2016/FINAL/EN):* <https://taxation-customs.ec.europa.eu/system/files/2017-04/jtpf0072017encomps.pdf>

Or. en

## **Amendment 10**

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

*Text proposed by the Commission*

*Amendment*

*(13) In order to minimise disputes and ensure a common approach across the Union, this Directive further provides that a taxpayer should not be subject to adjustment when its results fall within the interquartile range unless the tax administration or the taxpayer proves that a specific different positioning in the range is justified by the facts and circumstances of the specific case. When*

*deleted*

*the results of a controlled transaction fall outside the arm's length range, tax administrations should be required to make an adjustment to the median of all the results unless the taxpayer or the tax administration proves that any other point of the range determines a more reliable arm's length price in a given case.*

Or. en

## Amendment 11

### Proposal for a directive Recital 15

*Text proposed by the Commission*

(15) The rules provided by this Directive should be applied in in a manner consistent with the OECD Transfer Pricing Guidelines.

*Amendment*

(15) The rules provided by this Directive should be applied in in a manner consistent with the **latest** OECD Transfer Pricing Guidelines. **Any further amendments to those OECD Transfer Pricing Guidelines should be approved in the context of the OECD Committee on Fiscal Affairs via the adoption of a Union position under Article 218 TFEU. The European Parliament should be immediately and fully informed at all stages of the procedure in accordance with Article 218 TFEU.**

Or. en

## Amendment 12

### Proposal for a directive Recital 16

*Text proposed by the Commission*

(16) In order to create more certainty for taxpayers and mitigate the risk of double taxation, the possibility to establish further common transfer pricing binding rules by

*Amendment*

(16) In order to create more certainty for taxpayers and mitigate the risk of double **non-taxation and double taxation**, the possibility to establish further common

way of implementing acts is provided in this Directive. Those implementing acts should provide taxpayers with a clear view of what tax authorities in the Union would consider to be acceptable to be used for specified transactions and provide so-called ‘safe harbours’ that bring down the compliance burden and the number of disputes. In view of the potential impact of such measures on national executive and enforcement power regarding direct taxation, the exercising of taxing rights allocated under bilateral or multilateral tax conventions that prevent double taxation or double non-taxation and in view of potential impact on Member States’ tax bases, implementing powers to adopt decisions under this Directive should be conferred on the Council, acting on a proposal from the Commission.

transfer pricing binding rules by way of implementing acts is provided in this Directive. Those implementing acts should provide taxpayers with a clear view of what tax authorities in the Union would consider to be acceptable to be used for specified transactions and provide so-called ‘safe harbours’ that bring down the compliance burden and the number of disputes. In view of the potential impact of such measures on national executive and enforcement power regarding direct taxation, the exercising of taxing rights allocated under bilateral or multilateral tax conventions that prevent double taxation or double non-taxation and in view of potential impact on Member States’ tax bases, implementing powers to adopt decisions under this Directive should be conferred on the Council, acting on a proposal from the Commission.

Or. en

### **Amendment 13**

#### **Proposal for a directive Recital 17 a (new)**

*Text proposed by the Commission*

*Amendment*

***(17a) This Directive should cease to apply as of 2035 for BEFIT groups except for the transactions with associated enterprises in third countries. This Directive should cease to apply as of 2040 for all multinational enterprises operating in the Union, except for the transactions with associated enterprises in third countries.***

Or. en

## Amendment 14

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

## Amendment 15

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

*Text proposed by the Commission*

(5) 'independent enterprises' means enterprises that are not associated enterprises within the **meaning of Article 5**;

*Amendment*

(5) 'independent enterprises' means enterprises that are not associated enterprises within the **OECD Transfer Pricing Guidelines**;

Or. en

## Amendment 16

### Proposal for a directive Article 3 – paragraph 1 – point 9

*Text proposed by the Commission*

(9) '**comparable uncontrolled price method**' means a transfer pricing method that compares the price for property or services transferred in a controlled transaction to the price charged for property or services transferred in a **comparable uncontrolled transaction in comparable circumstances**;

*Amendment*

**deleted**

## Amendment 17

### Proposal for a directive

#### Article 3 – paragraph 1 – point 10

*Text proposed by the Commission*

*Amendment*

**(10) ‘resale price method’ means a transfer pricing method based on the price at which a product that has been purchased from an associated enterprise is resold to an independent enterprise; the resale price being reduced by the resale price margin and the result, after subtracting the resale price margin, can be regarded, after adjustment for other costs associated with the purchase of the product, e.g. custom duties, as an arm’s length price of the original transfer of property between the associated enterprises;**

*deleted*

## Amendment 18

### Proposal for a directive

#### Article 3 – paragraph 1 – point 11

*Text proposed by the Commission*

*Amendment*

**(11) ‘cost plus method’ means a transfer pricing method using the costs incurred by the supplier of property (or services) in a controlled transaction; an appropriate mark-up is added to these costs, to make an appropriate profit in light of the functions performed (taking into account assets used and risks assumed) and the market conditions; the price, after adding the mark-up to the proper cost base, may be regarded as an arm’s length price of the original**

*deleted*



*controlled transaction;*

Or. en

## **Amendment 19**

### **Proposal for a directive**

#### **Article 3 – paragraph 1 – point 12**

*Text proposed by the Commission*

*Amendment*

**(12) ‘transactional net margin method’ means a transactional profit method that examines the net profit margin relative to an appropriate base, e.g. costs, sales, assets, that a taxpayer realises from a controlled transaction that it is appropriate to aggregate;** *deleted*

Or. en

## **Amendment 20**

### **Proposal for a directive**

#### **Article 3 – paragraph 1 – point 13**

*Text proposed by the Commission*

*Amendment*

**(13) ‘profit split method’ means a transactional profit split method that shows the relevant profits to be split for the associated enterprises from a controlled transaction (or controlled transactions that it is appropriate to aggregate) and then divides those profits between the associated enterprises on an economically valid basis that approximates the division of profits that would have been agreed at arm’s length;** *deleted*

Or. en

## Amendment 21

### Proposal for a directive

#### Article 3 – paragraph 1 – point 15

*Text proposed by the Commission*

*Amendment*

**(15) ‘controlled transaction’ means a transaction between two associated enterprises;**

**deleted**

Or. en

## Amendment 22

### Proposal for a directive

#### Article 3 – paragraph 1 – point 16

*Text proposed by the Commission*

*Amendment*

**(16) ‘comparable uncontrolled transaction’ means a transaction between independent enterprises that is comparable to the controlled transaction under examination;**

**deleted**

Or. en

## Amendment 23

### Proposal for a directive

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

*Text proposed by the Commission*

*Amendment*

**(18) ‘OECD Transfer Pricing Guidelines’ means the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022, endorsed by the OECD Council pursuant to the OECD Council Recommendation of the Council on the Determination of Transfer Pricing between Associated Enterprises [C(95)126/Final], and as amended in January 20, 2022 and**

**(18) ‘OECD Transfer Pricing Guidelines’ means the *latest version of the* OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations *as of the entry into force of this Directive* and any further amendments to these OECD Transfer Pricing Guidelines that the Union approved in the context of the OECD Committee on Fiscal Affairs via the adoption of a Union**

*included in Annex I*, and any further amendments to these OECD Transfer Pricing Guidelines that the Union approved in the context of the OECD Committee on Fiscal Affairs via the adoption of a Union position under **218(9)** TFEU;

position under Article **218** TFEU;

Or. en

## Amendment 24

### Proposal for a directive Article 3 – paragraph 1 – point 19

*Text proposed by the Commission*

*Amendment*

**(19) ‘cost contribution arrangement’ is a contractual arrangement among business enterprises to share the contributions and risks involved in the joint development, production or the obtaining of intangibles, tangible assets or services with the understanding that such intangibles, tangible assets or services are expected to create benefits for the individual businesses of each of the participants.**

*deleted*

Or. en

## Amendment 25

### Proposal for a directive Article 5

*Text proposed by the Commission*

*Amendment*

**Article 5**

*deleted*

**Associated enterprises**

**1. For the purpose of this Directive, ‘associated enterprise’ means a person who is related to another person in any of the following ways:**

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

*(b) a person participates in the control of another person through a holding that exceeds 25 % of the voting rights;*

*(c) a person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds 25 % of the capital;*

*(d) a person is entitled to 25 % or more of the profits of another person.*

*2. If more than one person participates in the management, control, capital or profits of the same person, as referred to in paragraph 1, all persons concerned shall be regarded as associated enterprises.*

*3. If the same persons participate in the management, control, capital or profits of more than one person, as referred to in paragraph 1, all persons concerned shall be regarded as associated enterprises.*

*4. For the purposes of paragraphs 1 and 2, a person shall mean both legal and natural persons. A person who acts together with another person in respect of the voting rights or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person.*

*5. In indirect participations, the fulfilment of the criteria set out in point (b) and (c) of paragraph 1 shall be determined by multiplying the rates of holding through the successive tiers. A person holding more than 50 % of the voting rights shall be deemed to hold 100 % of the voting rights.*

*6. An individual, his or her spouse or recognised partner, in accordance with*

*the applicable national law, and his or her lineal ascendants or descendants and his or her siblings shall be treated as a single person.*

*7. A permanent establishment shall be considered an associated enterprise of the enterprise of which it is a part of.*

Or. en

## **Amendment 26**

### **Proposal for a directive**

#### **Article 6 – paragraph 5 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

*(aa) the downward adjustment is not leading to double non-taxation and there is a certainty on the part of the Member State performing the downward adjustment that the downward adjustment is included in the taxable profits of the associated enterprise in the other jurisdiction;*

Or. en

## **Amendment 27**

### **Proposal for a directive**

#### **Article 8**

*Text proposed by the Commission*

*Amendment*

*Article 8*

*deleted*

*Identifying the commercial or financial relations*

*1. Member States shall ensure that the application of the arm's length principle starts with the identification and accurate delineation of, on the one side, the commercial and financial relations of the associated enterprises and, on the*

*other, the actual transaction or transactions between the associated enterprises.*

*2. The identification and accurate delineation of the commercial and financial relations of the associated enterprises and the actual transaction(s) shall be based on the following aspects:*

*(a) a preliminary broad-based understanding of the industry sector in which the associated enterprises operate and of the factors affecting the performance of enterprises operating in that sector;*

*(b) an analysis of how each associated enterprise operates, to identify its commercial or financial relations with associated enterprises;*

*(c) an analysis of the economically relevant characteristics of the controlled transactions having regard to both their form and substance.*

Or. en

## **Amendment 28**

### **Proposal for a directive Article 9**

*Text proposed by the Commission*

*Amendment*

#### *Article 9*

*deleted*

#### *Transfer pricing methods*

*1. Member States shall ensure that the arm's length price charged in a controlled transaction between associated enterprises is determined using one of the following transfer pricing methods:*

*(a) the comparable uncontrolled price method;*

*(b) the resale price method;*

*(c) the cost-plus method;*

*(d) the transactional net margin method;*

*(e) the profit split method.*

**2. In addition to those methods listed in paragraph 1, Member States shall allow for the application of any other valuation methods and techniques to estimate the arm's length price only if it can be demonstrated in a satisfactory manner that:**

*(a) none of the methods referred to in paragraph 1 is appropriate or workable in the circumstances of the case;*

*(b) the selected valuation method or technique is consistent with the arm's length principle and provides a more reliable estimate of the arm's length result than the methods listed in paragraph 1.*

Or. en

## **Amendment 29**

### **Proposal for a directive Article 10**

*Text proposed by the Commission*

*Amendment*

#### *Article 10*

*deleted*

#### *The most appropriate method rule*

**1. Member States shall ensure that the arm's length price is determined by applying the most appropriate transfer pricing method to the circumstances of the case.**

**2. The most appropriate transfer pricing method shall be selected from among the transfer pricing methods set out in Article 9, taking into consideration the following criteria:**

*(a) the respective strengths and weaknesses of the transfer pricing methods;*

*(b) the appropriateness of a transfer pricing method in view of the nature of the controlled transaction, determined in particular through an analysis of the functions undertaken by each enterprise in the controlled transaction, taking into account assets used and risks assumed;*

*(c) the degree of comparability between the controlled and uncontrolled transactions, including the reliability of comparability adjustments, if any, that may be required to eliminate differences between them;*

*(d) the availability of reliable information needed to apply the selected transfer pricing method.*

Or. en

## Amendment 30

### Proposal for a directive Article 11

*Text proposed by the Commission*

*Amendment*

#### *Article 11*

*deleted*

#### *Comparability analysis*

*1. Member States shall evaluate whether a controlled transaction produces an arm's length result by comparing the conditions of the controlled transaction with the conditions that would have been set, had the associated enterprises been independent and had they undertaken a comparable transaction under comparable circumstances.*

*2. Member States shall ensure that the transactions under analysis are comparable. In order to determine whether two or more transactions are comparable, the following factors shall be considered, to the extent that they are economically relevant to the facts and*



*circumstances of a transaction:*

- (a) the contractual terms of the transaction;*
- (b) the functions performed by each of the parties to the transaction, taking into account assets used and risks assumed, including how those functions relate to the wider generation of value by the MNE group to which the parties belong, the circumstances surrounding the transaction, and industry practices;*
- (c) the characteristics of the property transferred or of services provided;*
- (d) the economic circumstances of the parties and of the market in which the parties operate;*
- (e) the business strategies pursued by the parties.*

**3. An uncontrolled transaction is comparable to a controlled transaction if either of the following conditions is met:**

- (a) none of the differences (if any) between the transactions being compared or between the enterprises undertaking those transactions could materially affect the price in the open market;*
- (b) reasonably accurate adjustments can be made to eliminate the material effects of such differences.*

**4. Member States shall ensure that the search for comparable uncontrolled transactions is transparent and reproducible.**

Or. en

## Amendment 31

### Proposal for a directive Article 12

*Text proposed by the Commission*

*Amendment*

#### *Article 12*

*deleted*

#### *Determination of the arm's length range*

- 1. Member States shall ensure that, when the application of the transfer pricing methods produces a range of values, the arm's length range is determined using the interquartile range of the results of the uncontrolled comparables.*
- 2. The interquartile range is the range from the 25th to the 75th percentile of the results derived from the uncontrolled comparables.*
- 3. Member States shall ensure that a taxpayer is not subject to adjustment if its results fall within the arm's length range, unless it is proven that a specific different positioning in the range is justified by the facts and circumstances of the specific case.*
- 4. Member States shall ensure that, if the results of a controlled transaction fall outside the arm's length range, an adjustment is made to the median of all the results unless it is proven that any other point of the range determines an arm's length price taking into consideration the circumstances of the specific case. The median is the 50th percentile of the range of results of the comparable uncontrolled transactions.*

Or. en

## Amendment 32

### Proposal for a directive Article 13 – paragraph 1

*Text proposed by the Commission*

1. Member States shall ensure that a taxpayer has sufficient information and analysis available to verify that the conditions of its transactions with associated enterprises are in accordance with Article 4(1) and should at least encompass *the elements referred to in articles 8, 9, 10, 11 and 12.*

*Amendment*

1. Member States shall ensure that a taxpayer has sufficient information and analysis available to verify that the conditions of its transactions with associated enterprises are in accordance with Article 4(1) and should at least encompass *the identified commercial and financial relations, the appropriate transfer pricing method as recognized by the OECD Transfer Pricing Guidelines and the way to chose the most appropriate method, the comparability analysis, and the arm's length range.*

Or. en

## Amendment 33

### Proposal for a directive Article 14 – paragraph -1 (new)

*Text proposed by the Commission*

*Amendment*

*-1. Member States shall ensure that transfer pricing rules are applied in a manner consistent with the latest OECD Transfer Pricing Guidelines.*

Or. en

## Amendment 34

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

*Text proposed by the Commission*

*Amendment*

2. The Council may lay down further

2. The Council may lay down further

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

- (a) transfer of intangibles asset or rights in intangible assets between associated enterprises, including hard-to-value intangibles;***
- (b) the provision of services between associated enterprises, including the provision of marketing and distribution services;***
- (c) cost contribution arrangements between associated enterprises;***
- (d) transactions between associated enterprises in the context of business restructurings;***
- (e) financial transactions;***
- (f) dealings between the head office and its permanent establishments.***

rules, consistent with the OECD Transfer Pricing Guidelines, on how the arm's length principle and the other provisions laid down in Chapter II of this Directive are to be applied in specific transactions to ensure more tax certainty and mitigate the risk of ***double non-taxation and double taxation, and reduce tax disputes and tax abuse.***

Or. en

## **Amendment 35**

### **Proposal for a directive**

#### **Article 14 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

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

### **Amendment 36**

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

### **Amendment 37**

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

*Text proposed by the Commission*

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

*Amendment*

1. The Commission shall examine and evaluate the application of this Directive every 3 years and submit a report on its evaluation to the European Parliament and to the Council. The first report shall be submitted by 31 December **2029**.

Or. en

### **Amendment 38**

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

*Text proposed by the Commission*

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

*Amendment*

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

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

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

Or. en

## Amendment 39

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

#### *Text proposed by the Commission*

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

#### *Amendment*

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

Or. en

## Amendment 40

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

#### *Text proposed by the Commission*

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

#### *Amendment*

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

## **Amendment 41**

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

*Text proposed by the Commission*

*Amendment*

**1a. The European Parliament may attend as observer the negotiations on the OECD Transfer Pricing Guidelines in the relevant OECD working parties and at the OECD Inclusive Framework.**

Or. en

## **Amendment 42**

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

*Text proposed by the Commission*

*Amendment*

**Article 19a**

**Sunset clause**

- 1. This Directive shall cease to apply as of 1 January 2035 for MNE groups that fall under the scope of the proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), except for the transactions with associated enterprises in third countries.**
- 2. This Directive shall cease to apply as of 1 January 2040 for all MNE groups operating in the Union, except for the transactions with associated enterprises in third countries.**
- 3. Paragraph 1 shall apply only if the proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) enters into force before 2035 .**

### **Amendment 43**

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

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

### **Amendment 44**

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

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

*Text proposed by the Commission*

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

*Amendment*

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

Or. en



## EXPLANATORY STATEMENT

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

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

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

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

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

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

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

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

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