



2023/0322(CNS)

18.12.2023

AMENDMENTS

45 - 208

Draft report
Kira Marie Peter-Hansen
(PE756.000v01-00)

Transfer pricing

Proposal for a directive
(COM(2023)0529 – C9-0339/2023 – 2023/0322(CNS))

Amendment 45
Isabel Benjumea Benjumea

Proposal for a directive
Recital 2

Text proposed by the Commission

(2) The globally recognised standard for determining the prices between associated enterprises for tax purpose is the so called “arm’s length principle”. The arm’s length principle prescribes that individual group members of a MNE must transact with each other as if they were independent third parties. In other words, the transactions between two associated enterprises should reflect the outcome that would have been achieved if the parties were not related i.e. if the parties were independent of each other and the outcome (price or margins) was determined by (*open*) market forces.

Amendment

(2) The globally recognised standard for determining the prices between associated enterprises for tax purpose is the so called “arm’s length principle”. The arm’s length principle prescribes that individual group members of a MNE must transact with each other as if they were independent third parties. In other words, the transactions between two associated enterprises should reflect the outcome that would have been achieved if the parties were not related i.e. if the parties were independent of each other and the outcome (price or margins) was determined by *open* market forces.

Or. es

Amendment 46
René Repasi, Paul Tang, Jonás Fernández, Aurore Lalucq, Evelyn Regner

Proposal for a directive
Recital 2 a (new)

Text proposed by the Commission

Amendment

(2 a) Base erosion and profit shifting (BEPS) refers to tax planning strategies used by multinational enterprises that exploit gaps and mismatches in tax rules to avoid paying tax. Transfer pricing, while currently needed to determine where profits are reported, has also been misused for reducing the tax liabilities of firms in countries with higher tax rates leading to profit shifting. The arm’s length principle should be applied in Member States, and by taxpayers, in a manner that guarantees greater tax

certainty for taxpayers and minimizes opportunities for profit shifting.

Or. en

Amendment 47

José Gusmão, Manon Aubry

Proposal for a directive

Recital 2 a (new)

Text proposed by the Commission

Amendment

(2 a) However, the “arm’s length principle” is based on the wrong assumption that MNE groups work as a collection of separate entities. This premise fails to acknowledge the global action of MNEs and how they benefit from their market power and economies of scale. Transfer pricing, thus, fails to respond to this reality and it is often used by MNEs to engage in profit-shifting. Artificially high prices for intra-group transactions allow to transfer profits from high to low-tax jurisdictions, reducing the total amount of taxes paid.

Or. en

Amendment 48

José Gusmão, Manon Aubry

Proposal for a directive

Recital 2 b (new)

Text proposed by the Commission

Amendment

(2 b) At the beginning of the BEPS project in 2013, OECD estimates, while acknowledging the methodological and data limitations, that the scale of global corporate income tax revenue losses due to BEPS practices (including transfer pricing manipulation) could be between USD 100 to 240 billion annually^{1a}. The

goal of this Directive is to collect at least part of this amount.

^{1a} <https://www.oecd.org/tax/beps-project-explanatory-statement-9789264263437-en.htm>

Or. en

Amendment 49
José Gusmão, Manon Aubry

Proposal for a directive
Recital 2 c (new)

Text proposed by the Commission

Amendment

(2 c) The long-term solution to effectively address tax avoidance and guarantee a minimum level of effective taxation for MNE groups is a system of unitary taxation with formulary apportionment based on relevant factors to assess where economic activity is taking place. The main purpose of the directive ‘Business in Europe: Framework for Income Taxation’ (BEFIT) should be to create a consolidated tax base for economic groups, as well as implementing such a system.

Or. en

Amendment 50
Andżelika Anna Mozdżanowska
on behalf of the ECR Group

Proposal for a directive
Recital 3

Text proposed by the Commission

Amendment

(3) Where Member States apply or interpret the arm’s length principle differently, they create situations that

deleted

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.

Or. pl

Justification

Member States should have a margin of discretion to create their own transfer pricing policies.

Amendment 51

Anna-Michelle Asimakopoulou, Lídia Pereira

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 ***in a significantly different way***, they create situations that could harm the internal market ***and could lead to unnecessary costs for businesses in case of disputes. Such significant differences*** in applicable transfer pricing rules not only could lead to double taxation, ***but can also be misused*** for profit shifting and tax avoidance ***purposes. Such significant inconsistencies can present*** 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. ***Tax administrations, however, should not automatically assume that associated enterprises have sought to manipulate their profits. There may be a genuine difficulty in accurately determining a market price in the absence of market***

forces or when adopting a particular commercial strategy. The consideration of transfer pricing should not be confused with the consideration of problems of tax fraud or tax avoidance, even though transfer pricing policies may be used for such purposes.

Or. en

Amendment 52

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

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, forster double taxation and/or double non taxation, 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 and tax avoidance. Such inconsistency is a serious ***threat to tax fairness and certainty, tax morale, ability of tax administration to tax, It can also have an impact on*** businesses operating across borders ***and,*** is likely to cause economic distortions, ***such has artificial financial flows,*** and inefficiencies.

Or. en

Amendment 53

José Gusmão, Manon Aubry

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 ***result in harmful tax practices and losses of tax revenues for 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 ***threat to tax revenues***, is likely to cause economic distortions and inefficiencies and has a negative impact on cross-border ***productive*** investment.

Or. en

Amendment 54

Isabel Benjumea Benjumea

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. 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, ***especially SMEs***. ***This*** is likely to cause economic distortions and inefficiencies and has a negative impact on cross-border investment and growth.

Or. es

Amendment 55

Gilles Boyer, Olivier Chastel

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. 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.
Furthermore, the European Commission should make sure this Directive does not create any inconsistency with the latest OECD guidelines, including the Amount B of Pillar one aiming at simplifying existing transfer pricing rules.

Or. en

Amendment 56
Gilles Boyer, Olivier Chastel, Martin Hlaváček

Proposal for a directive
Recital 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 57
Anna-Michelle Asimakopoulou, Lídia Pereira

Proposal for a directive
Recital 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 58
René Repasi, Paul Tang, Jonás Fernández, Aurore Lalucq, Evelyn Regner

Proposal for a directive
Recital 4

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 59
Andżelika Anna Możdżanowska
on behalf of the ECR Group

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

Amendment

(4) This Directive lays down rules to ensure a ***harmonised*** application of the

length principle across the Union with the aim of increasing tax certainty and reducing occurrences of double taxation as well as double non taxation.

arm's length principle across the Union with the aim of increasing tax certainty and reducing occurrences of double taxation as well as double non taxation.

Or. pl

Amendment 60
Isabel Benjumea Benjumea

Proposal for a directive
Recital 4 a (new)

Text proposed by the Commission

Amendment

(4a) This Directive should aim to harmonise certain procedural and governance aspects of transfer pricing in all Member States in order to provide greater consistency and increase tax certainty in the Union. Such harmonisation should not mean unification, as the freedom of the Member States to compete through their tax decisions and the exclusivity of their competences in this area should be respected.

Or. es

Amendment 61
Anna-Michelle Asimakopoulou, Lídia Pereira

Proposal for a directive
Recital 5

Text proposed by the Commission

Amendment

(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

(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 ***derived from the OECD guidelines*** . In order to ensure equal treatment, a permanent establishment should be treated, for the purpose of this

thus the internal dealings between head office and permanent establishment should be determined in accordance with the arm's length principle.

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.

Or. en

Amendment 62

José Gusmão, Manon Aubry

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

(5) To ensure that the arm's length principle is applied in a uniform way across the Union, Member States should apply a common ***and conservative*** 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.

Or. en

Amendment 63

José Gusmão, Manon Aubry

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) To ensure the mitigation of double taxation, Member States should have adequate mechanisms in place to enable them, when a primary adjustment is made in another Member State or third country jurisdiction, to make a corresponding

Amendment

deleted

adjustment. In particular, Member States should have the possibility to perform corresponding adjustments and should not limit the granting of such an adjustment in the context of mutual agreement procedures (MAPs) but also as a result of: (i) a “fast-track” procedure to be concluded in 180 days without the need to open a MAP when there is no doubt that the primary adjustment is well founded; or (ii) joint audits or other forms of international cooperation such as multilateral risk assessment programs like the European Trust and Cooperation Approach (ETACA) and the International Compliance Assurance Programme (ICAP).

Or. en

Amendment 64

Gilles Boyer, Olivier Chastel, Martin Hlaváček

Proposal for a directive

Recital 6

Text proposed by the Commission

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

Amendment

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and the International Compliance Assurance Programme (ICAP).

and the International Compliance Assurance Programme (ICAP). *To this aim, Member States should use all the procedures and arrangements provided by the Directive on administrative cooperation (DAC), especially DAC 3 and 6 that cover the exchange of information related to Advance Price Agreements and the exchange of information on reportable cross-border arrangements which have been reported by intermediaries or by the relevant taxpayer.*

Or. en

Amendment 65 **Isabel Benjumea Benjumea**

Proposal for a directive **Recital 6**

Text proposed by the Commission

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

Amendment

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

improving cooperation between tax authorities and ensuring a more binding application of the arm's length principle, it will be essential for this to be a binding deadline for tax authorities.

Or. es

Amendment 66

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

Proposal for a directive

Recital 7

Text proposed by the Commission

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

Amendment

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

situations of double non-taxation.

taxation. Member States should not create situations of double non-taxation.

Or. en

Amendment 67

José Gusmão, Manon Aubry

Proposal for a directive

Recital 7

Text proposed by the Commission

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

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Amendment 68
Isabel Benjumea Benjumea

Proposal for a directive
Recital 7

Text proposed by the Commission

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

Amendment

(7) There may be legitimate reasons as to why a corresponding adjustment is not given or is less than the primary adjustment. In particular, Member States should not grant corresponding adjustments if: (i) the primary adjustment is not considered to be consistent with the arm's length principle; (ii) the primary adjustment does not result in the taxation of an amount of profits in another jurisdiction on which the associated enterprise in the relevant Member State has already been subject to tax; and (iii) when a third country jurisdiction is involved, there is no tax treaty in place. In the absence of a primary adjustment, Member States may perform a downward adjustment only if: (i) the downward adjustment is consistent with the arm's length principle; (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.

However, the exclusive competence of the Member States in tax matters and thus their own decisions must be respected at all times.

Amendment 69
Isabel Benjumea Benjumea

Proposal for a directive
Recital 9 a (new)

Text proposed by the Commission

Amendment

(9a) This Directive will lead to an increase in litigation in the different Member States where it will be applied, meaning that mechanisms will be needed to be able to respond to claims, thus avoiding problems and disputes between companies and States. Litigation will have to be simple and quick in order to resolve disputes in a consensual manner in the shortest possible timeframe and with the least possible impact on business.

Or. es

Amendment 70
José Gusmão, Manon Aubry

Proposal for a directive
Recital 10

Text proposed by the Commission

Amendment

(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

(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 of these recognised transfer pricing methods. Instead, the most appropriate method rule provided for in ***the OECD Transfer Pricing Guidelines***.

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 (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 pricing³¹ should be taken into due consideration.*

³¹ 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

Or. en

Amendment 71

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

Proposal for a directive Recital 10

(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 (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 pricing³¹ should be taken into due consideration.

(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') **and are not exclusive of other international standards endorsed by a majority of Member States**. 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 (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 pricing³¹ should be

taken into due consideration.

³¹ *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*

Or. en

Amendment 72 **Gilles Boyer, Olivier Chastel**

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 (i.e. the transaction between associated enterprises); and (ii) such other method produces a result consistent with the result

Amendment

(10) Transfer pricing methods are used to establish the arm's length prices for transactions between associated enterprises. The methods listed in this Directive ***shall be*** in line with ***the latest*** OECD Transfer Pricing Guidelines ***to avoid any inconsistency between this Directive and the rules agreed at the OECD, including the Amount B of Pillar one aiming at simplifying existing transfer pricing rules***. 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 (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 pricing³¹ should be taken into due consideration.

³¹ 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

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 pricing³¹ should be taken into due consideration.

³¹ 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

Or. en

Amendment 73

José Gusmão, Manon Aubry

Proposal for a directive

Recital 11

Text proposed by the Commission

(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 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)

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 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.***

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.

Or. en

Amendment 74

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

Proposal for a directive
Recital 11

Text proposed by the Commission

(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 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

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 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. 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

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.

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 75
Isabel Benjumea Benjumea

Proposal for a directive
Recital 12 a (new)

Text proposed by the Commission

Amendment

12a The proposed codification of the arm's length principle and the OECD Guidelines should improve certainty and reduce litigation. Transfer pricing disputes are often based on divergent interpretations of the specific facts and circumstances rather than on interpretations of the Guidelines. With a view to avoiding the risk of regulatory duplication and contradiction due to changes in the OECD Guidelines, the latter shall take precedence over transfer pricing.

Or. es

Amendment 76
José Gusmão, Manon Aubry

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 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.*

(13) When the results of a controlled transaction fall outside the arm's length range, tax administrations should be required to make an adjustment to the median of all the results.

Or. en

Amendment 77
Isabel Benjumea Benjumea

Proposal for a directive
Recital 13

Text proposed by the Commission

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

Amendment

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

range or indicators. The main source of disputes stems from divergent perspectives on the facts and circumstances of a particular transaction. Therefore, an interquartile range will not reduce disputes but will lead to more closed positions on facts and circumstances, reducing flexibility in dispute settlement, in particular with third countries.

Or. es

Amendment 78

Anna-Michelle Asimakopoulou, Lídia Pereira

Proposal for a directive

Recital 13

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 79

Andżelika Anna Możdżanowska
on behalf of the ECR Group

Proposal for a directive
Recital 14

Text proposed by the Commission

(14) In order to lower the compliance burden for taxpayers that operate cross-border within the Union a common approach towards the documentation on transfer pricing should further be introduced. ***One standard template, rules on content and linguistic arrangements, timeframes and which taxpayers should be in scope would bring simplicity and potential cost savings taking into account chapter V ‘Documentation’ of the OECD Transfer Pricing Guidelines and the Code of conduct on transfer pricing documentation for associated enterprises in the European Union***³³.

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

Amendment

(14) In order to lower the compliance burden for taxpayers that operate cross-border within the Union a common approach towards the documentation on transfer pricing should further be introduced.

Or. pl

Justification

We are opposed to overly detailed documentation regulations. Concerns are raised in particular by the delegation of authority to the European Commission for the detailed definition of documentation obligations for affiliated entities.

Amendment 80
Anna-Michelle Asimakopoulou, Lídia Pereira

Proposal for a directive
Recital 14

(14) In order to lower the compliance burden for taxpayers that operate cross-border within the Union a common approach towards the documentation on transfer pricing should further be introduced. One standard template, rules on content and linguistic arrangements, timeframes and which taxpayers should be in scope would bring simplicity and potential cost savings taking into account chapter V ‘Documentation’ of the OECD Transfer Pricing Guidelines and the Code of conduct on transfer pricing documentation for associated enterprises in the European Union³³ .

(14) In order to lower the compliance burden for taxpayers that operate cross-border within the Union a common approach towards the documentation on transfer pricing should further be introduced. One standard template, rules on content and linguistic arrangements, timeframes and which taxpayers should be in scope would bring simplicity and potential cost savings taking into account chapter V ‘Documentation’ of the OECD Transfer Pricing Guidelines and the Code of conduct on transfer pricing documentation for associated enterprises in the European Union³³ . ***Harmonized interpretation of those terms at Union level is also necessary to facilitate application of this Directive by the tax administrations and businesses Therefore, Member States shall empower their tax administrations to deal efficiently with the common documentation efforts on transfer pricing.***

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

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

Or. en

Amendment 81
José Gusmão, Manon Aubry

Proposal for a directive
Recital 14

(14) In order to lower the compliance burden for taxpayers that operate cross-border within the Union a common approach towards the documentation on transfer pricing should further be introduced. One standard template, rules on content and linguistic arrangements, timeframes and which taxpayers should be in scope would bring simplicity and potential cost savings taking into account chapter V ‘Documentation’ of the OECD Transfer Pricing Guidelines and the Code of conduct on transfer pricing documentation for associated enterprises in the European Union³³ .

(14) In order to lower the compliance burden for taxpayers that operate cross-border within the Union, ***as well as to address the risk of tax avoidance***, a common approach towards the documentation on transfer pricing should further be introduced. One standard template, rules on content and linguistic arrangements, timeframes and which taxpayers should be in scope would bring simplicity and potential cost savings taking into account chapter V ‘Documentation’ of the OECD Transfer Pricing Guidelines and the Code of conduct on transfer pricing documentation for associated enterprises in the European Union³³ .

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

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

Or. en

Amendment 82 **Gilles Boyer, Olivier Chastel**

Proposal for a directive **Recital 15**

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

(15) ***To avoid any inconsistency***, the rules provided by this Directive should be applied in a manner consistent with the ***latest*** OECD Transfer Pricing Guidelines, ***especially with the upcoming Amount B of the Pillar one being negotiated in the***

framework of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting.

Or. en

Amendment 83
Isabel Benjumea Benjumea

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 OECD Transfer Pricing Guidelines. ***These rules must not contradict the guidelines adopted in the framework of the OECD, as this would create a climate of uncertainty for businesses, especially for SMEs.***

Or. es

Amendment 84
René Repasi, Paul Tang, Jonás Fernández, Aurore Lalucq, Evelyn Regner

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 OECD Transfer Pricing Guidelines ***or any other relevant international guidelines.***

Or. en

Amendment 85
Anna-Michelle Asimakopoulou, Lídia Pereira

Proposal for a directive
Recital 15

Text proposed by the Commission

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

Amendment

(15) The rules provided by this Directive should be applied in a manner consistent with the ***most up-to-date version of the*** OECD Transfer Pricing Guidelines.

Or. en

Amendment 86
José Gusmão, Manon Aubry

Proposal for a directive
Recital 16

Text proposed by the Commission

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

Amendment

deleted

Or. en

Amendment 87

Andżelika Anna Możdżanowska
on behalf of the ECR Group

Proposal for a directive Recital 16

Text proposed by the Commission

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

Amendment

(16) In order to create more certainty for taxpayers and mitigate the risk of double taxation, the possibility ***for the Commission to issue detailed guidelines on transfer pricing*** is provided in this Directive. Those ***guidelines*** should bring down the compliance burden and the number of disputes.

Or. pl

Justification

Specific issues should not be regulated in the form of binding implementing acts, but in the form of guidelines along the lines of the JTPF reports.

Amendment 88

Anna-Michelle Asimakopoulou, Lídia Pereira

Proposal for a directive

Recital 16

Text proposed by the Commission

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

Amendment

(16) In order to create more certainty for taxpayers and mitigate the risk of double taxation, the possibility to establish further common transfer pricing binding rules by way of **delegated** acts is provided in this Directive. Those **delegated** acts should provide taxpayers with a clear view of what tax authorities in the Union would consider to be acceptable to be used for specified transactions and provide so-called ‘safe harbours’ that bring down the compliance burden and the number of disputes. 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 89

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

Proposal for a directive

Recital 16

Text proposed by the Commission

(16) In order to create more certainty for taxpayers and mitigate the risk of double taxation, the possibility to establish further common transfer pricing binding rules by way of implementing acts is provided in this Directive. Those implementing acts should provide taxpayers with a clear view of what tax authorities in the Union would consider to be acceptable to be used for

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 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

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.

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 Commission.

Or. en

Amendment 90

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

Proposal for a directive

Recital 16 a (new)

Text proposed by the Commission

Amendment

(16 a) Divergent interpretation of the terms used in the international guidelines on Transfer Pricing, including the OECD guidelines, are likely to result in instances of double taxation, entail legal uncertainty, additional costs for businesses and distortion of competition. Uniform interpretation of those terms at Union level is also necessary to facilitate application of the present Directive by the tax administrations and businesses, in view of the future adaptations of the international guidelines on transfer pricing. In that spirit, the Commission is empowered to adopt implementing acts aiming at guaranteeing sufficient flexibility to remain aligned with international standards.

Or. en

Amendment 91

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

Proposal for a directive

Recital 16 b (new)

Text proposed by the Commission

Amendment

(16 b) As transfer pricing is a matter that evolves over time, it will be essential to continuously monitor the need for adjustments of the present Directive with the objective of guaranteeing the uniformity of transfer pricing methodologies within the EU and at global stage. Representatives of Member States, tax payers, academics and civil society should be able to exchange on the effective implementation of the present directive and identify potential needs for adaptation. A 'European Forum on Transfer Pricing' (EFTP) is created for that purpose.

Or. en

Amendment 92

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

Proposal for a directive

Recital 16 c (new)

Text proposed by the Commission

Amendment

(16 c) In order to increase tax certainty and ease the risk assessment by tax authorities, it would be very useful to provide for a simplified approach to transfer pricing compliance. To this aim, it would be important to enact a common risk assessment framework for transfer pricing based on a commonly accepted benchmark analysis. This assessment would investigate the margins of Earnings Before Interest and Tax for entities operating independently within the internal market. The profit markers so obtained should then be published, to be

used as a self-assessment risk tool, and enable groups operating in the internal market to know in advance the arm's length returns (market based) that they are expected to achieve in transactions with associated enterprises. Each transaction within the scope of the system should be assessed as being of low, medium or high risk, depending on how this compares to the profit markers, which will be set through an implementing act and published on the website of the Commission.

Or. en

Amendment 93

Gilles Boyer, Olivier Chastel, Martin Hlaváček

Proposal for a directive

Recital 17

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 94

José Gusmão, Manon Aubry

Proposal for a directive

Recital 17 a (new)

Text proposed by the Commission

Amendment

(17 a) This Directive should cease to

apply as of 2030 for 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, when a formulary apportionment based on relevant factors should be in place, and respecting the criteria laid down in article 19a of the present directive.

Or. en

Amendment 95

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

Proposal for a directive

Recital 17 a (new)

Text proposed by the Commission

Amendment

(17 a) This directive should cease to apply as of 2035 for BEFIT groups except for the transactions with associated enterprises in third countries.

Or. en

Amendment 96

Isabel Benjumea Benjumea

Proposal for a directive

Recital 18

Text proposed by the Commission

Amendment

(18) To allow businesses to directly enjoy the benefits of the internal market without incurring an unnecessary additional administrative burden, information on the tax provisions set out in this Directive should be made accessible through the Single Digital Gateway ('SDG') in accordance with Regulation (EU) 2018/1724³⁴. The SDG provides a one-stop-shop for cross-border users for

(18) To allow businesses to directly enjoy the benefits of the internal market without incurring an unnecessary additional administrative burden, information on the tax provisions set out in this Directive should be made accessible through the Single Digital Gateway ('SDG') in accordance with Regulation (EU) 2018/1724³⁴. The SDG provides a one-stop-shop for cross-border users for

the online provision of information, procedures and assistance services relevant to the functioning of the internal market.

the online provision of information, procedures and assistance services relevant to the functioning of the internal market.

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

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

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

Or. es

Amendment 97
Anna-Michelle Asimakopoulou, Lídia Pereira

Proposal for a directive
Recital 20

Text proposed by the Commission

(20) The retention period of **10** years is justified in order to allow Member States to comply with most statutes of limitations.

Amendment

(20) The retention period of **5** years is justified in order to allow Member States to comply with most statutes of limitations.

Or. en

Amendment 98
Andżelika Anna Możdżanowska
on behalf of the ECR Group

Proposal for a directive
Recital 21

(21) In order to lower the administrative burden for taxpayers, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the transfer pricing documentation, by laying down common templates, setting linguistic requirements, defining the type of taxpayer to abide by these templates and the timeframes to be covered. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

deleted

Or. pl

Justification

The delegation of powers to the European Commission for the detailed definition of documentation obligations could lead to an increase - rather than a decrease - in the administrative burden for businesses.

Amendment 99

José Gusmão, Manon Aubry

Proposal for a directive

Recital 21

Text proposed by the Commission

Amendment

(21) In order to lower the administrative burden for taxpayers, the power to adopt

(21) In order to lower the administrative burden for taxpayers **and the risk of tax**

acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the transfer pricing documentation, by laying down common templates, setting linguistic requirements, defining the type of taxpayer to abide by these templates and the timeframes to be covered. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

avoidance, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the transfer pricing documentation, by laying down common templates, setting linguistic requirements, defining the type of taxpayer to abide by these templates and the timeframes to be covered. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.

Or. en

Amendment 100

Andżelika Anna Możdżanowska
on behalf of the ECR Group

Proposal for a directive **Recital 22**

Text proposed by the Commission

(22) ***Since the objective of this Directive cannot sufficiently be achieved by the Member States but can rather, by reason of the cross-border nature of the transfer pricing rules and the need to reduce compliance costs in the internal market as a whole, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In***

Amendment

(22) In accordance with the principle of ***proportionality*** as set out in ***that*** Article, ***this Directive does not go beyond what is necessary in order to achieve the objective of eliminating the risk of double taxation and increasing tax certainty by reducing the number of international transfer pricing tax disputes.***

accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

Or. pl

Justification

We are of the opinion that the fulfilment of the objectives underlying the proposal to harmonise transfer pricing rules could also be ensured by means other than a directive - e.g. through guidelines published along the lines of the reports of the EU Joint Transfer Pricing Forum.

Amendment 101

Isabel Benjumea Benjumea

Proposal for a directive

Article 1 – paragraph 1

Text proposed by the Commission

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

Amendment

This Directive lays down rules to harmonise transfer pricing rules of Member States and to ensure a common application of the arm's length principle within the Union *with the aim of presenting a simplification of administrative processes for SMEs and reducing red tape for them.*

Or. es

Amendment 102

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

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.

Amendment 103

Martin Hlaváček

Proposal for a directive

Article 3 – paragraph 1 – point 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 104

Andżelika Anna Możdżanowska

on behalf of the ECR Group

Proposal for a directive

Article 3 – paragraph 1 – point 1

Text proposed by the Commission

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

Amendment

(1) ‘arm’s length principle’ means the international standard ***as defined in the OSCE Guidelines*** that prescribes that associated enterprises must transact with each other as if they were independent third parties. In other words, the transactions between two associated enterprises should reflect the outcome that would have been achieved if the parties were not related i.e. if the parties were independent of each other and the outcome

(open) market forces.

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

Or. pl

Amendment 105

Isabel Benjumea Benjumea

Proposal for a directive

Article 3 – paragraph 1 – point 1

Text proposed by the Commission

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

Amendment

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

Or. es

Amendment 106

Martin Hlaváček

Proposal for a directive

Article 3 – paragraph 1 – point 4

Text proposed by the Commission

(4) ‘permanent establishment’ means a fixed place of business, as defined under the relevant bilateral convention on the avoidance of double taxation or, in absence thereof, in national law;

Amendment

(4) ‘permanent establishment’ means a fixed place of business, as defined under the relevant bilateral convention on the avoidance of double taxation or, in absence thereof, in national law ***in line with Article 5 of the OECD Model Tax Convention;***

Or. en

Amendment 107
José Gusmão, Manon Aubry

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

Text proposed by the Commission

Amendment

(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;* **deleted**

Or. en

Amendment 108
José Gusmão, Manon Aubry

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**

Or. en

Amendment 109
José Gusmão, Manon Aubry

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 controlled transaction;*

deleted

Or. en

Amendment 110
José Gusmão, Manon Aubry

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 111
José Gusmão, Manon Aubry

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 112

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

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 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;**

(18) ‘OECD Transfer Pricing Guidelines’ means the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022, endorsed by the OECD Council pursuant to the OECD Council Recommendation of the Council on the Determination of Transfer Pricing between Associated Enterprises [C(95)126/Final], and as amended in January 20, 2022 and included in Annex I; **The Commission shall be empowered to adopt delegated acts, in accordance with Article 18, in order to incorporate** any further amendments *of* these OECD Transfer Pricing Guidelines **into this Directive;**

Or. en

Justification

Any further amendments to the OECD Transfer Guidelines should not be incorporated automatically but require a new legislative procedure launched by a Commission proposal.

Amendment 113
Isabel Benjumea Benjumea

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that, where an enterprise engages in one or more commercial or financial cross-border transactions with an associated enterprise, such enterprise determines the amount of its taxable profits in a manner that is consistent with the arm's length principle.

Amendment

1. Member States shall ensure that, where an enterprise engages in one or more commercial or financial cross-border transactions with an associated enterprise, such enterprise determines the amount of its taxable profits in a manner that is consistent with the arm's length principle **and the OECD Guidelines.**

Or. es

Amendment 114
Martin Hlaváček

Proposal for a directive
Article 4 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that, where an enterprise engages in one or more commercial or financial cross-border **transactions** with an associated enterprise, such enterprise determines the amount of its taxable profits in a manner that is consistent with the arm's length principle.

Amendment

1. Member States shall ensure that, where an enterprise engages in one or more commercial or financial cross-border **relations** with an associated enterprise, such enterprise determines the amount of its taxable profits in a manner that is consistent with the arm's length principle.

Or. en

Amendment 115
Anna-Michelle Asimakopoulou, Lídia Pereira

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 116

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

Proposal for a directive

Article 5 – paragraph 1 – point a

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 117

José Gusmão, Manon Aubry

Proposal for a directive

Article 5 – paragraph 1 – point a

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 118

Anna-Michelle Asimakopoulou, Lídia Pereira

Proposal for a directive

Article 5 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) a person participates in the control of another person through a holding that exceeds **33** % of the voting rights;

Or. en

Amendment 119

Isabel Benjumea Benjumea

Proposal for a directive

Article 5 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) a person participates in the control of another person through a holding that exceeds **50** % of the voting rights;

Or. es

Amendment 120

José Gusmão, Manon Aubry

Proposal for a directive

Article 5 – paragraph 1 – point b

Text proposed by the Commission

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

Amendment

(b) a person participates in the control of another person through a holding that exceeds **5** % of the voting rights;

Or. en

Amendment 121

Isabel Benjumea Benjumea

Proposal for a directive

Article 5 – paragraph 1 – point c

Text proposed by the Commission

Amendment

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

(c) a person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds **50** % of the capital;

Or. es

Amendment 122

José Gusmão, Manon Aubry

Proposal for a directive

Article 5 – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

(c) a person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds **5** % of the capital;

Or. en

Amendment 123

Anna-Michelle Asimakopoulou, Lídia Pereira

Proposal for a directive

Article 5 – paragraph 1 – point c

Text proposed by the Commission

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

Amendment

(c) a person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds **33**% of the capital;

Or. en

Amendment 124

Anna-Michelle Asimakopoulou, Lídia Pereira

Proposal for a directive

Article 5 – paragraph 1 – point d

Text proposed by the Commission

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

Amendment

(d) a person is entitled to **33** % or more of the profits of another person.

Or. en

Amendment 125

Isabel Benjumea Benjumea

Proposal for a directive

Article 5 – paragraph 1 – point d

Text proposed by the Commission

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

Amendment

(d) a person is entitled to **50** % or more of the profits of another person.

Or. es

Amendment 126

José Gusmão, Manon Aubry

Proposal for a directive

Article 5 – paragraph 1 – point d

Text proposed by the Commission

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

Amendment

(d) a person is entitled to **5** % or more of the profits of another person.

Or. en

Amendment 127

José Gusmão, Manon Aubry

Proposal for a directive

Article 6 – paragraph 1 – point b

Text proposed by the Commission

(b) the primary adjustment results in the taxation of an amount of profits in another jurisdiction on which the

Amendment

(b) the primary adjustment results in the taxation of an amount of profits in another jurisdiction on which the

associated enterprise in the Member State that was requested to perform the corresponding adjustment has already been subject to *tax* in such Member State;

associated enterprise in the Member State that was requested to perform the corresponding adjustment has already been subject to *a minimum effective level of taxation in line with the Directive (EU) 2022/2523* in such Member State;

Or. en

Amendment 128

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

Proposal for a directive

Article 6 – paragraph 3 – point a – point i

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 129

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

Proposal for a directive

Article 6 – paragraph 3 – point a – point ii a (new)

Text proposed by the Commission

Amendment

(ii a) communicate, for each Member States concerned by the adjustment, the effective tax rate calculated within the meaning of Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union;

Or. en

Amendment 130

José Gusmão, Manon Aubry

Proposal for a directive

Article 6 – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 131

Martin Hlaváček

Proposal for a directive

Article 6 – paragraph 3 – point b

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 132
Isabel Benjumea Benjumea

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

Text proposed by the Commission

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

Amendment

(b) Member States shall declare the request admissible within 30 days by virtue of a notification to the taxpayer if all the information provided in paragraph 3, point (a), has been submitted. In the same timeframe, Member States shall notify the taxpayer of the lack of any necessary information and grant at least **60** days to provide it. If the taxpayer does not provide the requested information within the assigned deadline, the request may be rejected as inadmissible.

Or. es

Amendment 133
René Repasi, Paul Tang, Jonás Fernández, Aurore Lalucq, Evelyn Regner

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

Text proposed by the Commission

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

Amendment

(c) Member States shall ensure that when the double taxation arises from a primary adjustment made in another Member State, the procedure is concluded within 180 days from the receipt of the taxpayer's request with a reasoned act of acceptance or rejection. ***The procedure can be extended once by a reasonable period of time if the tax payer and the involved Member States all agree to such extension.***

Or. en

Amendment 134
Isabel Benjumea Benjumea

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

Text proposed by the Commission

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

Amendment

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

Or. es

Amendment 135
Martin Hlaváček

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

Text proposed by the Commission

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

Amendment

(c) Member States shall ensure that when the double taxation arises from a primary adjustment made in another Member State, the procedure is concluded within **200** days from the receipt of the taxpayer's request with a reasoned act of acceptance or rejection.

Or. en

Amendment 136
Isabel Benjumea Benjumea

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

Text proposed by the Commission

(d) In the case of acceptance, Member

Amendment

(d) In the case of acceptance, Member

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

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

Or. es

Amendment 137

Gilles Boyer, Olivier Chastel, Martin Hlaváček

Proposal for a directive

Article 6 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

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

Or. en

Amendment 138

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

Proposal for a directive

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

Text proposed by the Commission

Amendment

(a a) the downward adjustment is not leading to double non taxation, the Member State performing the downward adjustment needs to receive assurances that the downward adjustment is included in the profits of the associated enterprise in the other jurisdiction and taxed;

Or. en

Amendment 139

José Gusmão, Manon Aubry

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

Text proposed by the Commission

Amendment

(a a) the downward adjustment is not leading to double non-taxation and the Member State performing it can attest it is included in the taxable profits of the associated enterprise in the other jurisdiction;

Or. en

Amendment 140
José Gusmão, Manon Aubry

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

Text proposed by the Commission

Amendment

(a) before recording the relevant transaction, or series of transactions, the taxpayer made ***reasonable efforts*** to achieve an arm's length outcome;

(a) before recording the relevant transaction, or series of transactions, the taxpayer made ***everything possible*** to achieve an arm's length outcome;

Or. en

Amendment 141
José Gusmão, Manon Aubry

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 142

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

Proposal for a directive

Article 9 – paragraph 1 – introductory part

Text proposed by the Commission

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:

Amendment

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

Or. en

Amendment 143

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

Proposal for a directive

Article 9 – paragraph 2

Text proposed by the Commission

Amendment

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: *deleted*

(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 144

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

Proposal for a directive

Article 9 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

Or. en

Amendment 145

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

Proposal for a directive

Article 9 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(b) the selected valuation method or technique is consistent with the arm's *deleted*

length principle and provides a more reliable estimate of the arm's length result than the methods listed in paragraph 1.

Or. en

Amendment 146

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

Proposal for a directive

Article 9 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(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.*

deleted

Or. en

Amendment 147

Paul Tang

Proposal for a directive

Article 9 a (new)

Text proposed by the Commission

Amendment

Article 9a

Amendments to Directive 2011/16/EU

1. Directive 2011/16/EU Article 8a (6), point (h) is amended as follows:

(i) the identification of the method used for determination of the transfer pricing or other valuation methods and techniques to estimate the arm's length price as defined in Directive [2024/XX/XX on transfer pricing] Article 9 and the reasoning behind applying such method, or the transfer price itself in the case of an advance pricing arrangement;

Or. en

Amendment 148

Anna-Michelle Asimakopoulou, Lídia Pereira

Proposal for a directive

Article 10 – paragraph 1

Text proposed by the Commission

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.

Amendment

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

Or. en

Amendment 149

José Gusmão, Manon Aubry

Proposal for a directive

Article 10 – paragraph 2 – introductory part

Text proposed by the Commission

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:

Amendment

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

Or. en

Amendment 150

José Gusmão, Manon Aubry

Proposal for a directive

Article 10 – paragraph 2 – point b

Text proposed by the Commission

(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*

Amendment

(b) the appropriateness of a transfer pricing method in view of the nature of the controlled transaction;

functions undertaken by each enterprise in the controlled transaction, taking into account assets used and risks assumed;

Or. en

Amendment 151

José Gusmão, Manon Aubry

Proposal for a directive

Article 11 – paragraph 2 – point b

Text proposed by the Commission

Amendment

(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;* **deleted**

Or. en

Amendment 152

José Gusmão, Manon Aubry

Proposal for a directive

Article 11 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) *the business strategies pursued by the parties.* **deleted**

Or. en

Amendment 153

Martin Hlaváček

Proposal for a directive

Article 11 – paragraph 3 – point a

Text proposed by the Commission

Amendment

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

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

Or. en

Amendment 154

José Gusmão, Manon Aubry

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 155

Isabel Benjumea Benjumea

Proposal for a directive

Article 12 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Owing to the fact that transfer pricing disputes often relate to points within the interquartile range or relative to benchmarks, this can lead to disputes about the facts and circumstances of particular transactions. Therefore, interquartile ranges will not reduce litigation. Contrary to what is being sought to be achieved, they may lead to more closed positions on facts and circumstances, diminishing flexibility in dispute resolution, in particular in relations with third countries.

Or. es

Amendment 156

Andżelika Anna Możdżanowska

on behalf of the ECR Group

Proposal for a directive

Article 13 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission shall be empowered to adopt delegated acts, in accordance with Article 18, in order to further supplement the rule referred to in paragraph 1 with regard to the documentation, by laying down common templates, setting linguistic requirements, defining the type of taxpayer to abide by

deleted

these templates and the timeframes to be covered .

Or. pl

Justification

The provisions of the Directive should not aggravate the situation facing entrepreneurs through an extensive system of burdens. The delegation of powers to the European Commission for the detailed definition of documentation obligations raises the danger of such excessive administrative burdens.

Amendment 157
Isabel Benjumea Benjumea

Proposal for a directive
Article 13 a (new)

Text proposed by the Commission

Amendment

Article 13a

Settlement of disputes

1. Owing to the potential increase in litigation, this Directive requires the introduction of fast-track mechanisms which can respond to all demands. The arbitration system needs to be quick so that agreements can be reached, thereby avoiding problems and disputes that may arise. The use of Advance Pricing Agreements (APAs) should therefore be encouraged to strengthen dispute prevention and resolution mechanisms in the European Union. This should involve allocating more resources to tax administrations to speed up the processing times for APAs, increasing legal certainty for EU companies.

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

cases within shorter timeframes. To this end, States are invited to allocate adequate resources so that deadlines are met and Mutual Agreement Procedures (MAPs) can become an effective tool to eliminate double taxation.

Or. es

Amendment 158
Isabel Benjumea Benjumea

Proposal for a directive
Article 13 b (new)

Text proposed by the Commission

Amendment

Article 13b

Extension of the European Trust and Cooperation Approach (ETACA) initiative

1. It is necessary to broaden the focus and scope of the European Trust and Cooperation Approach (ETACA) to include transfer pricing reviews of specific intra-EU flows by participating Member States and not only low value-added transactions, as is currently the case.

2. Broadening the focus and scope will contribute to a more comprehensive and efficient approach to transfer pricing issues, with ex ante tax certainty that will eliminate subsequent tax disputes. States will thus need to agree on common definitions of the process and the main practical aspects.

3. It is recommended that a link be established between the ETACA and APAs to ensure the ETACA acts as a fast-track for finding stable solutions when problems arise during the review process.

Or. es

Amendment 159
Isabel Benjumea Benjumea

Proposal for a directive
Article 13 c (new)

Text proposed by the Commission

Amendment

Article 13c

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

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

Or. es

Amendment 160
René Repasi, Paul Tang, Jonás Fernández, Aurore Lalucq, Evelyn Regner

Proposal for a directive
Article 14 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall include in the national rules transposing the transfer pricing rules laid down in Chapter II of this Directive provisions that ensure that those transfer pricing rules are applied in a manner consistent with the **OECD** Transfer Pricing Guidelines.

1. Member States shall include in the national rules transposing the transfer pricing rules laid down in Chapter II of this Directive provisions that ensure that those transfer pricing rules are applied in a manner consistent with the **latest internationally recommended** Transfer Pricing Guidelines, **from either the OECD**

or the United Nations.

Or. en

Amendment 161

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

Proposal for a directive

Article 14 – paragraph 1 – point 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 internationally recommended Transfer Pricing Guidelines, from either the OECD or the United Nations.

Or. en

Amendment 162

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

Proposal for a directive

Article 14 – paragraph 2 – introductory part

Text proposed by the Commission

Amendment

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:**

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

Or. en

Amendment 163

José Gusmão, Manon Aubry

Proposal for a directive

Article 14 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

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 ***non-taxation and double*** taxation, ***as well as reducing tax disputes.***

Or. en

Amendment 164

Andżelika Anna Możdżanowska

on behalf of the ECR Group

Proposal for a directive

Article 14 – paragraph 2 – introductory part

Text proposed by the Commission

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

Amendment

2. The ***Commission may issue guidelines***, 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:

Or. pl

Justification

The specific issues mentioned here should not, in the spirit of the principles of proportionality and subsidiarity, be regulated in the form of binding implementing acts, but in the form of guidelines along the lines of the JTPF reports.

Amendment 165

José Gusmão, Manon Aubry

Proposal for a directive

Article 14 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

Or. en

Amendment 166

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

Proposal for a directive

Article 14 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

Or. en

Amendment 167

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

Proposal for a directive

Article 14 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

Or. en

Amendment 168

José Gusmão, Manon Aubry

Proposal for a directive

Article 14 – paragraph 2 – point b

Text proposed by the Commission

Amendment

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

Or. en

Amendment 169

José Gusmão, Manon Aubry

Proposal for a directive

Article 14 – paragraph 2 – point c

Text proposed by the Commission

Amendment

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

Or. en

Amendment 170

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

Proposal for a directive

Article 14 – paragraph 2 – point c

Text proposed by the Commission

Amendment

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

Or. en

Amendment 171

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

Proposal for a directive

Article 14 – paragraph 2 – point d

Text proposed by the Commission

Amendment

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

Or. en

Amendment 172

José Gusmão, Manon Aubry

Proposal for a directive

Article 14 – paragraph 2 – point d

Text proposed by the Commission

Amendment

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

Or. en

Amendment 173

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

Proposal for a directive

Article 14 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) financial transactions; **deleted**

Or. en

Amendment 174

José Gusmão, Manon Aubry

Proposal for a directive

Article 14 – paragraph 2 – point e

Text proposed by the Commission

Amendment

(e) *financial transactions;* ***deleted***

Or. en

Amendment 175

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

Proposal for a directive

Article 14 – paragraph 2 – point f

Text proposed by the Commission

Amendment

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

Or. en

Amendment 176

José Gusmão, Manon Aubry

Proposal for a directive

Article 14 – paragraph 2 – point f

Text proposed by the Commission

Amendment

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

Or. en

Amendment 177

Andželika Anna Możdżanowska
on behalf of the ECR Group

Proposal for a directive

Article 14 – paragraph 3

Text proposed by the Commission

Amendment

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

proposal from the Commission.

Or. pl

Justification

The specific issues mentioned here should not, in the spirit of the principles of proportionality and subsidiarity, be regulated in the form of binding implementing acts, but in the form of guidelines along the lines of the JTPF reports.

Amendment 178

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

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 shall be taken by means of **Commission implementing acts**. *Those* implementing acts *shall be adopted in accordance with the examination procedure referred to in Article 17.*

Or. en

Amendment 179

José Gusmão, Manon Aubry

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 shall be taken by means of Council implementing acts based on a proposal from the Commission *and until the period laid down in article 19a.*

Or. en

Amendment 180

Anna-Michelle Asimakopoulou, Lídia Pereira

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 shall be taken by means of Council **delegated** acts based on a proposal from the Commission.

Or. en

Amendment 181

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

Proposal for a directive
Article 14 a (new)

Text proposed by the Commission

Amendment

Article 14a

1. A 'European Forum on Transfer Pricing' (EFTP) is created and chaired by the Commission. The EFTP provides advice and assistance to the committee within the meaning of Article 17, notably to assess the need for adjustment to the present Directive with the objective of guaranteeing the continuous uniformity of transfer pricing methodologies within the EU and at global stage.

2. The EFTP is composed of representatives of Members States and a balance representation of tax payers, academics and civil society. The European Parliament is a member of the EFTP in quality of observer. The conditions for membership will be decided by the committee as referred to in Article 17.

Or. en

Amendment 182

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

Proposal for a directive

Article 14 b (new)

Text proposed by the Commission

Amendment

Article 14b

new Scoping criteria

- 1. Member States shall subject the following activities, where these are performed through transactions between an enterprise and its associated enterprise, to a simplified approach to transfer pricing compliance:
(a) distribution activity where it is performed through a low-risk distributor, as described in paragraph 2, who is resident for tax purposes or situated in the form of a permanent establishment in a Member State. (b) manufacturing activity where it is performed through a contract manufacturer, as described in paragraph 3, who is resident for tax purposes or situated in the form of a permanent establishment in a Member State.***
- 2. For the purpose of applying paragraph 1, point (a), a low-risk distributor shall be an entity that performs distribution of goods purchased from associated enterprises. The activity of distribution shall display the following features: (a) it shall result from the accurate delineation of the transaction and exhibit economically relevant characteristics that can be reliably priced using a one-sided transfer pricing method, with the distributor being the tested party; (b) the distributor shall not hold the legal or economic co-ownership of the intellectual property contained in the products and/or services which are distributed; (c) the distribution activity shall be the predominant function performed by the distributor; (d) the distributor shall bear no or limited risks regarding market, inventory and bad credits.***

3. For the purpose of applying point (b) of paragraph 1, a contract manufacturer shall be an associated enterprise which performs a manufacturing activity under the control of a principal and displays the following features: (a)the manufacturing activity, as resulting from the accurate delineation of the transaction, shall exhibit economically relevant characteristics that can be reliably priced using a one-sided transfer pricing method, with the manufacturing entity being the tested party; (b)the manufacturer shall not hold the legal or economic co-ownership of the intellectual property contained in the manufactured products; (c)the manufacturing activity shall be the predominant function performed by the manufacturer; (d)the manufacture shall bear no or limited risks regarding price, market, inventory, capacity utilization and bad credits.

4. Where an associated enterprise is engaged in more than one economic activity, it shall remain within the scope of the simplified approach, provided that any of the following conditions are met: (a)the economic activities other than distribution or manufacturing can be adequately segregated and separately priced; (b)the economic activities other than distribution or manufacturing can be considered ancillary and are either immaterial or do not add major value to distribution or manufacturing.

Or. en

Justification

Article 14b to 14e should be included in Chapter IIIa

Amendment 183

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

Proposal for a directive

Article 14 c (new)

Article 14c

Compliance framework

1. Member States shall structure their risk assessment framework for the activities mentioned in Article 14b in such a way as to consist of three transfer pricing risk zones.

2. The risk zones shall be determined using the interquartile range of the profit performance resulting from the Union public benchmarks referred to in Article 14e.

3. The activities mentioned in Article 14b shall be risk assessed as being of low, medium or high risk, depending on how their profit performance in a given year, determined under Article 14d, compares to the interquartile range of the most recent set of public benchmarks prepared before the end of that year.

4. Member States shall apply the following risk framework: Risk zone Profit performance of the tested party relative to the EU profit markers low above 60TH percentile of the results of the public benchmark medium below 60TH percentile but above the 40TH percentile of the results of the public benchmark high below the 40TH percentile of the results of the public benchmark

5. Member States shall take the appropriate measures, in order to structure their approach to risk compliance in accordance with the following principles:

(a) Low-risk zone: the competent authorities of the Member States may not dedicate additional compliance resources to further review the transfer pricing results. Notwithstanding this, the competent authorities of the Member States shall retain the right to perform transfer pricing adjustments of the profit margins of the taxpayer that falls within

the low-risk zone.

(b) Medium-risk zone: the competent authorities of the Member States may monitor the results, using available data, and contact the taxpayer, to seek a better understanding of its circumstances before deciding whether to allocate compliance resources to carrying out risk assessments and audits.

(c) High-risk zone: the competent authorities of the Member States may recommend that the taxpayer reviews its transfer pricing policies and may decide to initiate a review or audit.

Or. en

Amendment 184

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

Proposal for a directive

Article 14 d (new)

Text proposed by the Commission

Amendment

Article 14d

Measure of the performance

1. Member States shall lay down the appropriate legal framework, so that their competent authorities measure the profitability of the distribution activity mentioned in Article 14b (2) using Earnings Before Interest and Tax relative to sales as a profit level indicator.

2. Member States shall lay down the appropriate legal framework, so that their competent authorities measure the profitability of the manufacturing activity mentioned in Article 14 b(3) using Earnings before Interest and Tax relative to total costs as profit level indicator.

Or. en

Amendment 185

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

Proposal for a directive

Article 14 e (new)

Text proposed by the Commission

Amendment

Article 14e

Public Benchmarks

- 1. The risk zone for the activities referred to in Article 14b shall be determined respectively via public benchmarks for distribution and manufacturing activities.**
- 2. The public benchmarks for distribution activity shall be representative of the profit performance of independent entities operating in the internal market and performing predominantly distribution activity with similar characteristics to the activity described in Article 14 b (2).**
- 3. The public benchmark for manufacturing activity shall be representative of the profit performance of independent entities operating in the internal market and performing predominantly manufacturing activity with similar characteristics to the activity described in Article 14b (3).**
- 4. The risk zone shall be determined using the interquartile range of the 5-year average profit performance of independent entities resulting from the public benchmarks.**
- 5. The Commission shall, by means of implementing act laying down the necessary practical arrangements, set the search criteria to identify comparables for establishing the appropriate benchmarks for low-risk distribution and contract manufacturing activities. The results of the benchmarks shall be published on the Commission website, for the purpose of allowing taxpayers to determine the risk zone of their activities. The benchmarks shall be updated every 3 years. Those implementing acts shall be adopted in**

accordance with the examination procedure referred to in Article 17.

Or. en

Amendment 186

Gilles Boyer, Olivier Chastel, Martin Hlaváček

Proposal for a directive

Article 15 – paragraph 1

Text proposed by the Commission

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

Amendment

1. **Every 5 years**, the Commission shall examine and evaluate the application, **the impact as well as the interplay** of this Directive **with the latest OECD guidelines** and submit a report on its evaluation to the European Parliament and to the Council, **and if appropriate, accompanied by a legislative proposal from the European Commission**. The first report shall be submitted by 31 December 2031.

Or. en

Amendment 187

Anna-Michelle Asimakopoulou, Lídia Pereira

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 5 years **or after the adoption of updated OECD Guidelines on Transfer Pricing, whichever is earlier**, and submit a report on its evaluation to the European Parliament.

Or. en

Amendment 188
José Gusmão, Manon Aubry

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 **2** 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 **2028**.

Or. en

Amendment 189
René Repasi, Paul Tang, Jonás Fernández, Aurore Lalucq, Evelyn Regner

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 190
Anna-Michelle Asimakopoulou, Lídia Pereira

Proposal for a directive
Article 15 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1 a. The Commission shall review the application of this Directive for MNE groups that fall under the scope of the proposal for a Council Directive on

Amendment 191

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

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

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

Amendment 192

José Gusmão, Manon Aubry

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

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

Amendment 193

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

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 **15 years as of the moment when personal data are processed for the purposes specified in this Directive.**

Or. en

Amendment 194

Anna-Michelle Asimakopoulou, Lídia Pereira

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 **5** years.

Or. en

Amendment 195

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

Proposal for a directive Article 17 – paragraph 1

Text proposed by the Commission

1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning of Regulation (EU) *No 182/2014*³⁸.

³⁸ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13–18)

Amendment

1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning of Regulation (EU) *No 182/20114*³⁸.

³⁸ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13–18)

Or. en

Amendment 196

Andżelika Anna Możdżanowska

on behalf of the ECR Group

Proposal for a directive

Article 18

Text proposed by the Commission

Article 18

Exercise of delegation

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

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

3. Before adopting the delegated act, the Commission shall consult experts

Amendment

deleted

designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement on better law making of 13 April 2016.

4. As soon as it adopts the delegated act, the Commission shall notify it to the Council.

5. The delegated act adopted pursuant to Article 13 shall enter into force without delay and shall apply as long as no objection is expressed by the Council. The Council may object to the delegated act within two months of the notification of that act. That period shall be extended by two months at the initiative of the Council. In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the Council.

Or. pl

Justification

The provisions of the Directive should not aggravate the situation facing entrepreneurs through an extensive system of burdens. The delegation of powers to the European Commission for the detailed definition of documentation obligations raises the danger of such excessive administrative burdens.

Amendment 197

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

Proposal for a directive Article 18 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The power to adopt the delegated act referred to in *Articles 13 (18) and* shall be conferred on the Commission subject to the conditions laid down in this Article.

Or. en

Amendment 198

José Gusmão, Manon Aubry

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

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 199

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

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

Text proposed by the Commission

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

Amendment

3. Before adopting the delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement on better law making of 13 April 2016. **For the adoption of the delegated act referred to in Article 3(18), the European Forum on Transfer Pricing referred to in Article 14a serves as the relevant expert body.**

Or. en

Amendment 200

Andżelika Anna Mozdżanowska
on behalf of the ECR Group

Proposal for a directive
Article 19 – paragraph 1

Text proposed by the Commission

Amendment

The European Parliament shall be informed by the Commission of the adoption of delegated acts, of any objection formulated to them, and of the revocation of the delegation of powers by the Council.

deleted

Or. pl

Justification

The provisions of the Directive should not aggravate the situation facing entrepreneurs through an extensive system of burdens. The delegation of powers to the European Commission for the detailed definition of documentation obligations raises the danger of such excessive administrative burdens.

Amendment 201

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

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

Text proposed by the Commission

Amendment

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

Or. en

Amendment 202

José Gusmão, Manon Aubry

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 2030 for 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. 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 2030 and if it encompasses the following criteria:

(a) accommodates a formulary apportionment based on relevant factors to assess where the economic activity is taking place;

(b) does not allow for base erosion practices to take place;

(c) covers a sufficiently broad definition of MNE group.

Or. en

Amendment 203

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

Proposal for a directive

Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19a

Sunset Clause

This directive should cease to apply as of 2035 for BEFIT groups as defined in Article 2 of Directive (EU) XX/2024 (BEFIT Directive).

Or. en

Amendment 204

José Gusmão, Manon Aubry

Proposal for a directive

Article 20 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 205

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

Proposal for a directive

Article 20 – paragraph 1 – subparagraph 1

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 206

José Gusmão, Manon Aubry

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

Amendment 207

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

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

Amendment 208

Andżelika Anna Możdżanowska

on behalf of the ECR Group

Proposal for a directive

Annex I

Text proposed by the Commission

**OECD TRANSFER PRICING
GUIDELINES**

OCED Transfer Pricing Guidelines

Amendment

deleted

Or. pl

Justification

The OECD Guidelines should not be part of the EU legal order subject to direct implementation into national law. Member States should remain free to implement and interpret the arm's-length principle on the basis of the Transfer Pricing Guidelines.