

Strasbourg, 12.9.2023
COM(2023) 529 final

2023/0322 (CNS)

Proposal for a
COUNCIL DIRECTIVE
on transfer pricing
{SWD(2023) 308-309 final}

Agence Europe

Agence Europe

EN

Obtenu pour vous par
Obtained by



agence europe

EN

**Draft compromise amendments - ECON report on the proposal for a
Council directive on transfer pricing**

Bold/italics text and ~~strikethrough~~ represents changes to the draft report.
Bold/italics/underlined text indicates changes compared to the amendments tabled.

COMP A

Covered AMs: 51, 54, 69, 75, 78, 80, 83, 88, 96, 157, 159 (EPP), 46, 52, 58, 66, 89, 91, 95 (S&D), 55, 56, 64, 82, 93 (Renew), 2, 3, 5, 13 (GreensEFA), 48, 49, 53, 67, 81, 94, 99 (The Left)

Falls if AM is adopted: 45, 57, 60, 61, 65, 66, 68, 77, 85, 97 (EPP), 71, 74, 84, 90, 92 (S&D), 72 (Renew), 1, 4, 6, 7, 8, 9, 10, 11, 12 (GreensEFA), 50, 59, 79, 87, 98, 100 (ECR), 47, 62, 63, 70, 73, 76, 86 (The Left)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 115 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Parliament¹,

Having regard to the opinion of the European Economic and Social Committee²,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Transfer pricing refers to the setting of prices for cross-border transactions between associated enterprises within an MNE group. Since tax calculations are generally based on entity-level accounts, the prices or other conditions at which cross-border transactions between associated enterprises take place will affect the relevant entities' income and/or expenses in relation to those transactions, and as a consequence, will impact on the amount of profit each group entity records for tax purposes in the jurisdictions where they operate.
- (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

¹ OJ C , , p. .

² OJ C , , p. .

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.

- (2a) *Base erosion and profit shifting (BEPS) refers to tax planning strategies used by multinational enterprises that exploit gaps and mismatches in tax rules to avoid paying tax. Transfer pricing, while currently needed to determine where profits are reported, has also been misused for reducing the tax liabilities of firms in countries with higher tax rates leading to profit shifting. The arm's length principle should be applied in Member States, and by taxpayers, in a manner that guarantees greater tax certainty for taxpayers and minimizes opportunities for profit shifting. (46)*
- (2b) *The long-term solution to effectively address tax avoidance and guarantee a minimum level of effective taxation for MNE groups is should be a system of ~~unitary taxation with~~ formulary apportionment for the benefit of all Member States 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. (49)*
- (3) Where Member States apply or interpret the arm's length principle *significantly different way differently*, they create situations that could harm the internal market *and lead to unnecessary costs for businesses in case of disputes, instigate harmful tax competition, attract aggressive tax avoidance structures, form illegal state aid and reduce revenues from Member States*. Inconsistency in applicable transfer pricing rules not only could lead to double taxation but also allow for profit shifting *and* tax avoidance *and double non-taxation*. Such *significant inconsistencies inconsistency can present is* a serious *threat to tax revenues, tax morale and the limited capacities of tax administrations. Also such inconsistencies lead to obstacles tax obstacle* for businesses, *especially SMEs*, operating across borders *and are is* likely to cause economic distortions and inefficiencies and *has have* 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 A and Amount B of Pillar one aiming at simplifying existing transfer pricing rules. (2, 51, 52, 53, 54, 55, 82, 83)*
- (3a) *Tax administrations, however, should not automatically assume consider 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. (51)*
- (3b) *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 annually³. The goal of this Directive is to collect at least part of this amount. (48)*
- (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 *non* taxation as well as double ~~non~~ taxation, *and reducing tax compliance costs and litigation especially for taxpayers that operate cross-border within the Union and avoiding tax abuse. (3, 56, 58, 75)*

³ <https://www.oecd.org/tax/beps-project-explanatory-statement-9789264263437-en.htm>

- (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.
- (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). *To this aim, Member States should use all the procedures and arrangements provided by the Directive on administrative cooperation (DAC), especially the third and sixth revision that cover the exchange of information related to Advance Price Agreements and the exchange of information on reportable cross-border arrangements which have been reported by intermediaries or by the relevant taxpayer. (64)*
- (6a) *Owing to the potential increase in litigation, this Directive requires the introduction of fast-track mechanisms which can respond to all demands. The arbitration system needs to be quick so that agreements can be reached, thereby avoiding problems and disputes that may arise. ~~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. (69, 157)~~*
- (6b) *The presence of accessible dispute resolution mechanisms is of vital importance for cross-border trade, thus ensuring tax certainty and eliminating double taxation for taxpayers. Strengthening the use of Mutual Agreement Procedures (MAPs) as outlined in the EU Arbitration Convention can speed up the resolution of cases within shorter timeframes. To 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. (157)*
- (7) There may be legitimate reasons as to why a corresponding adjustment is not given or is less than the primary adjustment. In particular, Member States should not grant corresponding adjustments if: (i) the primary adjustment is not considered to be consistent with the arm's length principle; (ii) the primary adjustment does not result in the taxation of an amount of profits in another jurisdiction on which the associated enterprise in the relevant Member State has already been subject to tax; and (iii) when a third country jurisdiction is involved, there is no tax treaty in place. In the absence of a primary adjustment, Member States may perform a downward adjustment only if: (i) the downward adjustment is consistent with the arm's length principle **and not leading to double non taxation**; (ii) an amount equal to the downward adjustment is included in the profit of the associated enterprise in the other jurisdiction and therein subject to tax; and (iii) a communication on the intention to perform a downward adjustment has been

sent to the relevant jurisdiction. The aim of the previous provisions is to ensure that: (i) Member States can preserve the right to assess whether the primary adjustment is at arm's length; and (ii) there is neither double taxation nor double non-taxation. Member States should not create situations of double non-taxation. (5, 66, 67)

- (8) In order to establish a common approach to compensating adjustments within the Union and to avoid litigation, this Directive provides the conditions under which Member States should recognise a compensating adjustment. This provision should be interpreted in conjunction with the Commission's 2013 EU Joint Transfer Pricing Forum Report on compensating adjustments⁴.
- (9) To ensure that transfer pricing outcomes are determined in accordance with the actual conduct of related parties, this Directive requires careful delineation of the actual transaction between the associated enterprises by analysing the contractual relations between the parties in combination with the conduct of the parties. In this regard, the critical first step of the transfer pricing analysis should be to accurately define the intercompany transactions by analysing their economically relevant characteristics, as reflected not only in the contracts between the parties, but also their conduct and any other relevant facts. The contractual terms should be the starting point for the analysis and, to the extent that the conduct or other facts are inconsistent with the written contract, the parties' conduct (rather than the terms of the written contract) should be taken as the best evidence of the transaction(s) actually undertaken.
- (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 pricing⁵ should be taken into due consideration.
- (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

⁴ JTPF/009/FINAL/2013/EN, Meeting of 5 November 2013: https://taxation-customs.ec.europa.eu/system/files/2016-09/jtpf_009_final_2013_en.pdf

⁵ 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

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.

- (12) In order to apply the arm's length principle, it is necessary to carry out a comparability analysis, which broadly consists of two key aspects: (i) identifying the commercial or financial relations between the associated enterprises and the conditions and economically relevant circumstances attached to those relations; and (ii) comparing the conditions and economically relevant circumstances of transactions between associated enterprises (controlled transactions) with those of comparable transactions between independent enterprises (comparable uncontrolled transactions). The comparability factors to be considered are (i) the contractual terms of the transaction, (ii) the functional analysis (the functions that each enterprise performs, taking into account assets used and risks assumed), (iii) the characteristics of the product or service which is the object of a transaction, (iv) the economic circumstances, and (v) the business strategies. Once the circumstances of the controlled transaction have been established, the actual comparison and assessment of whether the transaction is at arm's length should take place. For that, the conditions of the controlled transaction under examination should be compared to the conditions of a comparable uncontrolled transaction. A controlled and an uncontrolled transaction are regarded as comparable if the economically relevant characteristics of the two transactions and the circumstances surrounding them are sufficiently similar to provide a reliable measure of an arm's length result. The two transactions do not have to be identical to be comparable. Instead, none of the differences between them should materially affect the arm's length price or profit; where such material differences exist, reasonably accurate adjustments should be made to eliminate their effect. In the search for comparable uncontrolled transactions, the recommendations contained in the Commission's 2016 EU Joint Transfer Pricing

Forum Report on the use of comparables within the EU⁶ should be taken into due consideration.

- (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. (78)
- (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 Union⁷ **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.** (80, 81)
- (15) The rules provided by this Directive should be applied in a manner consistent with the OECD Transfer Pricing Guidelines.
- (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 delegated** acts is provided in this Directive. Those **implementing 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 delegating** powers to adopt decisions under this Directive should be conferred on the ~~Council, acting on a proposal from the Commission, in accordance with Article 290 of the Treaty on the Functioning of the European Union.~~ (12, 88, 89)
- (16a) **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**

⁶ Commission's 2016 EU Joint Transfer Pricing Forum Report on the use of comparables in the EU (JTPF/007/2016/FINAL/EN):<https://taxation-customs.ec.europa.eu/system/files/2017-04/jtpf0072017encomps.pdf>

⁷ 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>

guaranteeing the uniformity of transfer pricing methodologies within the EU and at global stage. (91)

~~(16b) *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. (158)*~~

(16c) *The EU Joint Transfer Pricing Forum has offered practical solutions to the challenges posed by transfer pricing practices in all Member States. The re-establishment of this forum with a broader mandate allows national experts from the Member States, together with representatives of the business community, academics and civil society, to support the Commission, which may result in legislation capable of achieving the stated objective of increasing security for business in the European Union. A joint view of taxpayers and tax authorities provides a more comprehensive point of view when it comes to finding practical solutions. (159)*

(17) In order to evaluate the effectiveness *and the impact* of the new rules set out in this Directive, the Commission should prepare an evaluation on the basis of the information provided by Member States and other available data, *and if appropriate, accompanied by a legislative proposal. (93)*

~~(17a) *The Commission should review the application of this Directive for MNE groups that fall under the scope of the proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT). This Directive should then cease to apply for BEFIT groups except for the transactions with associated enterprises in third countries. (94, 95,*~~

~~(17b) *This Directive should cease to apply as of 2040. (12)*~~

(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) 2018/1724⁸. 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. *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. (96)*

(19) The processing of personal data carried out within the framework of this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council⁹. Member States may process personal data under this Directive. .

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

⁸ 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).

⁹ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (21) In order to lower the administrative burden for taxpayers *and the risk of tax avoidance*, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the transfer pricing documentation, by laying down common templates, setting linguistic requirements, defining the type of taxpayer to abide by these templates and the timeframes to be covered. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance 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. (99)
- (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 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.
- (23) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered its opinion [to be inserted].

HAS ADOPTED THIS DIRECTIVE:

COMP B

Covered AMs: 101, 113 (EPP), 112 (S&D), 103 (Renew), 104 (ECR)

Falls if AM is adopted: 105, (EPP), 102–(S&D),–106 (Renew), 14, 15-22, 23, 24 (GreensEFA), 107-111 (The Left)

CHAPTER I GENERAL PROVISIONS

Article 1 Subject matter

This Directive lays down rules to harmonise *coordinate* (~~14, 102~~) transfer pricing rules of Member States and to ensure a common application of the arm's length principle within the Union *with the objective of simplifying compliance for companies whilst ensuring enforcement of tax rules within the Union* (101).

Article 2

Scope

This Directive applies to taxpayers that are registered in, or subject to, tax in one or more Member States, including permanent establishments in one or more Member States.

Article 3

Definitions

For the purposes of this Directive, the following definitions apply:

- (1) ‘arm’s length principle’ means the international standard *pursuant to Article 9 of the OECD Model Tax Convention (103, 104, 113)* 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.
- (2) ‘arm’s length result’ means the outcome of a controlled transaction if the conditions made or imposed between the associated enterprises in their commercial or financial relations had been those which would have been made between independent enterprises.
- (3) ‘arm’s length range’ means a range of figures that is acceptable for establishing whether the conditions of a controlled transaction are at arm’s length and that are derived from applying the same transfer pricing method to multiple comparable data;
- (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;
- (5) ‘independent enterprises’ means enterprises that are not associated enterprises within the meaning of Article 5;
- (6) ‘primary adjustment’ means an upward adjustment made to a company’s taxable profits by a tax administration in a first jurisdiction as a result of applying the arm’s length principle to transactions involving an associated enterprise in a second tax jurisdiction;
- (7) ‘corresponding adjustment’ means a downward adjustment to a company’s taxable profits made by the tax administration in a second jurisdiction as a consequence of a primary adjustment made by the tax administration in a first jurisdiction, so that the allocation of profits by the two jurisdictions is consistent;
- (8) ‘compensating adjustment’ means an adjustment in which the taxpayer reports a transfer price for tax purposes that is, in the taxpayer’s opinion, an arm’s length price for a controlled transaction, even though this price differs from the amount actually charged between the associated enterprises;
- (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;
- (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;

- (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;
- (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;
- (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;
- (14) 'comparability analysis' means a comparison of a controlled transaction with an uncontrolled transaction;
- (15) 'controlled transaction' means a transaction between two associated enterprises;
- (16) 'comparable uncontrolled transaction' means a transaction between independent enterprises that is comparable to the controlled transaction under examination;
- (17) 'multinational enterprise group' ('MNE group') means a multinational enterprise group of associated enterprises with business establishments in two or more jurisdictions;
- (18) 'OECD Transfer Pricing Guidelines' means the ~~latest version of 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, ~~as of the entry into force of this Directive (23)~~ and **the Commission shall be empowered to adopt delegated acts, in accordance with Article 290 TFEU, in order to incorporate (112)** any further amendments to these OECD Transfer Pricing Guidelines that the **Member States ~~Union~~ approved** in the context of the OECD Committee on Fiscal Affairs **or the Union approved via the adoption of a Union position under 218(9) TFEU (23)**;
- (19) 'cost contribution arrangement' is a contractual arrangement among business enterprises to share the contributions and risks involved in the joint development, production or the obtaining of intangibles, tangible assets or services with the understanding that such intangibles, tangible assets or services are expected to create benefits for the individual businesses of each of the participants.

COMP C

Covered AMs: 132, 136 (EPP), 116, 128, 129, 133, 138, 147 (S&D), 131, 135, 137, 153 (Renew), 26-(GreensEFA), 127, 130, 139 (The Left)

Falls if AM is adopted: 115, 118, 119, 121, 123-125, 134, 148, 155 (EPP), 142, 143-146, (S&D), 114 (Renew), 25, 27, 28-32 (GreensEFA), 156 (ECR), 117, 120, 122, 126, 140, 141, 149-152, 154 (The Left)

CHAPTER II TRANSFER PRICING RULES

Article 4

General rule on the application of the arm's length principle

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.
2. Member States shall ensure that, where the conditions made or imposed in commercial or financial cross-border transactions between associated enterprises are not consistent with the arm's length principle, then any amount of profits that would have accrued to either one of the enterprises and been taxable to that enterprise in a Member State if the conditions of the transactions had been consistent with the arm's length principle, but have not accrued to that enterprise due to the non-arm's length conditions, are to be included in the taxable profits of that enterprise and taxed accordingly.

Article 5

Associated enterprises

1. For the purpose of this Directive, 'associated enterprise' means a person who is related to another person in any of the following ways:
 - (a) a person participates in the management of another person by being in a position to exercise a significant influence over ~~ethe the~~ (116) other person;
 - (b) a person participates in the control of another person through a holding that exceeds 25 % of the voting rights;
 - (c) a person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds 25 % of the capital;
 - (d) a person is entitled to 25 % or more of the profits of another person.
2. If more than one person participates in the management, control, capital or profits of the same person, as referred to in paragraph 1, all persons concerned shall be regarded as associated enterprises.
3. If the same persons participate in the management, control, capital or profits of more than one person, as referred to in paragraph 1, all persons concerned shall be regarded as associated enterprises.
4. For the purposes of paragraphs 1 and 2, a person shall mean both legal and natural persons. A person who acts together with another person in respect of the voting rights

or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person.

5. In indirect participations, the fulfilment of the criteria set out in point (b) and (c) of paragraph 1 shall be determined by multiplying the rates of holding through the successive tiers. A person holding more than 50 % of the voting rights shall be deemed to hold 100 % of the voting rights.
6. An individual, his or her spouse or recognised partner, in accordance with the applicable national law, and his or her lineal ascendants or descendants and his or her siblings shall be treated as a single person.
7. A permanent establishment shall be considered an associated enterprise of the enterprise of which it is a part of.

Article 6

Corresponding adjustments

1. When a primary adjustment is made, Member States shall ensure that they make a corresponding adjustment so as to prevent the double taxation if the following conditions are met:
 - (a) the Member State that was requested to perform the corresponding adjustment agrees that the primary adjustment is consistent with the arm's length principle both in principle and as regards the amount;
 - (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;
 - (c) where a third country jurisdiction is involved, a tax treaty is in force to prevent economic double taxation.
2. Member States may grant a corresponding adjustment as a consequence of a mutual agreement procedure under a double tax treaty under the 1990 intergovernmental Convention on Elimination of Double Taxation ('the Arbitration Convention')¹⁰ or under Directive (EU) 2017/1852¹¹.
3. Notwithstanding paragraph 2, Member States shall ensure that a corresponding adjustment may be performed as a consequence of a taxpayer's request in view of a primary adjustment made in another jurisdiction. The following procedure shall apply to the corresponding adjustments performed under this paragraph:
 - (a) the taxpayer's request shall:
 - (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 (128)***;
 - (ii) provide a certificate (or equivalent document) attesting the definitive nature of the primary adjustment abroad; if the primary adjustment is still

¹⁰ Convention 90/463/EEC of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (OJ L 225, 20.8.1990, p. 10).

¹¹ Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union (OJ L 265, 14.10.2017, p. 1).

not definitive on the date of submission of the request, this is to be indicated along with the conditions for the adjustments to become definitive; the certificate of the definitive nature of the primary adjustment shall nonetheless be presented to the Member State concerned before the corresponding adjustment is granted.

(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; (127, 129)

- (b) Member States shall declare the request admissible within ~~30~~ **40 (131)** 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~~ **40 (131, 132)** days to provide it. If the taxpayer does not provide the requested information within the assigned deadline, the request ~~may~~ **shall (130)** be rejected as inadmissible.
- (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~~ **200 (135)** 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 100 days ~~time~~ if the tax payer and the involved Member States all agree to such extension. (133)*
- (d) In the case of acceptance, Member States shall communicate *immediately (136)* to the tax authority of the other relevant jurisdiction the recognition of the corresponding adjustment.
- (e) Member States shall ensure that, when the corresponding adjustment is not granted, the taxpayer is still able to pursue mutual agreement procedures under a double tax convention, the Arbitration Convention or Directive (EU) 2017/1852.

3a. 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). (137)

4. Notwithstanding paragraphs 2 and 3, Member States shall ensure that a corresponding adjustment may be made as a consequence of joint tax audits or other forms of international administrative cooperation when the following conditions are met:

- (a) the relevant tax administrations agree on the determination of the arm's length price;
- (b) primary and corresponding adjustments are granted symmetrically for the same amount in all the relevant jurisdictions.

5. Notwithstanding paragraph 1, in the absence of a primary adjustment, Member States may perform a downward adjustment only if the following conditions are met:

- (a) the downward adjustment is consistent with the arm's length principle both in principle and as regards the amount;

- (aa) ~~the downward adjustment is not leading to double non-taxation and there is a certainty on the part of the Member State performing the downward adjustment that meaning the downward adjustment is included in the taxable profits of the associated enterprise in the other jurisdiction; (26, 138, 139)~~
- (b) an amount equal to the downward adjustment is included in the profit of the associated enterprise in the other jurisdiction and taxed in both the Member State and the other jurisdiction and thus subject to double taxation;
- (c) the Member State requested to perform the downward adjustment has communicated to the tax administration of the relevant jurisdiction the intention to perform a downward adjustment providing all the factual and legal circumstances necessary to evaluate the downward adjustment under the arm's length principle.

Article 7

Compensating adjustment

Member States shall ensure that a compensating adjustment in the form of year-end adjustment initiated by the taxpayer is accepted if the following conditions are met:

- (a) before recording the relevant transaction, or series of transactions, the taxpayer made reasonable efforts to achieve an arm's length outcome;
- (b) the taxpayer makes the adjustment symmetrically in the accounts in all Member States involved;
- (c) the taxpayer applies the same approach consistently over time;
- (d) the taxpayer makes the adjustment before filing the tax return;
- (e) the taxpayer is able to explain why its forecast did not match the result achieved.

Article 8

Identifying the commercial or financial relations

1. Member States shall ensure that the application of the arm's length principle starts with the identification and accurate delineation of, on the one side, the commercial and financial relations of the associated enterprises and, on the other, the actual transaction or transactions between the associated enterprises.
2. The identification and accurate delineation of the commercial and financial relations of the associated enterprises and the actual transaction(s) shall be based on the following aspects:
 - (a) a preliminary broad-based understanding of the industry sector in which the associated enterprises operate and of the factors affecting the performance of enterprises operating in that sector;
 - (b) an analysis of how each associated enterprise operates, to identify its commercial or financial relations with associated enterprises;
 - (c) an analysis of the economically relevant characteristics of the controlled transactions having regard to both their form and substance.

Article 9

Transfer pricing methods

1. Member States shall ensure that the arm's length price charged in a controlled transaction between associated enterprises is determined ~~only (142)~~ 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.

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 (AM 147);*

Article 10

The most appropriate method rule

1. Member States shall ensure that the arm's length price is determined by applying the most appropriate transfer pricing method to the circumstances of the case.
2. The most appropriate transfer pricing method shall be selected from among the transfer pricing methods set out in Article 9, taking into consideration the following criteria:
 - (a) the respective strengths and weaknesses of the transfer pricing methods;
 - (b) the appropriateness of a transfer pricing method in view of the nature of the controlled transaction, determined in particular through an analysis of the functions undertaken by each enterprise in the controlled transaction, taking into account assets used and risks assumed;
 - (c) the degree of comparability between the controlled and uncontrolled transactions, including the reliability of comparability adjustments, if any, that may be required to eliminate differences between them;

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

Article 11

Comparability analysis

1. Member States shall evaluate whether a controlled transaction produces an arm's length result by comparing the conditions of the controlled transaction with the conditions that would have been set, had the associated enterprises been independent and had they undertaken a comparable transaction under comparable circumstances.
2. Member States shall ensure that the transactions under analysis are comparable. In order to determine whether two or more transactions are comparable, the following factors shall be considered, to the extent that they are economically relevant to the facts and circumstances of a transaction:
 - (a) the contractual terms of the transaction;
 - (b) the functions performed by each of the parties to the transaction, taking into account assets used and risks assumed, including how those functions relate to the wider generation of value by the MNE group to which the parties belong, the circumstances surrounding the transaction, and industry practices;
 - (c) the characteristics of the property transferred or of services provided;
 - (d) the economic circumstances of the parties and of the market in which the parties operate;
 - (e) the business strategies pursued by the parties.
3. An uncontrolled transaction is comparable to a controlled transaction if either of the following conditions is met:
 - (a) none of the differences (if any) between the transactions being compared or between the enterprises undertaking those transactions could materially affect the price *or margin (153)* in the open market;
 - (b) reasonably accurate adjustments can be made to eliminate the material effects of such differences.
4. Member States shall ensure that the search for comparable uncontrolled transactions is transparent and reproducible.

Article 12

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.

Article 13

Transfer pricing documentation

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

COMP D

Covered AMs: 158, 180 (EPP), 162, 166, 167, 170, 171, 173, 175, 178, 181, 182, 183, 184, 185 (S&D), 33, 34, 35, 36 (GreensEFA), 163, 165, 168, 169, 172, 174, 176, 179 (The Left)

Falls if AM is adopted: 160, 161, (S&D), 164, 177 (ECR)

CHAPTER III ORGANISATION

Article 14

Application of the arm's length principle

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** OECD Transfer Pricing Guidelines, ~~from either the OECD or the United Nations (160, 161)~~.
2. The **Commission shall be empowered to adopt delegated acts to Council may** lay down further rules, consistent with the ~~OECD~~ **the latest internationally recommended** Transfer Pricing Guidelines, ~~from either the OECD or the United Nations, (162)~~ 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. Those specific transactions or dealings are the following:**
 - ~~(a) transfer of intangibles asset or rights in intangible assets between associated enterprises, including hard-to-value intangibles;~~
 - ~~(b) the provision of services between associated enterprises, including the provision of marketing and distribution services;~~

- ~~(c) cost contribution arrangements between associated enterprises;~~
 - ~~(d) transactions between associated enterprises in the context of business restructurings;~~
 - ~~(e) financial transactions;~~
 - ~~(f) dealings between the head office and its permanent establishments. (34, 162, 163, 165, 166, 167, 168, 169, 170, 171, 172, 173, 174, 175, 176)~~
- 2a. ~~The Commission may adopt delegated acts to Council may lay down further rules to simplify the application of the arm's length principle in the Union, such as the introduction of safe harbours, to ensure more tax certainty and mitigate the risk of double non-taxation and double taxation, and reduce tax disputes and tax abuse. (35)~~
- 2b. ~~The Commission may adopt a delegated act laying down rules to integrate in this Directive the proposed simplified approach to transfer pricing compliance for distribution and manufacturing activities as referred to in Council Directive XX/XX/EU on Business in Europe: Framework for Income Taxation (BEFIT). (182, 183, 184, 185)~~
3. ~~The rules referred to in paragraphs 2, 2a and 2b shall be taken by means of Council implementing acts adopted in accordance with the examination procedure referred to in Article 17. (36, 178, 180) and until the period laid down in article 19a (178).~~

~~Article 14a~~

~~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.~~
- ~~(182)~~

~~Article 14b~~

~~Compliance framework~~

1. — ~~Member States shall structure their risk assessment framework for the activities mentioned in Article 14b Article 14a 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. (183)~~

~~Article 14e~~

~~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. (184)~~

~~Article 14d~~

~~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. (185)~~

Article 14e

Re-establishment of the EU Joint Transfer Pricing Forum

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, most importantly taking into account developments at OECD or UN level. (181)
2. The EFTP is composed of representatives of Member 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. (181)

Article 14f

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

1. The scope of the European Trust and Cooperation Approach (ETACA) shall include transfer pricing reviews of specific intra-EU flows by participating Member States and not only low value-added transactions, as is currently the case.
3. Member States are invited to establish a link between the ETACA and APAs to ensure the ETACA acts as a fast-track for finding stable solutions when problems arise during the review process. (158)

COMP E

Covered AMs: 187, 190 (EPP), 189, 191, 192, 193, 199, 201, 203, 205, 207 (S&D), 186 (Renew), 37, 38, 39, 40, 41, 42, 43, 44 (GreensEFA), 188, 202, 204, 206 (The Left)

Falls if AM is adopted: 194 (EPP), 195, 197 (S&D), 196, 200, 208 (ECR), 198 (The Left)

CHAPTER IV FINAL PROVISIONS

Article 15

Evaluation

1. Every 3 years (37, 188, 189), the Commission shall examine and evaluate the application, *the impact as well as the interplay* (186) of this Directive *with the latest OECD or UN guidelines every 5 years* (186) 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* (186). The first report shall be submitted by 31 December ~~2031~~ 2029 (37, 188, 189). The Commission may deviate from these timelines when new guidelines on Transfer Pricing are agreed to at OECD or UN level (187).
 - 1a. ~~The Commission shall review the application of this Directive for MNE groups that fall under the scope of the proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), once that Directive is in force (190).~~

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 (38, 191, 192)* taxation as well as to combatting tax abuse *and tax disputes (38, 191, 192)*, in accordance with paragraph 3.
3. The Commission shall, by means of implementing acts, specify the information to be provided by Member States in accordance with paragraph 2, and specify the format and the conditions of communication of that information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in article 17.
4. The Commission shall keep the information communicated to it pursuant to paragraph 2 confidential in accordance with the provisions applicable to Union institutions and Article 16 of this Directive.
5. Information communicated to the Commission by a Member State under paragraph 2, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States *and the European Parliament (39)*. The information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

Article 16 **Data protection**

1. Member States may process personal data for the purposes of applying this Directive. When processing personal data for the purposes of this Directive, the competent authorities of Member States shall be considered as controllers, within the meaning of Article 4(7) of Regulation (EU) 2016/679, within the scope of their respective activities under this Directive.
2. Information, including personal data, processed in accordance with this Directive shall be retained only for as long as necessary to achieve the purposes of this Directive, in accordance with each data controller's national law on statute of limitations, but in any case no longer than 10 years *as of the moment when personal data are processed for the purposes specified in this Directive (40, 193)*.

Article 17 **Committee procedure**

1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2014¹².
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

¹² 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)

Article 18

Exercise of delegation

1. The power to adopt the delegated act referred to in **Article 3(18)**, Article 13 and **Article 14** 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 and **Article 14** 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 designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement on better law making of 13 April 2016. **The European Forum on Transfer Pricing referred to in Article 14a serves as the relevant expert body (199).**
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.

Article 19

Informing the European Parliament

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.

The European Parliament may attend as observer the international negotiations on Transfer Pricing Guidelines in the relevant international fora. (41, 201)

Article 19a

Sunset clause Review

1. **The Commission shall review the application of this Directive for MNE groups that fall under the scope of the proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), once that Directive is in force. (42, 190, 202, 203)**
- ~~1. This Directive shall cease to apply as of 1 January 2035 for MNE groups that fall under the scope of the proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), except for the transactions with associated enterprises in third countries.~~
- ~~2. This Directive shall cease to apply as of 1 January 2040 for all MNE groups operating in the Union, except for the transactions with associated enterprises in third countries.~~

~~3. Paragraph 1 shall apply only if the proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT) enters into force before 2035. (42, 202, 203)~~

Article 20

Transposition

1. Member States shall adopt and publish, by [31 December ~~2025~~ 2024 (43, 204, 205)] 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.

They shall apply those provisions from [1 January ~~2026~~ 2025 (44, 206, 207)].

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

~~3. This Directive shall cease to apply from 1 January 2040. (42)~~

Article 21

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 22

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

*For the Council
The President*

Agence Europe

