Council Directive on Business in Europe: Framework for Income Taxation (BEFIT)

COMPROMISES

Final draft version – 15 September 2025

COMPROMISE A

CHAPTER I, GENERAL PROVISIONS

ARTICLES 1-3a, Recitals 1-8b

AMs covered: 1, 2, 3, 5, 6, 7, 8, 23, 24, 34 (S&D), 101, 106, 113, 138, 202, 247 (LEFT), 114, 131, 139, 140, 203, 246 (GREENS), 90, 98, 99, 100, 104, 108, 112, 115, 117, 134, 209, 221, 224, 227, 236, 245 (EPP), 97, 105, 111, 237, 238, 239 (RENEW)

AMs falling: 4, 25, 26, 27, 28, 30, 31 32, 33, (S&D), 126, 127, 128, 199, 205, 235 (PfE), 201, 204, 232 (ECR), 91, 92, 93, 94, 121, 130, 132, 135, 136, 137, 206, 215, 219, 222, 225, 228, 230, 233, 241, (LEFT), 95, 96, 102, 103, 107, 109, 110, 116, 118, 122, 123, 124, 125, 200, 207, 208, 210, 213, 214, 216, 217, 220, 223, 226, 229, 231, 234, 242, 243 (EPP) 129, 211, 212, (RENEW), 240 (GREENS)

AM 218 EPP to be covered under Article 77

Article 1

Subject matter

1. This Directive lays down a common framework for corporate income taxation in the Union for certain groups.

2. For the purpose of paragraph 1, this Directive lays down rules:

   (a) on delineating a group for the purposes of this Directive ('BEFIT group');

   (b) for calculating an aggregated tax base for the companies and permanent establishments of the BEFIT group ('BEFIT group member' and 'BEFIT tax base');

   (c) for allocating the BEFIT tax base to eligible BEFIT group members;

   (d) simplifying transfer pricing risk assessments for transactions with associated enterprises outside the group;

(e) for the administration of the common legal framework.

(ea) extending the concept of a permanent establishment, to include a significant economic presence through which a business is wholly or partly carried on. (23 S&D, 202 LEFT, 203 GREENS)

3. A company or a permanent establishment which is subject to this Directive shall cease to be subject to the national corporate tax law in all Member States where it is established in respect of all matters regulated by this Directive, unless otherwise stated in this Directive.

Article 2

Scope

1. This Directive applies to companies resident for tax purposes in a Member State, including their permanent establishments located in other Member States, and to permanent establishments located in Member States of entities resident for tax purposes in a third country ('third-country entities'), which comply with the following criteria:

(a) they belong to a domestic group or to a multinational enterprise group ('MNE group) which prepares consolidated financial statements and had annual combined revenues of EUR 750 000 000 or more in at least two of the last four fiscal years;

(b) in respect of companies, in addition:

(i) they take one of the forms listed in Annex I;

(ii) they are subject to one of the corporate taxes listed in Annex II, or to a similar tax subsequently introduced;

(iii) they are the ultimate parent entity ('UPE') or their assets, liabilities, income, expenses, and cash flows shall be consolidated on a line-by-line basis by the ultimate parent entity;

(c) in respect of permanent establishments, in addition:

(i) they are subject to one of the corporate taxes listed in Annex II or to a similar tax subsequently introduced;

(ii) they are a permanent establishment of the ultimate parent entity or of an entity whose assets, liabilities, income, expenses and cash flows shall be consolidated on a line-by-line basis by the ultimate parent entity.

2. By way of derogation from paragraph 1, this Directive shall not apply to companies or permanent establishments with an ultimate parent entity outside the Union where the combined revenues of the group in the Union either do not exceed 5% of the total revenues for the group based on its consolidated financial statements or the amount of EUR 50

million in at least two of the last four fiscal years. This shall be without prejudice to the right of opting in under paragraph 7.

3. Where two or more groups merge to form a single group, the threshold of EUR 750 000 000 referred to in paragraph 1 shall be deemed to be met for any fiscal year prior to the merger if the sum of the combined revenues of the merging groups for that fiscal year, as included in each of their consolidated financial statements, is EUR 750 000 000 or more. The companies and permanent establishments members of that newly formed group shall become subject to this Directive if that threshold was met in at least two of the last four fiscal years.

4. Where a company that is not a member of a group (the 'target') is acquired by another company or a group (the 'acquiring entity') and either the target or the acquiring entity did not have consolidated financial statements in any of the four fiscal years immediately preceding the fiscal year of the acquisition, the threshold of annual combined revenues of EUR 750 000 000 referred to in paragraph 1 shall be deemed to be met for that year if the sum of the revenues included in the financial statements or consolidated financial statements of the target and the acquiring entity for that fiscal year is EUR 750 000 000 or more. The acquiring entity shall become subject to this Directive if that threshold was met in at least two of the four fiscal years immediately preceding the fiscal year in which this Directive started to apply to the acquiring entity.

5. Where there is a demerger of a group into two or more groups (the 'demerged groups'), the threshold of EUR 750 000 000 referred to in paragraph 1 shall be deemed to be met by each of the demerged groups where:

   (a) in the first fiscal year ending after the demerger, each of the demerged groups has annual combined revenues of EUR 750 000 000 or more in that fiscal year;

   (b) in the second to fourth fiscal years ending after the demerger, each of the demerged groups has annual combined revenues of EUR 750 000 000 or more in at least two of those fiscal years.

6. Where one or more of the four fiscal years referred to in this Article is longer or shorter than 12 months, the revenue thresholds referred to shall be adjusted proportionally for each of those fiscal years.

7. Member States shall ensure that companies which are resident for tax purposes in a Member State and fulfil the conditions laid down in paragraph 1, point (b), including their permanent establishments located in other Member States, as well as permanent establishments, located in Member States, of third-country entities which fulfil the conditions of paragraph 1, point (c), may choose to be covered by this Directive if they belong to an MNE group or domestic group which prepares consolidated financial statements but does not fulfil the conditions laid down in paragraph 1, point (a) regarding the threshold of EUR 750 000 000.

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 74 to amend Annexes I and II ~~***to take account of***~~ ***strictly to reflect (237 RENEW)*** changes to the laws of the Member States concerning company forms and corporate taxes.

Article 3

Definitions

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

(1) 'group' means:

(a) a collection of entities which are related through ownership or control as defined by the acceptable financial accounting standard for the preparation of consolidated financial statements by the ultimate parent entity, including any entity that may have been excluded from the consolidated financial statements of the ultimate parent entity solely based on its small size, on materiality grounds or on the grounds that it is held for sale; or

(b) an entity that includes the net income or loss of one or more permanent establishment in its financial statements ('head office'), provided that it is not part of another group as defined in point (a);

(2) 'domestic group' means any group of which all entities are located in the same Member State;

(3) 'MNE group' means any multinational group that includes at least one entity or permanent establishment which is not located in the jurisdiction of the ultimate parent entity ('UPE');

(4) 'fiscal year' means the accounting period with respect to which the ultimate parent entity prepares its consolidated financial statements.

(5) 'consolidated financial statements' means the financial statements where the assets, liabilities, income, expenses and cash flows of an entity and those of its subsidiaries, which are controlled by the former, are presented as those of a single economic unit;

(6) 'entity' means any legal arrangement that prepares separate financial accounts or any legal person;

(7) 'ultimate parent entity' means:

(a) an entity that owns, directly or indirectly, a controlling interest in any other entity and that is not owned, directly or indirectly, by another entity with a controlling interest in it; or

(b) the head office of a group as defined in point (1)(b);

(8) ‘ownership interest’ means any equity interest that carries rights to the profits, capital or reserves of an entity or of a permanent establishment;

(9) ‘controlling interest’ means an ownership interest in an entity whereby the interest holder is required to consolidate the assets, liabilities, income, expenses and cash flows of the entity on a line-by-line basis;

(10) ‘filing entity’ means one of the following:

(a) the ultimate parent entity, when located in a Member State; or

(b) if the ultimate parent entity is not located in a Member State, the entity located in a Member State that has been appointed by the BEFIT group to fulfil the obligations in relation to the BEFIT group information return set out in Article 57 on behalf of the BEFIT group.

(11) ‘acceptable accounting standard in the Union’ means the International Financial Reporting Standards as adopted by the Union pursuant to Regulation (EC) No 1606/2002 of the European Parliament and of the Council[1] and the generally accepted accounting principles of the Member States;

(12) ‘financial accounting net income or loss’ means the net profit or loss determined for a BEFIT group member, under a single common acceptable accounting standard in the Union before any consolidation adjustments for eliminating intra-BEFIT group transactions, in accordance with Article 7.

(13) ‘Insurance undertaking’ means an insurance undertaking as defined in Article 13, point (1), of Directive 2009/138/EC of the European Parliament and of the Council[2];

(14) ‘Unit-linked/index-linked life insurance’ means life insurance policies where the investment gains and losses or interests/dividends accruing on the underlying investments of the insurance undertaking are fully allocated to policyholders over time;

(15) ‘economic owner’ means the person who receives substantially all the benefits and bears all the risks attached to a fixed asset, regardless of whether that person is the legal owner. A taxpayer who has the right to possess, use and dispose of a fixed asset and bears the risk of its loss or destruction shall in any event be considered the economic owner;

(16) ‘baseline allocation’ means the method for sharing the BEFIT tax base among BEFIT group members in each fiscal year of the transition period in accordance with Article 45.

(17) ‘filing authority’ means the competent authority of the Member State in which the filing entity is resident for tax purposes or, where it concerns a permanent establishment of a non-resident taxpayer, the Member State in which that permanent establishment is situated.

[1] Regulation (EC) No 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards (OJ L 243, 11.9.2002, p. 1)

[2] Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking-up and pursuit of the business of Insurance and Reinsurance (Solvency II) (OJ L 335, 17.12.2009, p. 1).

Article 3a

Significant Economic Presence

1. For the purposes of corporate tax, a permanent establishment shall be deemed to exist if a significant economic presence exists through which a business is wholly or partly carried on.

2. Paragraph 1 shall be in addition to, and shall not affect or limit the application of, any other test under Union or national law for determining the existence of a permanent establishment in a Member State for the purposes of corporate tax, whether specifically in relation to the supply of digital services or otherwise.

3. A significant economic presence shall be considered to exist in a Member State in a tax period if total revenues derived by a BEFIT group from that Member State exceed EUR 1 000 000.

4. The Commission shall, by means of implementing acts, lay down a detailed methodology for the sourcing rules to define the revenues. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 73. (34 S&D, 245 EPP, 246 GREENS, 247 LEFT)

5. The Commission may issue recommendations to support adaptations to the double tax conventions of Member States with non-Union jurisdictions, in order to ensure that the concept of a permanent establishment, including a significant economic presence, and the related profit attribution rules are applied in a manner consistent with internationally agreed standards.

Recitals

(1) Within the Union there is currently no common approach to the computation of the taxable base for businesses. Therefore, Union businesses are obliged to comply with a different corporate tax system in each Member State in which they operate. ***For example, in 2023, according to the 2024 Annual Report on Taxation, statutory corporate tax rates varied between Member States from 10 % to 31.5 % (and from 9 % to 29 % taking into account the tax support schemes put in place by governments). (90 EPP)***

(2) The existence of 27 different corporate income tax systems in the Union gives rise to complexity in tax compliance and leads to unfair competition for businesses***, and can lead to double taxation, tax avoidance and double non-taxation (1 S&D, 101 LEFT)***. ***According to the 2024 Annual Report on Taxation in the EU, revenue losses due to corporate profit shifting were estimated at 20 % of all corporate tax revenues collected in 2022 in the EU, which would amount***

to around EUR 100 billion in nominal value. These phenomena have (98 EPP) become more evident as globalisation and digitalisation of the economy have significantly altered the perception of land borders and business models. As governments have tried to adapt to that new reality, a fragmented response among Member States has led to further distortions in the internal market. The various legal frameworks inevitably lead to different tax administration practices across the Member States as well. This often entails long procedures characterised by unpredictability and inconsistency along with high compliance costs***, which can impact cross-border investments***. ***Because this complexity can hinder businesses' expansion in the single market, with further negative impacts on innovation, competitiveness and jobs, a common approach is ~~therefore~~ necessary not only to ensure fair and effective taxation, but also to strengthen the integrity and competitiveness of the companies acting on the Single Market. (97 RENEW, 99 EPP, 100 EPP)***

(3) Albeit different in their design, the fundamental features of corporate income tax systems are similar as they lay down rules aiming towards the same objective, i.e., to arrive at a taxable base for businesses. In this vein, ***to support the proper functioning of the internal market, the corporate tax environment in the Union should be shaped in accordance with the principle that companies pay their fair share of tax in the jurisdiction(s) where their profits are generated. Therefore***, ***(105 RENEW)*** it would be important for businesses which operate on the internal market that Member States introduce a common legal framework to harmonise the fundamental features of corporate income tax systems with a view to simplifying tax rules***, reducing administrative burden,*** ensuring a fair competition, ***enhancing legal certainty for companies operating across borders, and fighting tax avoidance***. ***(104 EPP, 106 LEFT) The scope of such harmonisation should be strictly limited to the criteria and entities listed herein, while the tax rate and enforcement policies remain with Member States, within the framework of Council Directive (EU) 2022/2523 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union. (2 S&D, 238, 239 RENEW)***

(3a) Harmonising the corporate tax base through a common set of rules improves transparency, thereby fostering a fairer and healthier tax environment within the Union, which is underpinned in particular by the entry into force of Directive (EU) 2022/2523 on a global minimum level of taxation, and contributes to strengthening the Union's overall competitiveness as well as the Union's commitment to internationally agreed standards. (108 EPP)

(4) On 9 June 2023, 139 jurisdictions, which are members of the OECD/G20 Inclusive Framework, had joined the October 2021 Statement on a "Two Pillar Solution to address the tax challenges arising from the digitalisation of the economy"[1]. With that Statement, Member States agreed (i) to a review exercise that calculates potential minimum tax liability of large multinational groups starting from financial accounting, as parts of Pillar 2 and (ii) to partially re-allocate taxable profits on the basis of a formulary apportionment as part of Pillar 1. The design of a common framework to address the tax challenges arising from digitalisation and globalisation should draw inspiration from the achievements of that exercise. As the implementation of Pillar 2 has unanimously been adopted by Member States via Council Directive (EU) 2022/2523[2], a common

corporate tax framework in the Union should build upon concepts, such as the scope and computation of the tax base, which both businesses and Member States are already familiar with.

[1] Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy – 8 October 2021, OECD/G20 Base Erosion and Profit Shifting Project.

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

(4a) To ensure legal certainty and avoid excessive administrative burdens on multinational enterprise groups, this Directive should aim for coherence with international tax developments, in particular those pursued by the OECD/G20 Inclusive Framework, including Pillar One and Pillar Two, while also taking into account the positions adopted by key international partners and Member States, including decisions to uphold or exempt themselves from agreed commitments. The Union should in any case retain ~~the~~ sufficient flexibility to determine its own allocation mechanism, where necessary, in order to reduce compliance burdens and mitigate the risk of double or multiple taxation. (111 RENEW)

(4b) The Commission and the Member States should ensure the coherence and alignment of this Directive with the OECD/G20 Model Rules and with Directive (EU) 2022/2523. Wherever possible, the Commission and Member States should interpret concepts in this Directive in light of principles and rules enshrined in Directive (EU) 2022/2523. (112, 209, 221, 224, 227, 236 EPP)

(5) The environment for doing business in the internal market should be made more attractive with the aim to stimulate growth and investment in the Union. For this purpose, the enactment of a common framework of corporate tax rules should be prioritised, in order to make it easier for businesses to comply with such rules when they operate across borders and also to encourage those who wish to further expand abroad to do so ***and encourage entrepreneurship in the single market (115 EPP)***. A single set of corporate tax rules for international activity is expected to result in enhanced tax certainty and less tax disputes, as it would tackle distortions and decrease the number of cases of double taxation and ***non-taxation. This further implies less opportunities to abuse some specific national tax provisions in a pan-European context. (114 GREENS)*** Furthermore, as tax revenue sustainability is key to Member States' budgets, including to invest in infrastructure, research and development, ***security and defence, (117 EPP) the green and social transitions*** and to deliver public services, ***especially for the most vulnerable households (113 LEFT)***, ***it is essential to design profit determination rules in the Union that will not result in lower revenues for Member States. In addition, (3 S&D)*** it would be critical to ensure for the future that the allocation of revenues is performed in accordance with a tool based on solid parameters that cannot be abused.

(6) It is indeed critical to create a system that achieves a degree of uniformity across the Union, at least amongst the taxpayers that it is chiefly addressed to. Accordingly, and considering the efforts that both tax administrations and businesses have made in order to implement the framework of a global minimum level of taxation, it would be important to capitalise on this achievement and design rules that remain as close as possible to the OECD/G20 Model Rules and Directive (EU) 2022/2523. On this basis, the common framework of rules should be mandatory for groups with a taxable presence in the Union provided that they have annual combined revenues of more than EUR 750 000 000 based on their consolidated financial statements. In this way, the scope would thus be targeted at businesses that are most likely to have cross-border activities and, thereby, can benefit from the simplification which a common legal framework would offer. The threshold would also provide alignment with Directive (EU) 2022/2523 for a consistent approach in the Union.

(7) Although the threshold would be determined on the basis of the combined revenues of the group on a global basis, the remit of the provisions should be limited to members of the group operating on the internal market as Union law only applies within the Union and does not bind non-Member States. Only the Union sub-set of such a group should therefore be captured. This would include companies which are resident for tax purposes in a Member State and their permanent establishments ***including a significant economic presence, (7 S&D)*** operating in a Member State as well as the permanent establishments in the Union of third country companies of the same group.

(7 a) The Union should lead and actively participate international discussions on making international corporate taxation fit for the future including by promoting a form of harmonisation of rules and an allocation of the taxable base for large multinationals. (6 S&D, 134 EPP)

(8) To ensure proportionality and the well-functioning of the common framework, group members, including companies resident in a Member State, their permanent establishments and permanent establishments in the Union which are members of a group headquartered outside the Union, with limited activity in the internal market should be excluded from the scope through a materiality threshold.

(8 a) This Directive should lay down rules extending the concept of a permanent establishment so as to include a significant economic presence through which a business is wholly or partly carried on. The underlying objective is to improve the resilience of the internal market as a whole in order to address the challenges of taxation of the digital economy. The increased importance of services, accelerated by the digitalisation of the economy, has led to recent proposals, as embedded in the OECD/G20 Pillar One proposal, to define significant economic presence as a taxable nexus based on a purely quantitative threshold of sales in any given country in order to capture all sectors and ensure simplicity. That objective cannot be sufficiently achieved by the Member States acting individually because digital businesses are able to operate cross-border without having any physical presence in a jurisdiction and rules

are therefore needed to ensure that digital businesses pay taxes in the jurisdictions where they make profits, whether by providing services or selling products ('sales'). (7 S&D, 138 LEFT, 139 GREENS)

(8 b) In order to provide for a robust definition of a taxable nexus of a business in a Member State, whether or not the business is digital, it is necessary that such a definition is based on the revenues from any sales, including from the supplied digital services. The definition included in this Directive is identical to the definition agreed upon in the framework of the OECD/G20 Pillar One proposal, in order to ensure coherence between this Directive and that international framework. The Union should lead by example in the international tax reform discourse, in order to provide certainty to taxpayers. (8 S&D, 140 GREENS). Furthermore, in order to ensure consistency, the Commission may issue recommendations to support adaptations to the double tax conventions of Member States with non-Union jurisdictions, so as to ensure that the concept of a permanent establishment, including a significant economic presence, and the related profit attribution rules are applied in a manner consistent with internationally agreed standards.

COMPROMISE B

CHAPTER II - DETERMINATION OF THE PRELIMINARY TAX RESULT – SECTION 1

ARTICLES 4-7, Recitals 9-10a

AMs covered: 7, 9, 10, 34, (S&D), 141, 142, 144, 245, 250, 252, 257, 270 (EPP)

AMs falling: 35, 36 (S&D), 143, 255, 256, (EPP), 248, 253, 254 (LEFT) 249, 251 (GREENS)

Article 4

General principles

1. The preliminary tax result of each BEFIT group member shall be determined, for each fiscal year, based on its financial accounting net income or loss as adjusted in accordance with Article 8 to 41 of this Directive.

2. Expenses that are included in the financial accounting net income or loss of a BEFIT group member shall be deductible from its preliminary tax result only to the extent that they are incurred in its direct business interest.

Article 5

Structure of a BEFIT group

1. A BEFIT group shall be formed where two or more companies or permanent establishments which fall within the scope of this Directive meet the following conditions:

   (a) the company is either the ultimate parent entity of the group, or any other company of the group in which the ultimate parent entity holds, directly or indirectly, at least ***~~75~~50% (250 EPP)*** of the ownership rights or of the rights giving entitlement to profit;

   (b) the head office of the permanent establishment is either the ultimate parent entity of the group or any other member (company or entity) of the group***,*** in which the ultimate parent entity holds, directly or indirectly, at least ***~~75~~50% (252 EPP)*** of the ownership rights or of the rights giving entitlement to profit.

2. For the purpose of calculating the threshold referred to in paragraph 1, points (a) and (b), the ownership rights and the rights giving entitlement to profit in a company that belongs to a group shall be calculated by multiplying the interests held, directly and indirectly, at each tier.

Article 6

Holding period requirements

1. A BEFIT group member shall meet the thresholds referred to in Article 5(1) without interruption, throughout the fiscal year.

2. A company or a permanent establishment shall become a BEFIT group member on the date that the thresholds referred to in Article 5(1) are reached. The thresholds shall be met for at least nine consecutive months. If a company or, as applicable, a permanent establishment fails to meet the thresholds for the required period, it shall be treated as if it has never been a BEFIT group member.

3. A company or a permanent establishment ceases to be a BEFIT group member on the day that follows the one on which it no longer meets the thresholds referred to in Article 5(1).

Article 7

Financial accounts as a basis for computing the preliminary tax result

1. The preliminary tax result of a BEFIT group member shall be computed by making the adjustments set out in Articles 8 to 41 to its financial accounting net income or loss for the fiscal year, as determined under a single common acceptable accounting standard in the Union before any consolidation adjustments for eliminating intra-BEFIT group transactions.

2. The acceptable accounting standard in the Union to be used by the BEFIT group members for the purpose of paragraph 1 shall be the acceptable accounting standard in the Union which is used in the preparation of the consolidated financial statements of the ultimate parent entity where the latter is resident for tax purposes in a Member State.

Where the ultimate parent entity is not resident for tax purposes in a Member State, the acceptable accounting standard in the Union shall be the standard in force in the Member State where the filing entity is resident for tax purposes.

3. Where a BEFIT group member is a permanent establishment, its financial accounting net income or loss shall be either:

(a) the net income or loss reflected in its own separate financial accounts, as determined in accordance with paragraphs 1 and 2; or

(b) in the absence of separate financial accounts, the net income or loss that would have been reflected in its separate financial accounts if they had been prepared on a standalone basis and in accordance with the acceptable standard in the Union determined in accordance with paragraphs 1 and 2.

4. By way of derogation from paragraph 1, where a Member State applies national law which allows groups to prepare, audit and publish financial statements on a jurisdictional basis, the preliminary tax result and the allocation of the BEFIT tax base of the BEFIT group members that are resident for tax purposes in that Member State may also be computed on a jurisdictional basis, provided that the group can identify separately, for each BEFIT group member, the data necessary to calculate such preliminary tax result and post-allocation adjustments in accordance with this Directive.

4a. Where it is not reasonably practicable to determine the financial accounting net income or loss of a constituent entity based on the acceptable financial accounting standard or authorised financial accounting standard used in the preparation of the consolidated financial statements of the ultimate parent entity, the financial accounting net income or loss of the constituent entity for the fiscal year may be determined using another acceptable financial accounting standard or an authorised financial accounting standard, provided that:

(a), the financial accounts of the constituent entity are maintained based on that accounting standard;

(b), the information contained in the financial accounts is reliable; and

(c), permanent differences in excess of EUR 1 000 000 that arise from the application of a particular principle or standard to items of income or expense or transactions, where that principle or standard differs from the financial standard used in the preparation of the consolidated financial statements of the ultimate parent entity, are adjusted to conform to the treatment required for that item under the accounting standard used in the preparation of the consolidated financial statements. (257 EPP)

Recitals

(9) The objective of simplifying the current rules underscores the envisaged initiative ***improving the efficiency and competitiveness of the single market (142 EPP)***. Therefore, the rules on the computation of the tax base should be built by applying a limited series of tax adjustments to the financial statements of each group member. These limited adjustments would represent common adjustments that are necessary to convert the financial accounting statements into a tax base. Considering the need for alignment with Directive (EU) 2022/2523, the adjustments should resonate with that framework, which should also facilitate implementation for Member States and businesses that would already be familiar with the general principles. ***In that framework, the payment of top-up tax due in accordance with Directive (EU) 2022/2523 or in application of a qualified domestic top-up tax as referred to in that Directive, or any other alternative minimum taxes recognised in an international forum such as the OECD, should be taken into consideration. (9 S&D, 141 EPP)***

(10) Given that, with the aim to bring simplification, the financial accounts will be used as a starting point for computing the tax base of each group member, it is necessary to draft tax rules in such a way that they stay as close as possible to financial accounting. In the cases where this is possible, the financial accounting treatment of an asset or liability would not change for the purpose of taxation and consequently, no adjustments would be required. Accordingly, it is also necessary that in line with the rationale of taxation, other elements of the tax base be treated for tax purposes in a different way compared to how they are qualified under financial accounting. ***In order to ensure consistency with international tax practices such as those under the Pillar Two framework, this Directive should allow greater flexibility in the choice of financial accounting standards used to determine the preliminary tax result. (144 EPP)***

(10 a) In order to achieve the objective of a simplified tax framework and in order for this Directive to adequately complement Directive (EU) 20XX/XX1a on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes, the rules laid down in this Directive on the deductibility of interest should align with the ones provided for in Directive (EU) 20XX/XX, where applicable. (10 S&D, 270 EPP)

COMPROMISE C

CHAPTER II, DETERMINATION OF THE PRELIMINARY TAX RESULT –SECTION 2, - ADJUSTMENTS TO THE FINANCIAL ACCOUNTING NET INCOME OR LOSS

ARTICLES 8-21a, Recitals 10b-11

AMs covered: 40, 41, 42 (S&D), 147, 150, 281, 282 (LEFT), 148, 149, 274, 283 (GREENS), 278, 279, 280 (EPP)

AMs falling: 37, 38, 39 (S&D), 151, 258, 262, 265, 268, 271, 273, 276 (LEFT), 152, 259, 269, 272, 275, 277 (GREENS), 260, 261, 263, 264, 266, 267, 278, 279, 280 (EPP)

Article 8

Dividends and other distributions

With the exception of financial assets held for trading, as referred to in Article 11(1), and investments made for the benefit of life insurance policyholders bearing the investment risk in the context of a unit-linked/index-linked life insurance policy, as referred to in Article 14, the financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude 95% of the amount of dividends or other distributions received or accrued during the fiscal year, provided that at the date of distribution, the ownership interest is held by the BEFIT group member for more than one year and this interest carries right to more than 10% of the profits, capital, reserves or voting rights.

Article 9

Gains or losses from the disposition of shares

With the exception of financial assets held for trading, as referred to in Article 11(1), and investments made for the benefit of life insurance policyholders bearing the investment risk in the context of a unit-linked/index-linked life insurance policy, as referred to in Article 14, the financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude 95% of the amount of gain or loss arising from the disposition of an ownership interest, provided that at the date of disposition, the ownership interest is held by the BEFIT group member for more than one year and this interest carries a right to more than 10% of the profits, capital, reserves or voting rights.

Article 10

Changes in fair value

With the exception of financial assets held for trading, as referred to in Article 11(1), and investments made for the benefit of life insurance policyholders bearing the investment risk in the context of a unit-linked/index-linked life insurance policy, as referred to in Article 14, the financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude the amount of gain or loss arising from changes in the fair value of an ownership interest, provided that at the date of disposition, the ownership interest is held by the BEFIT group member for more than one year and this interest carries right to more than 10% of the profits, capital, reserves or voting rights.

Article 11

Financial assets held for trading

1. A financial asset or liability shall be treated as being held for trading by a BEFIT group member where it meets any of the following conditions:

   (a) it is acquired or incurred mainly for the purpose of selling it or repurchasing it in the short term;

   (b) it is part of a portfolio of identified financial instruments, including derivatives, that are managed together and for which there is evidence of a recent actual pattern of short-term profit taking.

2. Where a financial asset or liability which is held by a BEFIT group member transitions to become an asset or liability held for trading or vice versa, the financial accounting net income or loss shall be adjusted to include any difference between the fair value calculated at the beginning of the fiscal year or at the date of purchase if later, and its fair value calculated at the end of the same fiscal year.

   The fair value of a financial asset or liability at the end of the fiscal year during which it transitioned to become an asset or liability held for trading or vice versa shall also be its fair value at the beginning of the fiscal year following the transition.

3. The holding period referred to in Article 9 shall begin or be interrupted when the financial asset or liability is no longer held for trading or is transitioned to become an asset or liability held for trading respectively.

Article 12

Income or loss of a permanent establishment

The financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude the amount of income or loss that is attributable to its permanent establishments.

Article 13

Interest limitation rule

1. A BEFIT group member shall adjust its financial accounting net income or loss to include the amount of exceeding borrowing costs, as referred to in Article 2 of Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market[1], which is not deductible for tax purposes in accordance with the interest limitation rules laid down in the national corporate tax law of the Member State where it is resident for tax purposes.

2. Paragraph 1 shall not apply to exceeding borrowing costs arising from a transaction between BEFIT group members.

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

Article 13a

Royalties limitation rule

The financial accounting net income or loss of a BEFIT group member shall be adjusted to include any amounts of royalty costs and licence fee payments for which the corresponding income derived by the recipient BEFIT group member is subject to an effective tax rate below 9%, unless the recipient entity carries out substantive economic activity supported by staff, equipment, assets, and premises, as evidenced by relevant facts and circumstances. (40 S&D, 274 GREENS)

Article 14

Insurance undertakings

1. Where a BEFIT group member is an insurance undertaking which is authorised to operate in a Member State in accordance with Directive 2009/138/EC, the rules laid down in paragraphs 2 to 4 shall apply.

2. The amount of technical provisions of insurance undertakings established in compliance with Council Directive 91/674/EEC[1] that were deducted in the financial accounting net income or loss of a BEFIT group member shall be reviewed and adjusted at the end of every fiscal year. In calculating the preliminary tax result in future years, account shall be taken of amounts already deducted.

3. The Commission may adopt delegated acts in accordance with Article 74 to supplement this Directive laying down more detailed rules on the adaptation of the preliminary tax

result for insurance undertakings, in the context of the impact of the new International Financial Reporting Standard (IFRS) 17 on insurance contracts.

4. Life insurers in the context of unit-linked/index-linked life insurance policy shall evaluate the assets at market value and set up the reserve in accordance with the evaluation of the underlying assets.

[1] Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings (OJ L 374, 31.12.1991, p. 7)

Article 15

Shipping activities covered by a tonnage tax regime

The financial accounting net income or loss of a BEFIT group member carrying out shipping activities shall be adjusted to exclude the amount of revenues, expenses and other deductible items derived from such activities covered by a tonnage tax regime.

Article 16

Fines, penalties and illegal payments

The financial accounting net income or loss of a BEFIT group member shall be adjusted to include the amount of expenses accrued for payments found illegal as a result of an audit or investigation by the competent authority as well as fines and penalties, including charges for late payment, that are due to a public authority for breach of any legislation.

Article 16a

Entertainment costs

The financial accounting net income or loss of a BEFIT group member shall be adjusted to include 50% of the amount of expenses accrued for entertainment costs. (41 S&D)

Article 17

Corporate tax

The financial accounting net income or loss of a BEFIT group member shall be adjusted to include the amount of any corporate tax, similar taxes on profits and deferred taxes accrued for the fiscal year as well as any amount recorded as current taxes in the financial accounts in relation to the payment of top-up tax due in accordance with Directive (EU) 2022/2523 or in application of a Qualified Domestic Top-up Tax as referred to in Article 11 of that Directive.

Article 18

Rollover relief for replacement assets

1. Where the proceeds from the disposition, including compensation for damage, of a fixed depreciable asset or land, are to be re-invested in a similar asset used for the same or a similar business purpose before the end of the second fiscal year after the fiscal year in which the disposition took place, the amount by which those proceeds exceed the value for tax purposes of the asset may be deducted in the year of the disposition. An asset which is disposed of voluntarily needs to be owned for a minimum period of three years prior to the disposition.

2. The replacement asset referred to in paragraph 1 may be purchased in the fiscal year prior to the disposition. Where the replacement asset is not purchased before the end of the second fiscal year after the year in which the disposition of the asset took place, and except in cases of force majeure, the amount deducted in the year of disposition, increased by 10 %, shall be added to the preliminary tax result in the second fiscal year after the disposition took place.

Article 19

Revenues and expense in relation to fixed assets subject to depreciation

1. The financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude the following amounts:

   (a) acquisition or construction costs as well as costs connected with the improvement of fixed assets which are depreciable in accordance with the rules laid down in Section 3; and

   (b) subsidies directly linked to the acquisition, construction or improvement of such assets.

2. The financial accounting net income or loss of a BEFIT group member shall be adjusted to only include the amount of deduction in respect of the depreciation of fixed assets as determined in Articles 22 to 28.

Article 20

Currency exchange gain or loss

The financial accounting net income or loss of a BEFIT group member shall be adjusted ~~***to exclude the following:***~~ ***in accordance with Article 16(e) of Directive (EU) 2022/2523 of 14 December 2022. (278 EPP)***

~~***(a) the amount of any unrealised foreign currency exchange gain or loss in relation to fixed assets and liabilities;***~~

~~***(b) the amount of any provision recorded for unrealised foreign currency exchange loss.***~~ ***(278, 279 EPP)***

Article 21

Adjustments in relation to certain items (items left to Member States after allocation)

The financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude from the preliminary tax result any amount relating to items listed in Article 48(1), points (a) to (j).

Article 21a

Controlled foreign companies

1. The financial accounting net income or loss of a BEFIT group member shall be adjusted to include the non-distributed income of an entity or permanent establishment treated as a controlled foreign company as referred to in Article 7(1) of Council Directive (EU) 2016/1164, which is derived from the following categories:

(i) interest or any other income generated by financial assets;

(ii) royalties or any other income generated from intellectual property;

(iii) dividends and income from the disposal of shares;

(iv) income from financial leasing;

(v) income from insurance, banking and other financial activities;

(vi) income from invoicing companies that earn sales and services income from goods and services purchased from and sold to associated enterprises, and add no or little economic value.

Paragraph 1 shall not apply where the controlled foreign company carries out a substantive economic activity supported by staff, equipment, assets and premises, as evidenced by relevant facts and circumstances.

Where the controlled foreign company is resident or situated in a third country that is not an EEA Member State, Member States may decide to refrain from applying this paragraph.

2. The income to be included in the tax base shall be calculated in accordance with Article 8 of Council Directive (EU) 2016/1164. (42 S&D, 281, 282 LEFT, 283 GREENS)

Recitals

(10 b) To guarantee a minimal level of taxation of royalties, a royalties limitation rule for BEFIT group members should be introduced in accordance with the Subject to Tax Rule[10b] as proposed by the OECD/G20 Inclusive Framework in Pillar Two. (147 LEFT, 148 GREENS)

[10b] ***OECD (2023). Tax Challenges Arising from the Digitalisation of the Economy – Subject to Tax Rule (Pillar Two): Inclusive Framework on BEPS, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris, https://doi.org/10.1787/9afd6856-en***

(10 c) A fairer taxation of passive income also requires robust Controlled Foreign Company (CFC) rules for BEFIT group members in order to make them more resilient against profit shifting. (149 GREENS, 150 LEFT)

(11) Accordingly, it is essential to address specific sectors of activity, notably international shipping, that require certain sector-specific adjustments. For group members in this sector, the financial accounts would have to be adjusted, in order to exclude an amount (profit or loss) covered by a tonnage tax regime. Special tax regimes for international shipping, often referred to as 'Tonnage tax regimes' would normally allow for taxation on the basis of the tonnage (i.e., the carrying capacity) of ships operated by a group member rather than the actual profits or losses incurred by the group member through activities eligible for tonnage tax. An exclusion of such an amount would, therefore, build on the different acknowledged approaches for the computation of the tax base and would ensure a suitable consistency with the different policy objectives of the internal market.

COMPROMISE D

CHAPTER II, DETERMINATION OF THE PRELIMINARY TAX RESULT – SECTION 3 – DEPRECIATION

ARTICLES 22-28, Recital 11a

AMs covered: 153, 244, 284, 285, 286, 290, 296 (EPP), 289, 291, 298, 299 (GREENS), 11, 44, 45, 46, 49, 50, 51 (S&D), 297 (LEFT)

AMs falling: 43, 47, 48 (S&D), 287, 288, 292, 293, (LEFT), 294, 295, 300 (GREENS) 301 (EPP)

SECTION 3
DEPRECIATION

Article 22

Depreciation method and duration

1. The financial accounting net income or loss of a BEFIT group member shall be adjusted to exclude in the fiscal year of acquisition any fixed tangible asset that has a book value before depreciation which is below EUR ~~***5000***~~ ***7500***. ***(284, 285, 286 EPP)***

2. Where paragraph 1 does not apply, fixed assets shall be depreciated individually over their useful life on a straight-line basis. The useful life of a fixed asset shall be determined as follows:

   (a) all buildings as well as any other type of immovable property and structure in use for the business, ***with the exception of industrial buildings and structures***: ~~***28***~~ ***30 (44 S&D, 289 GREENS, 290 EPP)*** years;

   (aa) industrial buildings and structures: 25 years; (45 S&D)

   (b) all other fixed tangible assets: their useful life as assessed in accordance with the acceptable accounting standard in the Union referred to in Article 7***, but not less than 10 years; (46 S&D, 291 GREENS)***

   (c) fixed intangible assets, including acquired goodwill: the period for which the asset enjoys legal protection or for which the right has been granted and, where that period cannot be determined, 5 years.

3. Second-hand fixed assets shall be depreciated in accordance with paragraph 2, unless the BEFIT group member demonstrates that the estimated remaining useful life of the asset is shorter, in which case it shall be depreciated over that shorter period.

   By way of derogation from the first subparagraph, second hand fixed intangible assets shall be depreciated over 5 years, unless the remaining period for which the asset enjoys legal protection or for which the right has been granted can be determined, in which case it shall be depreciated over that other period.

4. Depreciation shall be deducted on a monthly basis as from the month of entry into use of the fixed asset. No depreciation shall be deducted in the month of disposition of the asset.

5. The value for tax purposes of a fixed asset that is disposed of, or damaged to an extent that it can no longer be used for the business, and the value for tax purposes of any improvement costs incurred in relation to that asset shall be deducted from the preliminary tax result in the month of the disposition or damage.

Article 22a

Accelerated Depreciation Rules

1. ***By way of derogation from Article 22, fixed tangible assets acquired by BEFIT group members in the following categories shall be subject to accelerated depreciation by Member States:***

   a) ***assets that contribute directly to the EU's climate and social goals, in particular the enhancement of clean technology, energy efficiency and digitalisation;***
   b) ***assets that contribute directly to the attainment of the UN 2030 Sustainable Development Goals;***
   c) ***assets that contribute directly to the enhancement of the EU's defence, notably its ability to prevent and respond to emerging threats and crises, in accordance with the Preparedness Union Strategy. (244, 296 EPP)***

2. ***The Commission shall, by means of implementing act, lay down the necessary framework and criteria to operationalize paragraph 1, including the categories of assets eligible for accelerated depreciation. Every 5 years, the Commission shall conduct an assessment of the accelerated depreciation regime in paragraph 1, analysing, in particular whether:***

   a) ***the measures are fit for purpose,***
   b) ***they are a cost-effective way to achieve their policy objectives, and***
   c) ***they have any negative or unexpected implications.***

   Following the assessment referred to in the first subparagraph, the Commission shall update the implementing act every 5 years, where deemed necessary. Implementing acts under this Article shall be adopted in accordance with the examination procedure referred to in Article 73.

3. ***Member States shall inform the Commission of their existing accelerated depreciation rules at national level, according to paragraphs 1 and 2, three months after this Directive starts to apply and in accordance with the obligation in Article 48(2). Member States shall also supply to the Commission all the information necessary to carry out the assessment referred to in paragraph 2.***

4. ***After this Directive starts to apply, Member States shall inform the Commission on their new accelerated depreciation rules 6 months prior to their entry into force at national level and in accordance with the obligation in Article 48(2). (299 GREENS)***

Article 23

Entitlement to depreciate

1. Subject to paragraph 3, depreciation shall be deducted by the economic owner.

2. In the case of contracts in which the economic and legal ownership do not coincide, the economic owner shall be entitled to deduct the interest element of the payments from its preliminary tax result, unless that element is not included in the preliminary tax result or tax base of the legal owner, as the case may be, depending on whether the legal owner is another BEFIT group member or not.

3. If the economic owner of an asset cannot be identified, the legal owner shall be entitled to deduct depreciation. In the case of leasing contracts both the interest and capital element of the lease payments shall be included in the preliminary tax result of the legal owner and if the lessee is a BEFIT group member, these payments shall be excluded from its preliminary tax result.

4. A fixed asset may not be depreciated by more than one taxpayer within a fiscal year, unless either the legal or the economic ownership is shared between more taxpayers, or the economic or legal owner of the asset has changed.

5. A BEFIT group member may not disclaim depreciation.

5a. Member States shall not grant further entitlements to depreciate to a BEFIT group member other than those specified in this Section. (49 S&D, 297 LEFT, 298 GREENS)

Article 24

Depreciation base

1. The depreciation base shall comprise costs directly connected with the acquisition, construction, or improvement of a fixed asset. Those costs shall not include deductible value added tax, interests, or the result of any revaluation or impairment exercise.

2. The depreciation base of an asset received as a gift shall be its market value as included in the financial accounts of the BEFIT group member.

3. The depreciation base of a fixed asset subject to depreciation shall be reduced by deducting the amount of any public subsidy directly linked to the acquisition, construction, or improvement of the asset, as referred to in Article 19(1) point (b).

4. The depreciation of fixed assets that are not available for use, or that have not been used for more than 12 months for reasons that are not outside the control of the BEFIT group member, shall not be taken into account.

   Depreciation shall cease from the month that follows the one in which the period referred to in the first subparagraph ended and shall be resumed as of the month that follows the one in which the asset started being used again.

5. Where a depreciable fixed asset has been disposed of and replaced in accordance with the rules in Article 18, the depreciation base of the replacement asset shall be reduced by the same amount as the amount that was deducted in the year of the disposition.

Article 25

Fixed asset register

1. Acquisition costs, construction costs or improvement costs, together with the date of entry into use after acquisition, construction or improvement, shall be recorded in a fixed asset register ***within the BEFIT group (50 S&D)*** for each fixed asset separately.

2. When a fixed asset is disposed of, details of the disposition, including the date thereof, and any proceeds or compensation received as a result of such disposition, shall be recorded in the fixed asset register.

3. The fixed asset register shall be kept in a manner that provides sufficient information, including depreciation data, to calculate the preliminary tax result. ***A copy of the fixed asset register shall be kept by the BEFIT group for five years from the date that the depreciation of such asset ceased. The fixed asset register (51 S&D)*** shall include at least the following information:

   (a) identification of the asset;

   (b) month of entry into use;

   (c) depreciation base;

   (d) useful life in accordance with Article 22;

   (e) depreciation accumulated during the current tax period;

   (f) total accumulated depreciation;

   (g) depreciation base net of total accumulated depreciation and net of exceptional decreases in value;

   (h) month of discontinuation or resumption of the charging of tax depreciation;

   (i) month of disposition.

Article 26

Depreciation of improvement costs

1. Improvement costs shall be depreciated in accordance with the rules applicable to the fixed asset which has been improved as if they related to a newly acquired fixed asset, including its useful life in accordance with Article 22(2).

   Notwithstanding the first subparagraph, improvement costs relating to fixed assets that are rented shall be depreciated in accordance with Article 22(3) and 23.

2. Where the taxpayer demonstrates that the estimated remaining useful life of a depreciable fixed asset is shorter than the useful life of the asset specified in Article 22(2), improvement costs for that asset shall be depreciated over that shorter period.

Article 27

Assets not subject to depreciation

The following assets shall not be subject to depreciation:

(a) fixed tangible assets not subject to wear and tear and obsolescence such as land, fine art, antiques, or jewellery;

(b) financial assets.

Article 28

Exceptional decrease in value

1. A BEFIT group member who demonstrates that a fixed tangible asset not subject to depreciation, as referred to in Article 27, point (a), has decreased in value at the end of a fiscal year due to force majeure or criminal activities by third parties may deduct from the preliminary tax result an amount equal to that decrease in value.

2. Where the value of an asset that, in a preceding fiscal year has been subject to depreciation as referred to in paragraph 1 subsequently increases, an amount equivalent to that increase shall be added to the preliminary tax result in the year in which that increase takes place.

   However, any such additions, taken together, shall not exceed the amount of the deduction originally granted.

Recitals

(11a) In order to spur investment, achieve a sustainable transition and enhance the EU's ability to prevent and respond to emerging threats and crises, Member States should adopt a targeted accelerated depreciation regime to incentivise companies to make the necessary investments to deliver on the twin transition and foster their resilience. This temporary regime should stimulate sustainable economic growth, create jobs, enhance the EU's security, including in the digital and energy sectors, and foster innovation in sustainable technologies. To operationalise those incentives and ensure a uniform approach across the internal market, the Commission should be mandated to adopt implementing acts. (11 S&D, 153 EPP)

COMPROMISE E

CHAPTER II, DETERMINATION OF THE PRELIMINARY TAX RESULT

SECTION 4 – TIMING & QUANTIFICATION OF RULES

SECTION 5 – ENTERING AND LEAVING A BEFIT GROUP AND CORPORATE RESTRUCTURING

ARTICLES 29-41

AMs covered: 52 (S&D), 304 (Greens), 306 (EPP)

AMs falling: 302, 303, 307 (The Left), 305, 308 (EPP)

SECTION 4
TIMING AND QUANTIFICATION RULES

Article 29

Stocks and work-in-progress

1. The financial accounting net income or loss of a BEFIT group member shall be adjusted by the difference between the value of stocks and work-in-progress at the beginning and the end of the fiscal year, with the exception of stocks and work-in-progress relating to long term contracts as defined in Article 32.

2. The costs of stocks and work-in-progress shall be measured consistently by using the first-in first-out method or the weighted-average cost method.

3. The cost of stocks and work-in-progress involving items that ordinarily are not interchangeable and goods or services which are produced or supplied respectively and segregated for specific projects shall be measured individually.

4. A BEFIT group member shall use the same method for the valuation of stocks and work-in-progress that have a similar nature and use.

5. The cost of stocks and work-in-progress shall comprise all costs of purchase, direct costs of conversion and other direct costs incurred in bringing them to the location and condition in which they are found in the relevant fiscal year. Costs shall be net of deductible value added tax.

6. Stocks and work-in-progress shall be valued on the last day of the fiscal year at the lower of cost and net realisable value. The net realisable value is the estimated selling price in the ordinary course of business, less the estimated costs of completion and the estimated costs necessary to make the sale.

Article 30

Provisions

1. The financial accounting net income or loss of a BEFIT group member shall be adjusted to disallow the amount of any provision.

2. By way of derogation from the paragraph 1, the amount of a provision shall be allowed where, at the end of the fiscal year, the following conditions are met:

   (a) the BEFIT group member has a legal or reasonably expected legal obligation;

   (b) such an obligation arises from activities or transactions carried out in that fiscal year or in previous fiscal years;

   (c) the amount of provision arising from such an obligation can be reliably estimated;

   (d) the amount will result, when settled, in an expense which is deductible under this directive.

   Notwithstanding the first subparagraph, the financial accounting net income or loss of a BEFIT group member shall always be adjusted to disallow the amount of any provision that was recorded regarding contingent losses or future cost increases.

3. Where the obligation referred to in paragraph 1, second subparagraph, point (a), relates to an activity or transaction which will continue over future fiscal years, the amount of the provision shall be spread proportionately over the estimated duration of the activity or transaction.

   Provisions under this Article shall be reviewed and adjusted at the end of every fiscal year. In calculating the preliminary tax result in future fiscal years, account shall be taken of amounts that have already been deducted pursuant to this Article.

Article 31

Bad debts

1. The financial accounting net income or loss of a BEFIT group member shall be adjusted to disallow the amount of any deduction recorded with respect to a bad debt unless, at the end of the year, the BEFIT group member has not claimed a deduction in accordance with Article 28 and one of the following requirements are met:

   (a) the group member has taken all reasonable steps as referred to in paragraph 2 to pursue payment and it is probable that the debt will not be satisfied wholly or partially; or

   (b) the group member has a large number of homogeneous receivables which all derive from the same sector of business activity and is able to reliably estimate the amount of the bad debt receivable on a percentage basis, provided that the value of each

homogeneous receivable is lower than 0,1% of the value of all homogeneous receivables. In order to arrive at a reliable estimate, the BEFIT group member shall take into account all relevant factors, including past experience.

2. In determining whether all reasonable steps to pursue payment have been made, any of the following elements shall be taken into account by the BEFIT group member, on the condition that they are based on objective evidence:

(a) whether the costs of collection are disproportionate to the debt;

(b) whether there is any prospect of successful collection, including cases where the debtor has been declared insolvent, legal action has been initiated or a debt collector has been engaged;

(c) whether it is reasonable, in the circumstances, to expect the taxpayer to pursue collection.

3. Where the bad debt relates to a trade receivable, in addition to the conditions set out in paragraph 1, an amount corresponding to the debt shall be included in the preliminary tax result as revenue.

4. Notwithstanding paragraph 1, the financial accounting net income or loss of a BEFIT group member shall be adjusted to disallow the amount of any bad debt where the debtor is another BEFIT group member, any other associated enterprise or, when the debtor is an individual, where the debtor, his spouse or lineal ascendant or descendant participates in the management or control of the BEFIT group member or, directly or indirectly, owns capital of the BEFIT group member.

5. Where a BEFIT group member has previously deducted a bad debt which is settled in a following fiscal year, its financial accounting net income or loss for the fiscal year of settlement shall be increased by the amount recovered.

Article 32

Long term contracts

1. For the purpose of this Article, a long-term contract means a contract which complies with the following conditions:

(a) it is concluded for the purpose of manufacturing, installing or constructing, or for performing services;

(b) its term exceeds, or is expected to exceed, 12 months.

2. The financial accounting net income or loss of a BEFIT group member shall be adjusted to only include revenues relating to a long-term contract that have been accrued for the amount that corresponds to the part of the long-term contract that has been completed in the relevant fiscal year.

For that purpose, the percentage of completion of a long-term contract shall be determined by reference to the ratio of costs of that fiscal year to the overall estimated costs of the long-term contract.

3. The financial accounting net income or loss of a BEFIT group member shall be adjusted to allow all costs relating to long-term contracts that were incurred during a fiscal year.

Article 33

Hedging

1. Gains and losses on a hedging instrument, which result from a valuation or acts of disposition, shall be treated by a BEFIT group member in the same manner as the corresponding gains and losses on the hedged item.

There is a hedging relationship where the following conditions are met:

(a) the hedging relationship is formally designed and documented in advance;

(b) the hedge is expected to be highly effective and the effectiveness can reliably be measured.

2. Where the hedging relationship is interrupted or a financial instrument already held is subsequently treated as a hedging instrument, leading to its transition into a different tax regime, any difference between the new market value of the hedging instrument at the end of the fiscal year and the market value at the beginning of the same tax period shall be included in the preliminary tax result of the BEFIT group member.

The market value of the hedging instrument at the end of the fiscal year during which that instrument transitioned to a different tax regime shall coincide with its market value at the beginning of the year following that transition.

SECTION 5

ENTERING AND LEAVING A BEFIT GROUP AND CORPORATE RESTRUCTURING

Article 34

Recognition, valuation and timing for depreciation of assets and liabilities when entering or leaving a BEFIT group

1. All assets and liabilities shall be recognised at their value, as calculated in accordance with the acceptable accounting standard in the Union referred to in Article 7, immediately prior to the date on which this Directive becomes applicable to the BEFIT group member.

2. The assets and liabilities of a company or a permanent establishment to whom this Directive no longer applies shall be recognised at their value as calculated in accordance with this Directive.

3. The depreciation of the assets of a company or a permanent establishment that enters or leaves a BEFIT group in the course of a fiscal year shall be computed in proportion to the number of calendar months during which the company or permanent establishment belonged to the BEFIT group in that fiscal year.

Article 35

Qualification of fixed assets when entering a BEFIT group

Notwithstanding the rules laid out in Chapter II, Section 3, where a company or a permanent establishment transitions from a Member State's corporate income tax system to enter a BEFIT group, the following rules shall apply:

(a) Where a fixed asset with an accounting value below EUR 5 000 has not been, in part or in full, depreciated at the date of entry in the BEFIT group, the BEFIT group member shall adjust its financial accounting net income or loss to exclude the amount corresponding to the remaining net value of the fixed asset which appears in the individual financial accounts at the date of entry.;

(b) Where, at the date of entry in the BEFIT group, one or more fixed assets have a net value in the individual financial accounts which differs from the net tax value, the total amount corresponding to such difference for all fixed assets concerned shall be pooled for each BEFIT group member in the fiscal year of entry in the BEFIT group and be spread over a period of 5 years in the preliminary tax result. The financial accounting net income or loss of each BEFIT group member shall be adjusted accordingly.

Article 36

Long-term contracts when entering a BEFIT group

1. A company or a permanent establishment that enters a BEFIT group shall adjust to include, in accordance with the timing rules of national law, in its share of the BEFIT tax base as determined in accordance with the rules of Chapter III, the amount of revenues and costs which, pursuant to Article 32, are considered to have accrued or been incurred before this Directive became applicable but were not yet included in its tax base under the previously applicable national corporate tax law.

2. A company or a permanent establishment that enters a BEFIT group shall deduct in the first fiscal year from its share of the BEFIT tax base, as determined in accordance with the rules of Chapter III, the revenues of a long-term contract which have previously been subject to tax under national corporate tax law at an amount higher than the amount that would have been included in its preliminary tax result pursuant to Article 32.

3. Where the share of the BEFIT tax base of a BEFIT group member in a fiscal year is lower than the deductible amounts as determined under paragraphs 1 and 2, any unrelieved amount shall be carried forward and offset by the BEFIT group member against its share of the BEFIT tax base in the following fiscal years.

Article 37

Provisions, revenues and deductions when entering a BEFIT group

1. Provisions and bad-debt deductions as referred to in Articles 30 and 31 shall be deductible only to the extent that they arise from activities or transactions that were carried out after this Directive became applicable to the BEFIT group member.

2. Revenues which pursuant to the applicable acceptable accounting standard in the Union used in accordance with Article 7 are considered to have accrued before this Directive became applicable to a BEFIT group member, but were not included in its tax base under the previously applicable national corporate tax law, shall be added to its allocated part in accordance with the timing rules of the relevant national corporate tax law.

3. Expenses incurred after this Directive became applicable to a BEFIT group member, but in relation to activities or transactions that were carried out earlier and for which no deduction was made under the applicable national corporate tax law shall be deducted against its allocated part.

   Where expenses as referred to in the first subparagraph are incurred more than five years after a company or a permanent establishment enters a BEFIT group, those expenses shall be deducted from its preliminary tax result before aggregation and profit allocation.

   Expenses incurred under national corporate tax law that had not yet been deducted when this Directive became applicable to a BEFIT group member shall be deductible only against its allocated part of the BEFIT tax base, as computed in accordance with Chapter III, in equal amounts and spread over five fiscal years. Expenses that involve borrowing costs shall be deductible in accordance with Article 13.

   Where the share of the BEFIT tax base that has been allocated to a BEFIT group member in a fiscal year is not sufficient to fully deduct the amounts referred to in the first and third subparagraphs, the unrelieved amounts shall be carried forward and offset by the BEFIT group member against its share of the BEFIT tax base in the following fiscal years.

4. Any amount deducted before this Directive became applicable to a BEFIT group member shall not be deducted again.

Article 38

Pre-entry losses

Where a company or a permanent establishment enters a BEFIT group, any unrelieved losses incurred ***up until five years (304 Greens)*** before the entry date, in accordance with the corporate tax law of the Member State of its tax residence or location respectively, shall be deducted from its share of the BEFIT tax base as determined in accordance with Chapter III.

Article 39

Termination of a group

1. Where a BEFIT group is terminated, the fiscal year shall be ended and the BEFIT tax base of that fiscal year shall be allocated to each BEFIT group member in accordance with the rules laid down in Chapter III.

2. The depreciation of the assets of the BEFIT group members in the fiscal year of termination of a BEFIT group shall be computed in proportion to the number of calendar months that the BEFIT group operated in that fiscal year.

Article 40

Business reorganisations

1. Without prejudice to Article 9, a BEFIT group member that disposes of assets and liabilities during a fiscal year shall include the gain or loss arising from such disposition in the computation of its preliminary tax result.

   A BEFIT group member that acquires assets and liabilities shall determine its income or loss at the time of disposition based on the market value of the acquired assets and liabilities as it stands at the time of acquisition.

2. Notwithstanding paragraph 1, where a transfer of assets and liabilities takes place in the context of a reorganisation as defined in Article 2 of Council Directive 2009/133/EC[1]:

   (a) the BEFIT group member that disposes of the assets and liabilities shall exclude any resulting gain or loss from the computation of its preliminary tax result;

   (b) the BEFIT group member that acquires the assets and liabilities shall determine its preliminary tax result, in that fiscal year and the following fiscal years, by using the value for tax purposes, as it stands at the time of the transfer and as it is defined under Article 4 of Directive 2009/133/EC.

Article 41

Disallowance of exempt share dispositions

1. Notwithstanding Article 9, where, as a result of a disposition of shares, a BEFIT group member leaves the BEFIT group and during that or the previous fiscal year, this BEFIT group member acquired, in an intra-BEFIT group transaction, one or more fixed assets, ~~***an***~~ ***the (306 EPP)*** amount corresponding to the gain or loss arising from the intra-BEFIT group disposition of these fixed assets shall be included in the financial accounting net income or loss of the BEFIT group member which owned the assets prior to the intra-BEFIT group disposition.

   The first subparagraph shall not apply if the BEFIT group member demonstrates that the intra-BEFIT group transaction was carried out for valid commercial reasons ***within the meaning of Article 15(1), point (a), of Directive 2009/133/EC. (52 S&D)***

2. The amount corresponding to the gain or loss arising from the intra-BEFIT group disposition referred to in paragraph 1 shall be the market value of the fixed assets at the time when the BEFIT group member leaves the group less the value for tax purposes of the fixed assets or the costs referred to in Article 29.

3. The gain or loss arising from the intra-BEFIT group disposition shall be deemed to have been received by the BEFIT group member that held the asset(s) prior to the intra-BEFIT group transaction referred to in paragraph 1.

[1] Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States (OJ L 310, 25.11.2009, p. 34)

COMPROMISE F

CHAPTER III, AGGREGATION OF THE PRELIMINARY TAX RESULTS AND ALLOCATION OF THE BEFIT TAX BASE

SECTION 1 – BEFIT TAX BASE
SECTION 2 – ALLOCATION OF THE BEFIT TAX BASE

ARTICLES 42-45, RECITAL 12

AMs covered: 12, 53 (S&D), 314 (Greens), 157, 159, 317, 342, 343, 344, 345, 348, 356 (EPP), 154 (The Left), 158 (Renew)

AMs falling: 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67 (S&D), 309, 310, 311, 312, 313, 316, 318, 319, 365, 366, 367, 368, 369, 370, 371, 372 (The Left), 156, 315, 321, 323, 325, 326, 329, 331, 332, 333, 334, 335, 336, 337, 338, 339, 347, 349, 351, 353, 355, 358, 359, 363 (EPP), 155, 161, 164, 320, 322, 327, 328, 330, 340, 341, 346, 350, 352, 354, 357, 364, 384 (Greens) 162, 163, 324, 360, 361, 362 (Renew), 160 (PfE)

SECTION 1
BEFIT TAX BASE

Article 42
Computation of the BEFIT tax base

1. The preliminary tax results of all BEFIT group members, as determined in accordance with the rules laid down in Chapter II, shall be aggregated to obtain a BEFIT tax base.

2. Where the BEFIT tax base in a given year is:

   (a) a positive amount, the profit shall be allocated in accordance with Article 45;

   (b) a negative amount, the loss shall ***be set off against the taxable income of the ultimate parent entity and shall*** be carried forward ***for a maximum of five years (314 Greens)*** and shall be set off against the next positive BEFIT tax base. ***The deduction shall be in proportion to the holding of the ultimate parent entity in its qualifying subsidiaries as referred to in Article 3(1) and in full for permanent establishments. The reduction of the tax base of the resident taxpayer shall not result in a negative amount. (53 S&D)***

3. For the purpose of paragraph 1, the preliminary tax result of each BEFIT group member shall be converted to Euro (EUR) at the exchange rate issued by the European Central

Bank as it stood on the last day of the calendar year or, if the fiscal year does not coincide with the calendar year, on the last day of the fiscal year.

By way of derogation from the first subparagraph, where the filing entity is resident for tax purposes in a Member State that has not adopted the EUR, the preliminary tax result of each BEFIT group member shall be converted into the currency that is legal tender in that Member State.

Article 43

Withholding taxes and other source taxation

1. Member States shall not impose withholding taxes or any other source taxation on intra-BEFIT group transactions unless the beneficial owner of the payment is not a BEFIT group member.

1a. The Commission shall provide clear and harmonised criteria for determining beneficial ownership. These criteria shall aim to ensure the consistent application of the exemption system, reduce legal uncertainty, and prevent abuse. The criteria shall be developed in consultation with Member States and aligned, where appropriate, with international standards. (317 EPP)

2. Where a withholding tax is applied by a Member State in relation to a payment of royalties or interests by a BEFIT group member to a recipient that is not a member of the same BEFIT group or in application of paragraph 1, in accordance with the applicable rules of national law and double taxation conventions, the withholding tax shall be shared, for the fiscal year in which it is charged, amongst Member States using the allocation method referred to in Article 45.

Article 44

Tax credits on income taxed at source

1. Where a BEFIT group member derives income that has been taxed in another Member State or in a third country, a tax credit shall be granted in line with the applicable double taxation convention or its national law and shared amongst the BEFIT group members using the baseline allocation method referred to in Article 45.

2. By way of derogation from the first subparagraph, no tax credit shall be granted where the income derived by a BEFIT group member is not included in its financial accounting net income or loss in accordance with Articles 8, 9 or 12.

3. The tax credit referred to in paragraph 1 shall be calculated separately for each Member State or third country as well as for each type of income. It shall not exceed the amount which results from subjecting the income attributed to a BEFIT group member to the

corporate tax rate of the Member State where this BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment.

In calculating the tax credit referred to in paragraph 1, the amount of income shall be reduced by the amount of related deductible expenses.

SECTION 2
ALLOCATION OF THE BEFIT TAX BASE

Article 45

Transition allocation rule

1. For each fiscal year between 1 July 2028 and 30 June ***~~2035~~2033*** at the latest (the 'transition period') the BEFIT tax base shall be allocated to the BEFIT group members in accordance with the baseline allocation percentage.

   For groups that become subject to this Directive after the end of the first fiscal year when this Directive starts to apply, the transition period referred to in the first subparagraph shall be terminated by 30 June ***~~2035~~2033*** at the latest.

2. The baseline allocation percentage for each BEFIT group member shall be the result of the following computation:

   $$\text{Baseline allocation} = \frac{Taxable\ result\ of\ a\ BEFIT\ group\ member}{Total\ taxable\ result\ of\ the\ BEFIT\ group} * 100$$

   Where:

   (a) the taxable result of a BEFIT group member shall be the average of the taxable results in the three previous fiscal years.

   In the first fiscal year in which a BEFIT group is subject to this Directive, those taxable results shall be determined in accordance with the national corporate tax rules of the Member State in which the BEFIT group member is resident for tax purposes or is situated in the form of a permanent establishment.

   In the second fiscal year in which a BEFIT group is subject to this Directive, those taxable results shall be determined, for the first fiscal year in which a BEFIT group is subject to this Directive, in accordance with Chapter II of this Directive and for the two preceding fiscal years, in accordance with the national rules of the respective Member State.

   In the third fiscal year in which a BEFIT group is subject to this Directive, those taxable results shall be determined, for the first two fiscal years in which a BEFIT group is subject to this Directive, in accordance with Chapter II of this Directive

and for the fiscal year that immediately precedes, in accordance with the national rules of the respective Member State.

As from the fourth fiscal year in which a BEFIT group is subject to this Directive, those taxable results shall be determined in accordance with Chapter II of this Directive.

(b) the total taxable result of the BEFIT group shall be the addition of the average of the taxable results, as referred to in point (a), of all BEFIT group members in the three previous fiscal years.

For the purpose of this paragraph, a BEFIT group member with a taxable result that is negative shall have a baseline allocation percentage set at zero.

3. For the purpose of paragraph 2, Member States shall structure their risk assessment framework for the pricing of intra-BEFIT group transactions as follows:

(a) low-risk zone: where the expense incurred, or the income earned, by a BEFIT group member from intra-BEFIT group transactions increase in a fiscal year by less than ~~*10*~~***15*** **% *(342, 343 EPP)*** compared to the average expense or income of the previous three fiscal years from intra-BEFIT group transactions;

(b) high-risk zone: where the expense incurred, or the income earned, by a BEFIT group member from intra-BEFIT group transactions increase in a fiscal year by ~~*10*~~***15*** **% *(344, 345 EPP)*** or more compared to the average expense or income of the previous three fiscal years from intra-BEFIT group transactions.

4. 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 concerned shall presume that the pricing of intra-BEFIT group transactions of a specific BEFIT group member is consistent with the arm's length principle;

(b) high-risk zone: the competent authorities of the Member States concerned shall presume that the pricing of intra-BEFIT group transactions of a specific BEFIT group member does not comply with the arm's length principle and the part of the increase which goes beyond 10% shall not be recognized for the purpose of computing the baseline allocation percentage of that BEFIT group member.

Notwithstanding the rule set out in the first sub-paragraph of point (b), a BEFIT group member shall be entitled to provide evidence to the competent authority of the Member State in which it is resident for tax purposes or situated in the form of a permanent establishment that the pricing of the relevant intra-BEFIT group transactions is set in accordance with the arm's length principle. In such case, the full amount of expense from

the intra-BEFIT group transactions in question, as evidenced, shall be recognized for the purpose of computing the baseline allocation percentage of that BEFIT group member.

5. Notwithstanding Article 13(2), the exceeding borrowing costs as referred to in Article 2 of Council Directive (EU) 2016/1164 which arise from a transaction between BEFIT group members shall not be recognized for the purpose of computing the baseline allocation percentage of the BEFIT group member which incurs such costs. ***Member States shall take appropriate measures to encourage undertakings to reduce these risks. (348 EPP)***

6. If the structure of the BEFIT group changes during the transition period referred to in paragraph 1 due to new members joining the group or members leaving the group, the baseline allocation percentage shall be re-computed in accordance with paragraph 2. For each BEFIT group member, the BEFIT tax base shall be allocated in accordance with the new baseline allocation percentage for the time that remains until the end of this period, unless subsequent changes in the structure of the BEFIT group require a new re-computation of the baseline allocation percentage.

7. If the structure of the BEFIT group changes during the transition period referred to in paragraph 1 due to the creation of one or more new companies which qualify as BEFIT group members, the rules for allocating the BEFIT tax base, as laid down in paragraph 2, shall not apply to the new BEFIT group members in the first fiscal year. For subsequent fiscal years until the end of that transition period, the baseline allocation percentage of the new BEFIT group members shall be computed in accordance with paragraph 2.

8. If a group becomes subject to the rules of this Directive later than 1 July 2028, the baseline allocation shall be computed in accordance with paragraph 2. By way of derogation from paragraphs 1 and 2, the BEFIT tax base shall be allocated to the BEFIT group members over the remaining part of the transition period referred to in paragraph 1.

9. ~~***The Commission shall carry out a comprehensive review of the transition rule as part of which it shall prepare a study on the possible composition and weight of selected formula factors and submit a report to the to the Council by the end of the third fiscal year during the transition period referred to in paragraph 1. If the Commission deems it appropriate, taking into account the conclusions of this report, it may adopt a legislative proposal during the transition period, to amend this Directive by introducing a method for the allocation of the BEFIT tax base using formulary apportionment and based on factors. (356 EPP)***~~

10. The rules laid down in paragraphs 1 to 8 shall continue to apply until ***the entry into force of*** any amendment ~~***thereof has come into effect***~~ ***proposed pursuant to Article 77(1b).***

Recitals

(12) To achieve the key objective of creating a simplified corporate tax framework, the preliminary tax results for each group member should be aggregated into one single common tax base, in order to subsequently allocate this base to eligible group members. ***Such a framework should be simple for businesses and should avoid imposing any new burden on them***. The tax adjustments to the financial statements would produce preliminary tax results for each group member. These results would then be aggregated, which would allow for ***a capped*** cross-border loss relief between BEFIT group members, and subsequently, the aggregated tax base would be allocated to group members based on a transition allocation rule; this would pave the way towards a permanent mechanism. ~~That~~ ***The*** permanent mechanism ~~***could***~~ ***should*** be based on a formulary apportionment ~~and~~ ***including, but not limited to, four sets of tangible factors: labour, assets, sales and digital presence. It*** would render the need for intra-BEFIT group transactions to be consistent with the arm's length principle redundant. It would have the advantage of using more recent country-by-country reporting ('CbCR') data and the information gathered during the transition period. This will also allow for a more thorough assessment of the impact that the implementation of the two-pillar approach is expected to have on national tax bases and the BEFIT group tax bases***, and therefore, reduce tax compliance costs for companies***. In this way, it would still become possible to materialise the key objective of tax neutrality in the internal market, which would reduce instances of double ***taxation*** and ~~over-~~ ***double non-***taxation and enhance tax certainty with the aim of reducing the number of tax disputes. ***In light of evolving international tax developments and the uncertain implementation of Pillar One by key jurisdictions, it is essential that the Union preserves the flexibility in its development of an autonomous, fair, and economically balanced allocation mechanism (12 S&D, 154 The Left, 157, 159 EPP, 158 Renew)***

COMPROMISE G

CHAPTER III, AGGREGATION OF THE PRELIMINARY TAX RESULTS AND ALLOCATION OF THE BEFIT TAX BASE - SECTION 2 – ALLOCATION OF THE BEFIT TAX BASE – ARTICLES 46-49, RECITALS 13-15

AMs covered: 13, 14, 15, 71, 72 (S&D), 380, 382 (Renew), 169, 381 (Greens), 170, 173 (EPP)

AMs falling: 68, 69, 70 (S&D) 166, 168, 373, 374, 375, 379, 385 (The Left), 165, 171, 376, 383, 384 (Greens), 167, 170, 377, 378 (EPP), 172, 386 (Renew), 383, 384 (Greens)

Article 46

Upstream activities

1. By way of derogation from Articles 42 to 45, where a BEFIT group member conducts its principal business in the field of extractive activities, its revenues, expenses and other deductible items which stem from such activities shall be attributed to the BEFIT group member located in the Member State where the extraction takes place.

   Where there is more than one BEFIT group member that is tax resident in the Member State where the extraction takes place, the revenues, expenses and other deductible items which stem from such activities shall be attributed to each such BEFIT group member, in proportion to their baseline allocation percentage.

2. By way of derogation from Article 42 to 45, where there is no BEFIT group member in the Member State of extraction, or where the extraction takes place in a third country jurisdiction, the revenues, expenses and other deductible items which stem from such activities shall be attributed to the BEFIT group member to which they accrued.

Article 47

Exception for shipping not covered by a tonnage tax regime, inland waterways transport and air transport

1. By way of derogation from Article 42 to 45 and without prejudice to Article 15, the revenues, expenses and other deductible items which stem from the following activities shall be excluded from the BEFIT tax base in any of the following cases:

   (a) the operation of ships in international traffic where the taxable result is not covered by a tonnage tax regime;

   (b) the operation of aircraft in international traffic;

   (c) the operation of boats engaged in inland waterways transport.

The revenues, expenses and other deductible items as referred to in the first subparagraph shall be attributed to that BEFIT group member on a transaction-by-transaction basis and be subject to adjustments for pricing in accordance with the arm's length principle.

2. Any participation in and by the BEFIT group member as referred to in paragraph 1 shall be taken into account for the purpose of Article 5.

Article 48

Items deductible from the allocated part

1. A BEFIT group member shall increase or decrease its allocated part by the following items:

(a) unrelieved losses incurred before becoming subject to the rules of this Directive, in accordance with Article 38;

(b) revenues and costs accrued or incurred before this Directive became applicable to the BEFIT group member but which were not yet included in its tax base under the previously applicable national corporate tax law, in accordance with Article 36(1);

(c) revenues of a long-term contract which have previously been subject to tax under national corporate tax law at an amount higher than the amount that would have been included in its preliminary tax result pursuant to Article 32, in accordance with Article 36(2);

(d) revenues accrued before this Directive became applicable to a BEFIT group member but that were not included in its tax base under the previously applicable national corporate tax law, in accordance with Article 37(2);

(e) expenses incurred after the rules of this Directive became applicable to a BEFIT group member, but in relation to activities or transactions that were carried out earlier and for which no deduction was made under the applicable national corporate tax law, in accordance with the first subparagraph of Article 37(3);

(f) expenses incurred under national corporate tax law that had not yet been deducted when this Directive became applicable to the BEFIT group member, in accordance with Article 37(3), third subparagraph;

(g) any unrelieved amount carried forward in accordance with Article 36(3) and subparagraph 4 of Article 37(3);

(h) gifts and donations to charitable bodies to the extent that they are deductible under the corporate tax law of the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment;

(i) pension provisions to the extent that they are deductible under the corporate tax law of the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment;

(j) local taxes to the extent that they are deductible under the corporate tax law of the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment.

2. In addition to the adjustments listed in paragraph 1, a Member State may allow for increasing or decreasing, through additional items, ***subject to Directive (EU) 2022/2523, (71 S&D, 381 Greens)*** the allocated part of BEFIT group members that are resident for tax purposes or situated in the form of a permanent establishment in that Member State.

2.a ***A Member State providing incentives for research and development shall refrain from offering output-based incentives, such as patent boxes, which would decrease the allocated part of BEFIT group members that are resident for tax purposes or situated in the form of a permanent establishment in that Member State. (72 S&D, 385 Left)***

2.b ***In order to prevent double taxation arising from the interaction between this Directive and bilateral tax treaties with third countries, Member States shall, where applicable, provide corresponding adjustments in accordance with their treaty obligations. The Commission may facilitate coordination and, where appropriate, issue guidelines to promote a consistent application across Member States. (382 Renew)***

Article 49

Distribution based tax systems

1. Where a BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment in a Member State that applies a corporate income tax system which imposes income tax on profits only when those profits are distributed or deemed to be distributed to shareholders, or when the company incurs certain expenses that are taxable under domestic law ('distribution based tax system'), the part allocated to that BEFIT group member in accordance with Article 45 shall be adjusted by the distributions made during the fiscal year.

2. The adjustment of the allocated part shall be calculated as follows:

$$Adjusted\ Allocated\ Part\ = Allocated\ Part\ x\ \left(\frac{Distributions}{Financial\ Income}\right)$$

Where:

(a) the Financial Income refers to the income available for distributions under a distribution-based tax system, including reserves, for the fiscal year.

(b) the Allocated Part refers to the share allocated to the BEFIT group member for the fiscal year in accordance with Article 45, including any residual share from previous fiscal years calculated for the BEFIT group member in accordance with paragraph 4.

(c) the Distributions refer to distributions and other expenses that are made by the BEFIT group member during the fiscal year and that are taxable under a distribution-based tax system.

3. Where the adjusted allocated part of a BEFIT group member computed in accordance with paragraph 2 is lower than its allocated part, the balance between the two amounts shall be carried forward to the following fiscal year and added to the part allocated to the BEFIT group member in that following fiscal year in accordance with this Article.

4. The adjusted allocated part computed in accordance with paragraph 2 shall be increased by non-deductible expenses immediately subject to tax during the fiscal year under a distribution tax system in the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment.

Recitals

(13) The aggregation of the tax results amongst group members would not be a suitable measure for certain sectors, such as extractive activities as well as international shipping, inland waterways transport and air transport. It would therefore be important to exclude those from the aggregation as their characteristics do not fit in such context. Any amount of the profit or loss of companies that operate in the field of international traffic which is not covered by a tonnage tax regime (and thus excluded from the preliminary tax results), would have to be kept out of the aggregation while it would be computed by applying the common corporate tax rules.

(14) To provide space for growth and investment, Member States would also be allowed to individually apply additional post-allocation adjustments (e.g. tax treatment of pension contributions) in areas not covered by the common framework. Member States would also be free to further adjust their allocated share without a ceiling in order to ensure that Member States can make their national policy choices in this area***, such as to generate resource efficiency, stimulate investment and create jobs***. ***(170 EPP)*** ~~***Most importantly, Directive (EU) 2022/2523 would effectively set a ceiling which would effectively ensure that the effective tax rate is at least 15%.***~~ ***Such additional adjustments may include deductions, allowances, tax credits or other national corporate income tax measures, including those promoting research and development or other policy objectives, provided that such measures apply only to the allocated share of the tax base and do not affect the consolidated tax base or the allocation mechanism under this Directive (380 Renew).***

The post-allocation adjustment should, however, focus on input-based tax incentives. Member States should refrain from offering output-based tax incentives such as patent boxes and other intellectual property regimes. (13 S&D, 169 Greens)

(14a) The Commission and the Member States should ensure the coherence and alignment of this Directive with the OECD/G20 Model Rules and with Directive (EU) 2022/2523, in particular as regards the calculation of the effective tax rate on a country-by-country basis, which could be undermined by the cross-border loss relief between BEFIT group members envisaged in this Directive. That dimension should be assessed in the revision of this Directive. (14 S&D)

(15) Some Member States operate corporate tax systems which are built on principles that differ from the most common approach, such as distribution-based tax systems. It is therefore of prime importance to put in place the necessary adjustments, in order to ensure a workable interaction with those systems ***and not introduce a contradiction between the two systems which discourages business creation (173 EPP)***. The solution could be sought in certain post-allocation adjustments. These would entail that the part which would be allocated to a group member under a distribution-based system has to be modified in proportion to the distributions made during the fiscal year. The essence of a distribution-based tax system would be fully retained, considering that the distribution marks a timing point for taxing the allocated part and accordingly determine how much of this would need to be taxed. In this regard, it should be envisaged to operate a carry-forward mechanism, to ensure that the allocated part which is not taxed in the current year would be taxable in the following years. ***The possible inclusion of distribution-based tax systems within the scope of this Directive should be assessed after five years. (15 S&D)***

COMPROMISE H

CHAPTER IV, SIMPLIFIED APPROACH TO TRANSFER PRICING COMPLIANCE

ARTICLES 50-53, Recital 16

AMs falling: 175, 387 (ECR), 174, 388, 389, 390, 391 (The Left)

CHAPTER IV
Simplified Approach to Transfer Pricing Compliance

Article 50
Scoping criteria

1. Member States shall subject the following activities, where these are performed through transactions between a BEFIT group member and an associated enterprise outside the BEFIT group, 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.

Article 51

Compliance framework

1. Member States shall structure their risk assessment framework for the activities mentioned in Article 50 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 53.

3. The activities mentioned in Article 50 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 52, 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.

Article 52

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 50(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 50(3) using Earnings before Interest and Tax relative to total costs as profit level indicator.

Article 53

Public Benchmarks

1. The risk zone for the activities referred to in Article 50 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 50(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 50(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 73.

Recitals

(16) As relations within a group represent only part of the commercial activity of a group of companies, the transactions between members of a group and associated enterprises outside the group constitute another essential aspect to look at. To address this external aspect and as the number of transfer pricing disputes has lately risen considerably, especially with respect to the pricing considerations for routine activities, it would be very useful to provide for a simplified approach to transfer pricing compliance which would decrease compliance costs for the businesses and improve the efficiency of tax administrations in the use of human capital. 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.

COMPROMISE I

CHAPTER V ADMINISTRATION AND PROCEDURES

ARTICLES 54-72, Recital 17, 18, 21a (new)

AMs covered: 16, 73, 74, 75, 76, 77, 81, 84, 85 (S&D) 196, 393, 394, 398, 399, 406, 407, 408, 411, 412, 413 (EPP), 181, 396, 417, 421 (The Left), 397 (Renew), 182, 419 (Greens)

AMs falling: 78, 79, 80, 82, 83 (S&D) 178, 179, 183, 392, 400, 402, 404, 405, 410, 418, 420 (EPP), 177, 395, 403, 409, 414, 415, 416 (The Left), 176, 401 (PfE), 180 (Renew)

CHAPTER V
ADMINISTRATION AND PROCEDURES

SECTION 1
GENERAL PROVISIONS

Article 54

Creation and termination of the BEFIT group

1. A BEFIT group shall be covered by this Directive for a period of five years and its effect shall automatically be renewed at the end of the fifth year, unless there is a notice of termination on the grounds that the group no longer fulfils, the conditions of Article 2(1).

2. Groups that have chosen to be covered by this Directive in accordance with Article 2(7) shall be bound for a period of five years. At the end of the five-year period, the rules shall cease to apply, unless the filing entity notifies the choice to renew the option to be covered by this Directive to the filing authority. To this effect, the filing entity shall provide evidence to the filing authority that the eligibility requirements set out in Article 2(7) are met and that there is no reason for exclusion from the renewal.

Article 55

Fiscal year

1. All BEFIT group members shall have the same fiscal year, which shall be a period of 12 months. In the year in which a BEFIT group member joins a BEFIT group, it shall bring its fiscal year in line with the fiscal year of the BEFIT group.

2. The allocated part of a BEFIT group member for the year in which it joins a BEFIT group, shall be calculated in proportion to the number of calendar months during which the BEFIT group member belonged to the BEFIT group.

3. The allocated part of a BEFIT group member for the year in which it leaves a BEFIT group, shall be calculated in proportion to the number of calendar months during which the BEFIT group member belonged to the BEFIT group.

Article 56

Change of the filing entity

The filing entity may not be changed, unless it ceases to meet the conditions as referred to in Article 3(10). A new filing entity shall then be designated by the group in accordance with the conditions of Article 3(10). If the group fails to designate a filing entity within two months after the previous filing entity ceased to meet the conditions, the BEFIT team as referred to in Article 60 shall then designate a filing entity for the BEFIT group.

SECTION 2
BEFIT INFORMATION RETURN

Article 57

Filing the BEFIT information return

1. The filing entity shall file the BEFIT information return of the BEFIT group with the filing authority, except where the BEFIT group is a domestic group.

2. The BEFIT information return shall be submitted to the filing authority no later than ***~~four~~ six (393, 394 EPP)*** months after the end of the fiscal year.

3. The BEFIT information return shall comprise the following information:

   (a) identification of the filing entity and other BEFIT group members, including their tax identification numbers, if any, and the Member State in which the BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment;

   (b) information on the overall corporate structure of the BEFIT group, including the ownership interest in the BEFIT group members held by other BEFIT group members.

   (c) the fiscal year to which the BEFIT information return relates;

   (d) information and computation of the following:

      (i) the outcome of the preliminary tax result of each BEFIT group member;

      (ii) the BEFIT tax base;

      (iii) the allocated part of each BEFIT group member;

(iv) information about the 'baseline allocation percentage', as computed in accordance with Article 45.

3a. For the purposes of point (d)(ii), all supporting documentation that was used to build the BEFIT tax base referred to in that provision shall be kept for 10 years in order to be made available to the competent authorities of all Member States in which the BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment (73 S&D, 396 Left)

4. The filing authority shall transmit the BEFIT information return immediately to the competent authorities of all Member States in which the BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment.

4a. BEFIT teams shall use all existing procedures and arrangements offered by Directive 2011/16/EU on administrative cooperation in the field of taxation to ensure an efficient cooperation and exchange of information between national tax administrations (74 S&D, 397 Renew)

Article 58

Notification of errors in the BEFIT information return

1. The filing entity shall notify the filing authority of errors in the BEFIT information return within ~~***two***~~ ***three (398, 399 EPP)*** months of the timely submission of such return.

2. The filing authority shall transmit a revised BEFIT information return immediately to the competent authorities of all Member States in which BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment.

Article 59

Failure to file a BEFIT information return

Where the filing entity fails to file a BEFIT information return, the filing authority, in consultation with the competent authorities of all Member States in which BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment, shall issue a BEFIT information return based on an estimate, taking into account the available information. In addition, the filing authority shall apply the legal framework on penalties in accordance with Article 72. The filing entity may appeal against that BEFIT information return.

SECTION 3
BEFIT TEAM

Article 60

Establishment of the BEFIT team

1. A BEFIT team shall be convened within one month after filing the BEFIT information return, as referred to in Article 57, in order to perform the tasks set out in Article 61. In addition, the BEFIT team shall provide a framework for communication and consultation amongst the competent authorities of the Member States where members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment. When a member of a BEFIT team consults other members, it shall receive a response within a reasonable time.

2. The BEFIT team shall be composed of one or more representatives of each relevant tax administration, who will act as delegates, per Member State where there are BEFIT group members. The BEFIT team shall be chaired by the delegate of the filing authority.

2a. Member States shall attribute adequate human resources to the BEFIT team, including by providing content and language training to the BEFIT team representatives. (75 S&D)

3. Information communicated between the members of a BEFIT team, shall be provided by electronic means to the extent possible***, via a secure connection or a secure network, (76 S&D)*** through making use of a BEFIT collaborative tool.

4. To facilitate the operation and communication of the BEFIT team, the Commission shall, by means of implementing acts, standardise the communication of the information between the members of a BEFIT team through making use of a BEFIT collaborative tool ***and support the secure transmission of information (77 S&D)***. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 73.

Article 61

Role of the BEFIT team in the BEFIT information return

1. The BEFIT team shall examine the completeness and accuracy of the information filled in the BEFIT information return as required by Article 57, except for the outcome of the computation of the preliminary tax result of each BEFIT group member under point (d)(i) of Article 57(3).

2. The BEFIT team shall endeavour to achieve consensus on the content of the BEFIT information return, within four months of the date when all information required under Article 57 was reported. Without prejudice to Article 65, in connection with Article 57(3), points (a), (b), (c) and (d)(iv), the consensus of the BEFIT team shall mean that these points cannot be subject to any future challenge. The final decision on the information referred to in Article 57(3), point (d)(i), d(ii) and d(iii) shall remain within the exclusive

competence of the Member State where the group member is resident for tax purposes or situated in the form of a permanent establishment.

3. If the BEFIT team achieves consensus on a BEFIT information return, the filing authority to which the initial BEFIT information return was submitted shall notify the BEFIT information return to the filing entity.

4. If the BEFIT team is unable to achieve consensus pursuant to paragraph 2 within four months of the date when all information required under Article 57 was reported, such consensus shall be deemed to be achieved if the members of the BEFIT team give their consent, by the simple majority of the present members in accordance with paragraph 5, to the BEFIT information return at the end of the fifth month from the date when the information was reported. The filing authority to which the BEFIT information return has been submitted shall notify the BEFIT information return to the filing entity.

5. For the purpose of reaching a simple majority under paragraph 4, the voting rights shall be allocated to each competent authority in the BEFIT team in proportion to the revenues earned in the relevant fiscal year by the BEFIT group members that are resident for tax purposes or situated in the form of a permanent establishment in their territory. Where the vote is equally split, the filing authority shall have a casting vote. The quorum shall require the presence of at least two thirds of the BEFIT team members. If the quorum is not reached, the initially filed BEFIT information return shall form the basis for the individual tax returns as referred to in Article 62 and for individual tax assessments as referred to in Article 64. The filing authority to which the BEFIT information return has been submitted shall notify the filing entity if the quorum is not reached.

SECTION 4
INDIVIDUAL TAX RETURNS AND ASSESSMENTS

Article 62

Filing the individual tax returns

1. Each BEFIT group member shall file its individual tax return with the competent authority of the Member State in which that BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment no later than three months after receipt of the notice from the filing authority pursuant to Article 61(3), (4) or (5), or in case of a domestic group, no later than eight months from the end of the fiscal year.

2. The individual tax return shall comprise information on the following elements:

   (a) the computation of the preliminary tax result of the BEFIT group member;

   (b) the part allocated to the BEFIT group member in accordance with Article 45;

(c) the items that shall adjust the allocated part in accordance with Article 48 in the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment;

(d) credits that apply, to relieve foreign tax, in the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment.

3. Notwithstanding the provisions in paragraph 1, members of the same BEFIT group which are resident for tax purposes or situated in the form of a permanent establishment in the same Member State may choose to file one combined individual tax return in that Member State.

Article 63

Notification of errors in the individual tax return

1. A BEFIT group member shall notify the competent authority of the Member State in which it is resident for tax purposes or situated in the form of a permanent establishment of errors in the individual tax return within ~~***two***~~ ***three (406, 407, 408 EPP)*** months of the timely submission of such return.

2. If the errors require adjustments that affect the BEFIT tax base of the BEFIT group, the competent authority of the Member State in which the BEFIT group member has filed its individual tax return shall immediately notify, via the BEFIT team, the filing authority and the competent authorities of the other Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment.

3. The filing authority shall issue a revised BEFIT information return within a month and transmit this return immediately, via the BEFIT team, to the competent authorities of all Member States in which the BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment. The filing authority and the competent authorities of all Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment shall issue amended tax assessments in accordance with Article 64 where appropriate.

4. Notwithstanding paragraph 3, no amended tax assessment shall be issued in order to adjust the BEFIT tax base, where the difference between the initially declared BEFIT tax base and the revised BEFIT tax base does not exceed the lower of EUR 10 000 or 1% of the BEFIT tax base.

Article 64

Individual tax assessments

1. The competent authority of the Member State in which a BEFIT group member filed its individual tax return shall issue an individual tax assessment in accordance with the individual tax return. The enforcement of the tax liability shall be governed by the law of that Member State.

2. Where required, the competent authority of the Member State in which the BEFIT group member filed its individual tax return shall issue an amended tax assessment. Where the adjustments affect the BEFIT tax base, the competent authority of the Member State in which the BEFIT group member has filed its individual tax return shall immediately notify, via the BEFIT team, the filing authority and the competent authorities of all other Member States in which the other members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment.

3. Following receipt of an amended tax assessment in accordance with paragraph 2, the filing authority shall issue a revised BEFIT information return within a month and transmit this return immediately, via the BEFIT team, to the competent authorities of all Member States in which the BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment. The filing authority and the competent authorities of the other Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment shall issue amended tax assessments in accordance with paragraph 2, where appropriate.

4. Notwithstanding paragraph 3, no amended tax assessment shall be issued in order to adjust the BEFIT tax base, where the difference between the initially declared BEFIT tax base and the revised BEFIT tax base does not exceed the lower of EUR 10,000 or 1% of the BEFIT tax base.

SECTION 5
AUDITS

Article 65

Audits

1. The competent authority of a Member State may initiate and coordinate audits of BEFIT group members that are resident for tax purposes or situated in the form of a permanent establishment in that Member State. ***That competent authority shall notify the other BEFIT team members within one month of the initiation of such an audit. (81 S&D)***

2. The competent authority of a Member State in which a BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment may be requested by the competent authority of another Member State in which there is at least one member

of the same BEFIT group to engage in a joint audit with the latter authority. Joint audits shall be conducted in accordance with Article 12 of Council Directive 2011/16/EU[1] on administrative cooperation in the field of taxation. Notwithstanding this rule, the requested competent authority shall accept such request and inform the BEFIT team.

3. An audit (including joint audit) shall be conducted in accordance with the national legislation of the Member State in which it is carried out, subject to such adjustments as are necessary to ensure the proper implementation of this Directive. Those audits may include inquiries, inspections or examinations of any kind for the purpose of verifying the compliance of a taxpayer with this Directive.

4. The competent authority of the Member State in which the audit or joint audit is carried out shall inform the BEFIT team of the results of an audit or joint audit which affects the outcome of the allocation of the BEFIT tax base for the fiscal year that it refers to. The other members of the BEFIT team shall express their views within three months.

5. Following an audit or joint audit which affects the outcome of the allocation of the BEFIT tax base in paragraph 4, the filing authority shall issue a revised BEFIT information return within a month and transmit this return immediately, via the BEFIT team, to the competent authorities of all Member States in which the BEFIT group members are resident for tax purposes or situated in the form of a permanent establishment. The filing authority and the competent authorities of the other Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment shall issue amended tax assessments in accordance with Article 64, where appropriate.

6. Notwithstanding paragraph 5, no amended tax assessment shall be issued, in order to adjust the BEFIT tax base, where the difference between the initially declared BEFIT tax base and the revised BEFIT tax base does not exceed the lower of EUR 10 000 or 1% of the BEFIT tax base.

SECTION 6
APPEALS

Article 66

Administrative appeals in relation to the BEFIT information return

1. The filing entity may appeal against the content of the BEFIT information return, in accordance with Article 59, within two months after the return was issued or notified. The appeal shall be heard by an administrative body that, in accordance with the law of the Member State of the filing authority, is competent to hear appeals at first instance. The administrative appeal shall be governed by the law of the Member State of the filing

authority. Where there is no such administrative body in the Member State of the filing authority, the BEFIT group member may lodge a judicial appeal directly.

2. In making submissions to the administrative body, the filing authority, as the case may be, shall consult, via the BEFIT team, the other competent authorities of Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment.

3. The administrative body referred to in paragraph 1 shall decide on the appeal within two months. If the decision varies from the initial BEFIT information return, the varied decision shall replace the original BEFIT information return. If no decision is received by the filing entity within that period, the BEFIT information return shall be deemed to have been confirmed.

4. Notwithstanding Article 62(1), the time period for filing an individual tax return shall be initiated when the decision on the appeal is taken or the BEFIT information return is deemed to have been confirmed pursuant to paragraph 3.

Article 67

Administrative appeals in relation to individual tax assessments

1. A BEFIT group member may appeal against the content of the individual tax assessment made pursuant to Article 64 before the competent authority of the Member State where that BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment within ~~***two***~~ ***three (411, 412 EPP)*** months after the assessment was notified to it. The administrative appeal shall be heard by an administrative body that, in accordance with the law of the Member State of the BEFIT group member, is competent to hear appeals at first instance. The administrative appeal shall be governed by the law of the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment. Where there is no such administrative body in the Member State where the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment, the BEFIT group member may lodge a judicial appeal directly.

2. In making submissions to the administrative body, the competent authority of a BEFIT group member, as the case may be, shall consult, via the BEFIT team, the other competent authorities of Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment.

3. Where a decision taken pursuant to paragraph 1 affects the BEFIT tax base, the competent authority of the Member State in which the BEFIT group member filed its appeal shall notify, via the BEFIT team, the filing authority and the competent authorities of the other Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment. The filing authority and the other

competent authorities in Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment, shall issue amended tax assessments in accordance with Article 64, where appropriate.

4. Notwithstanding paragraph 3, no amended tax assessment shall be issued in order to adjust the BEFIT tax base, where the difference between the initially declared BEFIT tax base and the revised BEFIT tax base does not exceed the lower of EUR 10,000 or 1% of the BEFIT tax base.

Article 68

Judicial appeals in relation to the BEFIT information return

1. Where the decision pursuant to Article 66 has been confirmed or varied, the filing entity shall have the right to appeal directly to the courts of the Member State where it is resident for tax purposes or situated in the form of a permanent establishment within ~~***two***~~ ***three (413 EPP)*** months of the receipt of the decision of the administrative appeals body. A judicial appeal shall be governed by the law of the Member State where the filing entity is resident for tax purposes or situated in the form of a permanent establishment.

2. In making submissions to the court, the filing authority, as the case may be, shall consult, via the BEFIT team, the other competent authorities of Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment.

3. Where a decision is taken pursuant to paragraph 1, the filing authority shall immediately transmit, via the BEFIT team, an amended BEFIT information return to the competent authorities of all Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment. The filing authority and the other competent authorities in Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment, shall issue amended tax assessments in accordance with Article 64, where appropriate.

4. Notwithstanding paragraph 3, no amended tax assessment shall be issued in order to adjust the BEFIT tax base, where the difference between the initially declared BEFIT tax base and the revised BEFIT tax base does not exceed the lower of EUR 10,000 or 1% of the BEFIT tax base.

Article 69

Judicial appeals in relation to individual tax assessments

1. Where the decision pursuant to Article 67 has been confirmed or varied, a BEFIT group member shall have the right to appeal to the courts of the Member State where it is resident for tax purposes or situated in the form of a permanent establishment within ~~***two***~~ ***three***

(415, 416 EPP) months after the decision of the administrative appeals body referred to in Article 67 was notified to it. The judicial appeal shall be governed by the law of the Member State in which the BEFIT group member is resident for tax purposes or situated in the form of a permanent establishment.

2. In making submissions to the court, the competent authority of a BEFIT group member, as the case may be, shall consult, via the BEFIT team, the other competent authorities of Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment.

3. Where a decision taken pursuant to paragraph 1 affects the BEFIT tax base, the competent authority of the Member State in which the BEFIT group member filed its appeal shall notify, via the BEFIT team, the filing authority and the competent authorities of the other Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment. The filing authority and the other competent authorities in Member States in which members of the same BEFIT group are resident for tax purposes or situated in the form of a permanent establishment, shall issue amended tax assessments in accordance with Article 64, where appropriate.

4. Notwithstanding paragraph 3, no amended tax assessment shall be issued in order to adjust the BEFIT tax base, where the difference between the initially declared BEFIT tax base and the revised BEFIT tax base does not exceed the lower of EUR 10,000 or 1% of the BEFIT tax base.

Article 70

Statute of Limitation

Where the outcome of an administrative or judicial appeal requires amendments to the ***tax assessment of the BEFIT group or to the*** individual tax assessment of one or more member of a BEFIT group, Member States shall take the appropriate measures to ensure that such amendments remain possible, ***within a timeframe of 10 years (84 S&D, 417 The Left)*** ~~***notwithstanding any time limits in the domestic laws of Member States***~~***.***

SECTION 7
FINAL PROVISIONS

Article 71

Disclosure of information and documents

1. Information communicated between Member States in any form pursuant to this Directive shall be covered by the obligation of official secrecy as laid down in the national law of

the Member State(s) which received such information. This information may be used for the administration and enforcement of the laws of the Member States concerning the taxes under this Directive.

2. Such information may also be used in connection with judicial and administrative proceedings that may involve penalties, initiated as a result of infringements of tax law, without prejudice to the general rules and provisions governing the rights of defendants and witnesses in such proceedings.

Article 72
Penalties

Member States shall lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive and shall take all necessary measures to ensure that they are implemented and enforced. Penalties and compliance measures provided for shall be effective, proportionate and dissuasive. ***Penalties shall be set at a minimum of 0,1 % of the turnover of the BEFIT group in the event of a failure to file the BEFIT information return in accordance with Article 59 and in the event of a deliberate misreporting in a BEFIT information return. (85 S&D, 419 Greens, 421 The Left)***

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

Recitals

(17) A common framework for corporate taxation would necessarily feature an administration system, which should ideally provide for a degree of tax certainty and simplification. To promote uniformity, the administration system would have to build on the importance of operating a centralised point of reference for dealing with a number of common issues, such as an Information Return for the entire group, and ensuring an adequate degree of ***confidentiality and security, as well as*** coordination and collaboration amongst national tax administrations. At the same time, ***during the transition, (16 S&D)*** the administration system should fully respect national tax sovereignty as local tax returns, audits and dispute settlement would have to remain primarily at the level of the Member States.

(18) To ensure that the rules of the common framework are implemented and enforced correctly, Member States should lay down rules on penalties applicable to infringements of national provisions adopted pursuant to this Directive. Such penalties should be effective, proportionate and dissuasive. ***Those penalties should be set at a minimum rate of 0,1 % of the turnover of the BEFIT group in case of failure to file the BEFIT information***

return accordingly and in case of confirmed intentional misreporting of filing information return. (17 S&D, 181 Left, 182 Greens)

(21 a) To guarantee an efficient cooperation among the BEFIT teams, the Member States should ensure adequate human resources to the BEFIT team, including by providing content and language training to the BEFIT teams representatives and by relying on the FISCALIS programme. (196 EPP)

COMPROMISE J

CHAPTER VI FINAL PROVISIONS

ARTICLES 73-80, Recital 25a

AMs covered: 22, 87 (S&D), 120, 218, 433, 436 (EPP), 119, 430, 440 (Renew)

AMs falling: 86, 88 (S&D), 444, 447 (Left) 86, 88 (S&D) 422 (Renew) 423, 426, 431, 435 (Greens) 191, 424, 425, 427, 432, 437, 438, 439, 441, 442, 445, 448, 449 (PfE), 198, 428, 429, 434, 443, 446 (EPP)

CHAPTER VI
FINAL PROVISIONS

Article 73

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011[1].

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 74

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Articles 2(8) and 14(3) shall be conferred on the Commission for an indeterminate period starting on [the date of entry into force of this Directive].

3. The delegation of power 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 any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

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

6. A delegated act shall enter into force only if no objection has been expressed by the Council within a period of two months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by two months at the initiative of the Council.

Article 75

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.

Article 76

Data Protection

1. Member States may process personal data under this Directive solely for the purpose of applying Chapter IV as well as for the purpose of examining and reaching consensus on the content of the BEFIT information return and processing and assessing individual tax returns under Chapter V. 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 the statute of limitations, but in any case, no longer than 10 years.

Article 77

Review by the Commission of the operation of BEFIT

1. Five years after this Directive starts to apply, the Commission shall examine and evaluate its functioning and report to the European Parliament and the Council to that effect. The report shall, where appropriate, be accompanied by a proposal to amend this Directive.

1a. As part of the evaluation of BEFIT referred to in paragraph 1, the Commission shall carry out a comprehensive review of the transition rule and develop a permanent method for the allocation of the BEFIT tax base. The development of the permanent method shall be preceded by a comprehensive impact assessment and appropriate stakeholder consultations, in accordance with the Commission's Better Regulation principles.

1b. Before the end of the transition period, the Commission shall submit a legislative proposal to amend this Directive and introduce a permanent method for the allocation of the BEFIT tax base that replaces the transitional allocation formula. The permanent method for allocation of the BEFIT tax base shall take into account the conclusions from the comprehensive impact assessment and shall incorporate the following four factors — sales, labour, assets, and digital presence.

2. Member States shall communicate to ***the European Parliament and to (87 S&D, 433, 436 EPP)*** the Commission relevant information for the evaluation of the Directive in accordance with paragraph 3, including aggregated data on BEFIT group members which are resident for tax purposes in their jurisdiction and permanent establishments thereof operating in their jurisdiction, in order to properly assess**:**

(i) the impact of the transition allocation rule***;***

(ii) ***the link with other legislative acts in the area of corporate taxation, namely*** ~~and~~ ~~of~~ Directive (EU) 2022/2523 as well as assessing the situation regarding Pillar One of the Statement on a Two-Pillar Solution to Address the Tax Challenges Arising from the Digitalisation of the Economy agreed by the OECD/G20 Inclusive Framework on BEPS on 8 October 2021.

(iii) the relevance of the scope of this Directive and notably its potential extension to large groups as referred to in Article 3(7) of Directive 2013/34/EU;

(iv) the relevance of removing the exclusion of shipping income from the preliminary tax result;

(v) the impact on double tax treaties;

(vi) the impact of the co-existence of two tax systems, at Union level and at national level, on the administrative burden for entrepreneurs and tax administrations resulting from the application of Section 5 of Chapter II;

(vii) the impact of the allocation of the tax base on the Member States' revenues (430 Renew);

(viii) the impact of the co-existence of distribution-based tax systems, as referred to in Article 49, with traditional corporate tax systems relying on annual taxes on corporate profits. (87 S&D)

(ix) the interaction of bilateral pre-accession tax treaties with the derogation to the scope of this Directive as referred to in Article 2(2) of this Directive. (218 EPP)

3. The Commission shall, by means of implementing acts, specify the information to be provided by Member States for the purpose of evaluating the functioning of this Directive, as referred to in paragraph 2, as well as the format and the conditions for the communication of such information.

4. Information communicated to ***the European Parliament and to*** the Commission under paragraph 2 shall be kept confidential by the Commission in accordance with the provisions applicable to Union institutions and Article 76 of this Directive.

5. Information communicated to the Commission by a Member State in accordance with paragraph 2, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. The transmitted information shall be covered by the obligation of official secrecy, as laid down regarding similar information in the national law of the Member State(s) which received it.

Article 78

Transposition

1. Member States shall adopt and publish the laws, regulations and administrative provisions necessary to comply with this Directive by 1 January 2028. They shall forthwith communicate to the Commission the text of those provisions.

2. They shall apply those provisions from 1 July 2028.

3. When Member States adopt those provisions, they shall include a reference to this Directive or accompany them with such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

4. As soon as this Directive has entered into force, Member States shall ensure that the Commission is informed, in sufficient time for it to submit its comments on any draft laws, regulations or administrative provisions which they intend to adopt in the field covered by this Directive.

Article 79

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 80

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

[1] 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)

Recitals

(25a) In line with the legally binding roadmap on new own resources set out in the Interinstitutional Agreement of 16 December 2020 and the 2021 Commission Communication "An adjusted package for the next generation of own resources," part of the revenues generated through the application of this Directive may be allocated to the general budget of the Union, in accordance with the applicable procedures under the Own Resources Decision. (22 S&D, 119, 440 Renew, 120 EPP).

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Citations, Recitals 18a - 26

AMs covered: 18, 20 (S&D), 184, 189, 194, 195 (EPP), 190 (Renew), 193 (Greens)

AMs falling: 19, 21 (S&D), 185 (ECR), 186 (Left), 187, 192 (Greens), 89, 188, 197, 198 (EPP), 191 (PfE)

Citations

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 Parliament[1],

Having regard to the opinion of the European Economic and Social Committee[2],

Acting in accordance with a special legislative procedure,

[1] OJ C , , p. .

[2] OJ C , , p. .

Recitals

(18a) A key pillar for improving corporate tax compliance is the establishment of a comprehensive one-stop-shop system that enables businesses to fulfil their tax obligations across Member States through a single, streamlined interface, thereby reducing administrative burdens, ensuring consistent enforcement, and enhancing legal certainty in the internal market. (184 EPP)

(19) To optimise the benefits of having a common legal framework for computing the corporate tax base in the internal market, the application of the rules should be optional for groups, including SME groups, who earn annual combined revenues of less than EUR 750 000 000 as long as they prepare consolidated financial statements and have a taxable presence in the Union. By keeping the application of the rules open to groups of a smaller size, more groups with cross-border structures and activities may benefit from the simplification that the common framework offers. ***Companies choosing to be covered by this Directive should benefit from Member States' and the Commission's technical assistance to comply with the new rules and therefore foster their cross-border activities. (18 S&D, 189 EPP, 190 Renew)***

(20) In order to supplement or amend, as the case may be, certain non-essential elements of this Directive, 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 (i) amending Annexes I and II, as appropriate; and (ii) supplementing by laying down additional rules for insurance undertakings, in particular with regard to the new International Financial Reporting Standard (IFRS) 17 Insurance Contracts. 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 of 13 April 2016 on Better Law-Making[5] . 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.

(21) In order to ensure uniform conditions for the implementation and functioning of the so called 'BEFIT teams' set up in this Directive to bring together representatives of each relevant tax administration from the Member States where the group operates as well as to set profit margins for certain routine transactions between BEFIT group members and their associated enterprises outside the BEFIT group, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council[3].

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[3] 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 the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).

(21b) Before this Directive enters into force, the Commission should, where appropriate, submit a legislative proposal for a harmonised, common European taxpayer identification number. This would not only facilitate the communication between the representatives of Member States and the BEFIT team, but also increase the efficiency of tax information exchange within the Union. (20 S&D, 193 Greens, 194, 195 EPP)

(22) Any 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 Council[4]. Member States may process personal data under this Directive solely for the purpose of applying Chapter IV as well as for the purpose of examining and reaching consensus on the content of the BEFIT information return and processing and assessing individual tax returns under Chapter V.

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

(24) To allow businesses to directly enjoy the benefits of the internal market without incurring an unnecessary additional administrative burden, information on the tax provisions set out in this Directive should be made accessible through the Single Digital Gateway ('SDG') in accordance with Regulation (EU) 2018/1724[5]. 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.

(25) Since the objective of this Directive cannot sufficiently be achieved by the Member States but can rather, by reason of the existing challenges which are caused by the interaction between 27 different corporate tax systems, 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.

(26) 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 informal opinion on 18 August 2023.

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4 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).

5 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).