





Basic information	
<b>2023/0322(CNS)</b> CNS - Consultation procedure Directive	Awaiting final decision
Transfer pricing  <b>Subject</b> 2.70 Taxation 3.45.04 Company taxation	

Key players				
European Parliament	<b>Committee responsible</b>		<b>Rapporteur</b>	<b>Appointed</b>
	<b>ECON</b>	Economic and Monetary Affairs	PETER-HANSEN Kira Marie (Greens/EFA)	19/09/2023
			<b>Shadow rapporteur</b> ASIMAKOPOULOU Anna-Michelle (EPP) REPASI René (S&D) BOYER Gilles (Renew) MOŽDŽANOWSKA Andželika Anna (ECR) GUSMÃO José (The Left)	
Council of the European Union				
European Commission	<b>Commission DG</b>		<b>Commissioner</b>	
	Taxation and Customs Union		GENTILONI Paolo	

Key events			
Date	Event	Reference	Summary
12/09/2023	Legislative proposal published	COM(2023)0529 	Summary
11/12/2023	Committee referral announced in Parliament		
22/02/2024	Vote in committee		
01/03/2024	Committee report tabled for plenary, 1st reading/single reading	A9-0066/2024	Summary
10/04/2024	Decision by Parliament	T9-0219/2024	Summary

10/04/2024	Results of vote in Parliament	
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Technical information	
Procedure reference	2023/0322(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
Legal basis	Treaty on the Functioning of the European Union TFEU 115
Other legal basis	Rules of Procedure EP 165
Stage reached in procedure	Awaiting final decision
Committee dossier	ECON/9/13219

Documentation gateway				
<b>European Parliament</b>				
Document type	Committee	Reference	Date	Summary
Committee draft report		<a href="#">PE756.000</a>	14/11/2023	
Amendments tabled in committee		<a href="#">PE757.289</a>	18/12/2023	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A9-0066/2024</a>	01/03/2024	<a href="#">Summary</a>
Text adopted by Parliament, 1st reading/single reading		<a href="#">T9-0219/2024</a>	10/04/2024	<a href="#">Summary</a>
<b>European Commission</b>				
Document type	Reference	Date	Summary	
Legislative proposal	<a href="#">COM(2023)0529</a> 	12/09/2023	<a href="#">Summary</a>	
Document attached to the procedure	<a href="#">SWD(2023)0308</a> 	13/09/2023		
Document attached to the procedure	<a href="#">SWD(2023)0309</a> 	13/09/2023		
Commission response to text adopted in plenary	<a href="#">SP(2024)377</a>	29/07/2024		
<b>National parliaments</b>				
Document type	Parliament /Chamber	Reference	Date	Summary
Contribution	<a href="#">DE_BUNDESRAT</a>	<a href="#">COM(2023)0529</a>	14/02/2024	
Reasoned opinion	<a href="#">SE_PARLIAMENT</a>	<a href="#">PE759.649</a>	11/03/2024	
Contribution	<a href="#">MT_PARLIAMENT</a>	<a href="#">COM(2023)0529</a>	14/03/2024	

Other institutions and bodies				
Institution/body	Document type	Reference	Date	Summary
EESC	Economic and Social Committee: opinion, report	CES4143/2023	24/04/2024	

Additional information		
Source	Document	Date
EP Research Service	Briefing	21/03/2024
European Commission	EUR-Lex	

## Meetings with interest representatives published in line with the Rules of Procedure

### Rapporteurs, Shadow Rapporteurs and Committee Chairs

Transparency				
Name	Role	Committee	Date	Interest representatives
GUSMÃO José	Shadow rapporteur	ECON	13/12/2023	OXFAM INTERNATIONAL EU ADVOCACY OFFICE Eurodad
GUSMÃO José	Shadow rapporteur	ECON	12/12/2023	Tax Justice Network

## Transfer pricing

2023/0322(CNS) - 01/03/2024 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted, following a special legislative procedure (consultation), the report by Kira Marie PETER-HANSEN (Greens/EFA, DK) on the proposal for a Council directive on transfer pricing.

The committee responsible approved the Commission proposal subject to the following amendments:

### **Subject matter**

The proposed directive lays down rules to harmonise transfer pricing rules of Member States and to ensure a common application of the arm's length principle within the Union with the objective of **simplifying compliance for companies** whilst ensuring enforcement of tax rules within the Union.

The Commission should be empowered to adopt delegated acts in order to incorporate any further amendments to OECD Transfer Pricing Guidelines, that the Member States approved in the context of the OECD Committee on Fiscal Affairs or the Union approved via the adoption of a Union position.

### **Corresponding adjustments**

Member States should ensure that a corresponding adjustment can be made following a request from a taxpayer taking into account a primary adjustment made in another jurisdiction. When a primary adjustment is made, Member States should ensure that they make a corresponding adjustment so as to prevent the double taxation if certain conditions are met.

Members clarified that the taxpayer's request should:

- indicate all factual and legal circumstances necessary to evaluate, under the arm's length principle, the primary adjustment performed in the other jurisdiction, including relevant transfer pricing documentation communicated to the Member States;
- communicate, for each Member State concerned by the adjustment, the effective tax rate calculated within the meaning 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.

Member States should declare the request admissible within **40 days** (instead of 30) by virtue of a notification to the taxpayer if all the necessary information provided has been submitted.

Member States should ensure that when the double taxation arises from a primary adjustment made in another Member State, the procedure is concluded within **200 days** from the receipt of the taxpayer's request with a reasoned act of acceptance or rejection. The procedure can be extended once by a period of **100 days** if the tax payer and the Member States concerned all agree to such extension.

In the absence of a primary adjustment, Member States may perform a downward adjustment only if the downward adjustment does not lead to double non-taxation meaning the downward adjustment is included in the taxable profits of the associated enterprise in the other jurisdiction.

### ***Application of the arm's length principle***

The Commission should be empowered to adopt delegated acts to:

- lay down further rules, consistent with the latest internationally recommended Transfer Pricing Guidelines, from either the OECD or the United Nations, on how the arm's length principle and the other provisions laid down in Chapter II of this Directive are to be applied in specific transactions to ensure more tax certainty and mitigate the risk of double non-taxation and double taxation, and reduce tax disputes and tax abuse;
- lay down further rules, such as the introduction of safe harbours, to simplify the application of the arm's length principle in the Union;
- laying down rules to integrate in this Directive the proposed simplified approach to transfer pricing compliance for distribution and manufacturing activities proposed in the Council Directive on Business in Europe: Framework for Income Taxation (BEFIT).

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

Members suggested that the Commission should establish and chair the European Forum on Transfer Pricing (EFTP). The EFTP should provide advice and assistance to the committee, notably to assess the need for any adjustment to this Directive with the objective of guaranteeing the continuous uniformity of transfer pricing methodologies within the Union and on the global stage, most importantly taking into account developments at OECD or UN level.

The European Parliament should be a member of the EFTP as an observer. The **European Parliament** may attend as an observer the international negotiations on Transfer Pricing Guidelines in the relevant international fora.

### **Evaluation**

Every three years, the Commission should examine and evaluate the application, the impact as well as the interplay of this Directive with the latest OECD or UN guidelines and submit a report on its evaluation to the European Parliament and to the Council, to be accompanied, if appropriate, by a legislative proposal. The first report should be submitted by 31 December 2029.

### ***Review***

The Commission should review the application of this Directive for MNE groups that fall under the scope of the proposal for a Council Directive on Business in Europe: Framework for Income Taxation (BEFIT), once that Directive has entered into force.

The directive should apply from **1 January 2025** (instead of 1 January 2026).

## **Transfer pricing**

2023/0322(CNS) - 12/09/2023 - Legislative proposal

PURPOSE: to harmonise transfer pricing rules within the EU and ensure a common approach to transfer pricing problems.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to follow its opinion.

BACKGROUND: transfer pricing refers to the setting of prices for transactions between associated enterprises (i.e. members of the same Multinational Enterprise - MNE) involving the transfer of property or services. A significant volume of global trade consists of international transfers of goods and services, capital and intangibles (such as intellectual property) within an MNE; such transfers are called "intragroup transactions". Since tax calculations are generally based on entity-level accounts, the prices or other conditions at which cross-border transactions between associated enterprises take place will affect the relevant entities' income and/or expenses in relation to those transactions, and as a consequence, will impact on the amount of profit each group entity records for tax purposes in the jurisdictions where they operate.

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

Where Member States apply or interpret the arm's length principle differently, they create situations that could harm the internal market. Inconsistency in applicable transfer pricing rules not only could lead to double taxation but also allow for profit shifting and tax avoidance. Such inconsistency is a

serious tax obstacle for businesses operating across borders, is likely to cause economic distortions and inefficiencies and has a negative impact on cross-border investment and growth.

CONTENT: the Commission's proposal aims at **harmonising transfer pricing rules** within the EU and ensuring a common approach to transfer pricing problems. It incorporates the **arm's length principle** and key transfer pricing rules into EU law, clarifies the role and status of the OECD Transfer Pricing Guidelines and creates the possibility to establish common binding rules on specific aspects of the rules within the Union.

The proposal applies to taxpayers that are registered in, or subject to, tax in one or more Member States, including permanent establishments in one or more Member States. The proposal stated that Member States should ensure that, where an enterprise engages in one or more commercial or financial cross-border transactions with an associated enterprise, such enterprise determines the amount of its taxable profits in a manner that is consistent with the arm's length principle.

The proposal will increase tax certainty and mitigate the risk of litigation and double taxation. In this regard, Member States should have adequate mechanisms in place to enable them, when a primary adjustment is made in another Member State or third country jurisdiction, to make a corresponding **adjustment**.

Furthermore, the prospect for establishing common binding rules for Member States on specific transactions within the framework of the OECD Transfer Pricing Guidelines should improve businesses' resilience in the Union, reduce distortions and contribute towards a level playing field in the Single Market.

This proposal is part of the package known as 'Business in Europe: Framework for Income Taxation', or 'BEFIT' which includes a second separate [proposal](#) which lays down a common set of rules for computing the tax base of large groups of companies in the EU.

## Transfer pricing

2023/0322(CNS) - 10/04/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 438 votes to 99, with 63 abstentions, following a special legislative procedure (consultation), a legislative resolution on the proposal for a Council Directive on transfer pricing.

The European Parliament approved the proposal subject to the following amendments:

### ***Consistent application of transfer pricing rules***

members stressed that where Member States apply or interpret the arm's length principle in a significantly different way, they create situations that could harm the internal market and lead to unnecessary costs for businesses in the case of disputes, as well as instigate harmful tax competition, attract aggressive tax avoidance structures, form illegal state aid and reduce revenues from Member States. Inconsistency in applicable transfer pricing rules not only could lead to double taxation but also allow for profit shifting tax avoidance and double non-taxation.

The proposed directive lays down rules to **harmonise transfer pricing rules of Member States** and to ensure a common application of the arm's length principle within the Union with the objective of simplifying compliance for companies whilst ensuring enforcement of tax rules within the Union.

### ***Corresponding adjustments***

When a primary adjustment is made, Member States should ensure that they make a corresponding adjustment so as to prevent the double taxation if certain conditions are met. Member States should ensure that a corresponding adjustment can be made following a request from a taxpayer taking into account a primary adjustment made in another jurisdiction.

Members clarified that the taxpayer's request should:

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

- communicate, for each Member State concerned by the adjustment, the effective tax rate calculated within the meaning 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.

Member States should declare the request admissible within **40 days** (instead of 30) by virtue of a notification to the taxpayer if all the necessary information provided has been submitted. Member States should notify the taxpayer of the lack of any necessary information and grant at least 40 days to provide it. If the taxpayer does not provide the requested information within the assigned deadline, the request should be rejected as inadmissible.

Member States should ensure that when the double taxation arises from a primary adjustment made in another Member State, the procedure is concluded within **200 days** from the receipt of the taxpayer's request with a reasoned act of acceptance or rejection. The procedure can be extended once by a period of **100 days** if the tax payer and the Member States concerned all agree to such extension.

In the case of acceptance, Member States should communicate immediately to the tax authority of the other relevant jurisdiction the recognition of the corresponding adjustment.

In the absence of a primary adjustment, Member States may perform a downward adjustment only if the downward adjustment does not lead to double non-taxation meaning the downward adjustment is included in the taxable profits of the associated enterprise in the other jurisdiction.

### ***Application of the arm's length principle***

The Commission should be empowered to adopt delegated acts to:

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

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