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**MEETING DOCUMENT**

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From: Presidency  
To: Delegations

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Subject: Presidency steering note

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# Presidency steering note

Working Party on Tax Questions (Direct Taxation)

20 OCTOBER 2023





## **PROPOSAL FOR A DIRECTIVE ON TRANSFER PRICING – EXCHANGE OF VIEWS**

The Commission's Proposal for a Council Directive on Transfer Pricing has as a main objective establishing a common approach to Transfer Pricing within the EU with the aim of increasing tax certainty and reducing the number of disputes as well as the occurrences of double taxation or double non taxation situations.

The Commission proposes to achieve this objective by: (1) incorporating the arm's length principle into Union law; (2) harmonizing the key transfer pricing rules; (3) clarifying the role and status of the OECD Transfer Pricing Guidelines; and (4) creating the possibility to establish, within the Union, common binding rules on specific transfer pricing subjects within the framework of the OECD Transfer Pricing Guidelines.

The Spanish Presidency will invite Member States delegations to share their initial thoughts on a number of building blocks of the Commission proposal for a Council Directive on transfer pricing. Delegations will be invited to share their principal observations or concerns regarding the proposal. The questions indicated for each of the following building blocks are not exhaustive and designed for indicative purposes of guiding the exchange of views, taking into account the input received from the Delegations.

### **I. Comparison between the OECD Transfer Pricing Guidelines (OECD TPG) and the proposed Directive on transfer pricing (TP Directive)**

#### **i. Definitions (Article 3), general rule on the application of the arm's length principle (Article 4) and associated enterprises (Article 5)**

1. Do delegations agree with the definitions proposed in Article 3?
2. Should the proposal include any other terms to Article 3?
3. Do delegations have any objections incorporating the arm's length principle into Union law? What are the delegations' views on the wording of Article 4?
4. What are the delegations' views on the definition of associated enterprises proposed in Article 5?
5. Regarding Article 5(7), are delegations of the view that permanent establishments should be considered as associated enterprises for the purposes of the TP Directive?

[The definition of the OECD TPG will be addressed separately under II(ii) below]

## ii. Adjustments (Articles 6 and 7)

6. In general terms, do delegations agree with the proposed regulation of corresponding adjustments?
7. What are the delegations views on the “*fast-track*” procedure regulated in Article 6(3) of the Proposal?
8. Do you agree with the procedure proposed in Article 6(4) and with the rule included in Article 6(5)?
9. What are the delegations’ views on the treatment proposed for the compensating adjustments under Article 7?

## iii. Core transfer pricing rules (Articles 8-12)

10. What are the delegations’ views on Article 8 (identifying the commercial or financial relations)?  
  
Do delegations consider that a reference to the issues of risk and recharacterisation should be included in Article 8?
11. Do delegations have any objections regarding the methods listed in Article 9(1) and the reference to economic valuation techniques as it is stated in Article 9(2)?
12. Do delegations have any objections regarding the most appropriate method rule stated in Article 10?
13. Do delegations have any objections regarding Article 11 on the comparability analysis?
14. Do Member States agree with the determination of the arm’s length range and the adjustment made to the median, as well as the notion of ranges, as defined in Article 12 of the Proposal?

## iv. Conclusion

15. Do delegations consider that other elements of the OECD TPG, which are not yet comprised in the TP Directive, should be included in the TP Directive? If yes, which elements?

## II. Organisation and procedures

### i. Setting rules on transfer pricing documentation and delegated acts (Article 13)

16. Is the documentation referred to sufficient and in line with Chapter V of the OECD TPG, the obligations derived from the Country by Country reporting and the existence of the local file?
17. Should a threshold exemption (e.g. for SMEs) be included in Article 13(1) in relation to the Transfer Pricing Documentation?
18. What are the delegations' views in relation to the adoption of delegated acts by the Commission in order to lay down common templates, setting linguistic requirements, defining the type of taxpayer to abide by these templates and the timeframes to be covered?

### ii. Application and future modifications of the OECD Transfer Pricing Guidelines

19. Do delegations have any comments in relation to the interaction between the OECD TPG and the proposed Directive?
20. What should be the role and status of the OECD TPG in the TP Directive? Do delegations agree with the proposed rules on interpretation of the OECD TPG?
21. What are the delegations' views on the suggested process of approving the modifications to the OECD TPG through a process set out in Article 218(9) TFEU, in the context of the OECD Committee on Fiscal Affairs via the adoption of a Union position?

### iii. Arm's Length Principle: setting further rules on specific transactions and Council Implementing Acts (Article 14)

22. What are the views of delegations on the provisions of Article 14, and, in particular, on the possibility that further rules concerning the Arm's Length Principle are laid down through a Council implementing act?
23. What are the delegations' views on the list of transactions or dealings set out in Article 14(2) of the Proposal?

## III. Final provisions

24. Do delegations have any initial observations on Chapter IV of the proposal?