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General Secretariat

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MEETING DOCUMENT

From: General Secretariat of the Council
To: Delegations

Subject: Presentation by the Commission (transfer pricing)

Delegations will find attached a presentation by the Commission delegation.



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COUNCIL DIRECTIVE on Transfer Pricing

Working Party on Tax Questions
Presentation DG TAXUD

20 October 2023

Discussion Overview

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1. Comparison table and technical discussion

- a) First block of provisions: art. 3 Definitions – art. 4 General rule – art. 5 associated enterprises
- b) Second block of provisions: Art. 6 Corresponding adjustments – art. 7 compensating adjustments
- c) Third block of provisions: Art. 8 – 12 other substantive core rules

2. Organisation and Procedures

- a) Setting rules on Transfer Pricing documentation and Delegated Acts
- b) Application of the OECD Transfer Pricing Guidelines and 218(9) TFEU
- c) Setting further rules on specific transactions and Council Implementing Acts

3. Final provisions

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First block of provisions

Articles of the Directive	Reference to the OECD	Reference to the JTPF
Article 3 Definitions	Glossary of OECD TPG	n/a
Article 4 General Rule on the application of the arm's length principle	a. Art. 9(1) OECD MTC b. see also para 1 and 2 of section 1 (page 7) of the 2011 OECD Report on "transfer pricing legislation - a suggested approach"	n/a
Article 5 associated enterprises	a. OECD TPG Glossary b. Art. 9(1) OECD MTC	n/a

Second block of provisions

Articles of the Directive	Reference to the OECD	Reference to the JTPF
Article 6 Corresponding adjustments	<ul style="list-style-type: none">a. art. 9(2) and art. 25 OECD MTCb. 4.29-4.67 Chap IV section C of the OECD TPGc. Section 11 of the 2011 OECD Report on "transfer pricing legislation - a suggested approach"	N/A
Article 7 Compensating adjustments	4.38 - 4.39 Chap IV OECD TPG	JTPF/009/FINAL/2013/EN

Third block of provisions

Articles of the Directive	Reference to the OECD	Reference to the JTPF
Article 8 Identifying the commercial or financial relations	Section D1 of Chap I OECD TPG	N/A
Article 9 Transfer pricing methods	Part. II & III of Chap II OECD TPG	JTPF/003/2017/FINAL/EN
Article 10 The most appropriate method rule	Part. I chap II OECD TPG	N/A
Article 11 Comparability analysis	a. 1.36 of Chap I b. Chap III OECD TPG	JTPF/007/2016/FINAL/EN
Article 12 Determination of the arm's length range	3.55 - 3.66 chap III OECD TPG	N/A

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Transfer Pricing Documentation - Content

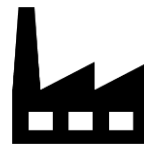
- **Sources/Background**

- Code of Conduct on transfer pricing documentation for associated enterprises in the European Union (**EU TPD**)
- **Chapter V** OECD Transfer Pricing Guidelines

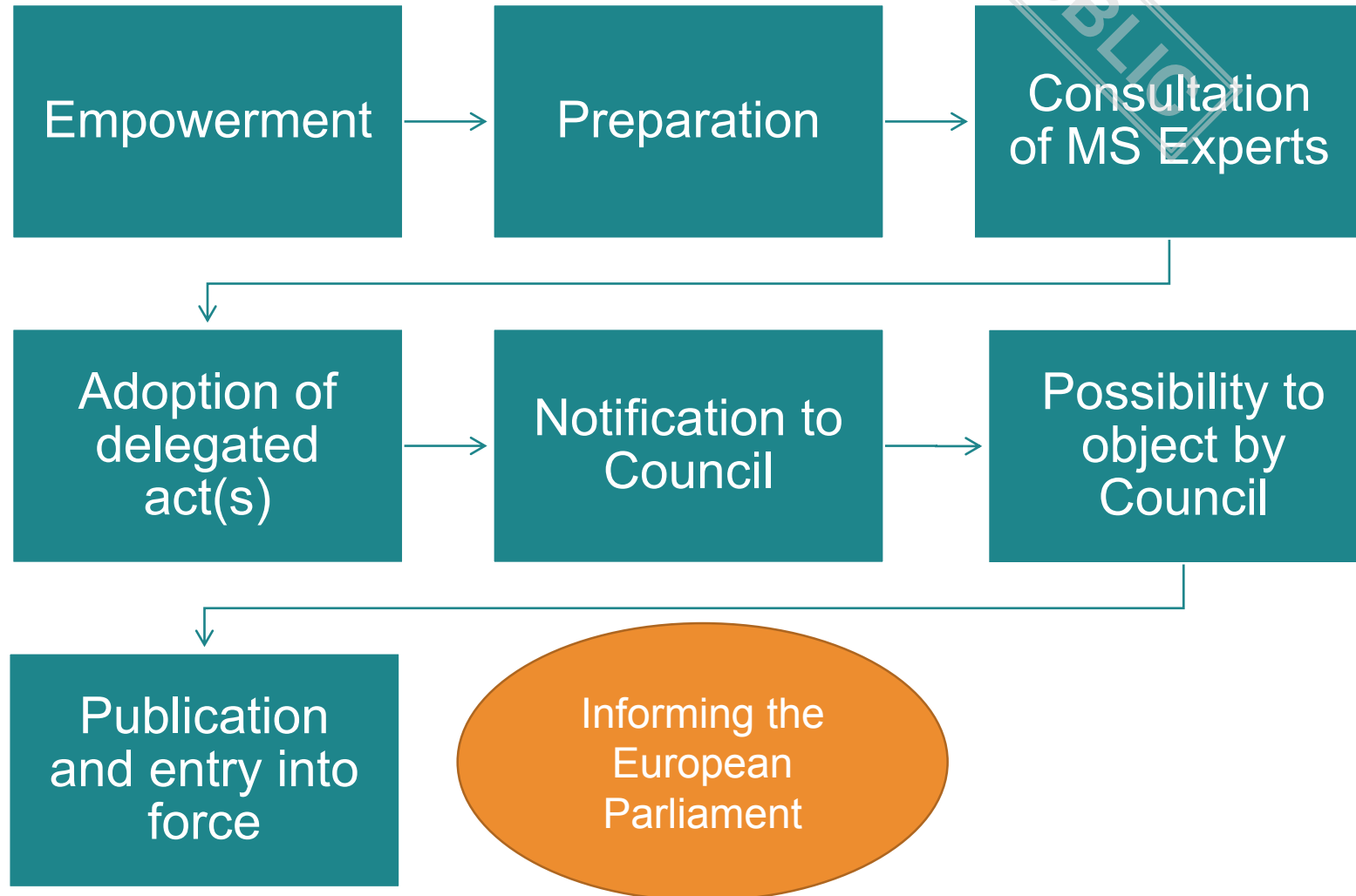
- Goal → **Standardization** which benefits **taxpayer** and **tax administrations**

- **Common template standardizing**

- Linguistic requirements
- Threshold for documentation requirement
- Fiscal years to be covered



Transfer Pricing Documentation – Procedure



Right of revocation:

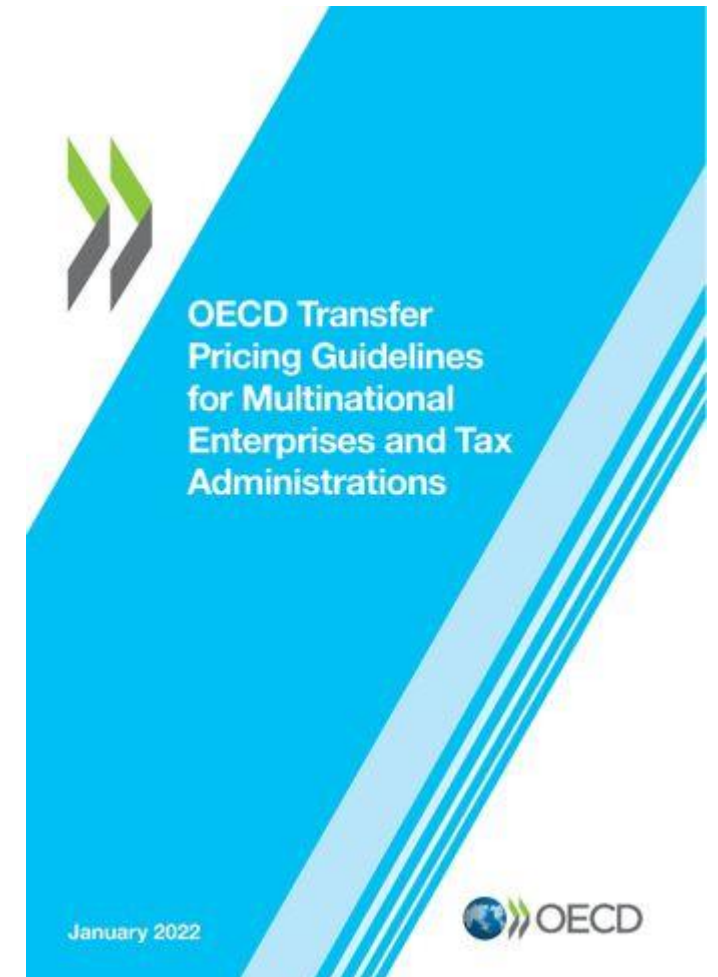
- **Council** may at any time **revoke** delegated powers.

Right of objection:

- 1) **Council expresses objections** → **delegated act cannot enter into force**. COM may prepare and adopt a new one.
- 2) **Council does not express objections** or informs COM of no intention to raise objections → **Publication and entry into force**

OECD Transfer Pricing Guidelines - Application

- **Definition** of the OECD TP Guidelines (art. 3(18))
 - Reference to January 2022 Edition (included in Annex I)
 - Common position and approval of updated version by the Union through 218(9) Procedure (next slide!)
- Obligation that **transfer pricing rules (CH. II)** enshrined in the Directive shall be **applied consistently** with the OECD TPG (art. 14(1))
- **Important!**
 - No deviation from the established OECD Transfer Pricing Framework.



218(9) TFEU – Procedure

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- **Objective**

- Common position and approval of updated OECD TPG version by the Union

- **Practical Procedures**

- COM prepares a decision to be submitted to the Council for voting (unanimity)
- Council decision necessary ahead of finalization and voting at OECD

- **Consequences**

- EU OECD Members will represent the common EU position at the OECD

→ **Stronger** common position at the OECD negotiation table



Further rules on specific transactions – Content

- Part of the **second step** of this Directive
- **Consistent** with the **OECD Transfer Pricing Guidelines**
- Goal → Increase **simplification** and **tax certainty** for taxpayers and tax administration

Resulting in reduction of **disputes**

Resulting in reduction of **compliance costs** for taxpayer

- Specific **transactions** or **dealings**:

(a) intangible assets; (b) provision of services incl marketing and distribution services;
(c) cost contribution arrangements; (d) business restructurings; (e) financial transactions;
(f) dealings between the head office and its permanent establishments.

Further rules on specific transactions – Procedure

Proposal by the COM

Adoption by the
Council

Publication and entry
into force

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Final Provisions

Committee procedure (art. 17)



Data Protection (art. 16)



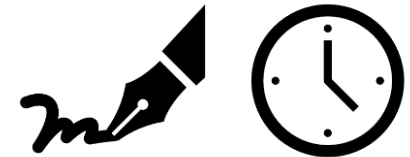
5-Year review by the Commission of the operation of the Directive (art. 15)



Exercise of the delegation (art. 18)



Transposition and entry into force (art. 20 and 21)



Informing the European Parliament (art. 19)



Thank you

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