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MEETING DOCUMENT

From: Presidency
To: Delegations

Subject: Transfer Pricing: Presidency steering note and compromise text

I. Introduction

Following the first general discussion on the Commission proposal for a Council Directive on transfer pricing under the Spanish Presidency on 20 October 2023 and the further discussion on specific topics on 12 January 2024, the Belgian Presidency aims to build on the key observations and comments made by delegations so far, and to propose for discussion several amendments to the Commission proposal, in order to address part of those concerns.

In this context, it is appropriate to recall the objectives of improving legal certainty on the status of the OECD Transfer Pricing Guidelines (hereafter “OECD TPG”) and further common interpretation of those OECD TPG that the Commission aims to achieve with this proposal. Those objectives were generally supported by Member States during the last meeting, but with reservations on the possible creation of a double standard in the field of transfer pricing.

The Belgian Presidency therefore proposes that the discussion on these important topics continues on the basis of a partial compromise text that covers a limited number of issues, selected on the basis of the discussion that took place so far. Furthermore, the Belgian Presidency suggests discussing a number of other technical aspects of the Commission proposal, which have not sufficiently been covered yet, in order to determine their merits and potential issues.

II. Compromise text on a limited number of topics

a. The status of the OECD Transfer Pricing Guidelines

During the last Working Party meeting, an elaborate discussion took place on the status of the OECD TPG within the EU and the potential consequences of the Commission proposal for future application of and amendments to the OECD TPG.

Most Member States support the objectives of ensuring legal certainty and of further harmonization around a common interpretation of the OECD TPG. Nevertheless, a large number of Member States equally expressed concerns that if the OECD TPG become part of the EU acquis, Member States would lose the current level of flexibility provided by the OECD TPG. Moreover, it would create a new (EU) standard that would exist in parallel to the internationally agreed standard.

On that topic, the Belgian Presidency proposed three options to the Working Party concerning the status of the OECD TPG. It quickly became clear that all Member States wish to move away from the *hard law* approach as currently included in the Commission proposal. Building on that discussion, a *soft law* approach has been included in the Presidency compromise text.

The discussion also covered the institutional consequences of including the OECD TPG into the EU acquis and the proposed procedure under Article 218(9) TFEU. Similarly, many Member States expressed concerns regarding the political and practical feasibility to reach a common EU position and inquired whether they could still construe their own positions in multilateral international negotiations on this topic. It became clear that the proposed procedure would have unwarranted consequences for Member States and was not endorsed.

To summarize, it is of the utmost importance for Member States that the Directive, if adopted, does not create a new standard and the current level of Member States' sovereignty in tax matters is maintained in the area of transfer pricing. Therefore, without prejudice to Union law, the new paragraph 2 of Article 1 aims for Member States to retain their exclusive competence on the matters that are not regulated by this Directive. Moreover, the Directive would not rule out the current arrangement that the necessary framework for practical details of application can continue to be set out in the OECD Transfer Pricing Guidelines, which are agreed and updated by the Member States and non-EU jurisdictions concerned.

Nevertheless, within the parameters outlined so far in this note, Member States were supportive of the objectives to improve legal certainty and work on further possible harmonization of rules on transfer pricing.

Against this background, the Presidency suggests the following amendments to the Commission proposal:

- Deletion of Article 3 point (1), in order to prevent the creation of a parallel new (EU) standard on the arm's length principle;
- Deletion of Article 3 point (18) in order to prevent a *hard law* codification of the OECD TPG;
- Redrafting of Article 4(1) in line with Article 9 of the OECD Model Tax Convention, in order to align with the internationally accepted standard on arm's length principle;
- Deletion of Article 14(1), in order to prevent a *hard law* codification of the OECD TPG;
- Redrafting and adding a number of recitals, in order to reflect the *soft law* nature of the OECD TPG, as the primary source of interpretation, and further aligning those recitals with the internationally accepted arm's length principle;
- Deleting the annex to the Directive in order to avoid a *hard law* codification of the OECD TPG.

b. Council Implementing Acts

Concerning future rules on further application of the arm's length principle by way of Council implementing acts, Member States were generally of the opinion that this has to be evaluated on a case-by-case basis, but also expressed concerns that those implementing acts could duplicate work or go beyond what is agreed upon within the framework of the OECD TPG. At this stage, in order to steer the discussion on these matters, the Belgian Presidency proposes to keep the suggested language in Article 14(2) of the proposal, but to delete the specific list of topics, which could give an impression to oblige Member States to come up with further work on these specific topics.

c. Permanent Establishments

In view of many Member States, the concept of permanent establishment should be covered by the proposed Directive. However, the wording of the Commission proposal would treat permanent establishments as associated enterprises and, as a consequence, many subtleties connected with the attribution of profits to permanent establishments would be lost. Equally, the same reservations by Member States as to the creation of a double standard and the loss of flexibility also apply.

It is therefore proposed, for discussion, that the general rule on the attribution of profits to permanent establishments is introduced in the proposed Directive.

d. Definition of associated enterprises

The views of Member States on the definition of associated enterprises were divergent. Although most Member States are of the opinion that the common definition would clarify to whom the transfer pricing rules would apply, agreeing on the proposed text seems to be difficult. Member States stressed that their domestic definition also extends to other rules beyond the domain of transfer pricing, which complicates changes to domestic definitions. Moreover, it was pointed out that, on an operational level, the concept of associated enterprises is hardly subject to any discussion. .

III. Corresponding and compensating adjustments

a. Article 6: Corresponding adjustments

Corresponding adjustments are used to eliminate double taxation resulting from a primary adjustment made by a Member State and are defined in Article 3 point (7) of the Commission proposal. The concept of such corresponding adjustments originates from Article 9(2) of the OECD Model Tax Convention, and is considered the best practice to be used in the tax treaties, following the 2015 OECD/G20 IF on BEPS Final Report on Action 14.¹ Article 6 of the

¹ OECD (2015), Making Dispute Resolution Mechanisms More Effective, Action 14 - 2015 Final Report, OECD/G20 Base Erosion and Profit Shifting Project, OECD Publishing, Paris. <https://doi.org/10.1787/9789264241633-en>.

Commission proposal further sets out the conditions for applying the corresponding adjustment and the procedures for eliminating double taxation.

Article 6 does not intend to change the fact that the decision whether to grant an adjustment remains an exclusive prerogative of the competent authority of the Member State, which preserves the right to assess whether the primary adjustment is at arm's length and acceptable.

Existing procedures for eliminating double taxation are generally experienced as long and cumbersome by taxpayers. Consequently, the introduction of a specific fast-track procedure for transfer pricing is relevant despite the existence of the Council Directive (EU) 2017/1852 on tax dispute resolution mechanisms in the European Union.

The mechanism put in place in Article 6(3) of the Commission proposal via the fast-track procedure is more flexible, as it will allow taxpayers to have a single point of contact and will respond more quickly to the expectations of taxpayers and the tax authorities in general.

Furthermore, an expeditious determination of the arm's length nature of a transaction will meet taxpayers' needs for better legal certainty. They will be more inclined to comply with the relevant tax authorities.

Lastly, tax authorities will no longer spend time following up tax assessments that could ultimately be subject to a corresponding adjustment or rebate. They will be able to deploy their resources in a more effective way.

Question 1: Which of the following options Member States could accept with regard to the fast-track procedure as provided for in Article 6(3) of the Commission proposal.

- A. No changes should be made to the Commission proposal in this respect.***
- B. The proposed fast-track procedure is acceptable on the condition that certain changes and/or clarifications are made. For changes related to the proposed deadlines, please refer to question 2 further in this text.***
- C. The use of the fast-track procedure should only be permitted in the event of a definitive primary adjustment, following the completion with regard to each Member State's own appeal procedures.***
- D. The fast-track procedure should be optional, with Member States having the option of implementing it or not.***

A number of Member States also expressed concerns about the proposed time limits and the ability of their internal services to manage the fast-track procedure. Safeguards could be put in place to ensure that deadlines are respected and that competent authorities are not overburdened.

With regard to the proposed deadlines, the possibility of extending them in order to assess the admissibility, to accept or reject the request as well as to introduce a fast-track procedure within a restricted timeframe would enable tax authorities to manage this new procedure more efficiently.

Question 2: With regard to the proposed deadlines, do you agree that:

- A. No changes should be made to the time limit for a decision on the admissibility of a request in Article 6(3), (b)?***
- B. The deadline for taking a position on acceptance or rejection under Article 6(3),(c) should be extended to allow the tax authorities to take a decision within a maximum of one year?***
- C. A limited time period within which taxpayers can initiate the fast-track procedure should be provided for?***
- D. The time limit for a taxpayer to initiate a Mutual Agreement Procedure as provided in Article 6(3), (e) already starts to run during the fast-track procedure?***

Besides the fast-track procedure, Article 6(4) of the Commission proposal deals with corresponding adjustments in the event of joint audits or any other form of international administrative cooperation (for example, ICAP, ETACA, (M)APA,...). Under current procedures, many Member States can grant corresponding adjustments only as a consequence of MAP procedures that have to be formally activated, even when e.g. there is agreement between tax administrations on the outcome of the Joint Audit (i.e. when there is an agreement on the need to make a primary adjustment and on its amount). In this situation, art. 6(4) aims at ensuring that when there is agreement between tax administrations on the primary adjustment, a corresponding adjustment can be granted without opening a MAP procedure.

Question 3: Can Member States agree with the proposed Article 6(4)? Should there be additional conditions to be fulfilled before granting a corresponding adjustment under joint audits and other forms international administrative cooperation (for example, the consent of the taxpayer)?

Lastly, Article 6(5) of the Commission proposal provides for the possibility of making unilateral downward adjustments. Although a unilateral downward adjustment may reflect an arm's length outcome, concerns arise that those could lead to situations of double non-taxation which may be uncalled for. Therefore, the Directive sets down further rules for Member States to abide by when performing such unilateral downward adjustments.

Question 4: Which of the following options do Member States endorse?

- A. Member States agree with the Commission proposal on unilateral downward adjustments?***
- B. In general, what changes would have to be made in order for the Commission proposal to be acceptable for you?***
- C. Should the proposed Article 6(5) be optional for Member States?***
- D. Member States have serious concerns that the current proposal on unilateral downward adjustments may lead to double non-taxation and are thus uncalled for?***

Question 5: Do Member States have any other remarks or questions regarding the proposed Article 6 on corresponding adjustments?

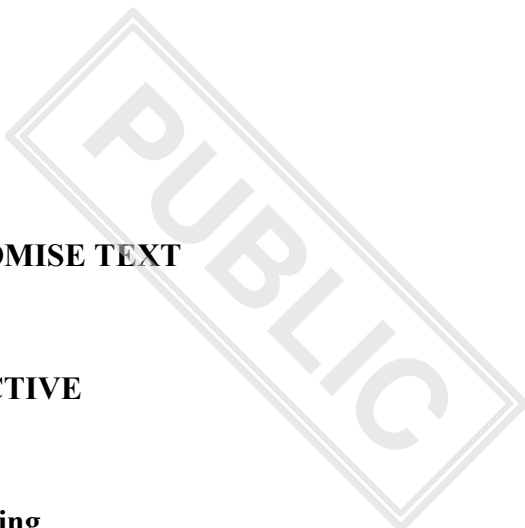
b. Article 7: Compensating adjustment

Article 7 introduces certain conditions on compensating adjustments made by the taxpayers and builds upon the Commission's 2013 EU JTPF Report on compensating adjustments.²

Question 6: Do you agree with one or more of the following statements concerning Article 7 of the Commission proposal?

- A. No changes should be made to the text on this topic.***
- B. An extra condition should be added whereby the taxpayer is required to specify the amount of the adjustments made.***
- C. An extra condition should be added specifying that the compensating adjustments made must correspond to the arm's length principle and be justified by means of a TP study.***

² JTPF/009/FINAL/2013/EN, Meeting of 5 November 2013: https://taxation-customs.ec.europa.eu/system/files/2016-09/jtpf_009_final_2013_en.pdf



PRESIDENCY COMPROMISE TEXT

COUNCIL DIRECTIVE

on transfer pricing

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Parliament¹,

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

Acting in accordance with a special legislative procedure,

Whereas:

- (1) Transfer pricing refers to the setting of prices for cross-border transactions between associated enterprises within a **multinational enterprise group (MNE group)**. Since tax calculations are generally based on entity-level accounts, the prices or other conditions at which cross-border transactions between associated enterprises take place ~~will affect~~ **influence** the relevant entities' income and/or expenses in relation to those transactions, and as a consequence, ~~will impact~~ **s** on the amount of profit **or loss** each group entity records for tax purposes in the jurisdictions where they operate.
- (2) The globally recognised standard for determining the prices between associated enterprises for tax purpose is the so called "arm's length principle". **This principle is set out in the OECD Model Tax Convention on Income and on Capital, which has served as a basis for the extensive network of international tax agreements, both between OECD member countries and non-member countries, that aims at setting out rules for the elimination of double taxation with respect to taxes on income and**

¹ OJ C , , p. .

² OJ C , , p. .

on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance. Moreover, the Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations (OECD Transfer Pricing Guidelines) have been developed to provide guidance on the meaning and application of the arm's length principle.

- (2a) The arm's length principle ~~prescribes~~ follows the approach that individual group members of an MNE group are to be treated, for tax purposes, must transact with each other as if they were independent third parties rather than inseparable parts of a single unified business. In other words, the transactions between two associated enterprises should reflect the outcome that would have been achieved in comparable uncontrolled transactions if the parties were independent of each other and by reference to the conditions which would have been obtained between independent enterprises in comparable transactions and comparable circumstances, 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.
- (3) 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.
- (4) Therefore, this Directive lays down rules to ensure a minimum common application of the arm's length principle across the Union with the aim of increasing tax certainty and reducing occurrences of double taxation as well as double non-taxation. Member States may maintain or introduce more specific provisions with regards to the application of the arm's length principle than the ones provided for in this Directive by determining more precisely specific requirements and provided that those domestic measures are compatible with Union law.
- (4a) Member States retain their competence on the matters that are not regulated by this Directive. Thus, for these matters, the guidance for their application can continue to be set out in the OECD Transfer Pricing Guidelines, which are agreed and updated by the Member States and non-EU jurisdictions concerned.
- (4b) In implementing this Directive, Member States should use the applicable OECD Transfer Pricing Guidelines as a source of illustration or interpretation to the extent that they are consistent with the provisions of this Directive and with Union law. Notably, the OECD Transfer Pricing Guidelines are recommendations to both MNE groups and tax authorities, in order for MNE groups and tax authorities to retain the freedom to deviate from those OECD Transfer Pricing Guidelines when such deviation is supported by an explanation of why the deviation, in the circumstances of the case, was regarded as providing a better solution. When transfer pricing rules are applied at a national level, MNE groups are expected to provide documentation regarding how transfer prices were established, even more so when the establishment of the arm's length price deviates from the OECD Transfer Pricing Guidelines.
- (4c) In the case of permanent establishments, the basic rule for the attribution of profits to permanent establishments prescribes that the profits to be attributed to a

permanent establishment are those that the permanent establishment would have derived if it were a separate and independent enterprise performing the activities that cause it to be a permanent establishment. The dealings from that permanent establishment with the other parts of the enterprise to which it depends are priced in accordance with the arm's length principle and take into account the OECD Transfer Pricing Guidelines.

- (5) To ensure that the arm's length principle is applied in a uniform way across the Union, Member States should apply a common definition of associated enterprises. In order to ensure equal treatment, a permanent establishment should be treated, for the purpose of this Directive, as an associated enterprise and thus the internal dealings between head office and permanent establishment should be determined in accordance with the arm's length principle.
- (6) To ensure the mitigation of double taxation, Member States should have adequate mechanisms in place to enable them, when a primary adjustment is made in another Member State or third country jurisdiction, to make a corresponding adjustment. In particular, Member States should have the possibility to perform corresponding adjustments and should not limit the granting of such an adjustment in the context of mutual agreement procedures (MAPs) but also as a result of: (i) a "fast-track" procedure to be concluded in 180 days without the need to open a MAP when there is no doubt that the primary adjustment is well founded; or (ii) joint audits or other forms of international cooperation such as multilateral risk assessment programs like the European Trust and Cooperation Approach (ETACA) and the International Compliance Assurance Programme (ICAP).
- (7) There may be legitimate reasons as to why a corresponding adjustment is not given or is less than the primary adjustment. In particular, Member States should not grant corresponding adjustments if: (i) the primary adjustment is not considered to be consistent with the arm's length principle; (ii) the primary adjustment does not result in the taxation of an amount of profits in another jurisdiction on which the associated enterprise in the relevant Member State has already been subject to tax; and (iii) when a third country jurisdiction is involved, there is no tax treaty in place. In the absence of a primary adjustment, Member States may perform a downward adjustment only if: (i) the downward adjustment is consistent with the arm's length principle; (ii) an amount equal to the downward adjustment is included in the profit of the associated enterprise in the other jurisdiction and therein subject to tax; and (iii) a communication on the intention to perform a downward adjustment has been sent to the relevant jurisdiction. The aim of the previous provisions is to ensure that: (i) Member States can preserve the right to assess whether the primary adjustment is at arm's length; and (ii) there is neither double taxation nor double non-taxation. Member States should not create situations of double non-taxation.

- (8) In order to establish a common approach to compensating adjustments within the Union and to avoid litigation, this Directive provides the conditions under which Member States should recognise a compensating adjustment. This provision should be interpreted in conjunction with the Commission's 2013 EU Joint Transfer Pricing Forum Report on compensating adjustments³.
- (9) To ensure that transfer pricing outcomes are determined in accordance with the actual conduct of related parties, this Directive requires careful delineation of the actual transaction between the associated enterprises by analysing the contractual relations between the parties in combination with the conduct of the parties. In this regard, the critical first step of the transfer pricing analysis should be to accurately define the intercompany transactions by analysing their economically relevant characteristics, as reflected not only in the contracts between the parties, but also their conduct and any other relevant facts. The contractual terms should be the starting point for the analysis and, to the extent that the conduct or other facts are inconsistent with the written contract, the parties' conduct (rather than the terms of the written contract) should be taken as the best evidence of the transaction(s) actually undertaken.
- (10) Transfer pricing methods are used to establish the arm's length prices for transactions between associated enterprises. The methods listed in this Directive are in line with Chapter III of the Organisation for Economic Co-operation and Development (OECD) Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022 ('OECD Transfer Pricing Guidelines'). This Directive does not have a preference for any of these recognised transfer pricing methods. Instead, the most appropriate method rule provided for in this Directive should be applied and thus the most appropriate method should be chosen taking into consideration the facts and circumstances of the specific case. This Directive further provides that a transfer pricing method other than the OECD recognised methods may be applied only where it can be demonstrated that: (i) none of the OECD recognised methods can be reasonably applied to determine arm's length conditions for the controlled transaction (i.e. the transaction between associated enterprises); and (ii) such other method produces a result consistent with the result which would be achieved by independent enterprises engaging in comparable uncontrolled transactions under comparable circumstances. The taxpayer, or the tax administration, that uses a method other than one of the OECD recognised methods should bear the burden of demonstrating that the requirements have been satisfied. When the conditions are fulfilled and an economic valuation technique is applied to identify an arm's length price, the content and recommendations of the Commission's 2017 EU Joint Transfer Pricing Forum Report on the use of economic valuation techniques in transfer pricing⁴ should be taken into due consideration.
- (11) The selection of the transfer pricing method should always aim at finding the most appropriate method for a particular case. The selection process of the most appropriate transfer pricing method should take account of (i) the respective strengths and weaknesses of the transfer pricing methods; (ii) the appropriateness of the method considered in view of the nature of the controlled transaction, determined in particular through a functional analysis; (iii) the availability of reliable information (in particular on uncontrolled comparables) needed to apply the selected method or other methods;

³ JTPF/009/FINAL/2013/EN, Meeting of 5 November 2013: https://taxation-customs.ec.europa.eu/system/files/2016-09/jtpf_009_final_2013_en.pdf

⁴ JTPF/003/2017/FINAL/EN, Meeting of 22 June 2017: https://taxation-customs.ec.europa.eu/system/files/2017-10/2017_10_16_jtpf_003_2017_en_final_en.pdf

and (iv) the degree of comparability between controlled and uncontrolled transactions, including the reliability of comparability adjustments that may be needed to eliminate material differences between them. No one method is suitable in every possible situation, nor is it necessary to prove that a particular method is not suitable in a given set of circumstances. It should be noted that one-sided methods such as Resale Price, Cost Plus, Transactional Net Margin Method are not considered reliable if each party to a transaction makes unique and valuable contributions in relation to the controlled transaction, or where the parties engage in highly integrated activities. In such a case, the profit split method is the most appropriate method, since independent parties might effectively price the transaction in proportion to their respective contributions, in which case a two-sided method would be more appropriate. One-sided methods are appropriate where one of the parties makes all of the unique and valuable contributions involved in the controlled transaction, while the other party does not make any unique and valuable contribution. In such a case, the tested party, that is, the party to the controlled transaction for which a financial indicator is tested, should be the one to which a transfer pricing method can be applied in the most reliable manner and for which the most reliable comparables can be found. The party that does not make any unique and valuable contributions in relation to the transaction will most often be the one to which a one-sided transfer pricing method can be applied most reliably.

- (12) In order to apply the arm's length principle, it is necessary to carry out a comparability analysis, which broadly consists of two key aspects: (i) identifying the commercial or financial relations between the associated enterprises and the conditions and economically relevant circumstances attached to those relations; and (ii) comparing the conditions and economically relevant circumstances of transactions between associated enterprises (controlled transactions) with those of comparable transactions between independent enterprises (comparable uncontrolled transactions). The comparability factors to be considered are (i) the contractual terms of the transaction, (ii) the functional analysis (the functions that each enterprise performs, taking into account assets used and risks assumed), (iii) the characteristics of the product or service which is the object of a transaction, (iv) the economic circumstances, and (v) the business strategies. Once the circumstances of the controlled transaction have been established, the actual comparison and assessment of whether the transaction is at arm's length should take place. For that, the conditions of the controlled transaction under examination should be compared to the conditions of a comparable uncontrolled transaction. A controlled and an uncontrolled transaction are regarded as comparable if the economically relevant characteristics of the two transactions and the circumstances surrounding them are sufficiently similar to provide a reliable measure of an arm's length result. The two transactions do not have to be identical to be comparable. Instead, none of the differences between them should materially affect the arm's length price or profit; where such material differences exist, reasonably accurate adjustments should be made to eliminate their effect. In the search for comparable uncontrolled transactions, the recommendations contained in the Commission's 2016 EU Joint Transfer Pricing Forum Report on the use of comparables within the EU⁵ should be taken into due consideration.
- (13) In order to minimise disputes and ensure a common approach across the Union, this Directive further provides that a taxpayer should not be subject to adjustment when its

⁵ Commission's 2016 EU Joint Transfer Pricing Forum Report on the use of comparables in the EU (JTPF/007/2016/FINAL/EN): <https://taxation-customs.ec.europa.eu/system/files/2017-04/jtpf0072017encomps.pdf>

results fall within the interquartile range unless the tax administration or the taxpayer proves that a specific different positioning in the range is justified by the facts and circumstances of the specific case. When the results of a controlled transaction fall outside the arm's length range, tax administrations should be required to make an adjustment to the median of all the results unless the taxpayer or the tax administration proves that any other point of the range determines a more reliable arm's length price in a given case.

- (14) In order to lower the compliance burden for taxpayers that operate cross-border within the Union a common approach towards the documentation on transfer pricing should further be introduced. One standard template, rules on content and linguistic arrangements, timeframes and which taxpayers should be in scope would bring simplicity and potential cost savings taking into account chapter V 'Documentation' of the OECD Transfer Pricing Guidelines and the Code of conduct on transfer pricing documentation for associated enterprises in the European Union⁶.
- ~~(15) The rules provided by this Directive should be applied in a manner consistent with the OECD Transfer Pricing Guidelines.~~
- (16) In order to create more certainty for taxpayers and mitigate the risk of double taxation, the possibility to establish further common transfer pricing binding rules by way of implementing acts is provided in this Directive. Those implementing acts, **should taking into account the OECD Transfer Pricing Guidelines and** provide taxpayers with a clear view of what tax authorities in the Union would consider to be acceptable to be used for specified transactions, **including the transfer of intangibles, provision of services, cost contribution arrangements, business restructurings and financial services and the dealings between head offices and permanent establishments** ~~and provide so-called 'safe harbours' that bring down the compliance burden and the number of disputes~~. In view of the potential impact of such measures on national executive and enforcement power regarding direct taxation, the exercising of taxing rights allocated under bilateral or multilateral tax conventions that prevent double taxation or double non-taxation and in view of potential impact on Member States' tax bases, implementing powers to adopt decisions under this Directive should be conferred on the Council, acting on a proposal from the Commission.
- (17) In order to evaluate the effectiveness of the new rules set out in this Directive, the Commission should prepare an evaluation on the basis of the information provided by Member States and other available data.

⁶ Resolution of the Council and of the representatives of the governments of the Member States, meeting within the Council, of 27 June 2006 on a code of conduct on transfer pricing documentation for associated enterprises in the European Union (EU TPD), 2006/C 176/01, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.C_.2006.176.01.0001.01.ENG&toc=OJ%3AC%3A2006%3A176%3AFULL

- (18) To allow businesses to directly enjoy the benefits of the internal market without incurring an unnecessary additional administrative burden, information on the tax provisions set out in this Directive should be made accessible through the Single Digital Gateway ('SDG') in accordance with Regulation (EU) 2018/1724⁷. 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.
- (19) The processing of personal data carried out within the framework of this Directive should comply with Regulation (EU) 2016/679 of the European Parliament and of the Council⁸. Member States may process personal data under this Directive. .
- (20) The retention period of 10 years is justified in order to allow Member States to comply with most statutes of limitations.
- (21) In order to lower the administrative burden for taxpayers, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of the transfer pricing documentation, by laying down common templates, setting linguistic requirements, defining the type of taxpayer to abide by these templates and the timeframes to be covered. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement on Better Law-Making of 13 April 2016. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.
- (22) Since the objective of this Directive cannot sufficiently be achieved by the Member States but can rather, by reason of the cross-border nature of the transfer pricing rules and the need to reduce compliance costs in the internal market as a whole, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.
- (23) The European Data Protection Supervisor was consulted in accordance with Article 42(1) of Regulation (EU) 2018/1725 of the European Parliament and of the Council and delivered its opinion [to be inserted].

HAS ADOPTED THIS DIRECTIVE:

⁷ 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).

⁸ 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).

CHAPTER I

GENERAL PROVISIONS

Article 1 **Subject matter**

1. This Directive lays down common measures to harmonise transfer pricing rules ~~rules to harmonise transfer pricing rules of Member States~~ and to ensure a common application of the arm's length principle within the Union.
2. Member States may maintain or introduce within their territories measures that are more specific than the ones provided for in this Directive on condition that those national measures are compatible with Union law.

Article 2 **Scope**

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

Article 3 **Definitions**

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

- (1) ~~‘arm's length principle’ means the international standard that prescribes that associated enterprises must transact with each other as if they were independent third parties. In other words, the transactions between two associated enterprises should reflect the outcome that would have been achieved if the parties were not related i.e. if the parties were independent of each other and the outcome (price or margins) was determined by (open) market forces.~~
- (2) ‘arm's length result’ means the outcome of a controlled transaction if the conditions made or imposed between the associated enterprises in their commercial or financial relations had been those which would have been made between independent enterprises.
- (3) ‘arm's length range’ means a range of figures that is acceptable for establishing whether the conditions of a controlled transaction are at arm's length and that are derived from applying the same transfer pricing method to multiple comparable data;
- (4) ‘permanent establishment’ means a fixed place of business, as defined under the relevant bilateral convention on the avoidance of double taxation or, in absence thereof, in national law;
- (5) ‘independent enterprises’ means enterprises that are not associated enterprises within the meaning of Article 5;

- (6) 'primary adjustment' means an upward adjustment made to a company's taxable profits by a tax administration in a first jurisdiction as a result of applying the arm's length principle to transactions involving an associated enterprise in a second tax jurisdiction;
- (7) 'corresponding adjustment' means a downward adjustment to a company's taxable profits made by the tax administration in a second jurisdiction as a consequence of a primary adjustment made by the tax administration in a first jurisdiction, so that the allocation of profits by the two jurisdictions is consistent;
- (8) 'compensating adjustment' means an adjustment in which the taxpayer reports a transfer price for tax purposes that is, in the taxpayer's opinion, an arm's length price for a controlled transaction, even though this price differs from the amount actually charged between the associated enterprises;
- (9) 'comparable uncontrolled price method' means a transfer pricing method that compares the price for property or services transferred in a controlled transaction to the price charged for property or services transferred in a comparable uncontrolled transaction in comparable circumstances;
- (10) 'resale price method' means a transfer pricing method based on the price at which a product that has been purchased from an associated enterprise is resold to an independent enterprise; the resale price being reduced by the resale price margin and the result, after subtracting the resale price margin, can be regarded, after adjustment for other costs associated with the purchase of the product, e.g. custom duties, as an arm's length price of the original transfer of property between the associated enterprises;
- (11) 'cost plus method' means a transfer pricing method using the costs incurred by the supplier of property (or services) in a controlled transaction; an appropriate mark-up is added to these costs, to make an appropriate profit in light of the functions performed (taking into account assets used and risks assumed) and the market conditions; the price, after adding the mark-up to the proper cost base, may be regarded as an arm's length price of the original controlled transaction;
- (12) 'transactional net margin method' means a transactional profit method that examines the net profit margin relative to an appropriate base, e.g. costs, sales, assets, that a taxpayer realises from a controlled transaction that it is appropriate to aggregate;
- (13) 'profit split method' means a transactional profit split method that shows the relevant profits to be split for the associated enterprises from a controlled transaction (or controlled transactions that it is appropriate to aggregate) and then divides those profits between the associated enterprises on an economically valid basis that approximates the division of profits that would have been agreed at arm's length;
- (14) 'comparability analysis' means a comparison of a controlled transaction with an uncontrolled transaction;
- (15) 'controlled transaction' means a transaction between two associated enterprises;
- (16) 'comparable uncontrolled transaction' means a transaction between independent enterprises that is comparable to the controlled transaction under examination;

- (17) ‘multinational enterprise group’ (‘MNE group’) means a multinational enterprise group of associated enterprises with business establishments in two or more jurisdictions;
- ~~(18) ‘OECD Transfer Pricing Guidelines’ means the OECD Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations 2022, endorsed by the OECD Council pursuant to the OECD Council Recommendation of the Council on the Determination of Transfer Pricing between Associated Enterprises [C(95)126/Final], and as amended in January 20, 2022 and included in Annex I, and any further amendments to these OECD Transfer Pricing Guidelines that the Union approved in the context of the OECD Committee on Fiscal Affairs via the adoption of a Union position under 218(9) TFEU;~~
- (19) ‘cost contribution arrangement’ is a contractual arrangement among business enterprises to share the contributions and risks involved in the joint development, production or the obtaining of intangibles, tangible assets or services with the understanding that such intangibles, tangible assets or services are expected to create benefits for the individual businesses of each of the participants.

CHAPTER II

TRANSFER PRICING RULES

Article 4

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

- ~~1. Member States shall ensure that, where an enterprise engages in one or more commercial or financial cross-border transactions with an associated enterprise, such enterprise determines the amount of its taxable profits in a manner that is consistent with the arm’s length principle.~~
- ~~2. Member States shall ensure that, where the conditions made or imposed in commercial or financial cross-border transactions between associated enterprises are not consistent with the arm’s length principle, then any amount of profits that would have accrued to either one of the enterprises and been taxable to that enterprise in a Member State if the conditions of the transactions had been consistent with the arm’s length principle, but have not accrued to that enterprise due to the non-arm’s length conditions, are to be included in the taxable profits of that enterprise and taxed accordingly.~~

Member States shall lay down -rules, pursuant to which, where conditions are made or imposed between two associated enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, [may][shall] be included in the profits of that enterprise and taxed accordingly.

Article 4a

General rule on the attribution of profits to a permanent establishment

Member States shall lay down rules, pursuant to which, when business is carried on in a Member State through a permanent establishment dependent on an enterprise situated outside that Member State, the profits allocable to that permanent establishment are those which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment, shall be attributed to that permanent establishment.

Article 5

Associated enterprises

1. For the purpose of this Directive, 'associated enterprise' means a person who is related to another person in any of the following ways:
 - (a) a person participates in the management of another person by being in a position to exercise a significant influence over the other person;
 - (b) a person participates in the control of another person through a holding that exceeds 25 % of the voting rights;
 - (c) a person participates in the capital of another person through a right of ownership that, directly or indirectly, exceeds 25 % of the capital;
 - (d) a person is entitled to 25 % or more of the profits of another person.
2. If more than one person participates in the management, control, capital or profits of the same person, as referred to in paragraph 1, all persons concerned shall be regarded as associated enterprises.
3. If the same persons participate in the management, control, capital or profits of more than one person, as referred to in paragraph 1, all persons concerned shall be regarded as associated enterprises.
4. For the purposes of paragraphs 1 and 2, a person shall mean both legal and natural persons. A person who acts together with another person in respect of the voting rights or capital ownership of an entity shall be treated as holding a participation in all of the voting rights or capital ownership of that entity that are held by the other person.
5. In indirect participations, the fulfilment of the criteria set out in point (b) and (c) of paragraph 1 shall be determined by multiplying the rates of holding through the successive tiers. A person holding more than 50 % of the voting rights shall be deemed to hold 100 % of the voting rights.
6. An individual, his or her spouse or recognised partner, in accordance with the applicable national law, and his or her lineal ascendants or descendants and his or her siblings shall be treated as a single person.
7. A permanent establishment shall be considered an associated enterprise of the enterprise of which it is a part of. **1**

Article 6
Corresponding adjustments

1. When a primary adjustment is made, Member States shall ensure that they make a corresponding adjustment so as to prevent the double taxation if the following conditions are met:
 - (a) the Member State that was requested to perform the corresponding adjustment agrees that the primary adjustment is consistent with the arm's length principle both in principle and as regards the amount;
 - (b) the primary adjustment results in the taxation of an amount of profits in another jurisdiction on which the associated enterprise in the Member State that was requested to perform the corresponding adjustment has already been subject to tax in such Member State;
 - (c) where a third country jurisdiction is involved, a tax treaty is in force to prevent economic double taxation.
2. Member States may grant a corresponding adjustment as a consequence of a mutual agreement procedure under a double tax treaty under the 1990 intergovernmental Convention on Elimination of Double Taxation ('the Arbitration Convention')⁹ or under Directive (EU) 2017/1852¹⁰.
3. Notwithstanding paragraph 2, Member States shall ensure that a corresponding adjustment may be performed as a consequence of a taxpayer's request in view of a primary adjustment made in another jurisdiction. The following procedure shall apply to the corresponding adjustments performed under this paragraph:
 - (a) the taxpayer's request shall:
 - (i) indicate all factual and legal circumstances necessary to evaluate, under the arm's length principle, the primary adjustment performed in the other jurisdiction;
 - (ii) provide a certificate (or equivalent document) attesting the definitive nature of the primary adjustment abroad; if the primary adjustment is still not definitive on the date of submission of the request, this is to be indicated along with the conditions for the adjustments to become definitive; the certificate of the definitive nature of the primary adjustment shall nonetheless be presented to the Member State concerned before the corresponding adjustment is granted.
 - (b) Member States shall declare the request admissible within 30 days by virtue of a notification to the taxpayer if all the information provided in paragraph 3, point (a), has been submitted. In the same timeframe, Member States shall notify the taxpayer of the lack of any necessary information and grant at least 30 days to

⁹ Convention 90/463/EEC of 23 July 1990 on the elimination of double taxation in connection with the adjustment of profits of associated enterprises (OJ L 225, 20.8.1990, p. 10).

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

provide it. If the taxpayer does not provide the requested information within the assigned deadline, the request may be rejected as inadmissible.

- (c) Member States shall ensure that when the double taxation arises from a primary adjustment made in another Member State, the procedure is concluded within 180 days from the receipt of the taxpayer's request with a reasoned act of acceptance or rejection.
 - (d) In the case of acceptance, Member States shall communicate to the tax authority of the other relevant jurisdiction the recognition of the corresponding adjustment.
 - (e) Member States shall ensure that, when the corresponding adjustment is not granted, the taxpayer is still able to pursue mutual agreement procedures under a double tax convention, the Arbitration Convention or Directive (EU) 2017/1852.
4. Notwithstanding paragraphs 2 and 3, Member States shall ensure that a corresponding adjustment may be made as a consequence of joint tax audits or other forms of international administrative cooperation when the following conditions are met:
- (a) the relevant tax administrations agree on the determination of the arm's length price;
 - (b) primary and corresponding adjustments are granted symmetrically for the same amount in all the relevant jurisdictions.
5. Notwithstanding paragraph 1, in the absence of a primary adjustment, Member States may perform a downward adjustment only if the following conditions are met:
- (a) the downward adjustment is consistent with the arm's length principle both in principle and as regards the amount;
 - (b) an amount equal to the downward adjustment is included in the profit of the associated enterprise in the other jurisdiction and taxed in both the Member State and the other jurisdiction and thus subject to double taxation;
 - (c) the Member State requested to perform the downward adjustment has communicated to the tax administration of the relevant jurisdiction the intention to perform a downward adjustment providing all the factual and legal circumstances necessary to evaluate the downward adjustment under the arm's length principle.

Article 7

Compensating adjustment

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

- (a) before recording the relevant transaction, or series of transactions, the taxpayer made reasonable efforts to achieve an arm's length outcome;

- (b) the taxpayer makes the adjustment symmetrically in the accounts in all Member States involved;
- (c) the taxpayer applies the same approach consistently over time;
- (d) the taxpayer makes the adjustment before filing the tax return;
- (e) the taxpayer is able to explain why its forecast did not match the result achieved.

Article 8

Identifying the commercial or financial relations

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

Article 9

Transfer pricing methods

1. Member States shall ensure that the arm's length price charged in a controlled transaction between associated enterprises is determined using one of the following transfer pricing methods:
 - (a) the comparable uncontrolled price method;
 - (b) the resale price method;
 - (c) the cost-plus method;
 - (d) the transactional net margin method;
 - (e) the profit split method.
2. In addition to those methods listed in paragraph 1, Member States shall allow for the application of any other valuation methods and techniques to estimate the arm's length price only if it can be demonstrated in a satisfactory manner that:

- (a) none of the methods referred to in paragraph 1 is appropriate or workable in the circumstances of the case;
- (b) the selected valuation method or technique is consistent with the arm's length principle and provides a more reliable estimate of the arm's length result than the methods listed in paragraph 1.

Article 10

The most appropriate method rule

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

Article 11

Comparability analysis

1. Member States shall evaluate whether a controlled transaction produces an arm's length result by comparing the conditions of the controlled transaction with the conditions that would have been set, had the associated enterprises been independent and had they undertaken a comparable transaction under comparable circumstances.
2. Member States shall ensure that the transactions under analysis are comparable. In order to determine whether two or more transactions are comparable, the following factors shall be considered, to the extent that they are economically relevant to the facts and circumstances of a transaction:
 - (a) the contractual terms of the transaction;
 - (b) the functions performed by each of the parties to the transaction, taking into account assets used and risks assumed, including how those functions relate to the wider generation of value by the MNE group to which the parties belong, the circumstances surrounding the transaction, and industry practices;
 - (c) the characteristics of the property transferred or of services provided;

- (d) the economic circumstances of the parties and of the market in which the parties operate;
 - (e) the business strategies pursued by the parties.
3. An uncontrolled transaction is comparable to a controlled transaction if either of the following conditions is met:
- (a) none of the differences (if any) between the transactions being compared or between the enterprises undertaking those transactions could materially affect the price in the open market;
 - (b) reasonably accurate adjustments can be made to eliminate the material effects of such differences.
4. Member States shall ensure that the search for comparable uncontrolled transactions is transparent and reproducible.

Article 12

Determination of the arm's length range

1. Member States shall ensure that, when the application of the transfer pricing methods produces a range of values, the arm's length range is determined using the interquartile range of the results of the uncontrolled comparables.
2. The interquartile range is the range from the 25th to the 75th percentile of the results derived from the uncontrolled comparables.
3. Member States shall ensure that a taxpayer is not subject to adjustment if its results fall within the arm's length range, unless it is proven that a specific different positioning in the range is justified by the facts and circumstances of the specific case.
4. Member States shall ensure that, if the results of a controlled transaction fall outside the arm's length range, an adjustment is made to the median of all the results unless it is proven that any other point of the range determines an arm's length price taking into consideration the circumstances of the specific case. The median is the 50th percentile of the range of results of the comparable uncontrolled transactions.

Article 13

Transfer pricing documentation

1. Member States shall ensure that a taxpayer has sufficient information and analysis available to verify that the conditions of its transactions with associated enterprises are in accordance with Article 4(1) and should at least encompass the elements referred to in articles 8, 9, 10, 11 and 12.
2. The Commission shall be empowered to adopt delegated acts, in accordance with Article 18, in order to further supplement the rule referred to in paragraph 1 with regard to the documentation, by laying down common templates, setting linguistic requirements, defining the type of taxpayer to abide by these templates and the timeframes to be covered .

CHAPTER III

ORGANISATION

Article 14

Application of the arm's length principle

- ~~1. Member States shall include in the national rules transposing the transfer pricing rules laid down in Chapter II of this Directive provisions that ensure that those transfer pricing rules are applied in a manner consistent with the OECD Transfer Pricing Guidelines.~~
2. The Council may lay down further rules, ~~consistent with the OECD Transfer Pricing Guidelines,~~ 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 taxation. ~~Those specific transactions or dealings are the following:~~
 - ~~(a) transfer of intangibles asset or rights in intangible assets between associated enterprises, including hard-to-value intangibles;~~
 - ~~(b) the provision of services between associated enterprises, including the provision of marketing and distribution services;~~
 - ~~(c) cost contribution arrangements between associated enterprises;~~
 - ~~(d) transactions between associated enterprises in the context of business restructurings;~~
 - ~~(e) financial transactions;~~
 - ~~(f) dealings between the head office and its permanent establishments.~~
3. The rules referred to in paragraphs ~~1~~² shall be taken by means of Council implementing acts based on a proposal from the Commission.

CHAPTER IV

FINAL PROVISIONS

Article 15

Evaluation

1. The Commission shall examine and evaluate the application of this Directive every 5 years and submit a report on its evaluation to the European Parliament and to the Council. The first report shall be submitted by 31 December 2031.

2. Member States shall communicate to the Commission relevant information for the evaluation of this Directive with a view to improving the application of the arm's length principle, to reducing double taxation as well as to combatting tax abuse, in accordance with paragraph 3.
3. The Commission shall, by means of implementing acts, specify the information to be provided by Member States in accordance with paragraph 2, and specify the format and the conditions of communication of that information. Those implementing acts shall be adopted in accordance with the examination procedure referred to in article 17.
4. The Commission shall keep the information communicated to it pursuant to paragraph 2 confidential in accordance with the provisions applicable to Union institutions and Article 16 of this Directive.
5. Information communicated to the Commission by a Member State under paragraph 2, as well as any report or document produced by the Commission using such information, may be transmitted to other Member States. The information shall be covered by the obligation of official secrecy and enjoy the protection extended to similar information under the national law of the Member State which received it.

Article 16

Data protection

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

Article 17

Committee procedure

1. The Commission shall be assisted by a Committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2014¹¹.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

¹¹ Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13–18)

Article 18

Exercise of delegation

1. The power to adopt the delegated act referred to in Article 13 shall be conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Article 13 may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of the delegated act if already in force.
3. Before adopting the delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Inter-institutional Agreement on better law making of 13 April 2016.
4. As soon as it adopts the delegated act, the Commission shall notify it to the Council.
5. The delegated act adopted pursuant to Article 13 shall enter into force without delay and shall apply as long as no objection is expressed by the Council. The Council may object to the delegated act within two months of the notification of that act. That period shall be extended by two months at the initiative of the Council. In such a case, the Commission shall repeal the act immediately following the notification of the decision to object by the Council.

Article 19

Informing the European Parliament

The European Parliament shall be informed by the Commission of the adoption of delegated acts, of any objection formulated to them, and of the revocation of the delegation of powers by the Council.

Article 20

Transposition

1. Member States shall adopt and publish, by [31 December 2025] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from [1 January 2026].

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

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

Article 21
Entry into force

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

Article 22
Addressees

This Directive is addressed to the Member States.

Done at Strasbourg,

For the Council
The President

