

Tuesday 17 January 2023

P9\_TA(2023)0004

**Rules to prevent the misuse of shell entities for tax purposes****European Parliament legislative resolution of 17 January 2023 on the proposal for a Council directive laying down rules to prevent the misuse of shell entities for tax purposes and amending Directive 2011/16/EU (COM(2021)0565 — C9-0041/2022 — 2021/0434(CNS))****(Special legislative procedure — consultation)**

(2023/C 0/19)

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2021)0565),
  - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C9-0041/2022),
  - having regard to Rule 82 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0293/2022),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

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**Amendment 1**  
**Proposal for a directive**

**Recital 1**

*Text proposed by the Commission*

- (1) Ensuring fair and effective taxation in the internal market and tackling tax avoidance and evasion remain high political priorities in the Union. While recent years saw important progress in this area, especially with the adoption of Council Directive (EU) 2016/1164<sup>(10)</sup> concerning anti-tax avoidance and the expansion of scope of Council Directive 2011/16/EU<sup>(11)</sup> on administrative cooperation, further measures are necessary to tackle specifically identified practices of tax avoidance and evasion, which are not fully captured by the existing legal framework of the Union. In particular, multinational groups often create undertakings with no minimal substance, to lower their overall tax liability, including by shifting profits away from certain high-tax Member States in which they carry out economic activity and create value for their business. This proposal complements the progress achieved in corporate transparency through requirements concerning beneficial ownership information introduced by the anti-money laundering framework, which address situations where undertakings are created to conceal true ownership, whether of the undertakings themselves or of the assets they manage and own, such as real estate or property of high value.

<sup>(10)</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

<sup>(11)</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

*Amendment*

- (1) Ensuring fair and effective taxation in the internal market and tackling tax avoidance and evasion remain high political priorities in the Union. While recent years saw important progress in this area, especially with the adoption of Council Directive (EU) 2016/1164<sup>(10)</sup> concerning anti-tax avoidance and the expansion of scope of Council Directive 2011/16/EU<sup>(11)</sup> on administrative cooperation **in the field of taxation**, further measures are necessary to tackle specifically identified practices of tax avoidance and evasion, **including through the misuse of shell entities**, which are not fully captured by the existing legal framework of the Union. **In that regard, the Pandora Papers' revelations reported on the creation of shell companies with the purpose of moving money between bank accounts, avoiding taxes and committing financial crimes, including money laundering, and circumventing Union sanctions on Russian oligarchs.** In particular, multinational groups often create undertakings with no minimal **economic** substance, to lower their overall tax liability, including by shifting profits away from certain high-tax Member States in which they carry out economic activity and create value for their business. This proposal complements the progress achieved in corporate transparency through requirements concerning beneficial ownership information introduced by the anti-money laundering framework, which address situations where undertakings are created to conceal true ownership, whether of the undertakings themselves or of the assets they manage and own, such as real estate or property of high value.

<sup>(10)</sup> Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

<sup>(11)</sup> Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC (OJ L 64, 11.3.2011, p. 1).

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**Amendment 2**  
**Proposal for a directive**  
**Recital 1 a (new)**

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*Text proposed by the Commission*

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*Amendment*

- (1a) *There can be valid reasons for using companies with minimal economic substance. Therefore, it is important to guarantee a proportionate legal framework that safeguards the position of small and medium-sized enterprises (SMEs) that use legal structures to promote investments, comply with national laws or operate in different national markets while, at the same time, legislating in concrete terms on the misuse of shell entities to avoid taxation. The quality and completeness of data are therefore essential in order to reap the greatest benefits from this Directive.*

**Amendment 3**  
**Proposal for a directive**  
**Recital 1 b (new)**

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*Text proposed by the Commission*

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*Amendment*

- (1b) *The lack of an international instrument on the misuse of shell entities for tax purposes creates a significant loophole in the global efforts to combat tax fraud and evasion and aggressive tax planning. In addition, it creates an uneven playing field among businesses. The absence of such an instrument confirms the importance of the legal standards laid down in this Directive. It is essential to guarantee that the obligations provided for in this Directive are proportionate and effective from a taxation point of view, preserving the competitiveness of Union undertakings.*

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**Amendment 4**  
**Proposal for a directive**  
**Recital 1 c (new)**

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*Text proposed by the Commission*

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*Amendment*

- (1c) *The misuse of shell entities for tax purposes leads to a reduction in tax liability and tax loss within the Union. It is therefore essential that this Directive sets ambitious and proportionate standards for the definition of common minimum substance requirements, for the improvement of exchange of information between national tax administrations and for the dissuasion of the use of shell entities promoted by certain intermediaries.*

**Amendment 5**  
**Proposal for a directive**  
**Recital 2**

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*Text proposed by the Commission*

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*Amendment*

- (2) It is acknowledged that undertakings with no minimal substance may be set up in a Member State with the main objective of obtaining a tax advantage, notably by eroding the tax base of another Member State. While some Member States have developed a legislative or administrative framework to protect their tax base from such schemes, the relevant rules often have a limited effect, as they only apply in the territory of a single Member State and do not effectively capture situations that involve more than one Member State. Furthermore, the national rules that apply in this field significantly differ across the Union while some Member States have no rules at all, to tackle the misuse of undertakings with no or minimal substance for tax purposes.

- (2) It is acknowledged that undertakings with no minimal substance may be set up in a Member State with the main objective of obtaining a tax advantage, notably by eroding the tax base of another Member State, **creating a window of opportunity for aggressive tax planning**. While some Member States have developed a legislative or administrative framework to protect their tax base from such schemes, the relevant rules often have a limited effect, as they only apply in the territory of a single Member State and do not effectively capture situations that involve more than one Member State. Furthermore, the national rules that apply in this field significantly differ across the Union while some Member States have no rules at all, to tackle the misuse of undertakings with no or minimal substance for tax purposes. **It is therefore important to create a Union-wide legal approach to ensuring a framework for safeguarding the integrity of the internal market, fully respecting the highest standards of accessibility, simplicity and transparency.**

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**Amendment 6**  
**Proposal for a directive**

**Recital 3**

*Text proposed by the Commission*

- (3) It is necessary to lay down a common framework, in order to strengthen Member States' resilience against practices of tax avoidance and evasion linked to the use of undertakings which do not perform an economic activity even if presumably they are engaged with economic activity and therefore do not have any or have only minimal substance for tax purposes. This is done in order to ensure that undertakings lacking minimal substance are not used as instruments of tax evasion or tax avoidance. As those undertakings may be established in one Member State but may be used with the effect of eroding the tax base of another Member State, it is critical to agree on a common set of rules for determining what should be considered as insufficient substance for tax purposes in the internal market as well as for delineating specific tax consequences linked to such insufficient substance. Where an undertaking has been found to have sufficient substance under this Directive, this should not prevent the Member States from continuing to operate anti-tax avoidance and evasion rules, provided that these are consistent with Union law.

*Amendment*

- (3) It is necessary to lay down a common framework, in order to strengthen Member States' resilience against practices of tax avoidance and evasion linked to the use of undertakings which do not perform an economic activity even if presumably they are engaged with economic activity and therefore do not have any or have only minimal substance for tax purposes. This is done in order to ensure that undertakings lacking minimal substance are not used as instruments of tax evasion or tax avoidance. As those undertakings may be established in one Member State but may be used with the effect of eroding the tax base of another Member State, it is critical to agree on a common set of rules for determining what should be considered as insufficient substance for tax purposes in the internal market as well as for delineating specific tax consequences linked to such insufficient substance. Where an undertaking has been found to have sufficient substance under this Directive, this should not prevent the Member States from continuing to operate **more stringent minimum substance rules and other** anti-tax avoidance and evasion rules, provided that these are consistent with Union law.

**Amendment 7**  
**Proposal for a directive**  
**Recital 3 a (new)**

*Text proposed by the Commission*

*Amendment*

- (3a) **To achieve the aims of this Directive, increasing the capacity of tax administrations and improving the exchange of information across the Union is of the utmost importance. It is necessary that Member States share the relevant information to which they have access, implement systems supporting the exchange of that information and, as a final step, enforce proposed sanctions against non-complying entities. In support of this Directive, the Commission should suggest specific activities within the Fiscalis programme.**

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**Amendment 8**  
**Proposal for a directive**

**Recital 4**

*Text proposed by the Commission*

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- (4) To ensure a comprehensive approach, the rules should apply to **all** undertakings in the Union which are taxable in a Member State, regardless of their legal form and status, as long as they have their residence for tax purposes in a Member State and are eligible to obtain a certificate of tax residence in that Member State.

*Amendment*

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- (4) To ensure a comprehensive **and proportionate** approach, the rules should apply to undertakings in the Union which are taxable in a Member State, regardless of their legal form and status, as long as they have their residence for tax purposes in a Member State and are eligible to obtain a certificate of tax residence in that Member State. ***That broad scope is mitigated by a set of standards regarding the economic activity of the undertakings included in the scope of this Directive.***

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**Amendment 9**  
**Proposal for a directive**

**Recital 5**

*Text proposed by the Commission*

- (5) To ensure the proper functioning of the internal market, the proportionality and effectiveness of potential rules, it would be desirable to limit their scope to undertakings which are at risk of being found to lack minimal substance and used **with the main objective of obtaining** a tax advantage. It would therefore be important to establish a gateway criterion, in the form of a set of three cumulative, indicative conditions, in order to conclude which undertakings are sufficiently at risk as aforementioned to justify that they be subjected to reporting requirements. A first condition should enable the identification of undertakings presumably engaged mainly in geographically mobile economic activities, as the place where such activities are actually carried out is usually more challenging to identify. Such activities normally give rise to important passive income flows. Hence, undertakings, which income consists predominantly of passive income flows would meet this condition. It should also be taken into account that entities holding assets for private use, such as real estate, yachts, jets, **artworks**, or equity alone, may have no income for longer periods of time, but still enable significant tax benefits by way of owning those assets. As purely domestic situations would not pose a risk for the good functioning of the internal market and would be best addressed at domestic level, a second condition should focus on undertakings engaged in cross-border activities. Engagement in cross-border activities should be established having regard, on the one hand, to the nature of the transactions of the undertaking, domestic or foreign, and on the other, to its property, given that entities that only hold assets for private, **non-business**, use may not engage in transactions for a considerable time. Additionally, a third condition should point out to those undertakings which have no or inadequate own resources to perform core management activities. In this regard, undertakings that do not have adequate own resources tend to engage third party providers of

*Amendment*

- (5) To ensure the proper functioning of the internal market, the proportionality and effectiveness of potential rules, it would be desirable to limit their scope to undertakings which are at risk of being found to lack minimal substance and used **mainly to obtain** a tax advantage. It would therefore be important to establish a gateway criterion, in the form of a set of three cumulative, indicative conditions, in order to conclude which undertakings are sufficiently at risk as aforementioned to justify that they be subjected to reporting requirements. **Undertakings should carry out the gateway test by themselves in the form of a self-assessment.** A first condition should enable the identification of undertakings presumably engaged mainly in geographically mobile economic activities, as the place where such activities are actually carried out is usually more challenging to identify. Such activities normally give rise to important passive income flows. Hence, undertakings, which income consists predominantly of passive income flows would meet this condition. It should also be taken into account that entities holding assets for private use, such as real estate, yachts, jets, **art**, or equity alone, may have no income for longer periods of time, but still enable significant tax benefits by way of owning those assets. As purely domestic situations would not pose a risk for the good functioning of the internal market and would be best addressed at domestic level, a second condition should focus on undertakings engaged in cross-border activities. Engagement in cross-border activities should be established having regard, on the one hand, to the nature of the transactions of the undertaking, domestic or foreign, and on the other, to its property, given that entities that only hold assets for private use may not engage in transactions for a considerable time. Additionally, a third condition should point out to those undertakings which have no or inadequate own resources to perform core management activities. In this regard, undertakings that do not have adequate own resources tend to engage third

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*Text proposed by the Commission*

administration, management, correspondence and legal compliance services or enter into relevant agreements with associated enterprises for the supply of such services in order to set up and maintain a legal and tax presence. Outsourcing of certain ancillary services only, such as bookkeeping services **alone**, while core activities remain with the undertaking, would not suffice in itself for an undertaking to meet this condition. While such service providers might be regulated for other, non-tax purposes, their obligations for such other purposes cannot always mitigate the risk that they enable the set up and maintenance of undertakings misused for tax avoidance and evasion practices.

*Amendment*

party providers of administration, management, correspondence and legal compliance services or enter into relevant agreements with associated enterprises for the supply of such services in order to set up and maintain a legal and tax presence. Outsourcing of certain ancillary services only, such as bookkeeping services, while core activities remain with the undertaking, would not suffice in itself for an undertaking to meet this condition. While such service providers might be regulated for other, non-tax purposes, their obligations for such other purposes cannot always mitigate the risk that they enable the set up and maintenance of undertakings misused for tax avoidance and evasion practices.

**Amendment 10****Proposal for a directive****Recital 6***Text proposed by the Commission*

- (6) It **would be fair** to exclude from the envisaged rules undertakings whose activities are subject to an adequate level of transparency and therefore do not present a risk of lacking substance for tax purposes. Companies having a transferable security admitted to trading or listed on a regulated market or multilateral trading facility as well as certain financial undertakings which are heavily regulated in the Union, directly or indirectly, and subject to increased transparency requirements and supervision, should equally be excluded from the scope of this Directive. Pure holding undertakings which are situated in the same jurisdiction as the operational subsidiary and their beneficial owner(s) are not likely to serve the objective of obtaining a tax advantage either. Similar is the case of sub-holding undertakings which are situated in the same jurisdiction as their shareholder or ultimate parent entity. On this basis, they should also be excluded. **Undertakings that engage an adequate number of persons, full-time and exclusively, in order to carry out their activities should equally not be considered to lack minimal substance. While they are not reasonably expected to pass the gateway criterion, they should be excluded explicitly for purposes of legal certainty.**

*Amendment*

- (6) It **is fair and proportionate** to exclude from the envisaged rules undertakings whose activities are subject to an adequate level of transparency **and tax supervision** and therefore do not present a risk of lacking substance for tax purposes. Companies having a transferable security admitted to trading or listed on a regulated market or multilateral trading facility as well as certain financial undertakings which are heavily regulated in the Union, directly or indirectly, and subject to increased transparency requirements and supervision, should equally be excluded from the scope of this Directive. Pure holding undertakings which are situated in the same jurisdiction as the operational subsidiary and their beneficial owner(s) are not likely to serve the objective of obtaining a tax advantage either. Similar is the case of sub-holding undertakings which are situated in the same jurisdiction as their shareholder or ultimate parent entity. On this basis, they should also be excluded. **That exclusion applies expressly to undertakings that are regulated or presenting little risk of lacking substance. The exclusion should be seen as entity-by-entity and not broadened to cover a whole group.**



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**Amendment 11**  
**Proposal for a directive**

**Recital 8**

*Text proposed by the Commission*

- (8) To facilitate implementation of this Directive, undertakings at risk of being found to lack substance and used with the main objective of obtaining a tax advantage should declare, in their annual tax return, that they possess a minimum level of resources **such as** people and premises in the Member State of tax residence and provide documentary evidence if that is the case. While it is recognised that different activities may require a different level or type of resources, a common minimum level of resources would be expected under all circumstances. This assessment should solely aim at identifying the substance of undertakings for tax purposes and does not question the role that ‘trust or company service providers’, as defined in Directive (EU) 2015/849 of the European Parliament and of the Council <sup>(12)</sup>, have in the identification of money laundering, its predicate offences and terrorist financing. Conversely, the absence of a minimum level of resources may be considered to indicate a lack of substance where an undertaking is already at risk of being found to lack substance for tax purposes. To ensure compatibility with relevant international standards, a common minimum level should draw on the existing Union and international standards on substantial economic activity in the context of preferential tax regimes or in the absence of corporate taxation <sup>(13)</sup>, as developed in the context of the Forum on Harmful Tax Practices. It is necessary to provide for submission of documentary evidence with the tax return in support of the declaration of the undertaking that it disposes a minimum of resources. It is also necessary in order to allow the administration to form a view based on the facts and circumstances of the undertaking and decide whether to initiate an audit procedure.

*Amendment*

- (8) To facilitate implementation of this Directive, undertakings **included in the scope of this Directive and** at risk of being found to lack substance and used with the main objective of obtaining a tax advantage should declare, in their annual tax return, that they possess a minimum level of resources, **namely**, people and premises in the Member State of tax residence, and provide documentary evidence if that is the case. **The requirement relating to premises in a Member State should take into account the growing prevalence of remote working, for which legitimate enterprises downscale their premises and move away from retaining exclusive premises.** While it is recognised that different activities may require a different level or type of resources, a common minimum level of resources would be expected under all circumstances. This assessment should solely aim at identifying the substance of undertakings for tax purposes and does not question the role that ‘trust or company service providers’, as defined in Directive (EU) 2015/849 of the European Parliament and of the Council <sup>(12)</sup>, have in the identification of money laundering, its predicate offences and terrorist financing. Conversely, the absence of a minimum level of resources may be considered to indicate a lack of substance where an undertaking is already at risk of being found to lack substance for tax purposes. To ensure compatibility with relevant international standards, a common minimum level should draw on the existing Union and international standards on substantial economic activity in the context of preferential tax regimes or in the absence of corporate taxation <sup>(13)</sup>, as developed in the context of the Forum on Harmful Tax Practices. It is necessary to provide for submission of documentary evidence with the tax return in support of the declaration of the undertaking that it disposes a minimum of resources. It is also necessary in order to allow the administration to form a view based on the facts and circumstances of the undertaking and decide whether to initiate an audit procedure.

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*Text proposed by the Commission*

- (<sup>12</sup>) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).
- (<sup>13</sup>) General Secretariat of the Council, 9637/18 FISC 241 ECOFIN 555, Code of Conduct (Business Taxation), Guidance on the interpretation of the third criterion; OECD/G20 Base Erosion and Profit Shifting Project, Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5: Final Report.

*Amendment*

- (<sup>12</sup>) Directive (EU) 2015/849 of the European Parliament and of the Council of 20 May 2015 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, amending Regulation (EU) No 648/2012 of the European Parliament and of the Council, and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC (OJ L 141, 5.6.2015, p. 73).
- (<sup>13</sup>) General Secretariat of the Council, 9637/18 FISC 241 ECOFIN 555, Code of Conduct (Business Taxation), Guidance on the interpretation of the third criterion; OECD/G20 Base Erosion and Profit Shifting Project, Countering Harmful Tax Practices More Effectively, Taking into Account Transparency and Substance, Action 5: Final Report.

**Amendment 12****Proposal for a directive****Recital 9***Text proposed by the Commission*

- (9) To ensure tax certainty, it is imperative to lay down common rules on the content of undertakings' declarations. Undertakings that pass the gateway criterion and are consequently subject to reporting requirements should be presumed not to have sufficient substance for tax purposes if they also declare not to possess one or more of the elements that cumulatively constitute a minimum level of substance, or do not provide the required supporting evidence. Undertakings that declare to possess all the elements of the minimum level of substance and provide the required supporting documentation should instead be presumed to have minimal substance for tax purposes and should incur no further obligations and consequences under this Directive. This, however, should be without prejudice to any applicable law and the right of the administration to perform an audit, including on the basis of the supporting documentation, **and possibly, arrive at a different conclusion.**

*Amendment*

- (9) To ensure tax certainty **and stability**, it is imperative to lay down common rules on the content of undertakings' declarations. Undertakings that pass the gateway criterion and are consequently subject to reporting requirements should be presumed not to have sufficient substance for tax purposes if they also declare not to possess one or more of the elements that cumulatively constitute a minimum level of substance, or do not provide the required supporting evidence. Undertakings that declare to possess all the elements of the minimum level of substance and provide the required supporting documentation should instead be presumed to have minimal substance for tax purposes and should incur no further obligations and consequences under this Directive. This, however, should be without prejudice to any applicable law and the right of the administration to perform an audit, including on the basis of the supporting documentation. **In order to allow Member States to allocate the resources of their tax administrations efficiently, Member States should be able to determine a period during which the undertaking is presumed to have minimum substance, provided that the factual and legal circumstances of the undertaking remain unchanged during that period.**

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**Amendment 13**  
**Proposal for a directive**

**Recital 10**

*Text proposed by the Commission*

- (10) ***It is recognised that*** whether an undertaking is actually performing economic activities for tax purposes or serves mainly tax avoidance or evasion purposes is ultimately a matter of facts and circumstances. This should be assessed on a case by case basis in respect of each specific undertaking. Therefore, undertakings presumed not to have minimal substance for tax purposes should be entitled to prove the contrary, including to prove that they do not serve primarily tax objectives, and rebut such presumption. After fulfilling their reporting obligations under this Directive, they should provide ***additional*** information to the administration of the Member State where they reside for tax purposes. While they may provide any additional information that they deem appropriate, it is essential to set common requirements of what may constitute appropriate additional evidence and should thus be required in all cases. Where the Member State, based on such additional evidence, considers that an undertaking has rebutted a presumption of lack of substance in a satisfactory manner, it should be able to issue a decision to certify that the undertaking has minimal substance for tax purposes in accordance with this Directive. Such decision may remain valid for the period during which factual and legal circumstances of the undertaking remain unchanged and up to **6** years from the time the decision is issued. This will allow to limit the resources allocated to cases that have been evidenced not to be a shell for the purposes of the Directive.

*Amendment*

- (10) ***The evaluation of*** whether an undertaking is actually performing economic activities relevant for tax purposes or serves mainly tax avoidance or evasion purposes, is ultimately a matter of facts and circumstances. This should be assessed on a case by case basis in respect of each specific undertaking. Therefore, undertakings presumed not to have minimal substance for tax purposes should be entitled to prove the contrary, including to prove that they do not serve primarily tax objectives, and rebut such presumption. After fulfilling their reporting obligations under this Directive, they should provide ***the necessary*** information to the administration of the Member State where they reside for tax purposes. While they may provide any additional information that they deem appropriate, it is essential to set common requirements of what may constitute appropriate additional evidence and should thus be required in all cases. Where the Member State, based on such additional evidence, considers that an undertaking has rebutted a presumption of lack of substance in a satisfactory manner, it should be able to issue a decision to certify that the undertaking has minimal substance for tax purposes in accordance with this Directive. Such decision may remain valid for the period during which factual and legal circumstances of the undertaking remain unchanged and up to **5** years from the time the decision is issued. This will allow to limit the resources allocated to cases that have been evidenced not to be a shell for the purposes of the Directive.

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**Amendment 14**  
**Proposal for a directive**

**Recital 11**

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*Text proposed by the Commission*

(11) As the objective of this Directive is to prevent tax avoidance and evasion **that are likely to flourish** through actions by undertakings without minimal substance, and in order to ensure tax certainty and enhance the proper functioning of the internal market, it is paramount to provide for a possibility of exemptions for undertakings which meet the gateway criterion but yet whose interposition has no actual advantageous impact on the overall tax position of the undertaking's group or of the beneficial owner(s). For that reason, such undertakings should be entitled to request the administration of the Member State, where they reside for tax purposes, to issue a decision which exempts them from complying with the proposed rules altogether and upfront. Such exemption should also be limited in time, to allow the administration to verify on a regular basis that the factual and legal circumstances justifying the exemption decision remain valid. At the same time a potential extended duration of such decision will allow to limit the resources allocated to cases that should be exempt from the scope of the Directive.

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*Amendment*

(11) As the objective of this Directive is to prevent tax avoidance and evasion through actions by undertakings without minimal substance, and in order to ensure tax certainty and enhance the proper functioning of the internal market, it is paramount to provide for a possibility of exemptions for undertakings which meet the gateway criterion but yet whose interposition has no actual advantageous impact on the overall tax position of the undertaking's group or of the beneficial owner(s). For that reason, such undertakings should be entitled to request the administration of the Member State where they reside for tax purposes to issue a decision which exempts them from complying with the proposed rules altogether and upfront, **without requiring the undertaking to perform the substance test, if it can prove the lack of tax benefit for the entity concerned**. Such exemption should also be limited in time, to allow the administration to verify on a regular basis that the factual and legal circumstances justifying the exemption decision remain valid. At the same time a potential extended duration of such decision will allow to limit the resources allocated to cases that should be exempt from the scope of the Directive.

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**Amendment 15**  
**Proposal for a directive**

**Recital 13**

*Text proposed by the Commission*

(13) To ensure effectiveness of the proposed framework, it is necessary to establish appropriate tax consequences for undertakings that do not have minimal substance for tax purposes. Undertakings that have crossed the gateway criterion and are presumed to be lacking substance for tax purposes while, additionally, have not provided evidence to the contrary or evidence that they do not serve the objective of obtaining a tax advantage, should not be allowed to benefit from the provisions of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, to which the Member State of their tax residence is a party and from any other agreements, including provisions in international agreements for the promotion and protection of investments, with equivalent purpose or effect. Such undertakings should not be allowed to benefit from Council Directive 2011/96/EU<sup>(14)</sup> and Council Directive 2003/49/EC<sup>(15)</sup>. To this effect, those undertakings should not be entitled to a certificate of tax residence to the extent that this serves to obtain those benefits. The Member State where the undertaking is resident for tax purposes should therefore deny to issue a certificate of tax residence. **Alternatively, that Member State should be able to issue such certificate while indicating, by means of a warning, that it should not be used by the undertaking to obtain tax benefits as above.** This denial of a certificate of tax residence, **or alternatively the issue of a special certificate of tax residence**, should not set aside the national rules of the Member State of the undertaking with regard to the tax residence and relevant obligations linked thereto. It would rather serve to communicate to other Member States, and third countries, that no relief or refund should be granted with regard to transactions involving this undertaking based on any treaty with the Member State of the undertaking or Union directives, if applicable.

<sup>(14)</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

<sup>(15)</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

*Amendment*

(13) To ensure effectiveness of the proposed framework, it is necessary to establish appropriate tax consequences for undertakings that do not have minimal substance for tax purposes. Undertakings that have crossed the gateway criterion and are presumed to be lacking substance for tax purposes while, additionally, have not provided evidence to the contrary or evidence that they do not serve the objective of obtaining a tax advantage, should not be allowed to benefit from the provisions of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, to which the Member State of their tax residence is a party and from any other agreements, including provisions in international agreements for the promotion and protection of investments, with equivalent purpose or effect. Such undertakings should not be allowed to benefit from Council Directive 2011/96/EU<sup>(14)</sup> and Council Directive 2003/49/EC<sup>(15)</sup>. To this effect, those undertakings should not be entitled to a certificate of tax residence to the extent that this serves to obtain those benefits. The Member State where the undertaking is resident for tax purposes should therefore deny to issue a certificate of tax residence **and issue a statement indicating the grounds on which the decision was based.** This denial of a certificate of tax residence should not set aside the national rules of the Member State of the undertaking with regard to the tax residence and relevant obligations linked thereto. It would rather serve to communicate to other Member States, and third countries, that no relief or refund should be granted with regard to transactions involving this undertaking based on any treaty with the Member State of the undertaking or Union directives, if applicable.

<sup>(14)</sup> Council Directive 2011/96/EU of 30 November 2011 on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (OJ L 345, 29.12.2011, p. 8).

<sup>(15)</sup> Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States (OJ L 157, 26.6.2003, p. 49).

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**Amendment 16**  
**Proposal for a directive**  
**Recital 13 a (new)**

*Text proposed by the Commission*

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*Amendment*

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- (13a) *The Commission and Member States should make sure that those tax consequences are articulated in a consistent manner with existing bilateral tax agreements concluded between Member States and third countries.*

**Amendment 17**  
**Proposal for a directive**  
**Recital 15**

*Text proposed by the Commission*

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*Amendment*

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- (15) Directive 2011/16/EU should therefore be amended accordingly.

- (15) *In light of the fact that Directive 2011/16/EU on Administrative Cooperation (DAC) laid down the rules and procedures for cooperation between Member States on the exchange of information between tax administrations of the Member States, notably the automatic exchange of information for tax purposes, this Directive should therefore be amended accordingly allowing Member States to automatically exchange the information received in the framework of this Directive.*

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**Amendment 18**  
**Proposal for a directive**

**Recital 16**

*Text proposed by the Commission*

- (16) In order to improve effectiveness, Member States should lay down penalties against the violation of the national rules that transpose this Directive. Such penalties should be effective, proportionate and dissuasive. To ensure tax certainty and a minimum level of coordination across all Member States, it is necessary to fix a minimum monetary penalty, also taking into account the situation of each specific undertaking. The envisaged rules rely on self-assessment by the undertakings **as regards** whether or not they meet the gateway criteria. To achieve effectiveness of the provisions, incentivising adequate compliance across the Union, and taking into account that a shell undertaking in one Member State may be used to erode the tax base of another Member State, it is important that any Member State has the right to request another Member State to conduct tax audits of undertakings at risk **for** not fulfilling minimum substance as defined in this Directive. **Accordingly, to reinforce effectiveness, it is essential that the requested Member State has an obligation to carry out such audit and to share information on the outcome, even where there is no finding of 'shell' entity.**

*Amendment*

- (16) In order to improve effectiveness, Member States should lay down penalties against the violation of the national rules that transpose this Directive. Such penalties should be effective, proportionate and dissuasive. To ensure tax certainty and a minimum level of coordination across all Member States, it is necessary to fix a minimum monetary penalty, also taking into account the situation of each specific undertaking. The envisaged rules rely on **a** self-assessment **performed** by the undertakings **to determine** whether or not they meet the gateway criteria. To achieve effectiveness of the provisions, incentivising adequate compliance across the Union, and taking into account that a shell undertaking in one Member State may be used to erode the tax base of another Member State, it is important that any Member State has the right to request another Member State to conduct **joint** tax audits of undertakings at risk **of** not fulfilling minimum substance as defined in this Directive. **Joint audits allow for the pooling of expertise, thereby ensuring a complete determination of the facts and promoting acceptance of the audit results. Council Directive (EU) 2021/514 <sup>(16)</sup> created a uniform framework for joint audits and therefore, in appropriate cases, they should be used.**

<sup>(16)</sup> Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (OJ L 104, 25.3.2021, p. 1).

**Amendment 19**  
**Proposal for a directive**

**Recital 18**

*Text proposed by the Commission*

- (18) In order to evaluate the effectiveness of the proposed new rules, the Commission should prepare an evaluation on the basis of the information provided by Member States and other available data. The Commission's report should be published.

*Amendment*

- (18) In order to evaluate the effectiveness of the proposed new rules, **as well as their impact on tax revenues in Member States and on the capacity of tax administrations**, the Commission should prepare an evaluation on the basis of the information provided by Member States and other available data. The Commission's report should be published **and, if appropriate, accompanied by a review with a view to increasing the effectiveness of this Directive and by a legislative proposal amending this Directive.**

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**Amendment 20****Proposal for a directive****Article 3 — paragraph 1 — point 5***Text proposed by the Commission*

(5) ‘beneficial owner’ means beneficial owner as defined in **Article 3, point (6), of Directive (EU) 2015/849 of the European Parliament and of the Council;**

*Amendment*

(5) ‘beneficial owner’ means beneficial owner as defined in **Article 2, point 22, of [please insert reference — proposal for a regulation on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing — COM(2021)0420 final];**

**Amendment 21****Proposal for a directive****Article 3 — paragraph 1 — point 6 a (new)***Text proposed by the Commission**Amendment*

(6a) ‘**tax benefit**’ means **a reduction in the obligatory liabilities of an undertaking to the government of tax residence.**

**Amendment 22****Proposal for a directive****Article 6 — paragraph 1 — subparagraph 1 — introductory part***Text proposed by the Commission*

1. Member States shall require that undertakings meeting the following criteria to report to the competent authorities of Member States in accordance with Article 7:

*Amendment*

1. Member States shall require that undertakings meeting the following **cumulative** criteria to report to the competent authorities of Member States in accordance with Article 7:

**Amendment 23****Proposal for a directive****Article 6 — paragraph 1 — subparagraph 1 — point a***Text proposed by the Commission*

(a) more than **75 %** of the revenues accruing to the undertaking in the preceding two tax years is relevant income;

*Amendment*

(a) more than **65 %** of the revenues accruing to the undertaking in the preceding two tax years is relevant income;



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**Amendment 24****Proposal for a directive****Article 6 — paragraph 1 — subparagraph 1 — point b — point i***Text proposed by the Commission*

- 
- (i) more than **60 %** of the book value of the undertaking's assets that fall within the scope of Article 4, points (e) and (f), was located outside the Member State of the undertaking in the preceding two tax years;

*Amendment*

- 
- (i) more than **55 %** of the book value of the undertaking's assets that fall within the scope of Article 4, points (e) and (f), was located outside the Member State of the undertaking in the preceding two tax years;

**Amendment 25****Proposal for a directive****Article 6 — paragraph 1 — subparagraph 1 — point b — point ii***Text proposed by the Commission*

- 
- (ii) **at least 60 %** of the undertaking's relevant income is earned or paid out via cross-border transactions;

*Amendment*

- 
- (ii) **more than 55 %** of the undertaking's relevant income is earned or paid out via cross-border transactions;

**Amendment 26****Proposal for a directive****Article 6 — paragraph 1 — subparagraph 1 — point c***Text proposed by the Commission*

- 
- (c) in the preceding two tax years, the undertaking outsourced the administration of day-to-day operations and the decision-making on significant functions.

*Amendment*

- 
- (c) in the preceding two tax years, the undertaking outsourced the administration of day-to-day operations and the decision-making on significant functions **to a third party**.

**Amendment 27****Proposal for a directive****Article 6 — paragraph 2— subparagraph 1 — introductory part***Text proposed by the Commission*

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2. By derogation from paragraph 1, Member States shall ensure that the undertakings **falling within any of the following categories** are not subject to requirements of Article 7:

*Amendment*

- 
2. By derogation from paragraph 1, Member States shall ensure that the **following** undertakings are not subject to requirements of Article 7:

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**Amendment 28****Proposal for a directive****Article 6 — paragraph 2 — subparagraph 1 — point e***Text proposed by the Commission**Amendment*

(e) undertakings with at least five own full-time equivalent employees or members of staff exclusively carrying out the activities generating the relevant income;

*deleted***Amendment 29****Proposal for a directive****Article 7 — paragraph 1 — point a***Text proposed by the Commission**Amendment*

(a) the undertaking has own premises in the Member State, **or** premises for its exclusive use;

(a) the undertaking has own premises in the Member State, premises for its exclusive use **or premises shared with entities of the same group**;

**Amendment 30****Proposal for a directive****Article 7 — paragraph 1 — point b***Text proposed by the Commission**Amendment*

(b) the undertaking has at least one own and active bank account in the Union;

(b) the undertaking has at least one own and active bank account **or e-money account** in the Union **through which the relevant income is received**;

**Amendment 31****Proposal for a directive****Article 7 — paragraph 1 — point c — point i — point 2***Text proposed by the Commission**Amendment*

(2) are **qualified and** authorised to take decisions in relation to the activities that generate relevant income for the undertaking or in relation to the undertaking's assets;

(2) are authorised to take decisions in relation to the activities that generate relevant income for the undertaking or in relation to the undertaking's assets;

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## Amendment 32

## Proposal for a directive

## Article 7 — paragraph 1 — point c — point i — point 3

Text proposed by the Commission

Amendment

(3) *actively and independently use the authorisation referred to in point (2) on a regular basis;*

deleted

## Amendment 33

## Proposal for a directive

## Article 7 — paragraph 1 — point c — point i — point 4

Text proposed by the Commission

Amendment

(4) *are not employees of an enterprise that is not an associated enterprise and do not perform the function of director or equivalent of other enterprises that are not associated enterprises;*

deleted

## Amendment 34

## Proposal for a directive

## Article 7 — paragraph 1 — point c — point ii

Text proposed by the Commission

Amendment

(ii) the majority of the full-time equivalent employees of the undertaking **are resident for tax purposes** in the Member State of the undertaking, or at no greater distance from that Member States insofar as such distance is compatible with the proper performance of their duties, and such employees are qualified to carry out the activities that generate relevant income for the undertaking.

(ii) the majority of the full-time equivalent employees of the undertaking **have their habitual residence as set out in Regulation (EC) No 593/2008** in the Member State of the undertaking, or **are** at no greater distance from that Member States insofar as such distance is compatible with the proper performance of their duties, and such employees are qualified to carry out the activities that generate relevant income for the undertaking.

## Amendment 35

## Proposal for a directive

## Article 7 — paragraph 2 — point g a (new)

Text proposed by the Commission

Amendment

(ga) *an overview of the structure of the undertaking and associated enterprises and any significant outsourcing arrangements, including the rationale behind the structure, described in the context of a standardised format;*

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**Amendment 36****Proposal for a directive****Article 7 — paragraph 2 — point g b (new)***Text proposed by the Commission**Amendment*

- (gb) a summary report of the documentary evidence submitted under this paragraph, containing in particular:**
- **a brief description of the nature of the activities of the undertaking;**
  - **the number of employees on a full-time equivalent basis;**
  - **the amount of profit or loss before and after taxes.**

**Amendment 37****Proposal for a directive****Article 8 — paragraph 1***Text proposed by the Commission**Amendment*

1. An undertaking that declares to meet all the indicators of minimum substance set out in Article 7(1) and provides the **satisfactory** supporting documentary evidence in accordance with Article 7(2) shall be presumed to have minimum substance for the tax year.

1. An undertaking that declares to meet all the indicators of minimum substance set out in Article 7(1) and provides the **required** supporting documentary evidence in accordance with Article 7(2) shall be presumed to have minimum substance for the tax year.

**Amendment 38****Proposal for a directive****Article 8 — paragraph 2***Text proposed by the Commission**Amendment*

2. An undertaking that declares not to meet one or more of the indicators set out in Article 7(1) or does not provide **satisfactory** supporting documentary evidence in accordance with Article 7(2) shall be presumed not to have minimum substance for the tax year.

2. An undertaking that declares not to meet one or more of the indicators set out in Article 7(1) or does not provide **the required** supporting documentary evidence in accordance with Article 7(2) shall be presumed not to have minimum substance for the tax year.

**Amendment 39****Proposal for a directive****Article 9 — paragraph 1***Text proposed by the Commission**Amendment*

1. Member States shall take the **appropriate** measures to allow undertakings that are presumed not to have minimum substance under Article 8(2) to rebut this presumption by providing any additional supporting evidence of the business activities which they perform to generate relevant income.

1. Member States shall take the **necessary** measures to allow undertakings that are presumed not to have minimum substance under Article 8(2) to rebut this presumption, **without undue delay and excessive administrative costs**, by providing any additional supporting evidence of the business activities which they perform to generate relevant income.

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**Amendment 40****Proposal for a directive****Article 9 — paragraph 2 — point a***Text proposed by the Commission*

- (a) a document allowing to ascertain the **commercial** rationale behind the establishment of the undertaking;

*Amendment*

- (a) a document allowing to ascertain the **business** rationale behind the establishment of the undertaking **in the Member State where the activity is performed**;

**Amendment 41****Proposal for a directive****Article 9 — paragraph 2 — point b***Text proposed by the Commission*

- (b) information about the employee profiles, **including** the level of their experience, their decision-making power in the overall organisation, role and position in the organisation chart, the type of their employment contract, their qualifications and duration of employment;

*Amendment*

- (b) information about the **full-time, part-time, and freelance** employee profiles, **namely** the level of their experience, their decision-making power in the overall organisation, role and position in the organisation chart, the type of their employment contract, their qualifications and duration of employment, **safeguarding high levels of data protection and privacy**;

**Amendment 42****Proposal for a directive****Article 9 — paragraph 3 a (new)***Text proposed by the Commission**Amendment*

- 3a. The Member State shall consider a request for the rebuttal of the presumption within a period of nine months after the introduction of the request and it shall be considered to be accepted in the absence of an answer from the Member State after the expiry of that nine-month period.**

**Amendment 43****Proposal for a directive****Article 10 — paragraph 1***Text proposed by the Commission*

1. A Member State shall take the **appropriate** measures to allow an undertaking that meets the criteria laid down in Article 6(1) to request an exemption from its obligations under this Directive if the existence of the undertaking does not reduce the tax liability of its beneficial owner(s) or of the group, as a whole, of which the undertaking is a member.

*Amendment*

1. A Member State shall take the **necessary** measures to allow an undertaking that meets the criteria laid down in Article 6(1) to request, **without undue delay and excessive administrative costs**, an exemption from its obligations under this Directive if the existence of the undertaking does not reduce the tax liability of its beneficial owner(s) or of the group, as a whole, of which the undertaking is a member.

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**Amendment 44****Proposal for a directive****Article 10 — paragraph 2***Text proposed by the Commission*

2. A Member State may grant that exemption for one tax year if the undertaking provides sufficient and objective evidence that its interposition does not lead to a tax benefit for its beneficial owner(s) or the group as a whole, as the case may be. That evidence shall include information about the structure of the group and its activities. That evidence shall allow to compare the amount of overall tax due by the beneficial owner(s) or the group as a whole, as the case may be, having regard to the interposition of the undertaking, with the amount that would be due under the same circumstances in the absence of the undertaking.

*Amendment*

2. A Member State may grant that exemption for one tax year if the undertaking provides sufficient and objective evidence that its interposition does not lead to a tax benefit for its beneficial owner(s) or the group as a whole, as the case may be. That evidence shall include information about the structure of the group and its activities, **including a list of its employees working on full-time equivalence**. That evidence shall allow to compare the amount of overall tax due by the beneficial owner(s) or the group as a whole, as the case may be, having regard to the interposition of the undertaking, with the amount that would be due under the same circumstances in the absence of the undertaking.

**Amendment 45****Proposal for a directive****Article 10 — paragraph 3 a (new)***Text proposed by the Commission**Amendment*

**3a. A Member State shall consider the exemption request within a period of nine months after the introduction of the request and it shall be considered to be accepted in the absence of an answer from the Member State after the expiry of the nine-month period.**

**Amendment 46****Proposal for a directive****Article 12 — paragraph 1 — introductory part***Text proposed by the Commission*

Where an undertaking does not have minimum substance for tax purposes in the Member State where it is resident for tax purposes, that Member State shall **take any of the following decisions**:

*Amendment*

Where an undertaking does not have minimum substance for tax purposes in the Member State where it is resident for tax purposes, that Member State shall **deny any request for a certificate of tax residence to the undertaking for use outside the jurisdiction of that Member State**.

**Amendment 47****Proposal for a directive****Article 12 — paragraph 1 — point a***Text proposed by the Commission*

**(a) deny a request for a certificate of tax residence to the undertaking for use outside the jurisdiction of this Member State;**

*Amendment***deleted**

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**Amendment 48****Proposal for a directive****Article 12 — paragraph 1 — point b**

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*Text proposed by the Commission*

(b) *grant a certificate of tax residence which prescribes that the undertaking is not entitled to the benefits of agreements and conventions that provide for the elimination of double taxation of income, and where applicable, capital, and of international agreements with a similar purpose or effect and of Articles 4, 5 and 6 of Directive 2011/96/EU and Article 1 of Directive 2003/49/EC.*

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*Amendment*

*deleted*

**Amendment 49****Proposal for a directive****Article 12 — paragraph 1 a (new)**

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*Text proposed by the Commission*

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*Amendment*

*When denying a request for such certificate, the Member State shall issue an official statement duly justifying such decision and prescribing that the undertaking is not entitled to the benefits of agreements and conventions that provide for the elimination of double taxation of income, and, where applicable, capital, or of international agreements with a similar purpose or effect and of Articles 4, 5 and 6 of Directive 2011/96/EU and Article 1 of Directive 2003/49/EC.*

**Amendment 50****Proposal for a directive****Article 12 — paragraph 1 b (new)**

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*Text proposed by the Commission*

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*Amendment*

*In cooperation with Member States, the Commission shall ensure that those tax consequences are well articulated in relation to existing bilateral tax agreements with third countries so that they receive the information on the presumed shell companies.*

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**Amendment 51**

**Proposal for a directive**

**Article 13 — paragraph 1 — point 2**

Directive 2011/16/EU

Article 8ad — paragraph 4 — point b

*Text proposed by the Commission*

(b) the VAT number, where available, of the undertaking required to report pursuant to Article 6 of Directive [OP];

*Amendment*

(b) ***In the case of lack of TIN***, the VAT number, where available, of the undertaking required to report pursuant to Article 6 of Directive [OP].

**Amendment 52**

**Proposal for a directive**

**Article 13 — paragraph 1 — point 2**

Directive 2011/16/EU

Article 8ad — paragraph 4 — point g

*Text proposed by the Commission*

(g) summary of the evidence provided by the undertaking in accordance with Article 7(2).

*Amendment*

(g) summary of ***the declaration, and where appropriate***, the evidence provided by the undertaking in accordance with Article 7(2).

**Amendment 53**

**Proposal for a directive**

**Article 13 — paragraph 1 — point 2**

Directive 2011/16/EU

Article 8ad — paragraph 6 a (new)

*Text proposed by the Commission*

*Amendment*

***6a. Where, in accordance with paragraphs 1, 2 or 3, the competent authority of a Member State identifies other Member States likely to be concerned by the reporting of the undertaking, the communication referred to in those paragraphs shall include a specific alert to those Member States deemed to be concerned.***



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**Amendment 54**  
**Proposal for a directive**  
**Article 14 — paragraph 2**

*Text proposed by the Commission*

Member States shall ensure that those penalties include an administrative pecuniary sanction of at least **5 %** of the undertaking's **turnover** in the relevant tax year, if the undertaking that is required to report pursuant to Article 6 does not comply with such requirement for a tax year within the prescribed deadline **or** makes a false declaration in the tax return under Article 7.

*Amendment*

Member States shall ensure that those penalties include an administrative pecuniary sanction of at least **2 %** of the undertaking's **revenue** in the relevant tax year, if the undertaking that is required to report pursuant to Article 6 does not comply with such requirement for a tax year within the prescribed deadline **and an administrative pecuniary sanction of at least 4 % of the undertaking's revenue if the undertaking that is required to report pursuant to Article 6 makes a false declaration in the tax return under Article 7. In case of an undertaking with zero or low revenue, defined as being below a threshold determined by the national tax authority and not falling below a minimum threshold set by the Commission in an implementing act, the penalty should be based on the total assets of the undertaking.**

**Amendment 55**  
**Proposal for a directive**  
**Article 14 — paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

**The implementing act referred to in the second subparagraph shall be adopted in accordance with the examination procedure referred to in Article 18a.**

**Amendment 56**  
**Proposal for a directive**  
**Article 15 — title**

*Text proposed by the Commission*

*Amendment*

Request for tax audits

Request for **joint** tax audits

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**Amendment 57****Proposal for a directive****Article 15 — paragraph 1***Text proposed by the Commission*

Where the competent authority of one Member State has reason to believe that an undertaking which is resident for tax purposes in another Member State has not met its obligations under this Directive, the former Member State may request the competent authority of the latter to conduct a tax audit of the undertaking.

*Amendment*

Where the competent authority of one Member State has reason to believe that an undertaking which is resident for tax purposes in another Member State has not met its obligations under this Directive, the former Member State may, **specifying such reasons**, request the competent authority of the latter to conduct a **joint** tax audit of the undertaking **following the procedures laid down in Article 12a of Council Directive (EU) 2021/514** <sup>(17)</sup>.

<sup>(17)</sup> Council Directive (EU) 2021/514 of 22 March 2021 amending Directive 2011/16/EU on administrative cooperation in the field of taxation (OJ L 104, 25.3.2021, p. 1).

**Amendment 58****Proposal for a directive****Article 15 — paragraph 2***Text proposed by the Commission*

The competent authority of the requested Member State shall initiate **it** within one month from the date of receipt of the request and conduct **the tax audit**, in accordance with the rules governing tax audits in the requested Member State.

*Amendment*

**If the requesting competent authority is not able to conduct a joint tax audit due to legal reasons**, the competent authority of the requested Member State shall initiate **a national audit** within one month from the date of receipt of the request and conduct **it**, in accordance with the rules governing tax audits in the requested Member State.

**Amendment 59****Proposal for a directive****Article 16 — paragraph 1 — point f***Text proposed by the Commission*

(f) number of audits to undertakings that meet the conditions laid down in Article 6(1),

*Amendment*

(f) number of audits to undertakings that meet the conditions laid down in Article 6(1), **broken down into joint audits and regular audits**,

**Amendment 60****Proposal for a directive****Article 17– title***Text proposed by the Commission***Reports***Amendment***Review**

Tuesday 17 January 2023

**Amendment 61****Proposal for a directive****Article 17 — paragraph 1**

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*Text proposed by the Commission*

1. By **31 December 2028**, the Commission shall **present** a report to the European Parliament and the Council on the implementation of this Directive.

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*Amendment*

1. By ... [*five years after date of transposition of this Directive*] the Commission shall **submit** a report to the European Parliament and the Council on the implementation **and operation** of this Directive. **Where appropriate, the report shall be accompanied by a review with a view to increasing the effectiveness of this Directive and a legislative proposal amending this Directive.**

**Amendment 62****Proposal for a directive****Article 17 — paragraph 1 a (new)**

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*Text proposed by the Commission*

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*Amendment*

**1a. The report shall review and assess the impact of this Directive on tax revenues in Member States, on tax administration's capacities and in particular, whether there is a need to amend this Directive. The report shall also assess whether it would be appropriate to add a substance indicator based on pre-tax profit per employee in Article 7 and to extend the obligation to report on indicators of minimum substance for tax purposes set out in that Article to regulated financial undertakings and, if necessary, review the exemption granted to them in Article 6 (2b).**

**Amendment 63****Proposal for a directive****Article 17 — paragraph 2**

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*Text proposed by the Commission*

2. When drawing up the report, the Commission shall take into account the information communicated by the Member States pursuant to Article **15**.

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*Amendment*

2. When drawing up the report, the Commission shall take into account the information communicated by the Member States pursuant to Article **16**.

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**Amendment 64**  
**Proposal for a directive**  
**Article 18 a (new)**

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*Text proposed by the Commission*

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*Amendment*

**Article 18a**

**Committee procedure**

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