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Corporate tax avoidance: Council agrees its position on hybrid mismatches

On 21 February 2017, the Council agreed its position on rules aimed at **closing down** 'hybrid mismatches' with the tax systems of **third countries**.

The draft directive is the latest of a number of measures designed to prevent tax avoidance by large companies.

It seeks to prevent them from exploiting disparities between two or more tax jurisdictions to reduce their overall tax liability. Such arrangements can result in a substantial erosion of the taxable bases of corporate taxpayers in the EU.

The directive will contribute to implementation of 2015 **OECD recommendations** addressing corporate tax base erosion and profit shifting.

> *"The EU is at the forefront of the fight against tax avoidance. We want to ensure **coherent implementation** in EU law of the OECD's BEPS action plan."*
>
> *Edward Scicluna, Minister for Finance of Malta, and President of the Council.*

The proposal addresses hybrid mismatches with regard to non-EU countries, given that intra-EU disparities are already covered by the 'anti-tax-avoidance directive' adopted in July 2016. It complements and amends that directive accordingly.

The Council reached a compromise on the following issues:

- for **hybrid regulatory capital**, a carve-out from the rules is established for the banking sector. The carve-out will be limited in time, and the Commission will be asked to present a report assessing the consequences;
- for **financial traders**, a delimited approach is followed in line with that followed by the OECD;
- as regards **implementation**, a longer timeline is foreseen than that set for the July 2016 directive. Implementation is set for **1 January 2020** (one year later), and for 1 January 2022 as concerns one specific provision.

Next steps

The directive is one of a package of corporate taxation proposals presented by the Commission in October 2016.

Agreement was reached at a meeting of the Economic and Financial Affairs Council. The Council will adopt the directive once the **European Parliament** has given its opinion.

Member states will have until 31 December 2019 to transpose the directive into national laws and regulations.

The directive requires unanimity within the Council, after consulting the Parliament. (Legal basis: article 115 of the Treaty on the Functioning of the European Union.)

- February 2017 draft directive on hybrid mismatches with third countries

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