



# Euro Tax Flash from KPMG's EU Tax Centre



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## **Council adopts new anti-hybrid rules at meeting of May 29, 2017**

**Council of the EU — Anti-Tax Avoidance Directive 2 - Third country hybrids**

At a meeting of the Competitiveness Council on May 29, 2017, the Council of the EU unanimously adopted, without discussion, a [Council Directive](#) amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries (Anti-Tax Avoidance Directive – “ATAD2” or “Directive”) . This follows an agreement reached by the ECOFIN Council at a meeting on February 21, 2017 (see [ETF 314](#)), and an [opinion](#) rendered by the European Parliament on April 27, 2017.

## **Background**

Hybrid mismatches occur due to disparities between the tax treatment of certain income or entities in different countries. Building on its work on preventing hybrid mismatches between EU Member States (established in the form of the EU Anti-Tax Avoidance Directive (ATAD1) adopted in July 2016; see [ETF 289](#)), on October 25, 2016 the Commission put forward a proposal to tackle arrangements that involve third countries as part of its corporate tax package (see [ETF 303](#)) .

The EU Member States discussed the ATAD2 proposal during a meeting of the Economic and Financial Affairs Council (ECOFIN) on December 6, 2016, but did not reach agreement (see [ETF 306](#)). After a substantive examination of the carve-out options for hybrid regulatory capital in the

banking sector and financial traders involving hybrid transfers, on February 21, 2017, the ECOFIN reached agreement on the [Presidency compromise text](#) on the Commission's proposal on ATAD2 (see [ETF 314](#)).



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## Anti-Tax Avoidance Directive 2 - hybrid mismatches with third countries

The final text of the ATAD2 is consistent with the compromise text agreed by the Council in February 2017 and does not contain any substantive changes.

The main recommendations proposed by the European Parliament in its [opinion](#) of April 27, 2017, including extending the scope to hybrid mismatch arrangements exploited by two taxpayers that are not associated enterprises, though taken into consideration by the Council, were not adopted.

In line with the compromise agreement in February, the adopted Directive includes a carve-out option through to December 31, 2022, for hybrid regulatory capital in the banking sector, and a carve-out for financial traders involving hybrid transfers made in the ordinary course of business.



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## Next steps

Member States have until December 31, 2019, to adopt and publish the laws, regulations and administrative provisions necessary to implement ATAD2, and must apply those provisions as of January 1, 2020, with the exception of rules on reverse hybrid mismatches, which must be transposed into domestic law by December 31, 2021.



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## EU Tax Centre comment

The adoption of ATAD2 represents the EU's commitment to combat tax avoidance through exploitation of hybrid mismatches between Member States and third countries. The practical implications for existing and future arrangements will need to be carefully examined after the Directive is transposed into national law.

Should you have any queries, please do not hesitate to contact [KPMG's EU Tax Centre](#), or, as appropriate, your local KPMG tax advisor.





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