

# Procedure file

| Basic information  |                                |                     |
|--|--------------------------------|---------------------|
| CNS - Consultation procedure Directive                           | <a href="#">2016/0339(CNS)</a> | Procedure completed |
| Corporate tax: hybrid mismatches with third countries            |                                |                     |
| Amending Directive (EU) 2016/1164 <a href="#">2016/0011(CNS)</a> |                                |                     |
| Subject<br>3.45.04 Company taxation                              |                                |                     |

| Key players                            |  |  |            |  |
|--|--|--|------------|--|
| European Parliament                    | Committee responsible  | Rapporteur   | Appointed  |  |
|  |  ECON Economic and Monetary Affairs             |  | 24/11/2016 |  |
|  |  |  <a href="#">LUDVIGSSON Olle</a>         |            |  |
|  |  | Shadow rapporteur  |            |  |
|  |  |  <a href="#">PIETIKÄINEN Sirpa</a>       |            |  |
|  |  |  <a href="#">RUOHONEN-LERNER Pirkko</a> |            |  |
|  |  |  <a href="#">TORVALDS Nils</a>         |            |  |
|  |  |  <a href="#">JOLY Eva</a>              |            |  |
|  | Committee for opinion  | Rapporteur for opinion   | Appointed  |  |
|  |  INTA International Trade                     | The committee decided not to give an opinion.  |            |  |
|  |  IMCO Internal Market and Consumer Protection | The committee decided not to give an opinion.  |            |  |
| Council of the European Union          | Council configuration  | Meeting  | Date       |  |
|  | <a href="#">Competitiveness (Internal Market, Industry, Research and Space)</a>  | <a href="#">3544</a>   | 30/05/2017 |  |
|  | <a href="#">Economic and Financial Affairs ECOFIN</a>  | <a href="#">3520</a>   | 21/02/2017 |  |
| European Economic and Social Committee |  |  |            |  |

| Key events |  |                               |         |
|------------|--|-------------------------------|---------|
| 25/10/2016 | Legislative proposal published             | <a href="#">COM(2016)0687</a> | Summary |
| 21/11/2016 | Committee referral announced in Parliament |                               |         |

|            |   |   |         |
|------------|---|---|---------|
| 21/02/2017 | Debate in Council   | <a href="#">3520</a>  |         |
| 27/03/2017 | Vote in committee   |   |         |
| 31/03/2017 | Committee report tabled for plenary, 1st reading/single reading | <a href="#">A8-0134/2017</a>  | Summary |
| 27/04/2017 | Results of vote in Parliament                                   |  |         |
| 27/04/2017 | Decision by Parliament  | <a href="#">T8-0135/2017</a>  | Summary |
| 30/05/2017 | Act adopted by Council after consultation of Parliament         |   |         |
| 30/05/2017 | End of procedure in Parliament                                  |   |         |
| 07/06/2017 | Final act published in Official Journal                         |   |         |

### Technical information

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|--|--|
| Procedure reference                          | 2016/0339(CNS)   |
| Procedure type                               | CNS - Consultation procedure                                     |
| Procedure subtype                            | Legislation  |
| Legislative instrument                       | Directive  |
|  | Amending Directive (EU) 2016/1164 <a href="#">2016/0011(CNS)</a> |
| Legal basis                                  | Treaty on the Functioning of the EU TFEU 115                     |
| Other legal basis                            | Rules of Procedure EP 159  |
| Mandatory consultation of other institutions | <a href="#">European Economic and Social Committee</a>           |
| Stage reached in procedure                   | Procedure completed  |
| Committee dossier                            | ECON/8/08425   |

### Documentation gateway

|   |                               |            |    |         |
|---|-------------------------------|------------|----|---------|
| Legislative proposal  | <a href="#">COM(2016)0687</a> | 25/10/2016 | EC | Summary |
| Document attached to the procedure                              | <a href="#">SWD(2016)0345</a> | 26/10/2016 | EC |         |
| Committee draft report  | <a href="#">PE597.532</a>     | 02/02/2017 | EP |         |
| Amendments tabled in committee                                  | <a href="#">PE599.858</a>     | 08/03/2017 | EP |         |
| Committee report tabled for plenary, 1st reading/single reading | <a href="#">A8-0134/2017</a>  | 31/03/2017 | EP | Summary |
| Text adopted by Parliament, 1st reading/single reading          | <a href="#">T8-0135/2017</a>  | 27/04/2017 | EP | Summary |
| Commission response to text adopted in plenary                  | <a href="#">SP(2017)363</a>   | 07/06/2017 | EC |         |

### Final act

[Directive 2017/952](#)  
[OJ L 144 07.06.2017, p. 0001](#) Summary

PURPOSE: to adopt new measures to end the exploitation, in the existing differences (hybrid mismatches) between the tax systems of Member States and those of third countries, by corporations in order to avoid tax.

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: Council may adopt the act only after consulting Parliament and with the approval of the latter.

BACKGROUND: [Council Directive \(EU\) 2016/1164](#) laying down rules against tax avoidance practices provides for a framework to tackle hybrid mismatch arrangements. These arrangements exploit differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions to achieve double non-taxation. These types of arrangements are widespread and result in a substantial erosion of the taxable bases of corporate taxpayers in the EU.

The hybrid mismatch rules in the Council Directive laying down rules against tax avoidance practices address the most widespread forms of hybrid mismatches, but only within the EU.

However, taxpayers in the EU engaged in cross-border structures involving third countries also take advantage of hybrid mismatches to reduce their overall tax liability in the EU.

Therefore, the Commission feels it necessary that hybrid mismatches involving third countries should be countered as well in order to neutralize hybrid mismatch arrangements.

The Organisation for Economic Co-operation and Development (OECD) has issued concrete action recommendations in the context of the initiative against Base Erosion and Profit Shifting (BEPS). In June 2016, the Council requested the Commission to put forward a proposal on hybrid mismatches involving third countries in order to provide for rules consistent with the rules recommended by the OECD on BEPS.

This proposed directive is part of a package that also includes the re-launch of [the proposal](#) for a common consolidated corporate tax base (CCCTB) and [a proposal](#) on a common corporate tax base (CCTB).

CONTENT: the proposal put forwards an amendment of the Anti-Tax Avoidance Directive. It sets out legally binding rules to enable Member States to effectively tackle hybrid mismatch arrangements that are not dealt with in the Anti-Tax Avoidance Directive. This Directive has the same scope as the Anti-Tax Avoidance Directive and thus aims to capture all taxpayers which are subject to corporate tax in a Member State.

The proposed directive establishes rules to combat hybrid mismatches with third countries. The new rules are limited to providing a remedy for cases of double deduction, of a deduction of a payment from the taxable base in one jurisdiction without a corresponding inclusion of that payment in the taxable base of a taxpayer in another jurisdiction.

Furthermore, the proposal includes new rules on:

- hybrid mismatches involving permanent establishments, both in their intra-EU and third-country dimension: a hybrid permanent establishment mismatch between two jurisdictions occurs where the business activities in a jurisdiction are treated as being carried on through a permanent establishment by one jurisdiction, while those activities are not treated as being carried on through a permanent establishment by another jurisdiction;
- hybrid transfers: this is an arrangement to transfer a financial instrument where the laws of two jurisdictions differ on whether the transferor or the transferee has got the ownership of the payments on the underlying asset;
- imported mismatches: these flow from arrangements involving group members, or structured arrangements in general, which shift the effect of a hybrid mismatch between parties in third countries into the jurisdiction of a Member State through the use of a non-hybrid instrument. A mismatch is imported in a Member State if a deductible payment under a non-hybrid instrument is used to fund expenditure under a structured arrangement involving a hybrid mismatch between third countries. This implies a flow of revenue out of the EU which is eventually not taxed;
- dual resident mismatches: this may result in a double deduction outcome if a payment made by a dual resident taxpayer is deducted under the laws of both jurisdictions where the taxpayer is resident.

## Corporate tax: hybrid mismatches with third countries

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The Committee on Economic and Monetary Affairs adopted, following the Parliaments consultation procedure, the report by Olle LUDVIGSSON (S&D, SE) on the proposal for a Council directive amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries.

The committee approved the Commission proposal subject to amendments.

The Commission proposal lays down measures to tackle the issue of hybrid mismatch arrangements with third countries. These arrangements exploit differences in the tax treatment of an entity or instrument under the laws of two or more tax jurisdictions to achieve double non-taxation. These types of arrangements are frequently created with the sole purpose to reduce corporate taxation, resulting in a substantial erosion of the taxable bases of corporate taxpayers in the EU. Hence, it has been necessary to lay down rules against these types of arrangements.

Members stated that it is of great importance to establish rules that neutralise hybrid mismatches and branch mismatches in a comprehensive manner. They also stressed the need to include other rules set out in the Commission proposal, such as those on hybrid transfers and imported mismatches and address the full range of double deduction outcomes, in order to prevent taxpayers from exploiting remaining loopholes.

In order to provide for a framework that is consistent with, and no less effective than, the OECD BEPS report on hybrid mismatch arrangements, it is essential that Directive (EU) 2016/1164 includes rules on hybrid transfers and imported mismatches and addresses the full range of double deduction outcomes, in order to prevent taxpayers from exploiting remaining loopholes. Those rules should be standardised and coordinated to the maximum extent possible between Member States. Member States should consider the introduction of penalties against taxpayers that exploit hybrid mismatches.

According to Members, the rules on hybrid mismatches shall apply automatically whenever a payment comes across a border having been deducted at the paying end, without having to prove a tax avoidance motive.

## Corporate tax: hybrid mismatches with third countries

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The European Parliament adopted by 591 votes to 36, with 12 abstentions, following the consultation procedure, a legislative resolution on the proposal for a Council directive amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries.

Parliament approved the Commission proposal subject to amendments.

The Commission proposal lays down measures to tackle the issue of hybrid mismatch arrangements with third countries. These mismatches, for example, allow corporations established in two jurisdictions (inside and outside the EU) to use the lack of coordination between national tax systems either to have the same expenditure deducted in both jurisdictions (so the firm enjoys a double tax deduction). Through its amendments, Parliament seeks to put an end to the practice of having income or expenditure which is treated as income or expenditure of one or more other persons under the laws of another jurisdiction.

Members stated that it is of great importance to establish rules that neutralise hybrid mismatches and branch mismatches in a comprehensive manner. They also stressed the need to include other rules set out in the Commission proposal, such as those on hybrid transfers and imported mismatches and address the full range of double deduction outcomes, in order to prevent taxpayers from exploiting remaining loopholes.

Underlying the BEPS initiative is also the declaration of G20 leaders at their meeting in Saint Petersburg on 5-6 September 2013, expressing their wish to ensure that profits are taxed where economic activities deriving the profits are performed and where value is created.

In order to provide for a framework that is consistent with, and no less effective than, the OECD BEPS report on hybrid mismatch arrangements, it is essential that Directive (EU) 2016/1164 includes rules on hybrid transfers and imported mismatches and addresses the full range of double deduction outcomes, in order to prevent taxpayers from exploiting remaining loopholes. Those rules should be standardised and coordinated to the maximum extent possible between Member States. Member States should consider the introduction of penalties against taxpayers that exploit hybrid mismatches.

According to Members, the rules on hybrid mismatches shall apply automatically whenever a payment comes across a border having been deducted at the paying end, without having to prove a tax avoidance motive. These rules should address mismatch situations which result from double deductions, conflicts in the legal characterisation of financial instruments, payments and entities, or conflicts in the allocation of payments.

The effects of hybrid mismatch arrangements should also be considered from the viewpoint of developing countries. The Union and its Member States should aim to support developing countries in tackling such effects.

## Corporate tax: hybrid mismatches with third countries

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**PURPOSE:** to prevent corporate tax avoidance by adopting rules that put an end to hybrid mismatches involving the tax regimes of third countries.

**LEGISLATIVE ACT:** Council Directive (EU) 2017/952 as regards hybrid mismatches with third countries.

**CONTENT:** the Directive aims to prevent corporate groups from exploiting the disparities between two or more tax jurisdictions to reduce their overall tax liability. To this end, it establishes rules to close down 'hybrid mismatches' with the tax systems of third countries.

Hybrid mismatches may enable a double tax deduction, this allowing certain corporations established in two jurisdictions (within and outside the EU) to reduce overall tax liability by exploiting disparities between two or more tax jurisdictions. Such arrangements can result in a substantial erosion of the taxable bases of corporate taxpayers in the EU.

The Directive amends [Directive \(EU\) 2016/1164](#) on tax avoidance, which provides for a framework to tackle the most widespread forms of hybrid mismatches, but only within the Union. It also contributes to implementation of 2015 Organisation for Economic Co-operation and Development (OECD) recommendations addressing corporate tax base erosion and profit shifting (BEPS).

The amendments made to Directive (EU) 2016/1164 include rules on:

- hybrid mismatches involving permanent establishments, both in their intra-EU and third-country dimension;
- tax residency mismatches;
- hybrid transfers;
- imported mismatches;
- reverse hybrid mismatches.

The Commission will evaluate the implementation of the Directive 5 years after its entry into force and report to the Council.

**ENTRY INTO FORCE:** 27.6.2017.

**TRANSPOSITION:** by 31.12.2019 (31 December 2021 with respect to the provision on reverse hybrid mismatches.)

**APPLICATION:** the date of implementation is 1.1.2020 and 1.1.2022 with respect to reverse hybrid mismatches.