

# European Commission Refers Luxembourg to ECJ for Failing to Correctly Transpose ATAD

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On 14 July 2023, the European Commission referred Luxembourg to the Court of Justice of the European Union (ECJ) for failing to correctly transpose provisions of the [Anti-Tax Avoidance Directive \(2016/1164\) \(ATAD\)](#).

The ATAD provides for a derogation from the measures limiting the deductibility of interest payments from the corporate tax base applicable to financial undertakings. The Directive contains an exhaustive list of entities considered as financial undertakings for this purpose. However, Luxembourg expands the derogation also to securitization entities. According to the European Commission, this goes beyond what is foreseen by the provisions of ATAD.

The European Commission sent a related letter of formal notice to Luxembourg in 2020 (see [European Commission Sends Letter of Formal Notice to Luxembourg and Portugal Regarding Implementation of EU Anti-Tax Avoidance Directive \(14 May 2020\)](#)) and a reasoned opinion in December 2021 (see [European Commission Urges Luxembourg to Correctly Transpose Interest Deduction Limitation Rules of EU Anti-Tax Avoidance Directive \(2 December 2021\)](#)).

The European Commission is of the opinion that Luxembourg's reply to the reasoned opinion is not satisfactory and that the Member State has not taken action to legislate a correction.