

## ATAD 3 - The Unshell Directive Proposal for a two-step approach

In December 2021, the European Commission released a proposal for a council Directive in line with the international tendency to prevent the misuse of the so-called *shell entities*, i.e. corporations without active business operations or significant assets.

The draft Directive has been under negotiations within the Member States since then. An amendment to the draft was presented in January 2023; nevertheless, a final agreement on the content of the Directive has not yet happened.

As a result, in order to collect the favorable vote of the majority of the Member States, the Spanish Presidency of the EU Council has suggested to implement the draft Directive through a two-step approach:

- The **first step** would involve the exchange of information on the shell entities, with reference to the substance hallmarks;
- The **second step** would involve the actual use of the exchanged information in order to apply tax consequences in line with domestic, EU and international anti-abuse rules.

According to this approach, the draft Directive would become an addendum to the Directives on Administrative Cooperation (DAC), inserting a requirement to disclose any information on shell entities between the Member States. Then, at a second stage, Member States would determine if tax consequences in the presence of shell entities should be introduced. As a result, the first step would leave to the Member States the freedom to apply their own existing anti-abuse rules to the companies that fulfill the conditions to be considered shell entities.

During a meeting of the EU countries representatives on October 4, 2023, the majority of the Member States have expressed support for the two-step approach suggested by the EU Council.

Nonetheless, Member States will still negotiate on other points of the draft Directive, e.g. entities that should be excluded from the scope of the Directive. Indeed, some Member States argue that special purpose vehicles, held by regulated financial entities, should also be excluded from the scope. Regarding this point, the EU Council has declared that more discussions will be needed.



**For further information do not hesitate to contact one of our team members who will be glad to assist you at any time:**

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