By PwC Deutschland | 24 June 2026

# ECJ: Breach of  Anti-Tax Avoidance Directive by exempting securitization companies from interest limitation?

**In her Opinion, the Advocate General suggested the European Court of Justice decide that Luxembourg has fulfilled its obligation to transpose the Anti-Tax-Avoidance-Directive (ATAD) into national law by including so called  securitization companies in the list of 'financial undertakings' for which the interest limitation rule set forth in Article 4 ATAD is not applicable.**

## Background

The European Commission had filed a lawsuit against Luxembourg because, in its view, special-purpose entities such securitization companies had been incorrectly classified as financial institutions in the relevant Luxembourg law. According to the Commission, this had resulted in these entities being exempted from certain restrictions on interest deductibility.

Luxembourg transposed the ATAD on 21 December 2018. The newly introduced Article 168a(1)(7) of the relevant Tax Act defines 'financial undertakings' in the same terms as Article 2(5) of the ATAD but added „special purpose vehicles“ as financial institutions which are excluded from the rule on the limitation of interest.

## Opinion of the Advocate General (AG)

In the AG’s view, the Court should dismiss the infringement action brought by the Commission. The Directive has not been incorrectly transposed into national law.

**Regarding “securitization companies”:** Securitization companies were not regulated at the EU level until late 2017 through the Securitization Regulation—that is, after the ATAD entered into force but before the transposition deadline set for the ATAD (December 31, 2018). These entities thus became comparable to other “financial institutions” within the meaning of Article 2(5) of the ATAD. If the review were to reveal the existence of unjustified unequal treatment in this context, the question arises as to whether it is possible to criticize the Grand Duchy of Luxembourg for having implemented the principle of equal treatment by treating securitization companies in the same manner as other financial and insurance companies referred to in Article 2(5) of the ATAD.

**The objective pursued by ATAD**, namely the minimum harmonization and uniform rules on the fight against tax avoidance practices within the internal market, does argue in favor of the exclusive competence of the EU legislature. Thus, a Member State cannot, in principle, be authorized to introduce divergent national rules outside the discretion expressly conferred on it. Nevertheless, the Member States have a margin of discretion, in particular as regards the exemption of financial undertakings from the rule on the limitation of interest provided for in Article 4 ATAD, which inevitably leads to divergent national rules. This is also in line with the requirements of the principle of proportionality, the GA said.

**Transposition into national law:** Luxembourg satisfied these requirements when transposing into national law Article 2(5) and Article 4(7) ATAD, which must be interpreted in accordance with primary law and, in particular, the principle of equal treatment. At the same time, it fulfilled his obligation to respect the fundamental right to equal treatment provided for in Article 20 of the Charter, read in conjunction with Article 51(1). The Commission cannot therefore, in the context of infringement proceedings, accuse it of

failing to fulfill its obligation to transpose those provisions or of violating Article 288(3) TFEU. For the purposes of that provision, one of the essential objectives of the transposition of a directive is precisely to ensure that the requirements of primary law are implemented.

**Finally**, Luxembourg cannot be criticized for failing to challenge the ATAD by filing an action for annulment within the time limit set forth in Article 263(6) TFEU on the grounds that the list of “financial undertakings” defined in Article 2(5) of the ATAD was not exhaustive. Indeed, on the one hand, it was exhaustive with respect to financial and insurance undertakings regulated as of the date of its adoption, and, furthermore, the Securitization Regulation was not adopted until well after the expiration of that time limit.

**Source:**

ECJ, Opinion of 18 June 2026 C-138/24 *Commission v Luxembourg*.

**Note:** At the time of publication, only a French version of the Opinion was available on the ECJ’s website.

**Keywords**

anti-avoidance, financial undertakings