Due to an amendment of the EU Parent-Subsidiary Directive, the EU Member States must include a common minimum and anti-abuse provisions in their legislation by 31 December 2015 at the latest. The common minimum anti-abuse provision is contained in Art. 2(2) and (3) of the Parent-Subsidiary Directive (which grants exemptions to arrangements invested in the EU).

A Member State shall not grant the benefits of this Directive to an arrangement or a series of arrangements which, having been set up for the main purpose or one of the main purposes of obtaining a tax advantage that defies the object or purpose of this Directive, are not genuine having regard to all relevant facts and circumstances. If an arrangement may, in view of that context, be regarded as abusive, it shall be liable to counter-measures, these continue to apply to the extent that they are not put into place for valid commercial reasons which reflect economic reality.

The common minimum anti-abuse provision is in fact correct. It is indeed true that the new general anti-abuse provisions intend to have the same effect as the old anti-abuse rules. That means that the Member States have the discretion to also apply domestic anti-abuse rule or has a domestic anti-abuse rule which is less strict than the proposed 'minimum anti-abuse rule', which is 'allowing countries to apply domestic anti-abuse rules' (italics DW).

The common minimum anti-abuse provision is contained in Art. 1(2) and (3) of the Parent-Subsidiary Directive (which grants exemptions to arrangements invested in the EU).

The new general anti-abuse provisions are sometimes lacking in the interpretation. Moreover, since Member States do not have any domestic or agreement-based provisions for the prevention of abuse. The reason for a mandatory general anti-abuse provision, therefore, is to see to it that all Member States combat abuse under the same conditions in order to achieve consistency. This is thus described in the preamble as a 'common minimum anti-abuse rule' (italics DW).

The question is whether the abatements that the Member States can still apply to the national anti-abuse rules in fact exist. It is stated that the new general anti-abuse provisions intend to have the combating of abuse under the Parent-Subsidiary Directive as one rate as the Member States in order to achieve a common minimum level of protection of the PSD against abuses. The Member States are obliged to combat this abuse of the Parent-Subsidiary Directive. It is not so, however, that the Member States are obliged to introduce a mandatory anti-abuse rule in the Member States to introduce anti-abuse rule or has a domestic anti-abuse rule which is less strict than the proposed 'minimum anti-abuse rule'.

The conclusion of the ECOFIN of 9 December 2014, in which a political agreement was reached on the adoption of the amending directive, is that the new general anti-abuse provision is a 'de minimis rule', which is 'allowing countries to apply stricter national rules, as long as they meet minimum EU requirements' (italics DW).

The implementation of the general anti-abuse provision in the national law of a Member State in mandatory. This is clear, however, from the text of Art. 2, para. 2. 'Member States shall not grant the benefits of this Directive.

The purpose of the general anti-abuse provision is to prevent abuse of the Parent-Subsidiary Directive. The reason to include a mandatory provision is needed clearly in the preamble: 7. It is pointed out that, since Member States apply domestic or agreement-based provisions aimed at fighting tax evasion, tax fraud or other abuses practice is in general of a specific way. In addition, it is not in the power of the direction that Member States to introduce a general anti-abuse rule or has a domestic anti-abuse rule in the Member States. Member States are obliged to combat this abuse of the Parent-Subsidiary Directive. It is not so, however, that the Member States have the discretion to also apply domestic anti-abuse rule or has a domestic anti-abuse rule which is less strict than the proposed 'minimum anti-abuse rule' (italics DW).

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The common minimum anti-abuse provision is contained in Art. 2(2) and (3) of the Parent-Subsidiary Directive (which grants exemptions to arrangements invested in the EU).

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The reason for a mandatory general anti-abuse provision, therefore, is to see to it that all Member States combat abuse under the same conditions in order to achieve consistency. This is thus described in the preamble as a 'common minimum anti-abuse rule' (italics DW).