

# **BDI – The Voice of German Industry**

## **Anti-Tax-Avoidance-Directive**

### **BEPS and Enforcement of EU Tax Law in the Member States IFA-Conference, Sofia**

**Berthold Welling, BDI – Federation of German Industry**

**19th May 2017**

# Agenda

## ATAD and its implementation

- ATAD – Starting point
- Anti-Tax-Avoidance Directive (ATAD)
  - Interest barrier rule
  - Exit taxation
  - GAAR - General Anti Abuse Rule
  - CFC – Controlled Foreign Corporations Regime
  - Hybrid mismatch
  - Complementary information
- Brief Outlook

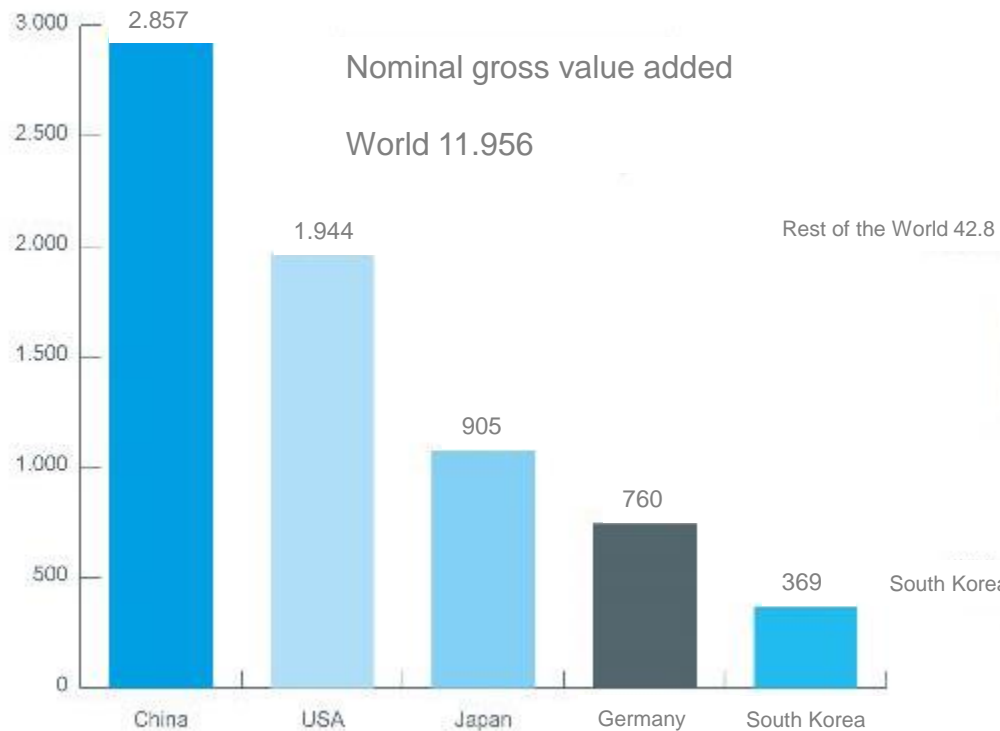
# Our 36 Member Associations



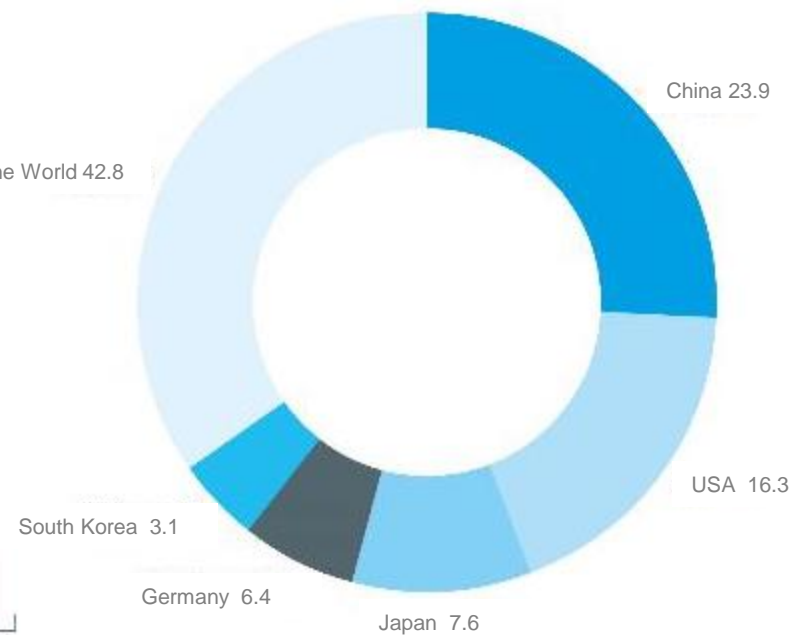
# Germany is one of the world's leading industrial nations

*Nominal Gross Value Added of Manufacturing, 2014*

In Billion US-Dollar



World share in percent



## Fourth biggest industrialised economy in the world

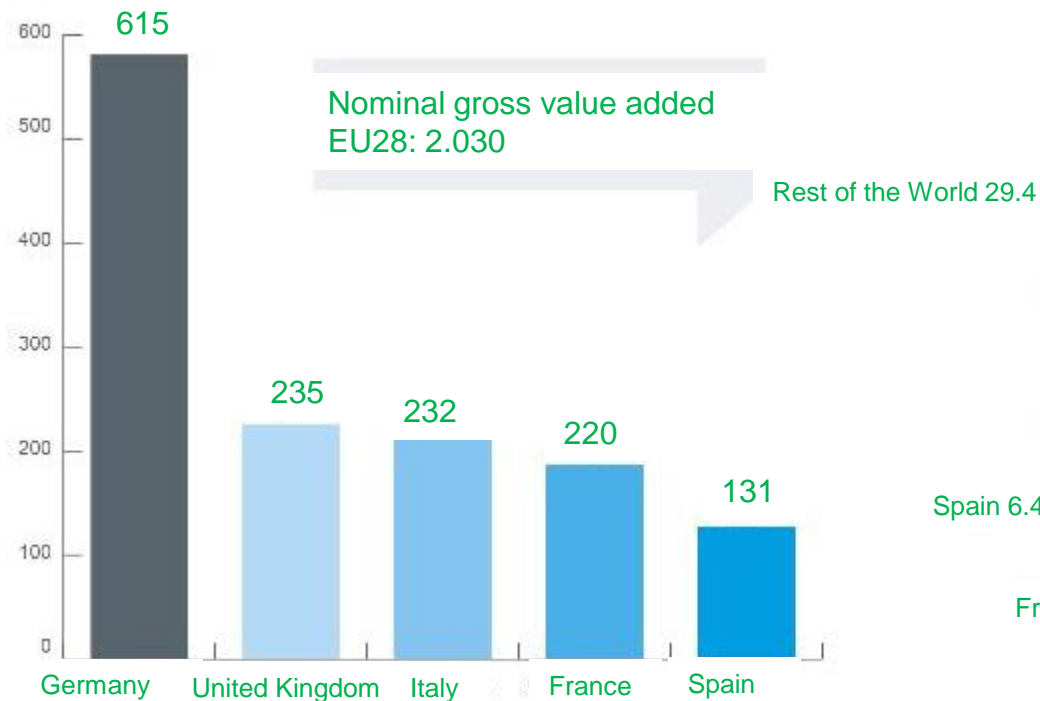
- Germany is No. 4 in global manufacturing output, 2014
- Germany's share of global production is close to 7 percent

Source: Weltbank

# Germany is Europe's leading industrial nation

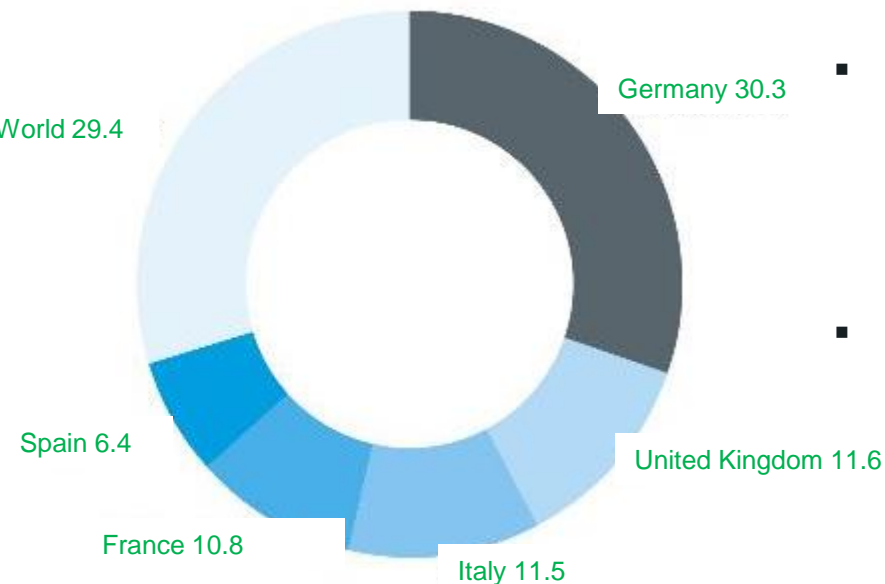
Nominal Gross Value Added of Manufacturing, 2015

In billions of Euro



Source: Eurostat

Share on EU28 in percent

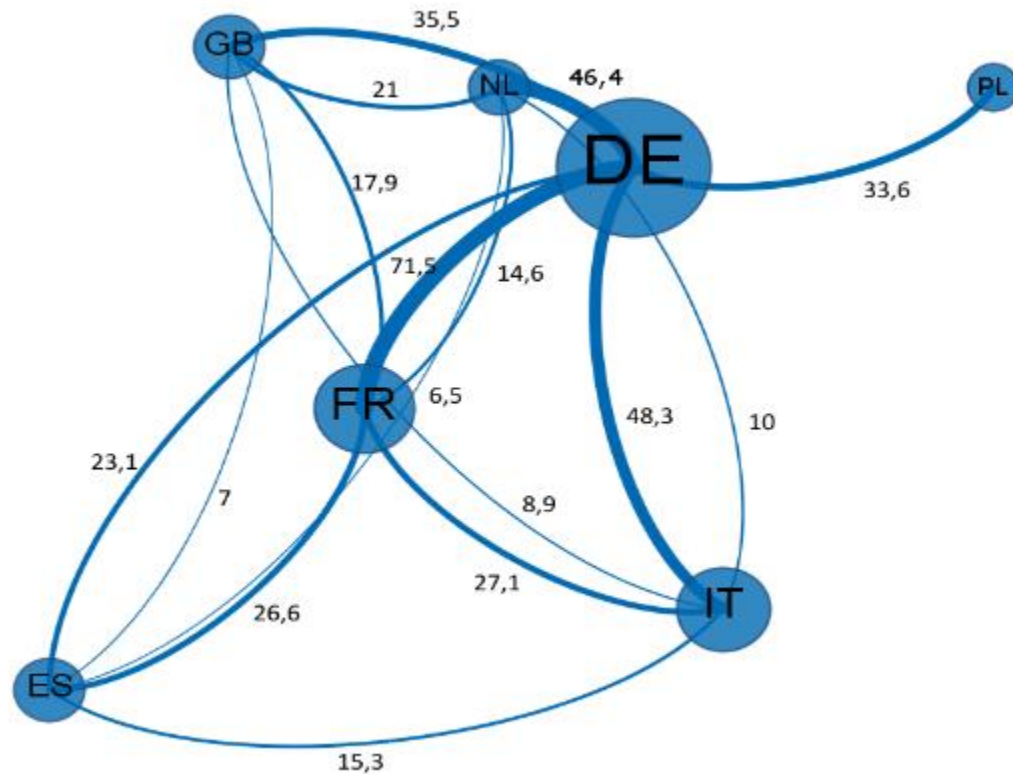


## The biggest industrial nation in Europe

- Nominal gross value added of manufacturing, 2015
- Germany's share in Europe is about one third and about as much as the combined output of France, Italy and the UK combined
- UK is second largest manufacturing hub

# German industry: Big Player in Europe

*Bilateral advance payments account for Manufacturing Industry in billions of euros, 2011*

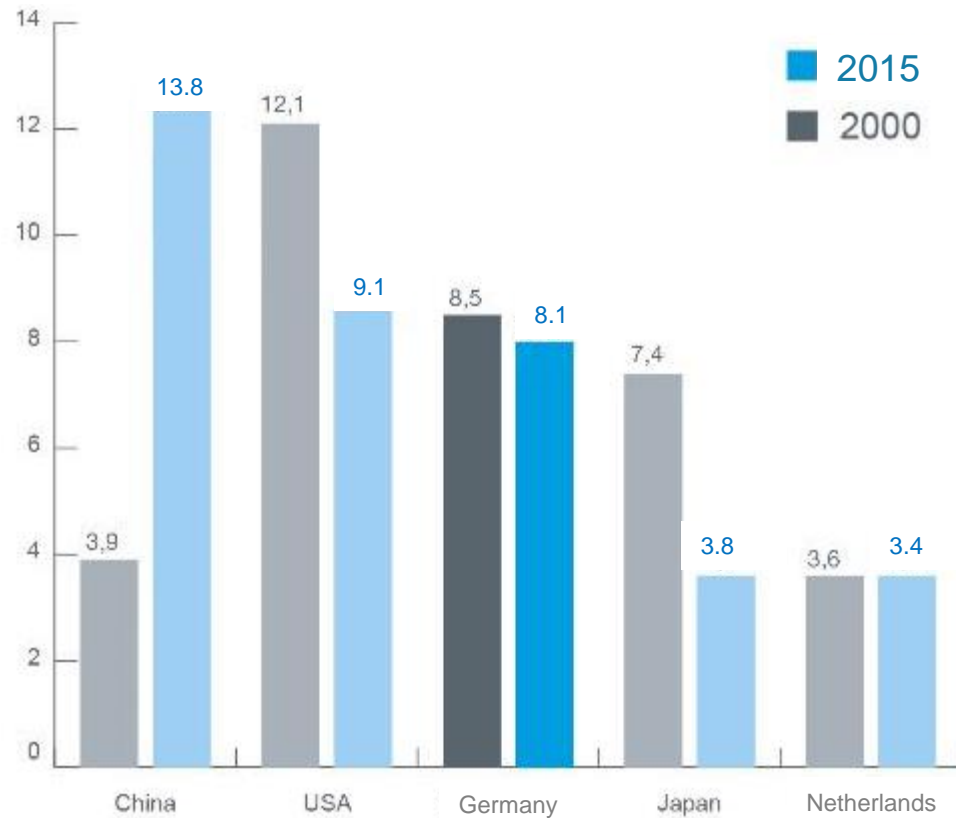


**The key partners are France, Italy and the Netherlands**

- Intermediate trade in goods, 2011
- Germany is industrially most intertwined with France
- Tight links with Italy, the Netherlands, the UK, Poland and Spain

# Germany is one of the world's leading trading nations

Shares of Worldwide Exports in %



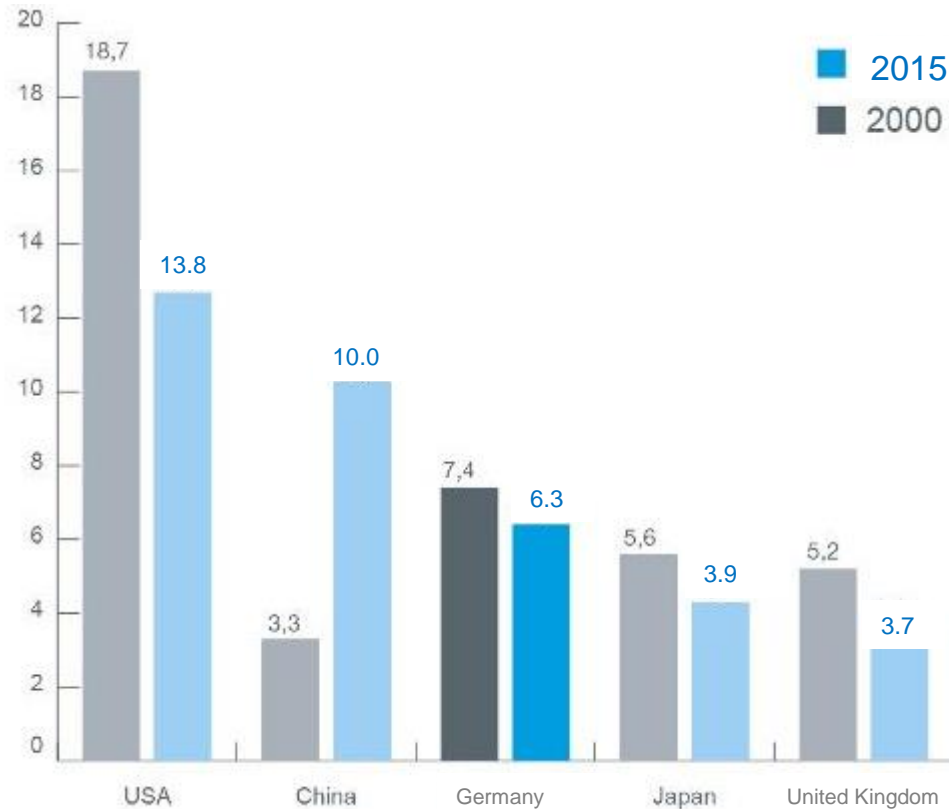
Source: WTO

## Third biggest exporter in the world

- Germany is the 3rd largest exporter of the world
- Germany was able to defend its share better as the US and Japan, despite a strong shift to China

# Germany is one of the world's leading trading nations

Shares of Worldwide Imports in %



Source: WTO

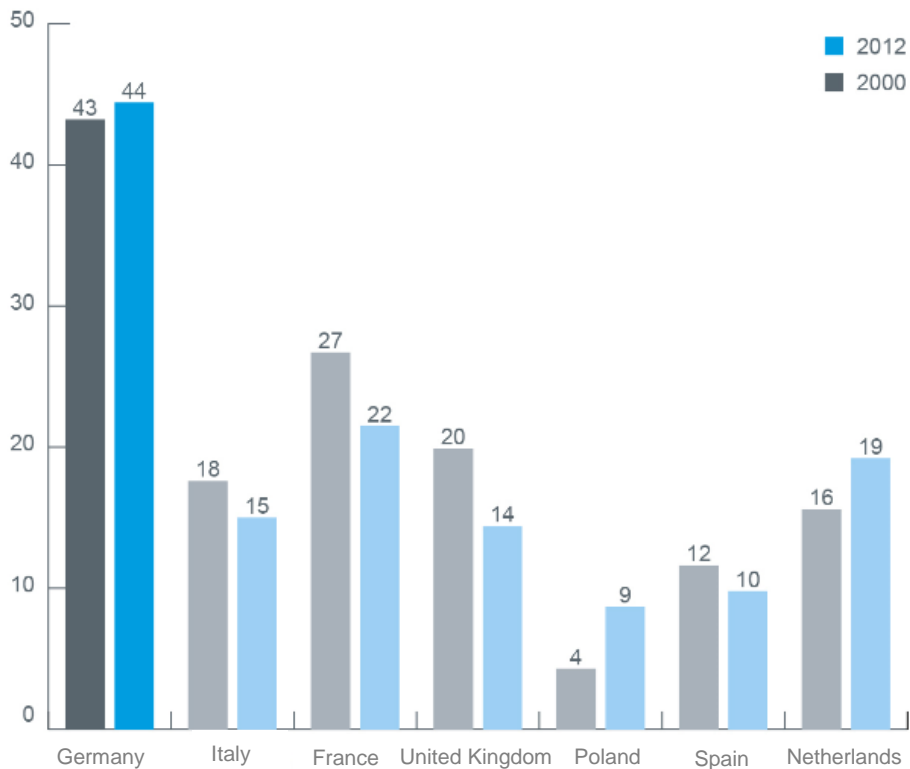
## The world's third biggest importer

- This also shows the close integration of the German economy with the European and global trading partners



# German industry: Big Player in Europe

*Cross-border advance payments in manufacturing industry in terms of advance payments trade in the EU27 in %*



Source: IW Consult, OECD

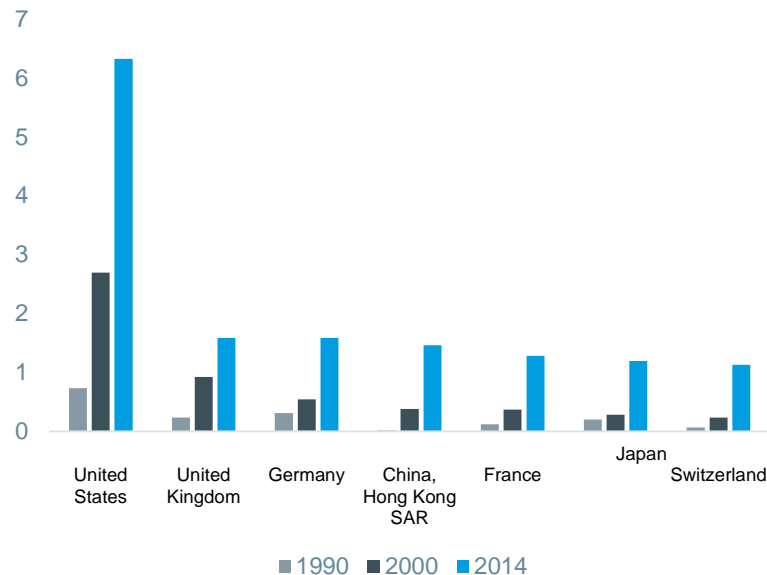
## Strongest networking with European neighbours

- Cross-border intermediate trade in goods, 2000 and 2012
- Germany exhibits tighter integration with trading partners than other member states
- Germany is supplier and recipient of more than 40 percent of all cross-border intermediate trade of goods

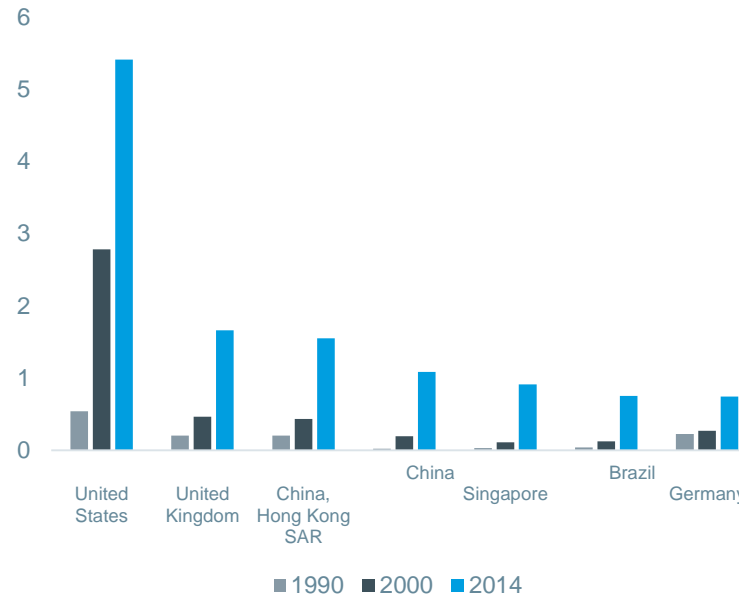
# Germany is one of the biggest countries of origin and destination countries for direct investments

Direct investments, portfolios in trillions of US dollars

The leading countries of origin



The leading destination countries



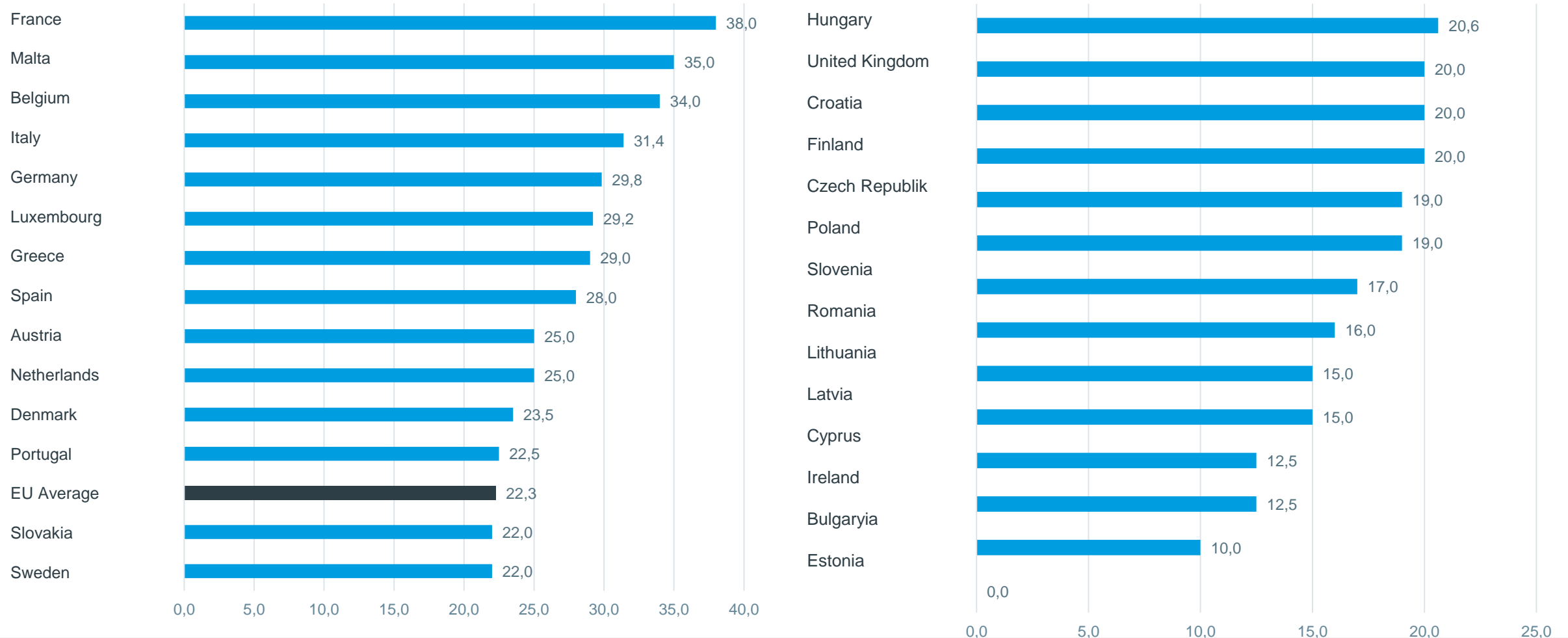
## Third biggest country of origin and seventh biggest destination country

- Germany is the third biggest country of origin for direct investments in the world and invested almost two trillion US dollars worldwide
- Almost one trillion dollars have been invested in Germany by foreign companies
- Germany is therefore the seventh biggest destination country for direct investments worldwide

Source: UNCTAD

# Anti Tax Avoidance Directive – Tax Rates in Europe – Race to the Bottom?

## Corporate Tax Rates 2015 – Nominal Tax Burden (figures in %)



# Implementation of ATAD Directive

## Implementation of ATAD Directive in Germany

- ATAD Directive
  - Some new provisions
- Some national rules served as blueprint
  - Some ATAD rules build on existing national regulations
- BEPS and ATAD
  - BEPS as a base of ATAD Directive
  - Some rules go beyond BEPS requirements
- ATAD and national rules
  - Tough German rules
- ATAD 2 – hybrid mismatch

# Anti-Tax-Avoidance Directive – Details

## Article 4: Interest limitation rule („Zinsschranke“)

- Corresponding provisions → Section 4h German Income Tax Act and section 8a German Corporate Tax Act
  - Limitation of net interest expenses
    - Up to 30 % of the current year's EBITDA
  - Exemptions from limitation:
    - Net interest expenses remain below EUR 3 Million per year
    - Stand-alone exemption – taxpayer is not part of a group of companies
    - Escape clause – taxpayer can demonstrate that the equity ratio is equal to or higher than the equity ratio of the group he belongs (with a 2 % variance being tolerated)
- Art. 4 ATAD
  - greater scope for companies
    - carry-back-regulation (3 years)
    - grandfathering rule
    - exceptions for financing of infrastructure-projects

# Anti-Tax-Avoidance Directive – Details

## Article 5: Exit taxation („Wegzugsbesteuerung“)

- Corresponding provisions → Section 4g Income Tax Act:

→ German rules...

... cover all four situations in which member states will be required to levy an exit taxation

... are triggered in any situation where German taxation rights are lost:

- When assets are transferred from a head office to a foreign PE
- When assets are transferred from one PE to another PE abroad
- When a taxpayer transfers his tax residence to the extent assets are no longer connected with a remaining PE
- When a tax payer transfers an entire business abroad

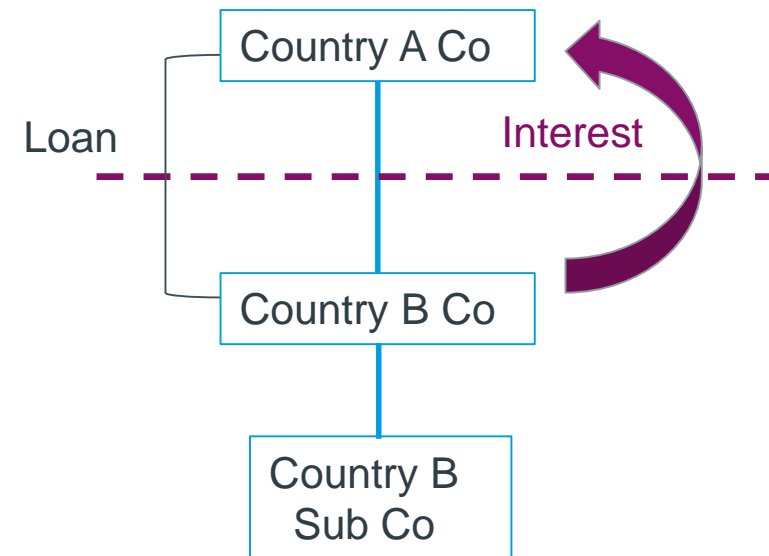
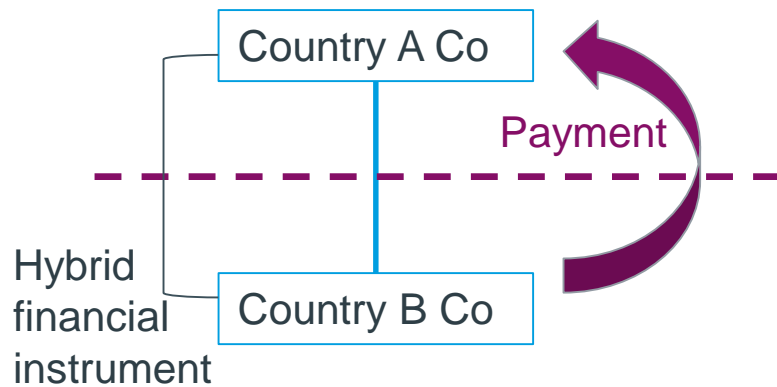
# Anti-Tax-Avoidance Directive – Details

## Article 7 und 8: Controlled Foreign Company Rule („Hinzurechnungsbesteuerung“)

- Corresponding provisions → Section 7 und 8 Foreign Tax Act
- Germany's CFC rules applies if the following conditions are fulfilled:
  - Resident tax payer holds more than 50 % of a foreign company  
(threshold is reduced to 1 % if the foreign company is engaged in the business of certain financial transactions)
  - Foreign company receives „passive income“
  - Low tax rate – „passive income“ is subject to tax at an effective tax rate of less than 25 %
- Description of income sources that are not considered passive income
- Exemptions (main exemptions apply for EU-resident companies, real estate investments and certain investments)

# Die Artikel der Anti-Tax-Avoidance-Directive

## Article 9: Hybrid Mismatches („Hybride Gestaltungen“)





# Die Artikel der Anti-Tax-Avoidance-Directive

## Article 9: Hybrid Mismatches („Hybride Gestaltungen“)

- Corresponding provision – Section 8b par. 1 sentence 2 Corporate Tax Act
  - ➔ Tax exemption for dividends received shall only apply as far as the payment did not decrease the income of the payee.
  - ➔ Exemptions for dividend payments based on a double tax treaty is subject to the conditions of the next sentence 2 as well.
- Corresponding provision – Section 4i Income Tax Act
  - ➔ Aim of new regulation is to prevent aggressive tax planning schemes (double deduction)

# Anti-Tax-Avoidance Directive – Details

## Article 6: General-Anti-Abuse-Rule – GAAR („42-Rule“)

- Corresponding provisions → Section 42 German Fiscal Code
  - This rule aims at preventing wholly artificial arrangements
  - Case law
  - In practice, GAAR hardly ever supplies

# Brief outlook

## Adjustment of the German tax provisions

- Interest barrier rule – extension of the escape clause:
  - net interest expenses – group equity ratio
  
- CFC rule – reduction of 25 % tax rate limitation
  - Average of EU Member States: 22.3 %
  
  - ATAD: precisely defined calculation ( $T_A < T_I - T_A \leftrightarrow 2 \times T_A = T_I \leftrightarrow T_A = T_I \times 0,5$  or 50 %)
    - typically 50 % of the national tax rate
    - German trade tax? Average trade tax rate?
  
- Measures to establish an international level playing field?

Thank You....



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