



**2022/0154(CNS)**

6.12.2022

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## **DRAFT REPORT**

on the proposal for a Council directive on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes  
(COM(2022)0216 – C9-0197/2022 – 2022/0154(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Luděk Niedermayer

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

#### **Amendments by Parliament set out in two columns**

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

#### **Amendments by Parliament in the form of a consolidated text**

New text is highlighted in ***bold italics***. Deletions are indicated using either the **■** symbol or ~~strikeout~~. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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## DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a Council directive on laying down rules on a debt-equity bias reduction allowance and on limiting the deductibility of interest for corporate income tax purposes**

**(COM(2022)0216 – C9-0197/2022 – 2022/0154(CNS))**

**(Special legislative procedure – consultation)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2022)0216),
  - having regard to Article 115 of the Treaty on the Functioning of the European Union, pursuant to which the Council consulted Parliament (C9-0197/2022),
  - having regard to the reasoned opinion submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
  - having regard to Rule 82 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs (A9-0000/2022),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

## Amendment 1

### Proposal for a directive Recital 1

#### *Text proposed by the Commission*

(1) Promoting a fair and sustainable business environment, including through targeted tax measures that incentivise investment and growth, is a high political priority of the Union. To support sustainable and long-term corporate financing, the tax system should minimise unintended distortions of business decisions, for example towards debt rather than equity financing. While the Commission's Capital Markets Union 2020 Action Plan<sup>14</sup> includes important actions to support such financing, for example Action 4 - Encouraging more long-term and equity financing from institutional investors, targeted tax measures should be adopted in order to enhance such actions. Such measures should take into account fiscal sustainability considerations.

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<sup>14</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'A Capital Markets Union for people and businesses-new action plan', COM(2020) 590 final

[https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-2020-action-plan/action-4-encouraging-more-long-term-and-equity-financing-institutional-investors\\_en](https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-2020-action-plan/action-4-encouraging-more-long-term-and-equity-financing-institutional-investors_en)  
(<https://eur-lex.europa.eu/resource.html?uri=cellar:61042990-fe46-11ea-b44f->

#### *Amendment*

(1) Promoting a fair and sustainable business environment **and improving the corporate tax system**, including through targeted **and simpler** tax measures that incentivise investment and growth, is a high political priority of the Union. To support sustainable, **robust** and long-term corporate financing, **in particular after the three successive economic crises since 2008, with many companies having to rely on debt financing in order to cover economic losses**, the tax system should minimise unintended distortions of business decisions, for example towards debt rather than equity financing. While the Commission's Capital Markets Union 2020 Action Plan<sup>14</sup> includes important actions to support such financing, for example Action 4 - Encouraging more long-term and equity financing from institutional investors, targeted tax measures should be adopted in order to enhance such actions. Such measures should take into account fiscal sustainability considerations.

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[https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-2020-action-plan/action-4-encouraging-more-long-term-and-equity-financing-institutional-investors\\_en](https://ec.europa.eu/info/business-economy-euro/growth-and-investment/capital-markets-union/capital-markets-union-2020-action-plan/action-4-encouraging-more-long-term-and-equity-financing-institutional-investors_en)  
(<https://eur-lex.europa.eu/resource.html?uri=cellar:61042990-fe46-11ea-b44f->

## Amendment 2

### Proposal for a directive Recital 2

#### *Text proposed by the Commission*

(2) Member States' tax systems allow the taxpayers to deduct interest payments on debt financing, and thereby reduce the corporate income tax liability, while costs related to equity financing are non-tax deductible in most Member States. The asymmetric tax treatment of debt and equity financing across the Union induces a bias towards debt in investment decisions. Moreover, where Member States provide for a tax allowance on equity financing in their domestic law, such national measures differ significantly in terms of policy design.

#### *Amendment*

(2) Member States' tax systems allow the taxpayers to deduct interest payments on debt financing, and thereby reduce the corporate income tax liability, while costs related to equity financing are non-tax deductible in most Member States. The asymmetric tax treatment of debt and equity financing across the Union induces a bias towards debt in investment decisions. Moreover, where Member States provide for a tax allowance on equity financing in their domestic law, such national measures differ significantly in terms of policy design. ***By adopting this Directive, the Union answers the numerous calls by Parliament to address the tax-related debt-equity bias, in other words, taxpayers' bias towards debt when making investment choices, which in turn leads to an increase in indebtedness in the internal market<sup>1a</sup>.***

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#### *<sup>1a</sup> See:*

- ***the resolution of the European Parliament of 8 October 2020 on further development of the Capital Markets Union (CMU): improving access to capital market finance, in particular by SMEs, and further enabling retail investor participation (2020/2036(INI)) (OJ C 395, 29.9.2021, p. 89);***
- ***the resolution of the European Parliament of 15 March 2018 on the***

*proposal for a Council directive on a Common corporate tax base (2016/0337(CNS)) (OJ C 162, 10.5.2019, p. 18);*

– *the resolution of the European Parliament of 10 March 2022 with recommendations to the Commission on fair and simple taxation supporting the recovery strategy (EP follow-up to the July Commission’s Action Plan and its 25 initiatives in the area of VAT, business and individual taxation) (2020/2254(INL)) (OJ C 347, 9.9.2022, p. 211);*

– *the resolution of the European Parliament of 15 February 2022 on the impact of national tax reforms on the EU economy ([2021/2074\(INI\)](#)) (OJ C 342, 6.9.2022, p. 14).*

Or. en

### Amendment 3

#### Proposal for a directive Recital 5

##### *Text proposed by the Commission*

(5) To neutralise the bias against equity financing, an allowance should be envisaged so that increases in a taxpayer's equity from one tax period to the next are deductible from its taxable base, subject to certain conditions. The allowance should be calculated by multiplying the increase in equity with a notional interest rate based on risk-free interest rate as laid down in the implementing acts adopted pursuant to Article 77e(2) of Directive 2009/138/EC. Such risk-free interest rates are already part of EU law and have been practically and effectively applied as such. Any part of the allowance that cannot be deducted in a tax period due to insufficient taxable profits may be carried forward. Taking into

##### *Amendment*

(5) To neutralise the bias against equity financing, an allowance should be envisaged so that increases in a taxpayer's equity from one tax period to the next are deductible from its taxable base, subject to certain conditions. ***Once an undertaking has met the criteria to obtain the right to deduct an allowance in line with this Directive, that right should be irrevocable and not affected by a change in the size of the undertaking.*** The allowance should be calculated by multiplying the increase in equity with a notional interest rate based on risk-free interest rate as laid down in the implementing acts adopted pursuant to Article 77e(2) of Directive 2009/138/EC. Such risk-free interest rates are already part



account the specific challenges that small- and medium-sized enterprises (SMEs) face in accessing capital markets, an increased allowance on equity should be envisaged for taxpayers that are SMEs. In order for the deduction of an allowance on equity to be sustainable for public finances in the short term, it should be limited in time. To safeguard the system from abuses, it is necessary to exclude the tax value of a taxpayer's own shares as well as that of its participation in associated enterprises from the calculation of changes in equity. In the same vein, it is necessary to provide for the taxation of a decrease in a taxpayer's equity from one tax period to the following one, to prevent an equity increase from being effected in an abusive manner. Such a rule would also encourage the retention of a level of equity. It would apply so that where there is a decrease in equity of a taxpayer that has benefitted from an allowance on equity increase, an amount calculated in the same way as the allowance would become taxable **for 10 tax periods**; unless the taxpayer provides evidence that this decrease is exclusively due to losses incurred during the tax period or due to a legal obligation.

of EU law and have been practically and effectively applied as such. Any part of the allowance that cannot be deducted in a tax period due to insufficient taxable profits may be carried forward. Taking into account the specific challenges that small- and medium-sized enterprises (SMEs) face in accessing capital markets **and the higher probability of them experiencing longer periods of losses**, an increased allowance on equity **as well as a longer period for tax deductibility** should be envisaged for taxpayers that are SMEs, **in order to compensate for the fact that their financing costs are higher and the availability of capital is lower**. In order for the deduction of an allowance on equity to be sustainable for public finances in the short term, it should be limited in time. To safeguard the system from abuses, it is necessary to exclude the tax value of a taxpayer's own shares as well as that of its participation in associated enterprises from the calculation of changes in equity. In the same vein, it is necessary to provide for the taxation of a decrease in a taxpayer's equity from one tax period to the following one, to prevent an equity increase from being effected in an abusive manner. Such a rule would also encourage the retention of a level of equity. It would apply so that where there is a decrease in equity of a taxpayer that has benefitted from an allowance on equity increase, an amount calculated in the same way as the allowance would become taxable; unless the taxpayer provides evidence that this decrease is exclusively due to losses incurred during the tax period or due to a legal obligation. **The Commission and Member States should implement information and communication actions relating to this Directive, especially as regards its possibilities and benefits for SMEs.**

Or. en

## Amendment 4

### Proposal for a directive Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

***(6a) The possible fiscal costs arising from the implementation of this Directive should be assessed together with the benefits of ensuring a more robust financing base for Union firms, which would be of utmost importance in cases of financial stress.***

Or. en

## Amendment 5

### Proposal for a directive Recital 7

*Text proposed by the Commission*

*Amendment*

(7) To effectively address the tax-related debt-equity bias in a manner sustainable for the Union's public finances, an allowance for equity financing should be accompanied by ***a limitation on the deductibility of debt financing*** costs. ***An interest limitation rule should therefore limit the deductibility of exceeding borrowing costs and apply independently from the allowance.*** Given the different objectives between such a rule and the existing anti-tax avoidance rule on interest limitation of Article 4 of Directive (EU) 2016/1164, both rules should be maintained. Taxpayers should first calculate the deductibility of exceeding borrowing costs under this Directive and then under ATAD. In the event that the latter results in a lower amount of deductible exceeding borrowing costs, the taxpayer should deduct this lower amount and carry forward or back any difference between the two amounts in accordance

(7) To effectively address the tax-related debt-equity bias in a manner sustainable for the Union's public finances, an allowance for equity financing should be accompanied by ***a rule limiting the deductibility of interest, which would limit the deductibility of exceeding borrowing costs.*** ***However, given the adverse economic conditions stemming from the COVID-19 crisis and from Russian aggression in Ukraine, that limitation rule should only be introduced as of 2027 and should not apply to small loans, which are contracted for the most part by smaller companies.*** Given the different objectives between such a rule and the existing anti-tax avoidance rule on interest limitation of Article 4 of Directive (EU) 2016/1164, both rules should be maintained. Taxpayers should first calculate the deductibility of exceeding borrowing costs under this Directive and then under ATAD. In the event that the latter results in a lower

with Article 4 of ATAD.

amount of deductible exceeding borrowing costs, the taxpayer should deduct this lower amount and carry forward or back any difference between the two amounts in accordance with Article 4 of ATAD.

Or. en

## Amendment 6

### Proposal for a directive Recital 9

#### *Text proposed by the Commission*

(9) In order to evaluate the effectiveness of this Directive, the Commission should prepare and publish an evaluation report on the basis of the information provided by Member States and of other available data.

#### *Amendment*

(9) In order to evaluate the effectiveness of this Directive, the Commission should prepare and publish an evaluation report on the basis of the information provided by Member States and of other available data. ***That report should pay special attention to SMEs, and should in particular assess whether the special conditions available to them have proven to be sufficient in increasing the attractiveness of equity financing among them. In the case of a negative evaluation in the report, the Commission should submit without delay a legislative proposal addressing that issue.***

Or. en

## Amendment 7

### Proposal for a directive Article 4 – paragraph 1 – subparagraph 1

#### *Text proposed by the Commission*

1. An allowance on equity shall be deductible, for 10 consecutive tax periods, from the taxable base of **a** taxpayer for corporate income tax purposes up to 30% of the taxpayer's earnings before interest,

#### *Amendment*

1. An allowance on equity shall be deductible, for:

tax, depreciation and amortisation (“EBITDA”).

- **15 consecutive tax periods, from the taxable base of an SME for corporate income tax purposes up to 30% of the SME’s earnings before interest, tax, depreciation and amortisation (“EBITDA”);**
- 10 consecutive tax periods, from the taxable base of **any** taxpayer **other than an SME** for corporate income tax purposes up to 30% of the taxpayer's earnings before interest, tax, depreciation and amortisation (“EBITDA”).

Or. en

## Amendment 8

### Proposal for a directive

#### Article 4 – paragraph 1 – subparagraph 3

*Text proposed by the Commission*

Member States shall ensure that **the** taxpayers may carry forward, for a maximum of 5 tax periods, the part of the allowance on equity which exceeds 30% of EBITDA in a tax period.

*Amendment*

Member States shall ensure that taxpayers **other than SMEs** may carry forward, for a maximum of 5 tax periods, the part of the allowance on equity which exceeds 30% of EBITDA in a tax period. **Member States shall ensure that the right to carry forward is extended to a maximum of 10 tax periods for SMEs.**

Or. en

## Amendment 9

### Proposal for a directive

#### Article 4 – paragraph 2 – subparagraph 2

*Text proposed by the Commission*

The allowance on equity shall be equal to the base of the allowance multiplied by the

*Amendment*

The allowance on equity shall be equal to the base of the allowance multiplied by the

10-year risk-free interest rate for the relevant currency and increased by a risk premium of 1% or, where the taxpayer is an SME, a risk premium of **1.5%**.

10-year risk-free interest rate for the relevant currency and increased by a risk premium of 1% or, where the taxpayer is an SME, a risk premium of **2%**.

Or. en

## Amendment 10

### Proposal for a directive Article 4 – paragraph 3

#### *Text proposed by the Commission*

3. If, after having obtained an allowance on equity, the base of the allowance on equity is negative in a tax period, an amount equal to the negative allowance on equity shall become taxable for **10** consecutive tax periods, up to the overall increase of net equity for which such allowance has been obtained under this Directive, unless the taxpayer provides sufficient evidence that this is due to accounting losses incurred during the tax period or due to a legal obligation to reduce capital.

#### *Amendment*

3. If, after having obtained an allowance on equity, the base of the allowance on equity is negative in a tax period, an amount equal to the negative allowance on equity shall become taxable for **15** consecutive tax periods **for SMEs or 10 consecutive tax periods for any taxpayer other than an SME**, up to the overall increase of net equity for which such allowance has been obtained under this Directive, unless the taxpayer provides sufficient evidence that this is due to accounting losses incurred during the tax period or due to a legal obligation to reduce capital.

Or. en

## Amendment 11

### Proposal for a directive Article 6 – paragraph 1 a (new)

#### *Text proposed by the Commission*

#### *Amendment*

**1a. The limitation of interest deduction to an amount (a) pursuant to paragraph 1 shall only apply for exceeding borrowing costs above EUR 500 000.**

## Amendment 12

### Proposal for a directive Article 6 – paragraph 2

*Text proposed by the Commission*

2. Paragraph 1 shall apply *to exceeding borrowing costs incurred from [OP insert the date of entry into force of this Directive].*

*Amendment*

2. Paragraph 1 shall apply *from 1 January 2027.*

Or. en

## Amendment 13

### Proposal for a directive Article 8 – title

*Text proposed by the Commission*

Reports

*Amendment*

Reports *and review*

Or. en

## Amendment 14

### Proposal for a directive Article 8 – paragraph 1

*Text proposed by the Commission*

1. By 31 December **2027**, the Commission shall present a report to the European Parliament and to the Council on the implementation of this Directive.

*Amendment*

1. By 31 December **2028**, the Commission shall present a report to the European Parliament and to the Council on the implementation *and impact* of this *Directive accompanied, if appropriate, by a legislative proposal to amend this* Directive.

*That report shall pay special attention to:*

- *SMEs, and shall in particular assess whether the special conditions available to them have proven to be sufficient to increase the attractiveness of equity financing among those firms;*
- *the limitation to interest deduction, in particular as regards the impact of amount (a) as referred to in Article 6(1), on the fiscal revenues of Member States.*

Or. en

## EXPLANATORY STATEMENT

The rapporteur welcomes the European Commission's initiatives in improving the corporate tax systems in the EU, aiming at having fairer and simpler tax systems. This would in turn further strengthen the economy of the EU as well as the Capital Markets Union.

The COVID19 and the current crisis stemming from the Russian invasion emphasises the need for addressing the corporate debt bias, with many companies having to rely on debt financing in order to cover economic losses. As the energy crisis is deepening and interest rates are going up in response to a very high level of inflation, this can put many EU companies, especially SMEs, under a financial strain.

The unequal treatment between debt and equity leads to a tax-led bias toward debt, while this choice can make firms more vulnerable in bad times. It also leads to a bias towards an increase in indebtedness in the EU Single Market and undermines the development of the equity market. Some Member States have already a tax allowance on equity in place at national level, but differences in their design increases compliance costs for businesses active in several Member States. Therefore, the rapporteur welcomes the Commission's proposal to address the debt equity bias at the EU level.

Despite some reservations on the proposal, the rapporteur believes that there is a strong economic reason to consider this proposal positively. To address some concerns, the option to roll out the rules gradually provides a good response.

The rapporteur introduces minor changes to the Commission's text, which aim to assist SMEs. Namely, since SME's are more exposed to longer periods of losses, increased allowance on equity as well as a longer period for tax deductibility should be considered. In addition, the rapporteur proposes higher equity allowance to better reflect the higher costs of capital for SMEs. A gradual introduction of the limitation to interest deduction's rule as well as permanent full deduction of interests for small loans ensures that the proposal will not have a negative impact for smaller SMEs that cannot effectively use equity financing.

Overall, the proposal does not put an end to debt bias, but at least partly increases the attractiveness of equity financing. As such, it could contribute to better stability of EU firms. The rapporteur is of a view that the proposal should not be rejected by the Council, but rather, be fine-tuned and gradually implemented.