EUROPEAN COMMISSION

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Dear Speaker,

The Commission would like to thank the Riksdag for its Opinion 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) 216 final}.

The Commission welcomes the Riksdag's support to the objective of promoting a well-functioning single market through positive measures.

The Commission takes the concerns expressed in the Riksdag's reasoned Opinion seriously and welcomes the opportunity to respond to the points made in the Opinion.

When considering questions of compliance with the principle of subsidiarity, it is critical that the main point of reference for assessing legislative proposals remains the Single Market as a whole. The general objective of the initiative is to address the debt-equity bias consistently throughout the EU and in doing so, contribute to the proper functioning of the Single Market.

In the impact assessment that accompanies the initiative, the Commission recalled that the problem is widespread across the EU. The interaction between a variety of actions by (currently six) Member States to address the debt-equity bias combined with the absence of equity-side measures in other Member States, may have undesirable effects, leading to market distortions and investment misallocations in the Single Market, since businesses may base their investment decisions on the (un)availability and generosity of the rules that allow deductions for equity costs.

In addition, the interaction of widely divergent national measures with a non-harmonised anti-tax avoidance framework may create loopholes that can be exploited for harmful tax practices, making some Member States vulnerable to tax arbitrage.

A common EU framework can alleviate distortions in the single market, making the system simpler and more efficient for taxpayers while better preventing abuse for tax avoidance purposes.

Mr. Andreas Norlén
Speaker of the Riksdag
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By reducing the preferential tax treatment of debt in all Member States, which comes at the expense of other financial instruments (in particular equity), the initiative will contribute to making equity financing more accessible to all European businesses, a key objective of the 2020 Communication on a Capital Markets Union for people and businesses. By providing for a common approach to mitigating the debt bias, this initiative will also contribute to the integration of national capital markets into a genuine single market, another key objective of the Capital Markets Union Communication. By removing the tax debt bias, which leads businesses to favour investment financed by debt, the initiative will contribute to the re-equitisation of European businesses. This will increase their resilience to unforeseen changes in the business environment and decrease the risk of insolvency, thereby indirectly contributing to bringing more financial stability in the Single Market.

The Riksdag notes that a point of departure when the general interest deduction limitation rule was introduced pursuant to Article 4 of the Anti-Tax Avoidance Directive was to increase neutrality between debt and equity. In view of this, the Riksdag considers that the extent of the distortion between equity and debt may be questioned, as well as the need for further regulation in this area.

In the Commission's view, the point of departure for the introduction of the general interest deduction limitation rule (Article 4 of the first Anti-Tax Avoidance Directive) was to tackle tax planning schemes using intragroup loans to transfer profits from higher tax jurisdictions to lower tax jurisdictions. This was also the point of departure in the Domestic tax base erosion and profit shifting (BEPS) project concerning Earnings Before Interest, Taxes, Depreciation, and Amortization based Interest Limitation Rules.

The Interest Limitation Rules as proposed in Article 6 of the draft debt-equity bias reduction allowance Directive is different. It aims at addressing the tax debt equity bias from the debt side, while the allowance addresses such bias from the equity side. Moreover, addressing debt equity bias from both the equity and debt sides will mitigate the fiscal costs for Member States. In preparing the proposal, the Commission has sought to strike a balance between the need to address the tax debt equity bias, on the one hand, with the necessity of containing the fiscal cost for Member States on the other hand.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Riksdag and looks forward to continuing the political dialogue in the future.

Yours faithfully,

Věra JOUROVÁ
Vice-President