Version 4 July 2023

Draft compromise amendments - DEBRA Directive

articles and related recitals

Bold/italics text (***underlined*** where a title is concerned or where the change deviates from amendments tabled) and ~~strikethrough~~ represents changes to the existing regulations as would have been amended by the Commission proposal. Indication of *AMs Covered* by the compromise and *AMs that fall* if a compromise is adopted. Track changes signalize the changes made from the first shadows meeting to the second one.

COMP A *(articles 1, 2, 3 and 4)*

AMs covered *by the COMP: 7, 8, 9, 10 Rapp, 54 S&D, 55 The Left, 56 S&D, 57 The Left, 58 S&D, 62 S&D , 63, 64, 65 EPP, 66 S&D, 68 S&D, 70, 71, 72, 73 EPP, 77, 78. 80, 81 EPP, 82 S&D*

AMs falling *if COMP is adopted: 7, 8, 9, 10 Rapp, 15, 50 Greens/EFA, 51 S&D, 52, 53 Greens/EFA,54 S&D, 55 The Left, 56 S&D, 57 The Left, 58 S&D, 59, 60, Greens/EFA, 61 The Left, 62 S&D , 63, 64, 65 EPP, 66 S&D, 67 The Left, 68 S&D, 69 The Left, 70, 71, 72, 73 EPP, 74-75 S&D, 76 The Left, 77, 78 EPP, 80, 81 EPP, 82 S&D*

AMs Withdrawn *61, 67, 69, 79, 83, 84 The Left*

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

Article 1
Subject matter

This Directive lays down rules on the deduction, for corporate income tax purposes, of an allowance on increases in equity and on the limitation of the tax deductibility of exceeding borrowing costs.

Article 2
Scope

(...)

Article 3

Definitions

For the purposes of this Directive, the following definitions shall apply:

(1) (...)

(5) 'SME' means all undertakings which do not exceed the threshold for medium-sized undertakings, as laid down in Article 3(3) of Directive 2013/34/EU;

(5 a) 'large undertaking' means all undertakings which exceed the threshold for large undertakings, as laid down in Article 3(4) of Directive 2013/34/EU; (AM 54 and 55)

(5 b) 'Medium-sized group' means all groups which do not exceed the threshold for medium-sized groups, as laid down in Article 3(6) of Directive 2013/34/EU; (AM 56)

(5 c) 'Large group' means all groups which exceed the threshold for large groups, as laid down in Article 3(7) of Directive 2013/34/EU; (AM 57 and 58)

CHAPTER II
ALLOWANCE ON EQUITY AND INTEREST DEDUCTIONS

Article 4

Allowance on Equity

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

- 10 consecutive tax periods, from the taxable base of any SME or medium sized group as defined in Article 3 (3 and 6) of Directive 2013/34/EU ~~SME~~ for corporate income tax purposes up to 30% (**AM 65**) ***of the taxpayer's earnings before interest, tax, depreciation and amortisation ("EBITDA ") (AM 7, 63, 64);***

- 7 consecutive tax periods, from the taxable base of a***ny*** ~~taxpayer~~ ***large undertaking or group ~~other than an SME~~ as defined in Article 3 (4 and 7) (AM 7, 55, 57, 58, 62, 64, 65)*** for corporate income tax purposes up to 30% of the taxpayer's earnings before interest, tax, depreciation and amortisation ("EBITDA ").

Member States shall ensure that the taxpayers may carry forward, for a maximum of 3 tax periods the part of the allowance on equity which exceeds the above mentioned percentages of EBITDA in a tax period (AM 8, 68, 70, 71, 72).

If the deductible allowance on equity, in accordance with the first subparagraph, is higher than the taxpayer's net taxable income in a tax period, Member States shall ensure that the taxpayer may carry forward the excess of allowance on equity to the following periods:

- for a maximum of 3 tax periods, should the taxpayer be a large undertaking or large group;

- without time limitation should the taxpayer be an SME or a medium sized group.

(AM 66)

2. Subject to Article 5, the base of the allowance on equity shall be calculated as the difference between the level of net equity at the end of the tax period and the level of net equity at the end of the previous tax period***, in other words, the year-on.year increase in own funds (AM 73)***.

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, increased by a risk premium of 1% ***for SMEs.*** (**AM 9, 77, 78**).

For the purposes of the second subparagraph of this paragraph, the 10-year risk-free interest rate for the relevant currency shall be the risk-free interest rate with a maturity of 10 years for the relevant currency, as laid down in the implementing acts adopted pursuant to Article 77e(2) of Directive 2009/138/EC for the reference date of 31 December of the year preceding the relevant tax period.

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 ***for SMEs or medium sized groups or 7 consecutive periods for any taxpayer other than an SME or medium sized groups (AM 10, 80, 81, 82)***, 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.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 9 amending paragraph 2 of this Article by modifying the rate of the risk premium, where any of the following two conditions is met:

(a) the 10-year risk-free interest rate as referred to in paragraph 2 of this Article varies by more than two percentage points with regard to at least three Union currencies compared to the tax period in which the most recent delegated act modifying the risk premium, or, where there is no such delegated act, this Directive started to apply; or

(b) zero or negative growth of the gross domestic product of the EU area in at least two successive quarters;

and

(c) the relevant data, reports and statistics, including those provided by Member States, conclude that the EU average of the financing conditions of debt for taxpayers in scope of this directive has more than doubled or halved since the last determination of the risk premium established in paragraph 2.

The percentage of increase or decrease of the risk premium shall take into account the changes in the financing conditions mentioned under point (c) of the first subparagraph other than changes in the risk-free interest rate for the EU as laid down in the implementing acts adopted pursuant to Article 77e(2) of Directive 2009/138/EC, and in any case shall not be greater than the percentage of increase or decrease of the financing conditions mentioned under point (c) of the first subparagraph.

COMP B

AMs covered *by the COMP: 87 Renew* ***AMs falling*** *if COMP is adopted: 85 Greens/EFA, 86 S&D, 87 Renew*

Article 5
Anti-Abuse Rules

1. Member States shall take appropriate measures to ensure that the base of the allowance on equity does not include the amount of any increase which is the result of:

   (a) granting loans between associated enterprises;

   (b) a transfer between associated enterprises of participations or of a business activity as a going concern;

   (c) a contribution in cash from a person resident for tax purposes in a jurisdiction that does not exchange information with the Member State in which the taxpayer seeks to deduct the allowance on equity.

   This paragraph shall not apply if the taxpayer provides sufficient evidence that the relevant transaction has been carried out for valid commercial reasons and does not lead to a double deduction of the defined allowance on equity.

2. Where an increase in equity is the result of a contribution in kind or investment in an asset, Member States shall take the appropriate measures to ensure that the value of the asset is taken into account for the calculation of the base of the allowance only where the asset is necessary for the performance of the taxpayer's income-generating activity.

   If the asset consists of shares, it shall be taken into account at its book value.

   If the asset is other than shares, it shall be taken into account at its market value, unless a different value has been given by a certified external auditor.

3. Where an increase in equity is the result of a reorganisation of a group, such increase shall only be taken into account for the calculation of the base of the allowance on equity for the taxpayer in accordance with Article 4 to the extent that it does not result in converting into new equity the equity (or part thereof) that already existed in the group before the re-organisation.

3 a. When implementing this Directive, Member States shall make sure the measures adopted are compliant with the guidance provided by the Code of Conduct Group (Business Taxation) on notional interest deduction regimes (AM 87).

COMP C

AMs covered *by the COMP: 11 Rapp, 12 Rapp, 90 S&D, 92 Renew, 95 S&D* ***AMs falling*** *if COMP is adopted: 11 Rapp, 12 Rapp, 88 EPP, 89 The Left, 90 S&D, 91 S&D, 92 Renew, 93, 94 Greens/EFA, 95 S&D, 96, 97 Greens/EFA*

Article 6

Limitation to Interest Deduction

1. Member States shall ensure that a taxpayer***, other than a SME and medium sized group as defined in Article 3 (AM 90, 92),*** is able to deduct from its taxable base for corporate income tax purposes exceeding borrowing costs as defined in Article 1, point (2), of Council Directive (EU) 2016/1164[1] up to an amount (a) corresponding to 85% of such costs incurred during the tax period. If such amount is higher than the amount (b) determined in accordance with Article 4 of Directive (EU) 2016/1164, Member States shall ensure that the taxpayer be entitled to deduct only the lower of the two amounts in the tax period. The difference between the two amounts (a) and (b) shall be carried forward or back in accordance with Article 4 of Directive (EU) 2016/1164.

2. Paragraph 1 shall apply to exceeding borrowing costs incurred from ***from 1 January 2027 (AM 12)***.

Article 7

Monitoring

Within 3 months from the end of every tax period, each Member State shall communicate the following information to the Commission regarding the tax period:

(a) the number of taxpayers that have benefited from the allowance on equity in the tax period, also as a percentage of the total number of taxpayers falling within the scope of this Directive;

(b) the number of SMEs ***and medium-size groups (AM 95)***that have benefitted from the allowance in the tax period, including as a percentage of the total number of SMEs ***and medium-sized groups (AM 95)***falling within the scope of this Directive and the number of SMEs that have benefitted from the allowance, which are part of large groups within the meaning of Article 3(7) of Directive 2013/34/EU;

(c) the total amount of expenditure incurred or tax revenue lost due to the deduction of allowance on equity allocated to the allowance on equity as compared to the national gross domestic product of the Member State;

(d) the total amount of exceeding borrowing costs;

(e) the total amount of non-deductible exceeding borrowing costs.;

(f) the number of taxpayers to which anti-abuse measures have been applied in the tax period pursuant to this Directive including the related tax consequences and sanctions applied;

(g) the data on the evolution in the Member State of the debt/equity ratio, within the meaning of Annex III, parts (A) and (C) to Directive 2013/34/EU.

[1] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

COMP D

AMs covered *by the COMP: 13 Rapp, 14 Rapp, 98 Renew, 99 EPP, 100 Renew, 101 Renew, 102 EPP, 103 EPP* ***AMs falling*** *if COMP is adopted: 13 Rapp, 14 Rapp, 98 Renew, 99 EPP, 100 Renew, 101 Renew, 102 EPP, 103 EPP*

Article 8

Reports <u>and review</u> (AM 13, 98, 99)

1. By 31 December ~~2027~~ ***2028 (AM 14)***, 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 ***(AM 14, 100, 103)***.

   That report shall review and assess the impact of this Directive, paying 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 (AM 14, 100, 102);

   – 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 (AM 14);

   – the link with other company tax legislation, namely a Directive ensuring a minimum effective tax rate for the global activities of large multinational groups and a Directive on Framework for Income Taxation in Europe (BEFIT) (AM 101).

2. When drawing up the report, the Commission shall take into account the information communicated by Member States pursuant to Article 7.

3. The Commission shall publish the report on its website.

COMP E

***AMs covered** by the COMP: 106, S&D, 107 Greens/EFA, 108 The Left, 109 S&D* ***AMs falling** if COMP is adopted: 104, 105 Greens/EFA, 106, S&D, 107 Greens/EFA, 108 The Left, 109 S&D*

Article 9
Exercise of Delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 4(5) shall be conferred on the Commission for an indeterminate period of time from [O*P insert the date of entry into force of this Directive*].

3. The delegation of power referred to in Article 4(5) may be revoked at any time by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. Before adopting a delegated act, the Commission shall consult experts designated by each Member State in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

5. As soon as it adopts a delegated act, the Commission shall notify it to the Council.

6. A delegated act adopted pursuant to Article 4(5) shall enter into force only if no objection has been expressed by the Council within a period of 2 months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by 2 months at the initiative of the Council.

Article 10
Informing the European Parliament

The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection to them, and of the revocation of a delegation of powers by the Council.

Article 11
Transposition

1. Member States shall adopt and publish, by [31 December 2023] at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

   They shall apply those provisions from [1 January 2024].

   When Member States adopt those provisions, they shall include a reference to this Directive or accompany those provisions with such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States may defer the application of the provisions of this Directive to taxpayers that on [1 January 2024] benefit from an allowance on equity under national

law for a period up to ~~10~~ ***5*** years and in no case for a period longer than the duration of the benefit under national law (**AM 107, 108, 109**).

3. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

4. Before transposing this Directive in accordance with article 11, Member States shall make public an assessment of the foreseen fiscal costs of the measures and the resulting decrease in the effective tax rate for corporates in order to take proper measures to protect tax revenues if needed (AM 106).

COMP F ***(ALL RECITALS)***

AMs covered *by the COMP: 1, 2, 3, 4, 5, 6 Rapp, 17, 18, 21, 22, 26, 35, 36, 45 EPP; 23, 25, 33, 42, 44, 47; S&D~~;~~ 27, 29, 38, 46; 48 Renew.* ***AMs falling*** *if COMP is adopted: 31; 39 EPP; 34 S&D; 43 Renew; 20, 24, 28, 30; 32; 37; 40; 49; 50 Greens/EFA; 16, 19; 41 The Left*

(1) Promoting a fair and sustainable business environment ***and improving the corporate tax system (AM 1)***, including through targeted tax measures that incentivise investment and growth, is a high political priority of the Union. To support sustainable ***robust (AM 1)*** 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 (AM 1 and 18)***, 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[2] 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.

(1a) (new) The promotion of a competitive and resilient Capital Markets Union, having a strong equity market as one of its pillars, is essential for the promotion of jobs, economic growth and investment. More private investment through equity is needed to tackle the economic challenges that lie ahead. Therefore, a legal instrument to harmonize the legislative solutions for reducing thetaxpayers' bias towards debt when making investment choices, without prejudice to the legitimate and effective use of debt instruments, is strongly advisable (AM 18).

(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. ***Due to the recent crises associated with debt problems of some firms in the single market, there is a need for this reform that puts equity and debt on equal footing and ceases the advantage of debt financing (AM 22). By adopting this Directive, the Union answers the numerous calls by Parliament to address the tax-related debt-equity bias, [1a] (AM 2, 23).*** 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. ***It is therefore essential to safeguard a level playing field for equity solutions and debt instruments, having in regard the need to guarantee minimum levels of systematic coherence between national tax frameworks, namely at the tax benefits level (AM 21).***

[1a] 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

[2] 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://eur-lex.europa.eu/resource.html?uri=cellar:61042990-fe46-11ea-b44f-01aa75ed71a1.0001.02/DOC_1&format=PDF)

(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).***

(3) In order to remove possible tax related distortions among Member States, it is necessary to lay down a common framework of rules to address the tax related debt-equity bias across the Union in a coordinated manner ***in full respect of the EU institutional framework on tax matters established by the treaties (AM 26)***. Such rules should ensure that equity and debt financing are treated in a similar way for tax purposes across the single market. At the same time, ***given the extensive tax deductibility of debt and/or the creation of an allowance on increases in equity could have a direct impact on public revenues, (AM 25) a*** common Union legislative framework should be sustainable also in the short term for Member States' budgets. Such framework should therefore include rules, on the one hand, for the tax deductibility of equity financing costs and, on the other, for limiting the tax deductibility of debt financing costs. ***The Directive should aim to strike better balance between the challenges related to the sustainability of Member States' public finances in the short term and therefore, avoid leading to substantial losses in Member States' revenues and aim to improve finacial stability of firms (AM 29).***

(3a) (new) In order to further develop the European Capital Markets Union, this proposal should aim at diversifying funding sources for European companies, with a particular focus on SMEs; therefore, it should avoid creating new costs and barriers to access financing for those companies that do not have easy access to capital markets; thus~~,~~ limiting the deductibility of their interest costs could hamper investment across Europe and hence there should be no need to limit interest deduction for SMEs and medium sized groups (AM 27).

(4) To ensure a simple and comprehensive legislative framework, the common framework of rules should apply to all undertakings in the Union that are subject to corporate income tax in a Member State. Financial undertakings have special features and require a specific treatment. If the rules to address the tax related debt-equity bias were to apply to them, the economic burden of the measures would be unequally distributed at the expense of non-financial undertakings. Financial undertakings should therefore be excluded from the scope of this Directive.

(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 account the specific challenges that small- and medium-sized enterprises (SMEs) ***and medium sized groups (AM 33)*** face in accessing capital markets***, their higher financing costs, the lower availability of capital (AM 33, 35) and the higher probability of them experiencing longer periods of losses (AM 3, 35)***, an increased allowance on equity ***as well as a longer period for tax deductibility (AM 3)*** should be envisaged for taxpayers that are SMEs ***or medium sized groups***. In order for the deduction of an allowance on equity to be sustainable for public finances in the short term, it should be ***properly and proportionately (AM 36)*** 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 ***for SMEs or medium sized groups or 7 consecutive periods for any taxpayer other than an SME or medium sized groups***; 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 (AM 3).***

(6) In order to avoid a misuse of the deduction of the allowance on equity, it is necessary to lay down specific anti-tax avoidance rules. Such rules should target, in particular, schemes put in place to circumvent the conditions on which an equity increase qualifies for an allowance under this Directive, for instance, through the intra-group transfer of participations in associated enterprises. Such rules should also target schemes put in place to claim an allowance in the absence of any equity increase at group level. For example, intra-group debt financing or contributions in cash could be used for these purposes. Specific anti-tax avoidance rules should also prevent schemes from being put in place to claim that an increase in equity, and the corresponding allowance, is higher than it actually is, for example, through an increase in loan financing receivables or overvaluation of assets. Moreover, the general anti-tax abuse rule in Article 6 of Council Directive (EU) 2016/1164[3] applies against abusive acts which are not covered by the specific anti-tax avoidance framework of this Directive. ***Member States should also make sure the measures taken in the framework of this Directive are compliant with the Code of Conduct Group on Business Taxation (AM 38).***

(6a) (new) 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 (AM 4).

(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 ***exceeding borrowing*** costs ***(AM 5) for groups that are not medium- size groups and undertakings that are not SMEs (AM 42, 44)***. ***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 (AM 5)***. 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

[3] Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (OJ L 193, 19.7.2016, p. 1).

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 with Article 4 of ATAD.

(8) As the implementation and enforcement of the Union rules in each Member State are critical for safeguarding Member States' tax bases and, where necessary, for properly reviewing the Union rules, such implementation and enforcement should be monitored by the Commission. Member States should therefore communicate to the Commission, on a regular basis, specific information on the implementation and enforcement in their territory of national measures transposing this Directive.

(9) In order to evaluate the effectiveness of this Directive, ***as well as its impact on SMEs and on tax revenues in Member States (AM 48),*** 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 (AM 6, 45, 47). The Commission's report should be published (AM 46).***

(10) In order to enable the smooth and prompt amendment of certain non-essential elements of this Directive taking into account ongoing developments, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission, so that the latter can amend this Directive, to modify the level of the risk premium rate as an element for the calculation of the allowance on equity. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level, and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making[4]. In particular, to ensure equal participation in the preparation of delegated acts, the Council should receive all documents at the same time as Member States' experts, and its experts should systematically be given access to meetings of Commission expert groups dealing with the preparation of delegated acts.

(11) Since the objective of this Directive cannot sufficiently be achieved by the Member States but can rather, by reason of the need to provide balanced incentives for business location and entrepreneurship in the single market, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality as set out in that Article, this Directive should not go beyond what is necessary in order to achieve that objective,

[4] OJ L 123, 12.5.2016, p. 1.