FUTURE PERSPECTIVES OF EUROPEAN CORPORATE TAXATION. TOWARDS AN HARMONIZED EUROPEAN CORPORATE TAXATION WITHIN THE MEMBER STATES

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SUMMARY: 1. Introduction into the topic concerning EU corporate taxation. – 1.1. Overview of the EU corporate framework. – 2. European perspectives – Challenges and Flagship Initiatives. – 2.1. Access to finance for technology-intensive scale-ups. – 2.1.1 Challenges. – 2.1.2 Flagship initiative on the financing of scale-ups in the field of technology-intensive innovation . – 2.2. Prospectives regarding the European Corporate taxation: Incentives to restore a balance of debt and equity. – 2.3. Consistency with existing and possible future rules in this area -2.4) Stock exchange listing. – 2.5. Late-stage financing through venture capital. – 2.6. Increasing diversity and revitalising investment. – 3. EU tax policy framework. – 3.1 Context. – 3.2 Ensuring effective taxation. – 4. Future perspectives regarding the Reform of the international framework for corporate taxation. – 5. Conclusions.

Abstract: The European Commission has proposed an exemption to reduce debt incentives (DEBRA) to facilitate companies' access to finance and promote their resilience. The introduction of an allowance is intended to provide equity, they are treated in the same way as debt capital. Tax systems in the EU allow the deduction of debt interest payments when calculating the tax base for corporate tax purposes, while capital financing costs such as dividends are largely non-deductible. This imbalance in tax treatment is one of the factors that favours the use of debt versus equity to finance investments.

This Directive is part of the EU corporate taxation strategy targeted at guaranteeing a fair and efficient tax system across the EU. In order to prevent abuse, the deductibility of the allowance has already been limited to a maximum of 30 % of the taxpayer's EBITDA for each tax year by means of the ATAD Directive by the project to combat profit shortening and profit shifting (BEPS) and the implementation at EU level through the ATAD Directive. It is proposed to coordinate the two restrictions. The Proposal also supports the EU Capital Markets Union Action Plan, which to help raise capital in the post-pandemic period. With the Capital Markets Union will incentivise long-term investments to ensure sustainable and to promote the transformation of the EU economy. The EU commission has suggested several recommendations to solve problems, which enterprises are facing.

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The removal of obstacles, lack of partners and opportunities, and difficulties in financing should be a priority within the EU. The future of the EU corporate taxation law should reflect a more coordinated approach across all EU policies.

1. Introduction into the topic concerning EU corporate taxation

Corporate taxation in the Member States of the European Union has not yet been harmonised. There are serious differences in both the tax bases and the tax rates. These burden differences affect cross-border investment in the European Single Market. There are distortions of the choice of location, the type of investment and its financing. An efficient allocation of resources is therefore not achievable; the competitiveness of EU-based businesses is limited and welfare losses for the Community as a whole. Moreover, the tax gap within the EU tends to shift book profits to Member States with low profit tax rates. This is mainly due to the relocation of silent reserves as well as by a tax rate-oriented allocation of losses or expense and income, especially in the context of the design of financing structures and transfer prices.

This outcomes in tax losses and conflicts between Member States over the distribution of tax revenues.[1] In order to protect national tax revenues against escalating tax planning, measures are in place in many Member States aimed at preventing relocation of profits abroad. This includes, for example, limitations on interest deductions related to the financing of undertakings, restrictions on cross-border loss relief; Obstacles to the withdrawal or transfer of companies, as well as tightened controls, corrections and documentation requirements for intra-corporate companies Transfer pricing. Essential elements of these rules conflict with the prohibitions on discrimination and restriction of the fundamental freedoms of the Treaty, with the freedom of establishment and the free movement of capital. The jurisprudence of the European Court of Justice makes it increasingly difficult for Member States to limit international tax planning. Only the Member States have the choice: either a restrictive regime, which is aimed only at foreign matters, also extends to domestic relations, or to remove the measures limited to foreign matters.

In the first case, additional burdens are imposed on domestic undertakings for which there is otherwise no justification; in the second case, international tax planning is given more scope than seems justified from a national point of view.[2]Without a certain degree of coordination of Member States'

[1] Bundesministerium für Finanzen, *Gutachten des Wissenschaftlichen Beirats beim Bundesministerium der Finanzen*, p. 3 ff.

[2] Bundesministerium für Finanzen, *op. cit.*, p. 3 ff.

tax policies in the field of corporate taxation in general and group taxation in particular, these problems will not be solved. Otherwise, neither the economic objectives of the internal market nor a satisfactory distribution of tax revenues will be achieved. There are different possibilities for an EU-wide reform of group taxation,[3] which the Advisory Council has examined in detail. In the balance of the pre-existing disadvantages of these reform options were based on a total of seven criteria. In particular, the aim must be to eliminate distortions of economic decisions as far as possible, eliminate incentives to shift book profits to low-tax countries, reduce the costs of dealing with the tax system for taxpayers (compliance costs) and administrative costs, limit harmonisation needs at EU external borders to a minimum, to minimise the impact on the distribution of tax revenues among Member States; to ensure compatibility with the provisions of constitutional, EC and double taxation law and to ensure compatibility between national corporate taxation structures and the measures envisaged at Community level. As reform opportunities, in accumulation to harmonising corporate tax rates, the Advisory Council examined a unification of the rules on tax profit determination in the EU and two more far-reaching coordination measures, both of which include the creation of a common consolidated corporate tax base for groups operating across the EU. This has led to the following results.

Harmonisation of tax rates without harmonising the determination of profits would initially reduce the tax burden gap within the EU. Nevertheless, such a measure would be insufficient, since the influence of different profit determination rules on the level of the effective tax burden remains.

In addition, there are significant obstacles to cross-border business in the internal market from the foreclosure of the national tax bases based on the coexistence of residence and source principles. After all, this coexistence is decisive for the increasing conflicts over the distribution of tax revenues between Member States and the related conflicts with EU law, which create

[3] For an overview concerning the international taxation system please cfr. V. Uckmar, G. Corasaniti, P. de´Capitani di Vimercante, C. Corrado Olivia, *Manuale di diritto tributario internazionale, Milano*, Cedam ed., 2012, XXVI ss.; P. Pistone, *Diritto tributario internazionale*, Torino, Giappichelli ed., 2017. Please also refer to G. Corasaniti, *Aggressive tax competition and State aid: brief considerations regarding the "Apple case"*, in Proceedings of the Conference held in Rome at the Sapienza University of Rome on 19 February 2017, P. Boria (edited by), Milan, Cedam ed., 2018, p. 86; for an overview regarding the Italian permanent establishment in VAT Cfr. P. Puri, *La stabile organizzazione nell'Iva*, in *Riv. Dir. trib.*, 2/2000; P. PISTONE, *On Abuse and Fraud in VAT: Setting the Appropriate Boundaries for GAARs in the EU VAT System*, in M. Lang et al(eds.), *Improving VAT/GST – Designing a Simple and Fraud-Proof Tax System,* Amsterdam, pp. 591-602; P. Pistone, C. Massoner, *Die gemeinschaftsrechtliche Verpflichtung zur Anrechnung von Quellensteuern im Ansässigkeitsstaat*, in M. Lang, J. Schuch, C. Staringer (eds.), *Quellensteuern – Der Steuerabzug bei Zahlungen an ausländischen Empfänger*, pp. 133-153.

domestic measures against the shifting of profits to low-tax countries. As tax rates are seen as a key component of national tax autonomy, there is currently no political intention to align tax rates across the EU. Aligning the rules on tax profit determination in the EU would have the advantage not to be underestimated, the tax compliance and administrative costs; to reduce those resulting from the handling of 27 different national tax systems. However, in the case of uniform profit determination rules, tax competition would narrow down and intensify to tax rate competition. The pressure to lower tax rates would increase.

In addition, the alignment of the winning rules cannot eliminate the incentive to shift real economic activity and book profits to low-tax countries as long as there are significant differences in the tariff burden on corporate profits. Establishing a common consolidated corporate tax base for companies operating across the EU, there are in principle two Opportunities. On the one hand, according to the European Commission, consolidated consolidated profit for the purposes of taxation could be based on a formula split among Member States (Formula Apportionment). This proposal conceptually implements the source principle within the EU. The formula-divided consolidated tax base is subject to final taxation in the respective member states of the Group companies. Alternatively, it is possible to maintain the prevailing taxation based on direct profit allocation (separate entity accounting), but all the results of the group units can be attributed to the parent company and taxed in its country of residence. The countries of residence of the subsidiaries retain their tax entitlements for the respective profits. Double taxation is avoided by the method of crediting. In the case of losses of the subsidiaries, the loss is initially attributed to the parent company, but in the event of subsequent profits of the subsidiary, the parent company is subject to post-taxation. Within the EU, this method of attribution is applied to: company level the residence or residence principle. However, an in-depth review of these broader coordination measures has shown that the existing tax rate differences between Member States do not sustainably reduce tax-related distortions of economic decisions. On the contrary: There may be new distortions and disincentives in addition.

Therefore, a consolidated corporate tax base can only in the case of reduced tax rate differences, improve the functioning of the internal market. The tax rate differences could be reduced by introducing a minimum tax rate or a tax rate corridor (minimum and maximum tax rate). Such a minimum tax rate has advantages, but also raises economic problems and is currently unlikely to be enforceable in the EU.[4]

[4] Bundesministerium für Finanzen, *Gutachten des Wissenschaftlichen Beirats beim Bundesministerium der Finanzen*, p. 3 ff.

Overall, the Advisory Board considers that the benefits of enhanced coordination of corporate taxation are limited in the case of tax rate differences that continue to exist. While aligning the rules on profit determination reduces compliance costs for cross-border companies, but the tax rate competition. The creation of a consolidated corporate tax base (in conjunction with Formula Apportionment or Separate Entity Accounting) is discouraged without agreements leading to a greater adjustment of tax rates to corporate profits in the EU.[5]

1.1. Overview of the EU corporate framework

Growth-intensive companies create far more new jobs compared to other companies.[6] Many of these companies are start-ups that develop into larger companies. This will improve innovation and competitiveness in the EU, which in turn benefits the economy. Such "scale-ups" also offer social benefits, such as flexible and modern employment relationships.

As part of the Single Market Strategy[7], the Commission announced that it would look for solutions to make the single market more efficient for start-ups and scale-ups. Ultimately, improving the entrepreneurial environment for start-ups and scale-ups in Europe has a direct positive impact on jobs and growth in the EU. Start-ups are often technology-based[8] and generally combine rapid growth, a strong reliance on product innovations, processes and finances, a great deal of attention to new technological developments, and a comprehensive use of innovative business models and collaborative platforms. Several Member States are considering initiatives to create, or have already launched, an environment conducive to innovation and entrepreneurship.

As a result, there are no major differences between the EU and the US in terms of the creation of new businesses.[9] This is particularly evident in the technology sector where EU companies are currently developing into global market leaders in certain sectors with medium/high levels of technology (e.g. mechanical engineering, automotive).Several EU initiatives contribute to boosting job creation and growth, namely the European Fund for Strate-

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[5] Bundesministerium für Finanzen, *op. cit.*, p. 3 ff.

[6] Europäische Kommission, *Europas Marktführer von morgen: die Start-up- und die Scale-up-Initiative*, 2016; M. Henrekson, D. Johansson, *Gazelles as job creators: a survey and interpretation of the evidence,* 2010, vol.35, II, 227 ff, *according to the authors "4% of enterprises create 70% of new jobs.*"

[7] Cfr. F. Giambrone, *New fiscal, monetary, financial, banking and capital perspectives of the European Union, in Centro Interuniversitario popolazione, ambiente e Cultura*, Nr. 39, 2021.

[8] Nt. *Konnektivität; 5G und Breitband usw.*

[9] Europäische Komission, *Europas Marktführer von morgen*: *op. cit*; Nt. *However, there are differences between EU Member States* cfr. OECD, *Entrepreneurship at a glance*, 2015.

gic Investments (EFSI)[10] and its expansion and reinforcement, but also the Single Market Strategy[11], the Digital Single Market[12] and the Capital Markets Union[13] have created the framework for further success. The Capital Markets Union will strengthen the third pillar of the Investment Plan for Europe. It will benefit all 28 Member States, while also benefiting Economic and Monetary Union by promoting economic convergence and mitigating economic shocks in the euro area, as explained in the Five Presidents' Report on the Completion of Economic and Monetary Union.[14] Stronger capital markets will fit into the strong European tradition of bank financing and Release more investment from the EU and the rest of the world: The Capital Markets Union will help mobilise capital in Europe and deliver to all companies, in particular SMEs, infrastructure projects and long-term sustainable projects needed to grow and create jobs. It will provide households with better opportunities to achieve their pension objectives; better link financing and investment projects across the EU: Member States with small markets and high growth potential can benefit greatly from better channelling of capital and investments in their projects. Member States with more developed capital markets will benefit more cross-border investment and savings opportunities; Making the financial system more stable: Integrated financial and capital markets can help Member States, especially in the euro area, to manage the impact of shocks together.

By opening a wider range of sources of funding, the Capital Markets Union will contribute to sharing financial risks and making EU citizens and businesses less vulnerable to bank shrinkage in the future. In addition, further developed equity markets enable more investments in the long term, as opposed to growing credit financing; deepen financial integration and increase competition: more cross-border risk sharing, deeper and more liquid markets, and diversified markets; funding sources will deepen financial integration, reduce costs and increase Europe's competitiveness. In short, the Capital Markets Union will better combine savings and growth. It will help savers and investors to more choice and better returns.

It will open up more financing opportunities for companies at the different stages of their development.[15] In addition, a stronger focus of the

[10] European Commission, *Europe´s next leaders: the Start-up and Scale -up Initiative*, 2016.

[11] Cfr. European Commission, *Europe´s next leaders, op. cit.*

[12] Europäische Kommission, *Strategie für einen digitalen Binnenmarkt für Europa* {SWD(2015) 100 final.

[13] Europäische Kommission, *Aktionsplan zur Schaffung einer Kapitalmarktunion,* 2015; A. F. Uricchio, F. L. Giambrone, *The eu budget powering the recovery plan for Europe, in open review of Management banking and finance,* 2020.

[14] Europäische Kommission, *Aktionsplan zur Schaffung einer Kapitalmarktunion*, p. 3.

[15] Europäische Kommission, *Aktionsplan zur Schaffung einer Kapitalmarktunion,op.cit.*, p. 4.

European Structural and Investment Funds on innovation and support for SMEs, 140 000 start-ups and scale-ups will provide venture capital support.[16] EFSI agreements already benefit from 377 000 SMEs, including start-ups. However, instead of flourishing and expanding in Europe and beyond, too few European start-ups survive the critical phase of two to three years, and even less are evolving into larger companies.[17]There are many reasons for this situation: Estimates suggest that up to 1 million new jobs will be created in the EU over the next 20 years and up to 2 Bio. EUR in additional GDP could be generated if the share of scale-ups were as high as in the US.[18]Due to the positive link between enterprise size and productivity, this would improve productivity growth in Europe.[19] Furthermore, finding ways to help start-ups expand could also benefit traditional companies by promoting their business and growth within the internal market. The results of the public consultation carried out by the Commission at the beginning of 2016 confirmed this picture.[20] As the main findings[21], the following is stated: Start-ups looking to expand their business are still facing too many regulatory and administrative hurdles, especially in a cross-border context. For both start-ups and scale-ups, there are too few ways to find and collaborate with potential financial partners, business partners and local authorities. Access to finance is one of the main obstacles to business enlargement. In short, the still too fragmented Single Market[22] can still limit the growth potential of start-ups and scale-ups in particular. They are obviously hampered by regulatory and administrative hurdles to innovation, valorisation of intangible assets and an EU-wide enterprise expansion. Companies may choose to move their operations to countries outside the EU with higher growth potential, thus losing jobs in the EU.

European authorities, start-ups and their business partners need to work together to avoid wasting valuable efforts by start-ups. A partnership is need-

[16] Europäische Kommission, *Europas Marktführer von morgen*, *op. cit*.

[17] Nt. *The share of companies that grow by less than 5 % or not at all is above 45 % in Europe compared to 37 % in the US*; A. Bravo-Biosca, *A look at business growth and contraction in Europe*, 2011, p. 1 ff.

[18] Europäische Kommission, *Europas Marktführer von morgen: die Start-up und die Scale- up- Initiative,* 2016.

[19] Siehe EUROSTAT, *Statistics Explained: Entrepreneurship — Statistical indicators*, 2016. "*Die Produktivität ist in Unternehmen mit mehr als 1000 Mitarbeitern weitaus höher als in anderen Unternehmen (Dänische Unternehmensbehörde).*"

[20] Cfr. European Commission, *op. cit.,* p. 3 ff.

[21] Cfr. European Commission, *op. cit.,* p. 3 ff; Ch. Smekal, *Steuerpolitik in Deutschland und Österreich: 2 Nachbarn- verschiedene Wege?,* in V. Ulrich, W. Ried (eds.), *Effizienz, Qualität und Nachhaltigkeit im Gesundheitswesen*, Baden-Baden, 2007, 93 ff.; 1 BvR 16/13, ord. 6 November 2019; 1 BvR 276/17, ord. 6 November 2019; G. Corasaniti, *Manuale di diritto tributario internazionale,* (a cura di) V. Uckmar, P. de' Capitani, I edizione Cedam, 2009, p. 333.

[22] Nt. *Including the Digital Single Market.*

ed with national, regional, and local authorities, with the start-ups themselves. This includes the need for authorities to create the conditions for start-ups to expand their business activities. In return, these start-ups can create jobs, maintain themselves in the market and take on social responsibility.

The recently published Scale-up Europe Manifesto[23] shows that start-ups are ready to work together. The Commission welcomes this initiative by stakeholders in this field and its recommendations have been incorporated into the Commission's reflections on these issues. This initiative addresses three problems: Obstacles, lack of partners and opportunities, and difficulties in financing. It is based on: a coordinated approach across all EU policies, based on existing or to be developed, including sectoral approaches such as in the space sector; Several limited and targeted practical measures; and most importantly, Partnership.[24]

2. European perspectives – challenges and flagship initiatives

2.1. Access to finance for technology-intensive scale-ups

2.1.1. Challenges[25]

Europe is one of the fastest growing regions in terms of private investment.19 In the period 2016-2020, Europe experienced stronger growth than China and the US20, while considering the lower starting position. European start-ups also accounted for 33 % of the total global capital invested, which amounted to around USD 5 million, compared to 35 % for start-ups in the US.[26]

Nevertheless, the number of scale-ups in technology-intensive areas in the EU is significantly lower than in the US and China, and the financing of scale-ups remains behind that of start-ups. Several factors are slowing down the EU. Traditional banking products such as loans, credit lines and

[23] European Commission, *Scale Up Europe: A Manifest for change and empowerment in the digital age*, 2016.

[24] Europäische Kommission, *Europas Marktführer von morgen: die Start-up- und die Scale-up-Initiative,* 2016.

[25] Europäische Kommission, *Eine neue europäische Innovationsagenda*, 2022, p. 4.

[26] Europäische Kommission, *op. cit.*, p. 4 "*With the revolutions of the seventeenth and eighteenth centuries and with the affirmation of modern constitutionalism changes the model of the exercise of tax power, imposing the bargaining between the authority of the sovereign and the parliamentary consent (instead of the sole authoritarian decision of the sovereign). In each of the countries involved (Œngland, United States of America and France) there is a metamorphosis of the fiscal order that is worth changing the conceptual scope of the social code".For a better understanding in this regard* Cfr. P. Boria, *No taxation without representation. La formazione storica del principio del consenso alla tassazione,* in *Riv. dott. Fisc.*, 1/2022, p. 15 ff.

overdrafts remain the main external source of financing for European companies. Alternative resources offered on the market, such as equity, play a secondary role in the EU; in addition, the tax system stabilises the status quo as interest payments on debt financing are tax deductible, while in most Member States the costs related to external equity financing do not entitle to deduction.

The short-term nature of traditional financing, coupled with the comparative financial disadvantage of equity compared to indebtedness, represents a significant obstacle to investment in innovation, especially in the growth phase. Technology-intensive innovation requires large amounts of patient capital, as the companies concerned generally have the following characteristics: Lack of continuous revenue sources and secured cash flow; they have substantial intellectual property, but have little material security; they will only achieve their results over time in terms of both marketable products and financial returns. Unlike in the US and China, the EU also lacks large venture capital funds that are willing to participate in large-scale transactions. The distribution of venture capital investors across the different types of investors shows that pension funds and insurance companies account for only 12.7 % of the total venture capital funds raised in the EU29 in 2020. On the other hand, government agencies accounted for the largest share at almost 35 %. This shows that the European venture capital market is fragmented and risk-averse and many investors engage only in the early stages of companies in small and regional markets, resulting in less and smaller late-stage financing rounds in Europe.[27]

2.1.2. Flagship initiative on the financing of scale-ups in the field of technology-intensive innovation

This flagship initiative focuses on measures to accelerate the growth of start-ups in the field of technology-intensive innovation in the EU. Funding of around EUR 45 billion could be mobilised for scale-ups36 from potential private capital sources by 2025, and the cost of listing on public markets could be reduced.

2.2. Prospectives regarding the European Corporate taxation: Incentives to restore a balance of debt and equity[28]

The Commission has proposed an exemption for corporate tax as an incentive against a preference for debt over equity financing (DEBRA),

[27] Europäische Kommission, *Eine neue europäische Innovationsagenda*, p. 5.

[28] Europäische Kommission, *op. cit.*, p. 6.

which would increase its availability across the EU by reducing the costs of new equity and making its use more attractive for companies.

On 18 May 2021, the European Commission adopted a Communication on Corporate Taxation for the 21st Century[29] to promote a sound, efficient and fair corporate tax system in the EU. It outlines both a long-term and a short-term vision of supporting Europe's recovery after the COVID-19 pandemic and ensuring adequate public revenues in the coming years. Similarly, the EU Action Plan for the Capital Markets Union[30]2 aims to help companies raise the capital they need and improve their equity position, especially during a recovery period accompanied by higher deficits and debt levels and higher capital investment needs. In particular, the measure of the Capital Markets Union[31] provides incentives for increased long-term investment by institutional investors, thereby helping to strengthen equity financing in the corporate sector in order to promote the transition to a sustainable and digital EU economy.[32] A debt incentive initiative at EU level complements the above-mentioned measure 4 with the aim of creating a fair and stable business environment that can promote sustainable and employment-intensive growth in the Union.

Tax systems in the EU allow the deduction of debt interest payments when calculating the tax base for corporate tax purposes, while capital financing costs such as dividends are largely non-deductible. This imbalance in tax treatment is one of the factors that favours the use of debt versus equity to finance investments. At present, only six Member States are taxed against debt incentives and the relevant national measures vary widely. If fiscal debt incentives are not effectively reduced throughout the internal market, EU companies will continue to lack sufficient incentives for equity financing instead of debt financing, and tax planning considerations will further distort the distribution of investment and growth.[33]

To address tax debt incentives in a coordinated manner throughout the internal market, this Directive lays down rules to provide for the tax deductibility of notional interest to capital increases under certain conditions and

[29] Cfr. Europäische Kommission, *Eine Unternehmensbesteuerung für das 21. Jahrhundert*, 2021.

[30] Europäische Kommission, *Eine Kapitalmarktunion für die Menschen und Unternehmen – neuer Aktionsplan*, 2020.

[31] A.F. Uricchio, F. L. Giambrone, *Eu finance at the Emergency Test*, in collana del Dipartimento Jonico in Sistemi Giuridici ed Economici del Mediterraneo, societá ambiente e culture, 2021; F. Giambrone, *Finanzföderalismus als Herausforderung des Europarechts*, in collana del Dipartimento Jonico in Sistemi Giuridici ed Economici del Mediterraneo, societá ambiente e culture 2021.

[32] Europäische Kommission, *Vorschlag für eine Richtlinie des Rates zur Festlegung von Vorschriften für einen Freibetrag zur Reduzierung der steuerlichen Begünstigung von Fremd- gegenüber Eigenkapitalfinanzierungen und für die Begrenzung der Abzugsfähigkeit von Zinsen für Körperschaftsteuerzwecke*, 2022.

[33] ID, *op.cit.*

to limit the tax deductibility of excess borrowing costs. The Directive shall apply to all taxable persons subject to corporation tax in one or more Member States, except for financial undertakings. As small and medium-sized enterprises (SMEs) tend to have greater difficulties in obtaining financing, it is proposed that SMEs be granted a higher notional interest rate.[34]This proposal also responds to the European Parliament's expectation that the Commission will present a proposal for an exemption to reduce leverage incentives, which contains effective rules to combat tax avoidance to prevent the use of capital allowances as a new instrument to erode the base.[35]

2.3. Consistency with existing and possible future rules in this area

This Directive is part of the EU corporate taxation strategy aimed at ensuring a fair and efficient tax system across the EU. In 2016, the Anti-Tax Avoidance Directive ('ATAD Directive')5 was adopted in order to ensure a fairer tax environment in the Member States through the coordinated implementation of the main anti-tax avoidance measures, largely stemming from the international project to combat profit shortening and profit shifting (BEPS). Although the fight against tax avoidance is not the primary objective of this proposal, it also contains a rule on an interest rate barrier. In view of the different objectives of this proposal and the rule on the interest-rate limitation of the ATAD Directive, both rules on the limitation of the deductibility of interest should be applied in parallel. However, existing tax instruments at EU level do not include measures to reduce leverage incentives in the internal market by making the tax treatment of debt and equity more balanced across the EU.

This Directive builds on the Commission Communication on Corporate Taxation for the 21st century for a sound, efficient and fair corporate tax system in the EU and takes up one of the policy initiatives foreseen in this Communication. In doing so, it complements a number of other policy initiatives that are supported in parallel by the Commission in the short and long term. These policy initiatives include a proposal entitled "Business in Europe: Framework for Income Taxation (BEFIT)" (Companies in Europe: a framework for corporate taxation), a common EU corporate tax framework based on a common tax base and the formula-based allocation of profits to the Member States (form tracing).

While the BEFIT proposal is still at an early stage of development, the two initiatives contribute to the same vision of a fair, efficient and sustainable business environment in the EU. The Communication"Enterprises in Europe: a framework for corporate taxation" (or BEFIT — "Business in

[34] Europäische Kommission, *op. cit.*

[35] ID., *Bericht über die Auswirkungen der einzelstaatlichen Steuerreformen auf die Wirtschaft in der EU*, 2021.

Europe: Framework for Income Taxation") will become uniform EU-wide rules for the creation of corporate taxation with a fairer allocation of tax sovereignty between Member States. BeFit will reduce bureaucracy, reduce compliance costs, close tax loopholes, maintain jobs in the EU and invest in the single market promotion. In addition, BEFIT will also replace the pending proposal for a common consolidated corporate tax base (CCCTB)[36], which will be withdrawn. BeFit will form a common corporate tax framework for the EU based on a common tax base and formula-based allocation of profits to Member States. It will build on the progress of international negotiations, where these two concepts already exist. The formula for partially reallocating Pillar 1 profits and common rules for the calculation of the tax base for the purposes of Pillar 2. BeFit aims to ensure that businesses can operate in the internal market without major tax obstacles. At the same time, it will ensure that discrepancies between corporate tax systems do not prevent Member States from generating revenue to finance national spending priorities. Common rules for determining the corporate tax base will significantly simplify business groups operating in the internal market. Instead of complying with the corporate tax rules of 27 Member States, a group of companies will be able to determine their tax liability in each EU Member State under a single set of rules. This will also pave the way for further administrative simplifications such as the possibility of a single EU corporate tax return for a group.

Consistency with the Union's policy in other areas. This proposal contributes to the Capital Markets Union. The main objectives of the Capital Markets Union are to improve the access of EU companies to finance and to promote the integration of national capital markets into a genuine single market. By reducing tax indebtedness incentives, the proposal aims to ensure an excessive

To prevent dependence on debt capital and to promote the stronger focus of companies on equity. Consequently, businesses will be in a better position to make investments for the future, which will boost growth and innovation as well as the EU's competitiveness. This also strengthens companies' resilience to unpredictable changes in the business environment and reduces the risk of insolvency, which in turn contributes to improving financial stability. If this proposal is adopted by the Council, costs of raising equity could be deductible for tax purposes and the deductibility of interest could be limited. All non-financial corporations would be entitled to tax deductibility of new equity, and a higher fictitious interest rate could be provided for small and medium-sized enterprises compared to larger companies (i.e. they would benefit from higher deductions). The European Commission has proposed an exemption to reduce debt incentives (DEBRA)[37] to facilitate

[36] Europäische Kommission, *op. cit.*

[37] Europäische Kommission, *op. cit.*

companies' access to finance and promote their resilience. The introduction of an allowance is intended to treat equity in the same way as debt capital. The proposal provides that increases in a taxpayer's equity from one tax year to the next are deductible from their tax base, as well as debt capital. This initiative is part of the EU Corporate Taxation Strategy, which aims at a fair and effective EU-wide tax system aims and contributed to the Capital Markets Union by facilitating access for EU companies to finance and by promoting the integration of national capital markets into a genuine single market.[38]

2.4. Stock exchange listing

In line with the objectives of the Commission's 2020 Capital Markets Union Action Plan, the Commission will present a stock exchange listing act in the second half of 2022. The Stock Exchange Listing Act simplifies stock market listing requirements for certain types of companies to reduce costs and increase legal certainty for issuers while safeguarding investor protection and market integrity. In order to allow certain founders and families (e.g. issuers listed on SME growth markets) to maintain control after the IPO, but also to raise more capital and make use of the benefits associated with the listing, the act on listing may also propose a minimum harmonisation of national legislation on the structure of the two classes of shares across the EU. In addition, thanks to the EU guarantees under the InvestEU initiative to promote the IPO of SMEs38, the European Investment Fund will invest in SMEs that go public or are planning a listing. This will attract additional private investment in the expansion and growth of SMEs.[39]

2.5. Late-stage financing through venture capital

The InvestEU Guarantee Agreement, signed by the European Commission and the EIB Group in March 2022, paves the way for the implementation of InvestEU financial products in the research, innovation, and digitalisation policy area, under which the EIB Group will allocate a total of EUR 5.5 billion by 2027 to support breakthrough innovation. Following a successful pilot project40, the mechanism of the European Scale-up Action on Risk Capital (ESCALAR) will be extended under InvestEU. This expansion aims at mobilising numerous and new private capital sources and institutional investors by complementing venture capital with quasi-equity with a lower risk profile. This can potentially double the investment capacity of a venture capital

[38] ID., *Steueranreize für Eigenkapital vor, um das Wachstum von Unternehmen zu unterstützen und sie stärker und widerstandsfähiger zu machen Brüssel*, 2022

[39] Europäische Kommission, *Eine neue europäische Innovationsagenda*, 2022, p. 6.

fund without distorting the nature of the European venture capital landscape by mobilising additional private investments on unequal terms. As part of this project, the Commission will convene the leaders of major institutional investors (pension, insurance, and sovereign funds) to explore possibilities and requirements for increasing investment in venture capital funds. The InvestEU programme also aims to provide a framework to help financial institutions and their investment experts to better assess, assess and enhance intangible assets and facilitate the use of intellectual property by SMEs as security. In addition, the Commission, together with the Member States and the EIB, will assess the complementarity between existing EU financial instruments and recent initiatives such as the European Tech Champions Initiative (ETCI) (for which the EIB Group will initially provide up to EUR 500 million) in order to bridge the gap that exists in terms of the expansion capacity of European companies in the field of technology-intensive innovation.[40]

2.6. Increasing diversity and revitalising investment

The Commission will test an innovation index on equality and diversity. It will collect data on women and other less represented groups, including persons with disabilities, in innovative start-ups and scale-ups, as well as on investors and funds investing in such companies. The project will be based on a study assessing gender investment gaps for both women-led companies and women-led funds. The aim of the study is to develop a harmonised methodology for sound and systematic data collection and recommend adequate data analysis to provide better information for policy decisions. Programmes such as Women2Invest of the European Institute of Innovation and Technology (EIT) will further contribute to greater diversity by supporting investors in finding access to and recruiting from a more diverse pool of potential employees.[41]

3. EU tax policy framework[42]

3.1. Context

The context of EU corporate taxation policy has changed fundamentally last year. COVID-19 has hit the societies and economies in Europe and worldwide. The public health crisis has led to the most serious economic crisis in the EU's history, which has profound social implications and exac-

[40] ID., *op. cit.,* 8.

[41] Europäische Kommission, *Eine neue europäische Innovationsagenda*, 2022.

[42] Europäische Kommission, *op. cit.*, p. 1 ff.

erbates inequalities. The pandemic occurred against the backdrop of other major developments that shape our economies and societies. These include population ageing, climate change, environmental degradation, globalisation, and labour market change. The pandemic has also accelerated existing trends in digitalisation as more people and businesses shop, work, communicate and do business via the Internet. These trends have a significant impact on the existing tax bases and make it necessary to reflect on the design of efficient, sustainable, and fair tax frameworks for the future, considering the overall tax mix. There is also a consensus that the basic concepts of the tax seat and the source of taxation on which the international tax system has been based over the last hundred years are now obsolete. Nowadays, businesses are carried out regularly without a physical presence in a state. The current rules are not suitable for this situation. Globalisation has also created new opportunities to undermine the existing principles through tax planning models.[43]

In response, governments have increasingly adopted a patchwork of measures to combat tax avoidance and tax evasion. Although individual problems have been successfully solved, on the other hand, the complexity of the systems has increased. Triggered by several tax scandals, strict enforcement of state aid rules and the need to finance public spending after the financial crisis, discussions on a reform of the international corporate tax framework in the beginning of the 2010s were intensified in the BEPS (Base Erosion and Profit Shifting)[44] project to combat profit shortening and profit shifting1 led by OECD and G20. The project brought its first results in 2015, which were subsequently implemented in the EU through, inter alia, the Anti-Tax Avoidance Directive 2.

In the international discussions, a global solution is now emerging to reform the outdated international system of corporate taxation, which includes measures to redistribute taxation rights and effective minimum taxation.[45]EU business taxation measures need to be embedded in a comprehensive EU tax agenda. It focuses on the need for a balanced mix of tax revenues and a tax system guided by the principles of fairness, efficiency and simplicity.

The following priorities are crucial to achieving this vision: (I) Promoting fair and sustainable growth. The EU's tax agenda contributes to the overall objective of fair and sustainable growth by supporting overarching EU policies such as the European Green Deal[46], the Commission's digital

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[43] Europäische Kommission, *op. cit.,* p. 2 ff.

[44] Europäische Kommission, *Vorschriften zur Bekämpfung von Steuervermeidungspraktiken mit unmittelbaren Auswirkungen auf das Funktionieren des Binnenmarkts,* 2016, p. 1 ff.

[45] Europäische Kommission, *op. cit.,* p. 1 ff.

[46] Cfr. A.F. Uricchio, G. Chironi, F. Scialpi, *Sostenibilità e misure fiscali e finanziarie del d.l. clima,* in *AmbienteDirittto.it,* 2020, n 3.

agenda, the new industrial strategy for Europe and the Capital Markets Union.[47] It should also contribute to promoting inclusive recovery in line with the principles of the European Pillar of Social Rights.[48]The EU tax framework must be designed to contribute to a stronger single market for Europe's recovery, in line with the new 2020 Industrial Strategy and its May 2021 update. It should reduce compliance costs for businesses, facilitate cross-border investment and create the right conditions for SMEs and larger enterprises to thrive in a green and digital Europe. The EU tax framework also plays a key role in promoting the development of the Capital Markets Union by removing tax barriers to cross-border investment and ending corporate debt-friendly taxation.

3.2. Ensuring effective taxation

Ensuring effective tax collection is crucial for the financing of high-quality public services and a precondition for the fair sharing of the tax burden among taxpayers. It also contributes to a level playing field for businesses and improves the EU's competitiveness. Every year, Member States in the EU escape billions of euros through tax fraud, tax evasion and tax avoidance.[49] The tax law of each Member State can also lead to tax defaults in other Member States, for example if royalties and interest payments can be paid to recipients in low or zero tax jurisdictions without paying taxes in the EU.[50]Tax systems need to be modernised to better reflect current and future economic and social developments. Member States' public budgets are heavily dependent on labour taxation and social security contributions, which account for more than 50 % of total tax revenue in the EU-27. VAT[51]

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[47] European Commission, *Capital Markets union for people and business- new action p*lan, 2020.

[48]Europäische Kommission, *op. cit.,* p. 2 ff.

[49] As a result of tax avoidance at international level by natural persons, EU Member States avoid tax revenues of EUR 46 billion annually. See ECOPA and CASE, *Estimating International Tax Evasion by Individuals,* Taxation Papers, 2019, p. 76. *This is estimated to result in losses due to corporate tax avoidance of EUR 35 to EUR 70 billion per year.* See R. Dover, B. Ferrett, D. Gravino, E. Jones, S. Merler, *Bringing transparency, coordination and convergence to corporate tax policies in the European Union*, European Parliamentary Research Service, 2015, PE 558.773; M. Álvarez-Martinez, S. Barrios, D. D'Andria, M. Gesualdo, G. Nicodeme, J. Pycroft, *How Large is the Corporate Tax Base Erosion and Profit Shifting? A General Equilibrium Approach,* in *CEPR Discussion Papers*, 2018, 12637; T. Torslov, L. Wier, Tørsløv, G. Zucman, *The Missing Profits of Nations*, in *NBER Working Paper*, 2018, 24701.

[50] Europäische Kommission, *Eine Unternehmensbesteuerung für das 21. Jahrhundert*, COM(2021) 251 final, *op. cit.*, p. 4 ff.

[51] A. F. Uricchio, S. Lotito Fedele. *Operazioni fittizie e inesistenti: la Corte esclude la detrazione Iva,* in *Rivista C. conti*, 2019, III; For a better understanding concerning risk management in the fight against corruption: specific interventions and quality of administration Cfr. F. ROTA*, La*

accounts for more than 15 % of the total tax revenue; other tax types, such as environmental taxes (~6 %), real estate taxes (~5 %) or corporation tax (~7 %) each account for only a small share.[52] Although the overall composition of tax revenues in the EU[53] has remained relatively stable over the last twenty years[54], megatrends such as climate change and the digital transformation of the labour market are likely to have an impact on the tax mix in EU Member States in the future.[55]

Due to the ageing of the population and the increase in atypical forms of employment, the taxation of labour may no longer generate the same revenue as at present. As already underlined in the Green Paper on Ageing and in the 2021 demographic ageing report, we will need to reconsider the taxation of labour and the consequences for the taxation of other factors. At the same time, the need for sustainable revenue and Take account of intergenerational justice and ensure the sustainability of social security systems. The traditionally high tax and tax burden on labour in the EU, also compared to other advanced economies, needs to be further reduced to promote competitiveness, employment and the creation of new jobs after the crisis.[56]

At the same time, excise duty rates have already reached a historic high with the increase in VAT rates after the financial crisis. One of the priorities should be to limit inefficient reduced VAT[57] rates and exemptions, which often do not have the expected effect.

Behavioural taxes such as environmental or health taxes are becoming

gestione del rischio nel contrasto alla corruzione: interventi specifici e qualità dell'amministrazione, *in Persona e amministrazione,* 2018, n. 1.

[52] https://ec.europa.eu/taxation_customs/business/economic-analysistaxation/datataxation_de.

[53] For an in depth analysis concerning tax treaties and procedural law within the European Union Cfr. P. Pistone, G. Kofler, M. Lang, A. Rust, J. Schich, K. Spies, C. Staringer(eds.), *Tax Treaties and Procedural Law*, vol. 18 WU Vienna European and International Tax Law and Policy Series, 2020; C.A. Giusti, F. L. Giambrone, *The nomophylactic function of the European Court of Justice in tax matters within the italian and German experience. Possible Dispute Settlement Solutions for the Member States,* in*, comparative law review* 2019.

[54] Europäische Kommission, Annual Review of Taxation – 2021 Edition.

[55] Europäische Kommission, *Eine Unternehmensbesteuerung für das 21. Jahrhundert*, COM(2021) 251 final, *op. cit.*, p. 6 ff; for a general overview related to the eu tax system Cfr. A. F. Uricchio, F. L. Giambrone, *Neue Entwicklungen im italienischen Steuerrecht als Herausforderung des neuen Europäischen Entwicklungsprozesses*, 9 ff; for an overview concerning the Italian tax framework cfr. A. F. Uricchio, *Percorsi di diritto tributari*o, 34 ff.

[56] Nt. *Zwischen 2012 und 2020 ist die durchschnittliche Steuer- und Abgabenbelastung in der EU-27 für eine alleinstehende Person, die das Durchschnittsgehalt verdient, um mehr als 2 Prozentpunkte gesunken.*

[57] *The Value Added Tax (VAT) is certainly the main tax in terms of revenue among the indirect taxes, governed by Decree No 633 of the President of the Republic of 26 October 1972 and subsequent amendments. Levied gradually, at the various stages of production and distribution of a good, is a consumption tax that is imposed on the final consumer and must not be affected by the number of steps a good take before reaching the final consumer. Its assumption is the value added, i.e. the part of the value of a good or service that the undertaking*

increasingly important for EU tax policy. Carefully designed environmental taxes promote the green transition by sending the right price signals and implementing the polluter pays principle. They also generate revenue that could offset some of the necessary tax cuts in labour taxation. Similarly, health taxes such as tobacco or alcohol can help improve public health, save lives while reducing pressure on public health systems.

Finally, a future-proof tax mix requires the fair and effective taxation of capital income from both natural persons and companies. At the same time, simplification and other measures are needed to reduce administrative burdens. In addition, periodic taxes on real estate can be a relatively efficient means of generating additional tax revenue. However, this requires appropriate resolution of the distribution and management problems associated with the valuation of real estate.[58]

The above-mentioned principles should also apply to the own resources system for financing the EU budget. In accordance with the mandate given by the European Council and the commitments it has made in the Interinstitutional Agreement[59] on the new Multiannual Financial Framework, the Commission will also: Present proposals for new own resources to repay NextGenerationEU. Following a first set of proposals on, inter alia, a carbon border adjustment mechanism, a digital tax, and the revision of the EU Emissions Trading System, which the Commission has presented in

adds with its activity, and which results from the difference between the value of the goods and services produced and sold by the undertaking and the value of the goods and services purchased by the undertaking and used in production. With VAT, therefore, an example of a perfect tax translation is realised: for all those involved in the production and distribution cycle of a good or service, the tax turns out to be a neutral transaction, except for the final consumer, who, by purchasing the goods or service to satisfy their own needs and not to sell it, pays the tax by taking the full burden. Transactions are considered to be subject to VAT when there are three requirements — objective, subjective and territorial — and, in this case, are subject to all the requirements laid down in Title II of Presidential Decree No 633/1972. An interesting case is embodied by the "circulation" of the manufacturer's preliminary sales and VAT invoicing regarding the Italian legal order confront, P. Puri, *La "circolazione" del preliminare di vendita del costruttore e la fatturazione Iva,* in *Fondazione Nazionale del Notariato*, 1/2022, according to whom, for the purposes of value added tax, the question is then made more complex by the taxable nature of the supply of the preliminary contract (even in the case of a supply free of charge) and the particular consequences that always for VAT purposes derive from the negotiation clauses normally used to overcome the problem of the supply of the contract. Of particular interest in these cases is the question of taxation with the consequent possibility of deduction and/or recovery of the tax paid on price advances at the time of the preliminary conclusion. Complications that — as we will see — we also find in some alternative figures that the application practice uses to achieve the same results.

[58] Europäische Kommission, *op. cit.*, p. 5 ff.

[59] Europäische Kommission, *Interinstitutionelle Vereinbarung zwischen dem Europäischen Parlament, dem Rat der Europäischen Union und der Europäischen Kommission über die Haushaltsdisziplin, die Zusammenarbeit im Haushaltsbereich und die wirtschaftliche Haushaltsführung sowie über neue Eigenmittel, einschließlich eines Fahrplans für die Einführung neuer Eigenmittel*, in, ABl. L 433I, 22.12.2020, 28.

July 2021, it will later propose further new sources of own resources, such as a financial transaction tax and own resources related to the business sector.[60]Digital companies[61] tend to pay less taxes than other companies, and the taxes they pay do not always benefit the countries in which they operate. The purpose of the Digital Tax[62] is to ensure that the digital sector makes a fair contribution to financing the recovery in the EU and to society as a whole. It will be designed independently of the announced global agreement on the reform of international corporate tax and will be consistent with WTO and other international commitments. The tax will be consistent with the key policy objective of supporting and accelerating the digital transformation.

It will exist in parallel with the implementation of an OECD agreement on the allocation of part of the tax revenue of the largest multinationals, if the latter has been ratified and transposed into EU law. Corporate taxation should ensure that[63] the tax burden is distributed fairly between companies and that taxable revenues are disseminated fairly between the different jurisdictions.[64] The whole system should be simple to reduce compliance costs

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[60] Europäische Kommission, *op. cit.*; Europäische Kommission, *op. cit.*

[61] Cfr. A.F. Uricchio, S. A. Parente, *Data Driven e Digital Taxation: Prime sperimentazioni e nuovi modelli di prelievo*, in, *Diritto e pratica tributaria internazionale* n. 2/2021, according to Antonio F. Uricchio " *the spread of new enabling technologies and tools for the conservation and circulation of big data have generated new forms of wealth. In the face of this phenomenon, the search for new taxable situations and new taxation criteria can not only be arbitrary, but must reflect the criterion of the suitability for the contribution of the case and the subject obliged according to economically appreciable situations. The most significant experiences on the imposition of big players in the digital economy have affected certain foreign legislation, both in advanced economic systems and in developing countries. However, in the current frameworks, taxation of the digital economy still appears to be an open construction site with several proposals drawn up in various areas to determine a minimum level of effective taxation, not necessarily linked to traditional economic capacity indices. Recently, the European Council also confirmed the indistinguishability of a web taxation intervention on the assumption that the objectives of digital transformation and sustainability will be the pillars of the post-pandemic recovery; For an overview regarding the judgements of the EU Court of Justice in tax matters";* cfr. C.A. Giusti, F. L. Giambrone, *The nomophylactic function of the European Court of Justice in tax matters within the italian and German experience. Possible Dispute Settlement Solutions for the Member States, in, comparative law review* 2019; C.A. Giusti, F. L. Giambrone, *The Biffi Judgement and the Suarez case. Judicial decision of the ECJ and possible reforms of the italian civil code from an european point of view,* 2020, in, *Annali del Cersig.*

[62] Cfr. F. Gallo, A. F. Uricchio*, La tassazione dell'economia digitale, 2022;* A. F. Uricchio, G. Selicato*, Green deal e prospettive di riforma della tassazione ambientale,* in Atti della II summer school in circular economy and environmentale taxation, 2022.

[63] Europäische Kommission, *op. cit*, p. 6 ff.

[64] For an overview concerning the international taxation system please cfr. V. Uckmar, G. Corasaniti, P. de´Capitani di Vimercate, C. Corrado Olivia, *Manuale di diritto tributario internazionale,* Milano, 2012, XXVI ss.; P. Pistone, *Diritto tributario internazionale,* Torino, 2017. Please also refer to G. Corasaniti, *Aggressive tax competition and State aid: brief considerations regarding the "Apple case",* in Proceedings of the Conference held in Rome at the Sapienza University of Rome on 19 February 2017, P. Boria (edited by), Milan, Cedam ed., 2018, p. 86; for an overview regarding the Italian permanent establishment in VAT Cfr. P. Puri, *La stabile organizzazione nell'Iva*, in *Riv. Dir.*

and encourage investment and growth to strengthen the internal market. Although some obstacles to the internal market have already been removed in other areas, companies operating in the EU continue to struggle with up to 27 different national tax systems.

The patchwork of national tax rules causes unnecessary compliance costs for businesses and makes cross-border investment in the internal market more difficult. This applies not only to larger companies, but also to SMEs, start-ups and other companies that want to grow, expand, and trade across borders.

At the same time there are loopholes and complexity that excavate opportunities for aggressive tax planning and hinder the creation of a level playing field. This affects investment and growth and the EU's competitiveness compared to other international partners. Policy decisions in the field of corporate taxation also influence the investment friendliness of the tax system.

Finally, a tax system should reduce unintentional distortions of business decisions, for example against equity and debt financing, thus promoting sustainable and long-term corporate financing and the recapitalisation of companies that have been dangerously indebted, including because of the COVID-19 crisis.[65]The EU[66] has already made significant progress in recent years, for example by adopting and starting the implementation of the Anti-Tax Avoidance Directives (ATAD) and the Directive on Administrative Cooperation (DAC)[67]. Within the framework of the Code of Conduct

trib., 2/2000; P. Puri, *La "circolazione" del preliminare di vendita del costruttore e la fatturazione Iva,* in Fondazione Nazionale del Notariato, 2022, I; P. Pistone, *On Abuse and Fraud in VAT: Setting the Appropriate Boundaries for GAARs in the EU VAT System*, in M. Lang, I. Lejeune (eds.), *Improving VAT/GST – Designing a Simple and Fraud-Proof Tax System,* pp. 591-602.

[65] Europäische Kommission, *op. cit.*, 7 ff; With regard of the COVID 19 impact on the improper alteration of the institutional balance Cfr. P. Forte, *Caratteri della decisione pubblica di emergenza contemporanea,* in L'Ircocervo, 2021, p. 110 ss.

[66] Europäische Kommission, *op. ci.t*, p. 8.

[67] Europäische Kommission, *Richtlinie 2011/16/EU des Rates vom 15. Februar 2011 über die Zusammenarbeit der Verwaltungsbehörden auf dem Gebiet der Besteuerung*, in, ABl. L 64 vom 11.3.2011, 1 ff.; For an overview concerning the international taxation system please Cfr. V. Uckmar, G. Corasaniti, P. de´Capitani de Vimercante, C. Corrado Olivia, *Manuale di diritto tributario internazionale*, Milano, 2012, XXVI ss.; P. Pistone, Diritto tributario internazionale, Torino, Giappichelli ed., 2017. Please also refer to G. Corasaniti, Aggressive tax competition and State aid: brief considerations regarding the "Apple case", in Proceedings of the Conference held in Rome at the Sapienza University of Rome on 19 February 2017, P. Boria (edited by), Milan, Cedam ed., 2018, p. 86; for an overview regarding the Italian permanent establishment in VAT Cfr. P. Puri, *La stabile organizzazione nell'Iva*, in *Riv. Dir. trib.,* 2/2000; P. Pistone, *On Abuse and Fraud in VAT: Setting the Appropriate Boundaries for GAARs in the EU VAT System,* in M. Lang et al(eds.*), Improving VAT/GST – Designing a Simple and Fraud-Proof Tax System,* Amsterdam, pp. 591-602.

Group (Business Taxation), Member States shall continue the peer review of their respective tax systems to ensure that they comply with the principles of fair tax competition. The European Parliament is also in the field of Taxation in general and corporate taxation. In addition, in July 2020, the Commission adopted an ambitious Action Plan[68] on fairer, simpler, and more appropriate taxation.

This Action Plan is one of the key elements of an ambitious comprehensive EU tax agenda for the coming years, which also includes the following important initiatives: a well-designed tax system plays an important role in supporting the green transition. The use of taxation as a policy tool will contribute to achieving climate neutrality by 2050 and the other environmental objectives set out in the European Green Deal.[69]

Initiatives such as the revision of the Energy Taxation Directive and the establishment of a carbon border adjustment mechanism are part of the European Green Deal, which also aims to create the framework for far-reaching tax reforms at national level, eliminating subsidies for fossil fuels, shifting the tax burden from labour to pollution while taking into account social considerations. As part of the actions taken to support this objective, the Commission will organise a conference on more environmentally friendly taxation in 2020.

In the meantime, it will also bring additional tax revenue to public budgets to support smart investments in favour of a green transition. Environmental taxes help to give producers, users and consumers the right price signals and incentives to promote less polluting consumption and promote

[68] Europäische Kommission, *Aktionsplan für eine faire und einfache Besteuerung zur Unterstützung der Aufbaustrategie*, 1 ff.

[69] Nt.*The European Green Deal introduced by the European Commission represents the kick-off of a new environmental and climate protection policy. Environmental safeguards and sustainability seem be the leitmotif of European politics in the future. Ambitious goals are prompting a profound ecological transformation. Nevertheless, many of the challenges raised in recent years still persist.*COM (2020) 312 final. For a further understanding please Cfr. A.F. Uricchio, *The Future of European Environmental Policy in Appreciation of German Federal Constitutional Jurisprudence,* in Italian law journal, 2022, n. 1, p. 327.According to the author above all*," existing European environmental law is often insufficiently implemented by the Member State level. Environmental and climate protection is also not adequately integrated into other policy areas, such as agricultural and transport policy. The ecological turnaround seem step up to the place and further develop elements of the previous reform discussion. A CO2 border compensation system for selected sectors is going to be proposed in order to reduce the risk of relocation of economic activities and emissions abroad (carbon leaks)."* For further reading cfr. A. F. Uricchio, F.L.Giambrone, *Entwicklungen im italienischen Steuerrecht als Herausforderung des neuen europäischen Entwicklungsprozesses*, 2021; F. Giambrone, *Aspekte des türkischen Familienrechts und Würdigung familienrechtlicher Rechtsinstitute aus Italien und Österreich. Eine Rechtsvergleichung*, 2016; for a comparative overview cfr. F. Giambrone; *Eine Aspekte zu den Begriffen Errungenschaft und Eigengut im türkischen gesetzlichen Güterstand der Errungenschaftsbeteiligung,* 2014; A. F. Uricchio, *Le prospettive di riforma della fiscalità ambientale in ambito UE nell'ottica della transizione ecologica e della fiscalità circolare,* 2022, pp. 15-36.

sustainable growth. They can also offer opportunities for tax reductions in other sectors, e.g. at work and, given that the revenue needed to ensure an adequate level of social protection is guaranteed, they can be a winning solution to address both environmental and employment issues.

A profound reform of the corporate tax regime, to adapt it to our modern and increasingly digitised economy, is now more important than ever to support growth and generate the necessary revenues in a fair way, realigning tax rights with value creation and setting a minimum level of effective taxation of corporate profits. The Commission actively supports the discussions conducted worldwide by the OECD and the G20 and stands ready to act in the absence of a comprehensive agreement. By the end of the year, the Commission will define the next steps, following global discussions in the framework of an action plan on corporate taxation for the 21st century.[70] The global fight against tax evasion and avoidance requires decisive action. The COVID-19 pandemic has triggered unprecedented action at national and Union level to support Member States' economies and facilitate their recovery. This involves State intervention to ensure liquidity and access to finance for companies, a substantial part of which is subject to Union State aid rules. The Union list of non-cooperative jurisdictions for tax purposes ('the EU list of non-cooperative jurisdictions') is designed to address threats to the tax bases of EU Member States.

In this context, the Commission recommended that Member States make their financial support to Union companies subject to the absence of links between those undertakings and the jurisdictions on the Union list. To fully achieve the EU's fair taxation agenda, all existing policy instruments need to be activated. It is in this context that the Commission will examine how to make full use of the provisions of the Treaty on the Functioning of the EU (TFEU) that allow for the adoption of proposals on taxation by ordinary legislative procedure, including Article 116 TFEU.[71] Alongside these tax flagship initiatives, EU tax policies will continue to contribute to the Commission's wider programme.

For example, the revision of the Tobacco Taxation Directive and the Alcohol Excise Directive and the provision on cross-border acquisitions by individuals in the Horizontal Excise Directive will be launched to better contribute to public health objectives and avoid tax fraud. The Commission will also move forward with its programme for fair, simple and sustainable taxation in the framework of the European Semester, which includes taxation as an instrument for defining a holistic programme for a green and socially just

[70] Europäische Kommission, *Aktionsplan für eine faire und einfache Besteuerung zur Unterstützung der Aufbaustrategie*, p. 1 ff.

[71] Cfr. Europäische Kommission, *op. cit.*

transition, including through the promotion of green budgetary instruments. In addition, the Commission continues to support the implementation of its programme for fair and simple taxation through its technical assistance programmes. The EU COMMISSION adopted in 2020 also the Communication on Tax Good Governance in the EU and beyond[72], with which the EU is even more committed to transparency and fair taxation at European and global level.

4. Future perspectives regarding the Reform of the international framework for corporate taxation

On behalf of the G20, the OECD Inclusive Framework is looking for a global consensus solution to reform the international framework for corporate taxation. The discussions will focus on two major areas of work: Pillar1 (partially reclassification of taxation rights) and Pillar[73] (effective minimum taxation of profits of multinational companies). Both pillars address different but interrelated issues related to the increasing globalisation and digitalisation of the economy.

The aim of the work of Pillar 1 is to adapt the international rules for the taxation of corporate profits in such a way that they reflect the changing business models, such as the fact that companies can operate without being physically present. Market states should have the right to tax some of the profits of certain non-resident companies by redistributing a share of these global profits between the jurisdictions in which the company has customers or users based on an agreed formula.

The discussions on Pillar 1 initially focused primarily on businesses in the digital sector. However, the proposed solution could now be simplified and cover fewer multinational companies; to this end, the scope could be extended so that the largest and most profitable multinational groups are covered by the scheme, regardless of the sector in which they operate.[74]

[72] Cfr. European commission, *Communication on Tax Good Governance in the EU and beyond,* 2020, p. 1 ff.

[73] Europäische Kommission, *op. cit.*, p. 9 ff

[74]Nt. *With regard of the Member States, which should decide to join their forces by sharing more competences, resources an taking decisions together in an unanimous way. From an administrative point of view, we should also remind about the fact that Member States Politics are incardinated within its administrative discretion. By trying to look at the traditional aspect of administrative discretion, without going too far back in time, after the former has been treated substantially as little more than a matter of merit, it has matured, emerged, a constitutionally advanced reading has been refined, referring to the interests in place in the decision to be taken, in the ongoing business; but at the same time, this approach has involved another important finding, more or less coeval, of the existence of a "political share" of the administrative decision, i.e. the indispensable presence of a certain screening*

Pillar 2 aims to stop excessive tax competition by ensuring that multinationals tax their total profits at a certain minimum tax rate each year. The globalisation of the economy and the increasing use of intangible assets in global value chains have enabled some multinational companies to shift their profits to low-tax areas.

Pillar 2 aims to allow countries to raise the tax levels paid by multinational companies to an effective minimum level while allowing each country to define the characteristics of their respective tax systems. Such an effective minimum taxation of corporate profits will limit the possibilities of tax avoidance. Both pillars of the future global agreement are in line with the Commission's vision for a 21st century corporate taxation framework. Their objectives complement each other, and during international discussions a solution for both must be found. They contribute to the implementation of the important principles of formula-based profit sharing (using a formula for partial reallocation of taxation rights under Pillar 1) and a common definition of the tax base.[75]

5. Conclusions

Launched in 2014, the European Capital Markets Union project aims to strengthen capital market financing in the Member States of the European Union as a complement to bank financing and to promote the deepening of financial integration.[76] To this end, the European Commission presented in 2015 an action plan aimed at overcoming barriers to capital market financing in Europe.[77]

In addition to the general promotion of capital market financing, this plan focuses on certain market segments, such as capital market access for

of the situation, and above all of options, which would have to do with politics. For a more detailed analysis of the issue in concern Cfr. P. Forte, *Pubblica amministrazione ad eminenza scientifica e tecnologica. Riflessioni teoriche,* in Istituzioni del Federalismo, 2021, Nr. 4, p. 995 ss. The author *"subjects administrative discretion to a test of effort in relation to our time characterised by technique, scientific knowledge, and the "distinction" between politics and administration, and finds evidence to assume that the administrative one, purified by the political quota, is not a function of the aims, but a practice for achieving objectives established elsewhere, even when they have vague, indeterminate definitions, since it consists precisely in determining a decision. Today's administrative decision, therefore, must be unfolded, it can be said physiologically, using techno-scientific knowledge, expertise, basing on the reasons for decision-making and the reliability of the resulting act, in a kind of technique of the singular fact."*

[75] See European Commission, *Communication on Business Taxation for the 21st Century*, 2021.

[76] Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung, Jahresgutachten 2015, paragraphs 437 et seq.

[77] Europäische Kommission, *Aktionsplan zur Schaffung einer Kapitalmarktuni*on, 2015; European Commission, *Towards an Integrated Energy Technology (SET) Plan: Accelerating the European Energy System Transformation*, 2015c

small and medium-sized enterprises (SMEs), long-term infrastructure and venture investments, private placements and credit securitisation.[78] Initially, the framework conditions for a Capital Markets Union should be established by 2019. Improved access to capital market financing could prove beneficial for several reasons. Greater diversification of financing sources for companies reduces dependency on the banking sector, which is particularly important in times of financial crises.[79] This is how Gambacorta et al. (2014), that recessions associated with financial crises are particularly difficult for countries with bank-based financial systems. In addition, improved access to capital market financing can increase risk sharing among Member States through the factor income or savings channel. Finally, comparatively risky companies could benefit from improved capital market access. In addition to start-up financing, this concerns young enterprises in the growth phase, whose insufficient funding is often cited as a barrier to the establishment of such companies in Europe.[80] The area of equity financing is particularly weak in Europe.[81] This is favoured by the design of the tax system.[82]

In most EU Member States, debt financing is tax-privileged.[83] Tax inequality creates incentives for companies to excessive debt financing, which should at the same time increase the tendency towards bank financing.[84] These hurdles exist even more in cross-border financing, which could explain the low risk sharing via capital markets. From the point of view of private investors, different withholding taxes in Member States are likely to constitute barriers to cross-border movements of capital.

While most bilateral tax treaties provide for a refund to avoid double taxation, investors may need complex procedures go through.[85]

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[78] Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung, *Jahresgutachten 2015*, Box 15.

[79] ID., *Jahresgutachten 2015*, Box 16; A. Thomdakis, *How close are we to a Capital Markets Union?,* in *European Capital Market Institute Commentary*, 2017, No. 44, Brüssel.

[80] ID, *Jahresgutachten 2015*, paragraphs 690 et seq.; For a better understanding regarding the evolution of the rules of international tax law cfr. A. F. Uricchio, *L'evoluzione delle norme del diritto tributario internazionale: verso un diritto tributario «globale»?, in Riv. di dir. tri. Int., numero unico* 2020, I.

[81] D. Vallante, *Europe's Untapped Capital Market: Rethinking Financial Integration After the Crisis*, 2016.

[82] L.P. Feld, J.H. Heckemeyer, M. Oversch, *Capital structure choice and company taxation: a meta-study,* in *Journal of Banking & Finance*, 2013, vol. 37, issue 8, pp. 2850–2866.

[83] Cfr. European Commission, *Tax reforms in the EU Member States 2013. Tax policy challenges for economic growth and fiscal sustainability*, 2013; F. Bremus, J. Huber, *Corporate taxation, leverage, and macroeconomic stability,* in *DIW Roundu, p 93,* Berlin, 2016.

[84] Europäische Kommission, *Aktionsplan zur Schaffung einer Kapitalmarktuni*on, cit.; F. Bremus, J. Huber, *Corporate taxation, leverage, and macroeconomic stability,* in *DIW Roundup 93,* Berlin, 2016.

[85] Europäische Kommission, *Beschleunigung der Kapitalmarktunion: Beseitigung nationaler Hindernisse für Kapitalströme*, 1-17, 14 ff.

In the context of the proposal on the common corporate tax base, proposals are also made on how to address the tax advantage of debt. For this purpose, a tax deduction is to be granted in the case of equity issuance. The European Commission proposes that a fixed percentage of a company's new equity is tax deductible each year.[86] It consists of a risk-free interest rate and a risk premium. This is in principle in line with the proposal by the Council of Experts for years to adjust the share capital interest rate.[87]

Reducing the tax privilege of debt would be a major contribution to strengthening equity financing in Europe. This would incentivise companies to finance more through equity and help banks strengthen their equity ratios. Both would increase the resilience of the financial system. Moreover the taxation aspects deriving from the competition between the Member States should be highlighted.[88] Intensive tax competition between EU Member States, in particular the competition for book profits, could lead to a further decline in tax rates on corporate profits and, ultimately, to a far-reaching erosion of corporate taxation.[89] It is true that this would also be accompanied by decreasing tax rate differences, thus reducing the economic distortions caused by the tax rate differences.

Nevertheless, such an erosion would pose serious problems to tax policy. On the one hand, it is necessary to clarify how the tax revenue losses associated with falling tax rates can be compensated. On the other hand, the question arises whether further declining tax rates on corporate profits with a fair distribution of economic performance tax burdens are compatible.

The assessment of the tax reduction pressure caused by tax competition depends firstly on the assessment of whether the political decision-making process without such pressure leads to an appropriate level of government budgets.

If one considers that imperfections of the political process tend to lead to excessive expansion of state activity, one will be critical of the limitation of tax competition by minimum tax rates. A low-level adjustment by competition could affect the tax system by erosion in taxation of corporate

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[86] Europäische Kommission, *Vollendung der Kapitalmarktunion bis 2019: Beschleunigung der Umsetzung,* 7 ff; for further literature in this regard cfr. European Commission, *Council directive laying down rules relating to the corporate taxation of a significant digital presence*, 2018; M. Draghi, *Rede von EZB-Präsident Mario Draghi anlässlich des 37. Treffens des International Monetary and Financial Committee (IMFC)*, 2018a, Washington, DC.

[87] Sachverständigenrat zur Begutachtung der gesamtwirtschaftlichen Entwicklung, *Jahresgutachten 2017* Box 2; *Jahresgutachten* 2015 paragraphs 728 et seq.; *Jahresgutachten* 2012 digits 407 et seq.

[88] L.P. Feld, J.H. Heckemeyer, M. Oversch, *Capital structure choice and company taxation: a meta-study,* in *Journal of Banking & Finance*, 2013, vol. 37, issue 8, pp. 2850–2866.

[89] Bundesministerium für Finanzen, *Gutachten des Wissenschaftlichen Beirats beim Bundesministerium der Finanzen*, p. 76 ff.

profits.[90] The main question is whether the current progressive income taxation with partly high marginal tax rates can be maintained if profit income is significantly lower, at least at company level. It could be argued here that low corporate taxes can be offset by higher taxation of profit distributions. However, this is limited in view of the mobility of financial assets. Taxation of distributions is also limited by EU law and double taxation agreements.[91] The taxation of profit distributions must also consider that equity financing should not be disadvantaged as far as possible compared to other forms of financing, in particular debt financing.

One way to solve this problem would be the introduction of a flat rate tax system with significantly lower peak tax rates.[92] Although there are many reasons for the abolition of the direct progressive tariff of income tax, this would be a very far-reaching reform step, which currently has little prospects for enforcement. Another solution would be the transition to a dual income tax system that subjects capital income to a low proportional tax rate, while other incomes are directly progressive and taxed at higher rates. The introduction of minimum tax rates on profits of corporations also raises several problems. Firstly, this minimum tax rate would only apply within the EU. Competition with third countries would continue to exist. The fact that the EU's external borders have more possibilities to prevent the shift in book profits is, of course, relativised. Second, there is the possibility that once introduced, presumably at first moderate minimum tax rate from the fiscal interests of the EU Member States via a meaningful measure is increased. Remaining tax competition with third countries however, the weight of this fear decreases.

Thirdly, it should be borne in mind that in the case of unified winner determination, a coordination the tax rate limits the possibilities of individual Member States, tax policy to respond flexibly to unforeseeable future challenges, such as increased tax competition caused by economic or technological changes by third countries.

Fourthly, it should be noted that the growth prospects in the Eastern European Member States would be affected by a minimum rate of taxation. For these states, the possibility of using low rates of profit tax Attracting activity is an important economic policy instrument. In addition, the Italian

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[90] ID, *op.cit*, p. 76 ff.

[91] C. Fuest, Ch. Spengel, K. finke, J. Heckemeyer, H. Nusser, *Profit shifting and'aggressive'tax planning by multinational firms: Issues and options for reform,* in *ZEW-Centre for European Economic Research Discussion Paper*, 2003.

[92] Vgl. Wissenschaftlicher Beirat beim Bundesministerium der Finanzen*, Flat Tax oder Duale Einkommensteuer? Zwei Entwürfe zur Reform der deutschen Einkommensbesteuerung,* Schriftenreihe des BMF, *op.cit.*, Heft 76.

contribution to the financing of the EU budget can be reduced because of the positive economic development of these countries.[93] Overall, the Advisory Council considers that the introduction of a minimum rate for national corporate taxes in the EU has advantages and disadvantages, which do not allow a clear assessment.[94]

If you choose a minimum tax rate, there is a lot of support to seek greater coordination of the tax base. Politically, however, the agreement on such a minimum rate or a tax rate corridor seems unlikely at the moment. For this reason, the italian fiscal policy will have to develop strategies to pursue its objectives in a European environment, which is characterised by an intensive Competition of corporate taxes. There is no prospect of this competition by coordinating corporate taxation in the EU and to limit the full respect of national tax rate sovereignty.

The considerations set out in this opinion lead to the following results: as a starting point one should bear in mind that alignment of the rules on tax winnings in the European Union would have the ununderestimated advantage of reducing compliance costs currently resulting from dealing with 27 different national tax systems. However, in the case of uniform profit determination rules, tax competition would narrow down and intensify to tax rate competition.[95]

The pressure to lower tax rates would increase. With the understanding that there are differences in the tariff burden on corporate profits, the incentives existing in the status quo to shift both real economic activity and book profits to low-tax countries remain even after an adjustment of the profit determination rules. [96]

As a far-reaching coordination measure, the European Commission has proposed to abandon taxation based on direct profit sharing and to move to split the EU-wide profits of individual companies according to a formula among the Member States for tax purposes (Formula Apportionment).

It remains, however, that the consolidated profit is finally taxed by the Group companies (source principle). Alternatively, it is conceivable to maintain taxation based on direct profit allocation, but to tax the profits of all subsidiaries in addition by offsetting foreign taxes at the parent company (seating principle). With tax rate differences still in place, none of these further coordination measures can sustainably reduce tax-related distortions of economic decisions in the European Single Market. On the contrary, new distortions and disincentives can be added.[97]

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[93] Bundesministerium für Finanzen, *Gutachten des Wissenschaftlichen Beirats*, cit., 76 ff.

[94] A. F. Uricchio, F. Giambrone, *European Finance at the Emergency test*, Bari, 2020.

[95] Bundesministerium für Finanzen, *Gutachten des Wissenschaftlichen Beirats*, cit., p. 76 ff.

[96] Vgl. Wissenschaftlicher Beirat beim Bundesministerium der Finanzen, *Flat Tax oder Duale Einkommensteuer?* cit., Heft 76.

[97] Bundesministerium für Finanzen, *op. cit.*, p. 76 ff.

Only in the case of reduced tax rate differences can the above-mentioned further coordination measures improve the functioning of the European Single Market.

The tax rate differences among Member States could be reduced by introducing a minimum tax rate or a tax rate corridor (minimum and maximum tax rate). Such a minimum tax rate has advantages, but also raises economic problems arise and are currently difficult to enforce in the EU.

In the absence of agreements leading to a greater alignment of tax rates to corporate profits in the European Union, there is coordination of corporate taxation on the approximation of the rules for determining profits goes beyond (Formula Apportionment or Seat Principle with Separate Entity Accounting) not recommended. From a more general, European perspective it should be highlighted that the Treaty on the Functioning of the European Union (TFEU) grants Member States the sovereign right to decide on their tax policies, but requires them to comply with EU standards.

At the same time, Member States' tax policy decisions have a clear impact on the functioning of the internal market.

A certain degree of political coordination is therefore desirable to avoid problems such as legal uncertainty, bureaucracy, the risk of double taxation and difficulties in applying for tax refunds, all factors that can ultimately discourage businesses and citizens from doing business across borders. At the same time, tax fragmentation, coupled with a lack of cooperation between tax authorities, could encourage arbitrage and aggressive tax planning.[98]

The Impact on small and medium-sized enterprises should furthermore be analysed.

The disadvantages of tax fragmentation as well as the potential benefits of better coordination of national tax policies are unevenly distributed among the various economic operators, with small and medium-sized enterprises (SMEs) most affected. The costs of complying with tax rules are not fully proportionate to the overall growth of a company, making smaller companies significantly more affected than larger ones. Some Member States try to compensate SMEs by introducing favourable tax regimes for smaller companies for the challenges they face in the context of higher compliance costs. While support to SMEs is generally welcome, such measures pose a certain risk of creating new distortions, for example by incentivising businesses to remain small. Therefore, the benefits of such preferential arrange-

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[98] P. Pistone, *Aggressive tax planning and the conceptual categories of global tax law*, p. 282 sq., according to whom "*in any event, that 'the two phenomena of aggressive tax planning and tax avoidance represent two different forms of tax savings not tolerated by law does not mean that they cannot coexist within international tax planning schemes or that they cannot at least partially overlap, it is in such cases that it is concretely possible that rules or techniques aimed at countering tax avoidance and abusive practices also counter aggressive tax planning.*"

ments must be carefully weighed against possible disadvantages. Another option to facilitate cross-border economic activities would be to harmonise the tax base as provided for in the Commission's proposal for a common (consolidated) corporate tax base (C(C)CTB)[99], as well as the forthcoming Commission initiative "BEFIT (Business in Europe: a framework for corporate taxation).[100]As mentioned within this article the Coordination of tax policy within the EU is of important relevance.[101]

While tax policy coordination across the EU is needed, the European Union primarily has soft law tools to ensure tax policy coordination; the main instruments are the Code of Conduct Group on business taxation, the country-specific recommendations under the European Semester and the legislative process, which requires unanimity when voting in the Council. Although the instruments of the European Union are limited, the ideal level for tax policy coordination is the global level. The past has shown that policy proposals resulting from OECD[102] discussions are often more likely to be adopted in the Council, and these have the advantage of reducing tax fragmentation beyond the single market. This, in turn, is particularly beneficial for SMEs who are trying to expand their potential market beyond European borders.

Many Recommendations/areas are in need of reform. In the following some areas which need to be reformed will be highlighted. While there is plenty of room for improvement to coordinate EU tax policies more effectively, the report focuses on several key areas where reforms are both necessary and realistic.

There should be a preference for debt over equity financing.

Corporate tax systems in most Member States are designed to allow generous tax deductions from debt service costs, while there is no comparable mechanism for deducting equity financing costs, making debt financing comparatively more attractive than equity financing. The different tax treatment

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[99] For an overview related to the topic of the controlled foreign company legislation Cfr. P. Pistone, G. Kofler, M. Lang, J. Owens, A. Rust, J. Schuch, K. Spies, C. Staringer (eds.), *Controlled Foreign Company Legislation, vol. 17 WU Vienna European and International Tax Law and Policy Series*, IBFD, 2020.

[100] Europäisches Parlament, *Bericht über die Auswirkungen der einzelstaatlichen Steuerreformen auf die Wirtschaft in der EU*, 2022.

[101] For a better understanding regarding the evolution of the rules of international tax law cfr. A. F. Uricchio, *L'evoluzione delle norme del diritto tributario internazionale: verso un diritto tributario «globale»?, in Riv. di dir. trib. Int.,* 2020, I.

[102] For a better understanding concerning the future tax challenges cfr. OCSE, *op. cit.*, p. 123 ss. In dottrina, si rinvia a G. Corasaniti, *La tassazione della digital economy: evoluzione del dibattito internazionale e prospettive nazionali*, in *Dir. prat. trib.*, 2020, IV, p. 1397 ss.; A. F. Uricchio, S.A. Parente, *Data driven e digital taxation: prime sperimentazioni e nuovi modelli di prelievo*, in *Dir. prat. trib.*, 2021, II, p. 606 ss.

of different funding channels could lead companies to excessive indebtedness, which would make them less resilient in unfavourable economic scenarios. In addition, this preference for debt represents a structural disadvantage for young and small enterprises that rely more on equity capital. To address this problem, some Member States have introduced an interest-adjusted income tax, but a European approach would be more useful to avoid distortions in the internal market.

Finally a Competition with the effective marginal tax rate should take place. The effective marginal tax rate of corporate tax is a factor that can greatly influence the investment decisions of companies, so sometimes Member States compete by lowering the effective marginal tax rate of corporate tax. Thus, the differences in the effective marginal tax rates of corporate tax in each Member State are significantly greater than the differences in standard tax rates, with the expected future marginal tax rate even negative in some Member States in 2020.[103] It would therefore be useful for the Commission to examine this measure in order to determine whether some Member States distort competition by artificially reducing border tax rates, e.g. through the introduction of accelerated depreciation plans or the granting of too generous deductions. As a further suggestion Tax incentives for research and development should be provided[104].

Research and development spending brings significant benefits to society and the economy, as they foster innovation and ultimately lead to falling prices and more competition.

Nevertheless, total R & D expenditure as a percentage of gross domestic product in the EU is significantly lower than in other advanced economies. To counter this, many Member States are trying to incentivise additional investment in research and development through tax incentives. However, there are doubts as to whether all tax incentives in this area are equally effective. Tax regimes related to intellectual property (IP-Box) and patent box schemes have in the past contributed little to boosting additional R & D expenditure but, on the contrary, led to new distortions in the internal market. A common understanding of Member States on how to

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[103] Cfr. Europäische Kommission, *Jahresbericht über die Besteuerung,* 2021, S. 36

[104] D. Checchi, T. Jappelli, A. Uricchio, *Teaching , research and academic careers,* Springer Nature, 2022; Cfr. A. F. Uricchio, *Promuovere la ricerca attraverso il fisco*, in *Rass. trib.*, 2004, IV, In this article A.F. Uricchio" *advances proposals to promote university research, innovation and development through the use of taxation. The need to stem, with the tax leverage, the consequences of the significant definancing of the university system immediately lead to the identification of ten proposals concerning different areas of "university taxation". They intend to bring new life to Italian scientific research and preserve the irreplaceable social function that the Academy is required to perform, in a scenario of slowing down the economy, of rapid transformation of reference patterns and of intensification of relations with abroad. These proposals could become part of a comprehensive proposal for the Italian-led European Semester just launched."*

deal with tax incentives for research and development would therefore be useful. The Commission's attempt to establish a common framework for research and development expenditure under the Common Corporate Tax Base should therefore be reviewed[105].

[105] Europäisches Parlament, *op. cit.*