# R E S O L U T I O N

# O F T H E S E J M O F T H E R E P U B L I C O F P O L A N D

of 22 October 2026

**on declaring the Proposal for a Council Directive amending Directives 2003/49/EC, 2009/133/EC, 2011/96/EU, (EU) 2016/1164, (EU)2017/1852, (EU) 2025/50 as regards the simplification of the Union framework on direct taxation and supporting growth and competitiveness of the EU to be incompatible with the principle of subsidiarity**

The Sejm of the Republic of Poland, pursuant to Article 148cc of the Standing Orders of the Sejm, hereby declares that the Proposal for a Council Directive amending Directives 2003/49/EC, 2009/133/EC, 2011/96/EU, (EU) 2016/1164, (EU)2017/1852, (EU) 2025/50 as regards the simplification of the Union framework on direct taxation and supporting growth and competitiveness of the EU (COM(2026) 560 final), to the extent that Council Directive (EU) 2016/1164 establishes minimum levels of support for research and development activities in the Member States, does not comply with the principle of subsidiarity as referred to in Article 5(3) of the Treaty on European Union. The proposal violates the principle of subsidiarity, as the proposed directive does not ensure that the objectives of the intended actions will be achieved more effectively at the European Union level than through actions taken at the national level.

The reasoned opinion stating the reasons why the Sejm considers that the proposal does not comply with the principle of subsidiarity is annexed to this Resolution.

Appendix to the Resolution
of the Sejm of the Republic of Poland
of 22 October 2026

**Reasoned opinion of the Sejm of the Republic of Poland of 22 October 2026 stating the reasons why the Sejm considers that the Proposal for a Council Directive amending Directives 2003/49/EC, 2009/133/EC, 2011/96/EU, (EU) 2016/1164, (EU)2017/1852, (EU) 2025/50 as regards the simplification of the Union framework on direct taxation and supporting growth and competitiveness of the EU does not comply with the principle of subsidiarity**

The Sejm of the Republic of Poland finds that the Proposal for a Council Directive amending Directives 2003/49/EC, 2009/133/EC, 2011/96/EU, (EU) 2016/1164, (EU)2017/1852, (EU) 2025/50 as regards the simplification of the Union framework on direct taxation and supporting growth and competitiveness of the EU (COM(2026) 560 final), to the extent that it establishes in Council Directive (EU) 2016/1164 minimum levels of support for research and development activities in the Member States, does not comply with the principle of subsidiarity as referred to in Article 5(3) of the Treaty on European Union (TEU). The proposal violates the principle of subsidiarity, as the proposed directive does not ensure that the objectives of the intended actions will be achieved more effectively at the European Union level than through actions taken at the national level.

The primary declared objective of the proposal for a directive is to simplify the existing Union framework for direct taxation in order to reduce unnecessary regulatory burdens, increase legal certainty and ensure the consistent functioning of the internal market.

The proposal amends six directives on direct taxation.

One of the acts amended is Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market[1] (hereinafter: Directive 2016/1164 or the ATAD). Directive 2016/1164 introduces a set of common rules to counteract tax avoidance, with a view to

[1]OJ L 193, 19.7.2016, p. 1, as amended

reducing the risk of tax base erosion and profit shifting, which is often caused or exacerbated by discrepancies or fragmentation between the national tax systems of the Member States. These include the provisions limiting the deductibility of interest, the provisions concerning the taxation of unrealised capital gains in the event of a change of registered office or place of residence for tax purposes, controlled foreign companies, discrepancies in the classification of hybrid structures, as well as the general anti-abuse rules.

Since the adoption of the ATAD, significant developments have occurred at the international level, in particular following the adoption of the OECD/G-20 two-pillar approach and the Pillar 2 Directive[2], which may overlap with certain provisions of the ATAD. Furthermore, the experience related to the practical application of the ATAD has shown that certain provisions are no longer up to date or give rise to disproportionate regulatory burdens, legal uncertainty and fragmentation.

However, the proposed amendments to the ATAD are not limited to changes concerning the rules for limiting the inclusion of debt financing costs in tax deductible costs and provisions regarding controlled foreign companies. The proposal extends the scope of the Directive to include provisions on the minimum level of support for research and development in the Member States, thereby going beyond the existing objectives of the ATAD and the declared primary objective of the proposed directive – to simplify the existing EU framework in the field of direct taxation in order to reduce unnecessary regulatory burdens, enhance legal certainty and ensure the consistent functioning of the internal market.

The nature of this regulation differs from the other changes introduced by the proposed directive. The proposal in this scope regulates the area of direct taxation, not yet harmonised within the EU, by defining both research and development activities, the types of expenditure subject to deduction (eligible expenditure), the useful life of capital expenditure, the period during which capital expenditure may be deducted, and the basis for such deductions. According to the explanatory statement to the motion and recitals 20–23 of the proposal, this measure is intended to strengthen the competitiveness of the EU, support innovation and facilitate the green and digital transitions.

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[2] Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union; OJ L 328, 22.12.2022, p. 1.

According to the European Commission, establishing a framework to ensure a level playing field regarding the deduction of expenditure on research and development in all Member States would reduce the barriers faced by companies operating across borders within the EU. However, the Commission has not analysed these barriers and their actual impact on the internal market and the businesses operating there.

In this context, it should be noted that the provisions on tax relief for research and development constitute a significant interference in the tax sovereignty of Member States, limiting the powers of the legislative authorities of individual states to develop their own rules on assistance to enterprises in the development of their business activities. These provisions require each Member State, rather than to adopt a minimum level of support for enterprises investing in research and development, to provide assistance in specified form - namely, by deducting the expenditure from the taxable amount. They interfere directly with the tax system of each Member State without explicitly indicating that: 1) such interference is necessary to ensure the free movement of goods, persons, services and capital, which is the foundation of the internal market (Article 26(2) of the Treaty on the Functioning of the European Union; TFEU); 2) the intended measure (the establishment of a minimum level of support for research and development activities) is essential to achieve the intended objective (the coherent functioning of the internal market and the strengthening of competitiveness of the EU), which cannot be sufficiently achieved by the Member States, whether at the central, regional or local level; 3) the proposed regulation enables the achievement of the intended objectives more effectively than by taking measures at the national level (Article 5(3) TEU).

The explanatory statement to the proposal and the recitals do not demonstrate beyond doubt that, under the current legal framework, the freedoms referred to in Article 26(2) TFEU in the area covered by the regulation are in any way compromised as a result of existing disparities, and that other measures in this regard would not produce the desired result. This is important as the effectiveness of mechanisms supporting innovation is closely linked to national economic, social and legal conditions, which may vary from one Member State to another. These differences must be taken into consideration when assessing the proposed harmonisation in the context of the limits of the principle of subsidiarity set out in Article 5(3) of the TEU. Furthermore, the diversity of the national systems does not itself indicate the existence of a barrier to the functioning of the internal market that would require harmonisation at the EU level.

The premise of the proposed harmonisation, which interferes with the tax jurisdiction of the Member States, cannot be solely - as stated in recital 23 of the proposal for the directive - ensuring that research and development activities remain a key element of the competitiveness of the Union and contribute to a level playing field in the internal market. It should be indicated that Article 115 TFEU, which provides the legal basis for the proposed directive, does not refer - in contrast to Article 113 TFEU, which provides the legal basis for the harmonisation of indirect taxes - to distortions of competition, but solely to the direct impact of Member States' laws, regulations and administrative provisions on the establishment or functioning of the internal market. Competitiveness in this regard, which has a direct impact on the establishment or functioning of the internal market, should therefore be considered in the context of the principle of subsidiarity arising from the Treaty, which is absent in the explanatory statement and the recitals of the proposal for the directive. Moreover, the Commission has not presented sufficient qualitative or quantitative indicators to demonstrate that the proposed objectives would be better achieved at the EU level, due to the extent or impact of these measures.

Summing up, in the opinion of the Sejm, the Proposal for a Council Directive amending Directives 2003/49/EC, 2009/133/EC, 2011/96/EU, (EU) 2016/1164, (EU)2017/1852, (EU) 2025/50 as regards the simplification of the Union framework on direct taxation and supporting growth and competitiveness of the EU infringes the principle of subsidiarity.