Recommendations on the interest limitation rules in the EU Tax Omnibus

This paper is submitted jointly by European and national organisations representing the European real estate value chain: the listed and non-listed long-term investors that own, hold, manage and renovate Europe's property, and the developers and homebuilders that deliver Europe's new homes and regenerate its urban areas.

Against this shared background, our intervention is deliberately focused on a single provision: Article 4 of Council Directive (EU) 2016/1164 (ATAD I), the interest limitation rule, as it would be amended by Article 4, point (5), of the proposed Directive. Individual signatories may address other aspects of the Omnibus separately; on this provision, however, we speak with one voice.

Within this focused scope, we welcome the proposal, and in particular **Recital (25), which recognises that the rule may disproportionately affect capital-intensive sectors, including real estate.** The text takes up several recommendations that some signatories have advocated for over the past two years: a uniform, mandatory 30% cap; a mandatory and inflation-indexed de minimis; the exclusion of exceeding borrowing costs on low-risk third-party loans; and the extension of the public-benefit exclusion to housing, including the construction, transformation and renovation of buildings.

We therefore ask the Council to preserve this level of ambition and ensure that the operative text translates into practice the neutrality and legal certainty promised in the recitals. Harmonising these rules across EU Member States and aligning them more closely with economic reality is critically important to incentivise investment in real estate construction, transformation and maintenance.

SUMMARY OF OUR RECOMMENDATIONS

1. **Low-risk third-party loans.** Retain the mandatory carve-out and explore how it can extend to intra-group lending or equivalent on-lending through pooled investment structures that demonstrably passes through genuine third-party debt.
2. **The 30% cap and the safe harbour.** Support both. Adjust the €3 million threshold for inflation since 2016 and apply it from 1 January 2029 rather than 2032. Explore whether objective prudent-capitalisation criteria could provide a supplementary safe harbour or otherwise be taken into account.
3. **The uniformity clause.** Confirm that stricter parallel national regimes cannot continue to apply alongside the harmonised parameters and set out how the elements of Article 4 interact.
4. **The group escape.** Harmonise a single, forward-looking mechanism, or at minimum lay down EU-level design standards.
5. **Carry-forward.** Make mechanism (c) the mandatory baseline and extend the unused-capacity carry-forward from five to ten years.
6. **Housing and the public-benefit exclusion.** Anchor social and affordable housing in the operative text, confirm it covers the development phase and privately financed projects on a provider-neutral basis, make it mandatory, and extend it to renovation more broadly.
7. **Timing.** Bring the safe harbour forward to the general application date (2029) and confirm the treatment of loans already in place.

Who we are, and why we write jointly

Our organisations represent two halves of a single value chain. One half acquires, holds, manages and improves existing buildings for the long term; the other assembles land, obtains consent, builds, and delivers new stock — homes above all — into the market. The two are commercially interdependent: the developer's exit is very often the investor's entry.

This interdependence also means that financing conditions at the investor end of the value chain affect development capacity upstream. Greater investment capacity allows long-term investors to acquire and forward-fund newly developed assets, strengthening the exit market available to developers and supporting the delivery of additional projects.

Taken together, EPRA, INREV, Build Europe, IVBN, NEPROM, FPI France, PZFD, UPSI-BVS, APPII, APCEspaña and Asociace developerů represent a major private-sector force across Europe's housing and real estate value chain. They bring together the long-term investors, property companies, developers and homebuilders that mobilise capital, regenerate land and urban areas, deliver new homes, and own, manage and renovate Europe's existing building stock. This breadth gives the signatories a direct and shared understanding of the financing and investment conditions required to increase housing supply, support affordable housing and modernise Europe's built environment.

Our respective roles across the real estate value chain differ, but they share a common financing reality. Real estate requires substantial upfront capital and therefore relies heavily on debt financing. Yet a rule intended to counter base erosion through artificially inflated intra-group interest payments also applies to ordinary third-party borrowing from banks and bond markets. In such cases, the financing does not transfer profits within the borrower's group and ordinarily presents limited base-erosion risk, while the borrower may nevertheless be denied a deduction for the corresponding financing cost. Where that happens, no tax has been avoided anywhere in the chain; a real economic cost has simply been made non-deductible.

The consequence is not abstract. It raises the cost of capital for housing delivery, urban regeneration and the energy renovation of Europe's building stock at precisely the moment the Union has identified all three as priorities.

The impact of Article 4 across the real estate cycle

The interest limitation rule measures a multi-year cost against a single-year earnings figure. That is workable for a business whose costs and revenues arise in the same period. Our members' costs and revenues do not, and the mismatch arises in two distinct and, in a sense, opposite ways.

The investment profile

A property generates rental EBITDA once it is let, while the return on the capital committed is realised over a much longer period and may crystallise only upon a capital event, such as a disposal or revaluation, many years after construction. Exceeding borrowing costs disallowed during periods of acquisition, refurbishment, vacancy or lease-up may therefore remain unrelieved for many years, if at all. For this investment profile, the proposal's mandatory and indefinite carry-forward of exceeding borrowing costs is particularly valuable, and we strongly support it.

The development profile

Development presents the opposite timing profile. Interest begins to accrue from land acquisition and continues throughout permitting, site preparation and environmental clean-up, infrastructure works and construction. Revenue generally arises only at the end, through completion of the project or the sale of units. A residential project commonly takes three to seven years from land acquisition to completion, while complex brownfield redevelopment, mixed-use regeneration and large phased masterplans may take seven to fifteen years, or longer where planning approvals are challenged or delayed.

Throughout those years the taxpayer's EBITDA is nil, or negative. Thirty per cent of nil is nil. The entire exceeding borrowing cost is disallowed, year after year, on debt that is unambiguously third-party and unambiguously financing real construction. Then, in the delivery year, the position inverts: EBITDA spikes, the interest that would have absorbed the resulting capacity has already been incurred and disallowed, and a large part of that year's capacity goes unused and is lost.

The rule therefore denies relief in the years the cost is incurred and wastes capacity in the year the income arrives. Measured over the cycle, a developer that borrows on the same terms and earns the same profit as a business with a flat earnings profile bears a higher effective tax burden: not because anything has been shifted, but because the accounting period is shorter than the project. This distortion can arise even where the project is prudently capitalised and the level of leverage is commercially sound.

The Commission has recognised this. Recital 36 states that the possibility to carry forward exceeding borrowing costs and unused interest capacity is essential to avoid disproportionate outcomes for taxpayers with volatile earnings or long-term investment cycles. We agree entirely. Our request is that the operative text deliver what that recital announces (see section 3.5 below).

Recommendations on Article 4

Low-risk third-party loans (new Article 4(2a))

The new Article 4(2a) requires Member States to exclude from the limitation exceeding borrowing costs on low-risk third-party loans: loans that are not provided by an associated enterprise, permanent establishment or entity of the same consolidated group, and that finance exclusively the borrowing entity's own activities with no financing passing to a group entity. Recital 29 confirms that the exclusion covers bond issuances subject to regulatory oversight, and makes clear that "low risk" denotes a low risk of base erosion — the third-party lender is taxed on the interest — rather than a credit-risk concept.

We strongly welcome this provision. It restores symmetry for the most common financing pattern in our sector for SMEs and generalises a relief that some Member States already grant and others do not. It is, in our view, one of the most valuable elements of the package for real estate, and we ask the Council to retain it unchanged. Its principal limitation is equally clear.

However, large groups and pooled investment structures use centralised financing models: external debt is raised at parent level, where the scale and credit rating can support more favourable terms, and the proceeds are down streamed to the property companies. Asset-level mortgage debt is scarcer and materially more expensive. That centrally raised debt is genuinely third-party at origin and the intra-group leg creates no leakage. As drafted, condition (b) denies the carve-out to the parent, whose external borrowing does not fund exclusively its own activities, and to the subsidiary, whose loan is intra-group. The result is a tax incentive to abandon efficient corporate financing for more expensive asset-level debt: the opposite of the proposal's competitiveness objective. For capital-intensive real estate businesses, that additional financing cost also reduces the equity available for further investment. Conversely, preserving neutral treatment for genuine third-party financing can release investment capacity for additional acquisitions, development, regeneration and renovation.

The Dutch Association of Tax Advisers (NOB), in its reaction of 8 July 2026, raises the same questions: whether one-to-one back-to-back on-lending of external financing should be excluded; whether structures in which external financing is raised lower in the group under a parent guarantee — economically identical to central financing — should be treated differently.

RECOMMENDATION

Retain the mandatory carve-out unchanged. Consistent with the aim of not penalising genuine ordinary commercial borrowing, we would welcome the opportunity **to explore how the carve-out might extend to intra-group loans that demonstrably pass through genuine third-party debt.** One workable approach could build on the concept of a genuine group or pooled investment structures financing function, that is, the regular activity of pooling the external financing for the benefit of the group or pooled investment structure. We believe such a solution would preserve the anti-abuse logic while helping to restore neutrality between financing models.

The mandatory 30% cap and the indexed €3 million safe harbour (Article 4(1) and 4(3))

We support making the 30% EBITDA cap a uniform standard that Member States may no longer tighten and making the €3 million de minimis mandatory with automatic annual indexation. Constant national adjustment of these parameters has been a documented deterrent to long-term investment, and the divergence has been wide: several Member States apply thresholds far below €3 million and some tightened the percentage below 30%. A harmonised floor is a real gain in certainty.

At the same time, an EBITDA-based test can restrict deductibility even where a business is prudently capitalised and its level of debt is commercially sound. This is particularly relevant for development activities, where substantial financing is required well before the corresponding EBITDA is generated. We therefore see merit in exploring whether objective prudent-capitalisation criteria, such as a commercially sound debt/equity ratio, could provide a supplementary safe harbour or otherwise be taken into account.

RECOMMENDATION

Given the competitiveness imperatives underpinning the proposal, it may be worth considering whether the safe harbour could apply **from the general application date of 1 January 2029, rather than only three years after entry into force** (currently deferred to 2032); and we would respectfully note that the €3 million threshold dates from 2016 and while indexation prevents future erosion, it does not repair a decade of inflation. We would also welcome consideration of a supplementary safe harbour based on objective prudent-capitalisation criteria, particularly where leverage is commercially sound but the timing of EBITDA does not reflect the underlying project economics.

The uniformity clause (new Article 4(9))

Harmonising the percentage does not harmonise the outcome. Differences persist in how EBITDA is computed, in how the rule interacts with domestic tax-consolidation and loss-utilisation regimes, in sector-specific provisions and — most fundamentally — in the stricter parallel regimes that some Member States operate alongside the ATAD rule.

Thin-capitalisation rules are the clearest example: they can reduce the deductible amount to a lower EBITDA percentage in defined situations, and apply a lower de minimis in place of the general one. Nor are they the only example. The new uniformity clause provides that Member States may not maintain or introduce national provisions with a subject-matter falling within the scope of Article 4 that lay down diverging rules. Its perimeter is not spelled out.

RECOMMENDATION

The Council should state expressly — in the operative text or, failing that, in a recital — whether stricter national thin-capitalisation, or other parallel regimes survive alongside the harmonised 30% cap and the mandatory safe harbour. **Our position is that they should not: a mandatory floor that a Member State can undercut through a parallel regime delivers neither the legal certainty nor the compliance saving the proposal is designed to achieve.**

We also ask the Council to set out how the cap, the safe harbour, the third-party carve-out, the group escape and the carry-forward operate together, and in what order. They are drafted as separate amendments but apply cumulatively to the same taxpayer, and their ordering determines whether the package delivers the flexibility long-term investment requires.

The group escape (Article 4(5))

The proposal makes the group escape mandatory while leaving Member States the choice between the equity-ratio escape and the group-ratio escape. Harmonising that an escape must exist, but not how it works, relocates the divergence rather than curing it: a group operating in ten Member States must still plan against up to ten designs.

RECOMMENDATION

Harmonise a single, forward-looking escape mechanism at EU level. Failing that, lay down minimum design standards in the Directive so that the mandatory escape is effective in every Member State.

Carry-forward mechanisms (Article 4(6))

Article 4(6) as amended would require Member States to provide either (a) the indefinite carry-forward of non-deductible exceeding borrowing costs, or (c) that indefinite carry-forward together with the carry-forward, for a maximum of five years of unused interest capacity. A new final subparagraph permits — but does not require — a carry-back of exceeding borrowing costs for a maximum of three years. Although carry-back may help taxpayers with sufficient capacity in earlier years, it does not address the position of long-term development projects that may have no such earlier capacity.

Recital 36 announces something more generous than the operative text delivers. It states that the carry-forward of exceeding borrowing costs and unused interest capacity should be made mandatory. In the operative text, the unused-capacity element remains a national option and, where it is offered, is capped at five years. This is a straightforward coherence gap, and closing it is one of our main asks.

Make mechanism (c) the mandatory baseline. For the investment profile, mandatory indefinite carry-forward of exceeding borrowing costs is the essential element, and several Member States — Italy, Belgium, France among them — already apply it, so for them the amendment adds EU-wide consistency rather than domestic relief. For the development profile, this is necessary but not sufficient. The problem is not only that relief is delayed, but also that unused interest capacity generated in the delivery year may expire before the financing costs of the next development cycle arise. Only mechanism (c) addresses this second mismatch. Making it the mandatory baseline would align the operative text with Recital (36) without altering the structure of the rule.

Extend the unused-capacity carry-forward from five to ten years. Five years is short measured against the assets being financed. It is shorter than the period between land acquisition and delivery on a typical urban regeneration scheme; it is also short when measured against the investment and financing horizon of a long-term holder. A ten-year window would cover the great majority of development cycles in our members' markets and would bring the treatment of capacity closer to the indefinite treatment the same paragraph already accords to costs. We see no principled reason why a cost should be carried forward without limit while the capacity to absorb it expires after five years. Even the existing five-year mechanism would be an improvement in a number of Member States that currently offer nothing, which is why making mechanism (c) mandatory matters in its own right; the extension to ten years is the second step, not a substitute for the first.

RECOMMENDATION

Align the text with the recital. The operative text does not deliver what Recital (36) announces: the carry-forward of unused interest capacity remains a national option, and where it exists it is capped at five years. **Make mechanism (c) the mandatory baseline, with an extension to ten years.**

Social and affordable housing and the public-benefit exclusion (Article 4(4)(b))

Europe faces an acute shortage of affordable housing and a renovation challenge of a scale that cannot be met without private capital: meeting EU climate targets requires the deep renovation of the building stock that is overwhelmingly debt-financed. For the signatories to deliver on this European priority, this provision is of significant importance. The European Parliament's report, adopted on 10 March 2026 by 367 votes to 166, recognises that addressing the housing crisis requires tax incentives and the mobilisation of private investment alongside public funding. Whether this article contributes to that objective is a question that should be raised explicitly.

The proposal reframes the optional exclusion for long-term public infrastructure projects as an exclusion for long-term public-benefit projects — projects to provide, upgrade, operate or maintain a large-scale asset considered in the general public interest by a Member State — and recital (33) extends the intended scope to the Union's common priorities, expressly including social and affordable housing and the construction, transformation and renovation of buildings for those purposes. This is a clear improvement on earlier drafts, which covered social housing alone. But its practical effect is fragile as drafted, and several points require attention.

Anchor housing in the operative text. Social and affordable housing appears only in the recital; the Article defines the exclusion by reference to what a Member State considers to be in the general public interest. To guarantee availability and uniform interpretation, the operative definition should reference social and affordable housing expressly, including construction, transformation and renovation projects that support the Union's decarbonisation, energy-efficiency and urban-regeneration objectives.

Confirm that public involvement is not a condition. Under the current reference to public infrastructure projects, some Member States grant the exemption only for public-private projects in which public authorities participate. The Council should confirm that a public-benefit project does not require public authorities to participate in or finance it. Otherwise, the provision may fail to cover privately financed affordable housing, despite its essential role in increasing supply at the required scale.

Ensure provider neutrality and a level playing field. Additionally, the exclusion should be available irrespective of the status of the provider. Consistent with the revised SGEI Decision, private operators meeting the same affordability and public-interest conditions should qualify on equal terms.

RECOMMENDATION

Beyond the clarifications above, we see clear merit in **(a) making the exclusion mandatory for social and affordable housing**, so that availability does not depend on national transposition choices – as an option, it risks reproducing at national level the very fragmentation the Omnibus is meant to cure; and **(b) extending it beyond social and affordable housing to renovation more broadly,** where it serves the Union's objectives of decarbonisation, energy efficiency and urban regeneration. The financing needs of the renovation wave are not confined to the social and affordable segment.

Transposition and timing (Article 7)

Member States would transpose by 31 December 2028 and apply the provisions from 1 January 2029. The provision replacing Article 4(3) ATAD – the mandatory indexed €3 million safe harbour – is deferred to 1 January 2032. Until then, Member States may continue to apply national de minimis thresholds well below €3 million, even though the rest of the interest limitation package will already be in force.

RECOMMENDATION

Given the competitiveness imperatives underpinning the proposal, **we ask that the safe harbour apply from the general application date of 1 January 2029, in line with the rest of Article 4. We also ask the Council to confirm that the third-party carve-out applies to loans in place at the date of application and is not limited to loans concluded thereafter:** the carve-out is, in substance, the trade-off for a threshold that has not been increased since 2016, and a grandfathering restriction would remove much of its value for assets and schemes already financed.

Summary of recommendations

#	PROVISION	JOINT RECOMMENDATION
1	**Art. 4(2a) – low-risk third-party loans**	Retain the mandatory carve-out unchanged. Explore how it can extend to intra-group lending or equivalent on-lending through pooled investment structures that demonstrably passes through genuine third-party debt, subject to appropriate safeguards.
2	**Art. 4(1) and 4(3) – 30% cap and €3m safe harbour**	Support the uniform mandatory 30% cap and the mandatory indexed €3 million safe harbour. Explore whether objective prudent-capitalisation criteria could provide a supplementary safe harbour or otherwise be taken into account.
3	**Art. 4(9) – uniformity clause**	State expressly that stricter parallel national regimes cannot continue to apply alongside the harmonised parameters. Clarify how the cap, safe harbour, carve-out, group escape and carry-forward mechanisms interact and the order in which they apply.
4	**Art. 4(5) – group escape**	Harmonise a single, forward-looking escape mechanism; failing that, establish EU-level design standards so that national variants do not undermine its effectiveness in practice.
5	**Art. 4(6) – carry-forward**	Align the operative text with Recital (36): make mechanism (c) the mandatory baseline; extend the carry-forward of unused interest capacity from five to ten years.
6	**Art. 4(4)(b) – public-benefit exclusion and housing**	Anchor social and affordable housing, including its construction, transformation and renovation, in the operative text. Confirm that public-authority participation is not a condition and that qualifying projects are treated on a provider-neutral basis. Make the exclusion mandatory for social and affordable housing and extend it to renovation projects that support the Union's decarbonisation, energy-efficiency and urban-regeneration objectives.
7	**Art. 7 – transposition and timing**	Apply the mandatory, annually indexed €3 million safe harbour from 1 January 2029 rather than 1 January 2032, in line with the rest of the interest limitation package. Confirm that the third-party carve-out applies to loans in place on the date of application.

The signatories

The signatories are available to provide any additional information, to discuss these recommendations with delegations, and to supply worked examples illustrating the operation of Article 4 across a development and investment cycle.

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