



Bruksela, dnia 14 lutego 2013 r.

KANCELARIA SENATU

Przedstawiciel Kancelarii Senatu
przy Unii Europejskiej

Sprawozdanie nr 16/2013

Sprawozdanie na temat propozycji Komisji Europejskiej ws. podatku od transakcji finansowych

W dniu 14 lutego 2013 r. Komisja Europejska przyjęła wniosek przedstawiający szczegóły dotyczące podatku od transakcji finansowych, który ma zostać wprowadzony w ramach wzmocnionej współpracy. Na prośbę jedenastu państw członkowskich¹, które zdecydowały się zastosować taki podatek, zakres i cele zaproponowanej dyrektywy są zbieżne z pierwotnym wnioskiem w tej sprawie przedstawionym przez Komisję we wrześniu 2011 r. W przyjętym wniosku podtrzymano założenie, zgodnie z którym podatek będzie pobierany od wszystkich transakcji, w przypadku których ustalono, że są one powiązane ze strefą objętą podatkiem od transakcji finansowych. Zachowano także te same stawki podatkowe: 0,1% od obrotu akcjami i obligacjami oraz 0,01 % od transakcji na instrumentach pochodnych.

Szacuje się, że w przypadku wprowadzenia podatku przez 11 państw członkowskich dochody z tego tytułu mogą wynieść 30-35 mld EUR rocznie.

Zaprezentowany wniosek w sprawie podatku od transakcji finansowych wprowadza pewne ograniczone zmiany względem pierwotnego wniosku w związku z tym, iż podatek od transakcji finansowych będzie obowiązywał na mniejszym obszarze geograficznym niż pierwotnie zakładano. Wspomniane zmiany mają przede wszystkim

¹ Francja, Niemcy, Belgia, Austria, Słowenia, Portugalia, Grecja, Słowacja, Włochy, Hiszpania, Estonia.

na celu zapewnienie jasności prawa oraz zwiększenie skuteczności przepisów zwalczających przypadki unikania zobowiązań podatkowych oraz nadużyć.

Algirdas Šemeta, komisarz ds. podatków, stwierdził „Wraz z przyjęciem dziś wniosku spełnione zostały wszystkie warunki, by urzeczywistnić projekt wspólnego podatku od transakcji finansowych w UE. Nie ulega wątpliwości, że zaproponowany podatek jest sprawiedliwy i solidny pod względem technicznym i w efekcie wzmocni nasz jednolity rynek i poskromi nieodpowiedzialny obrót instrumentami finansowymi. Jedenaście państw członkowskich zaapelowało o przyjęcie tego wniosku, by móc wdrożyć podatek od transakcji finansowych w ramach wzmocnionej współpracy. Zwracam się teraz do tych państw, by ambitnie kontynuowały swoje zamierzenia – by podejmowały decyzje związane z pierwszym na świecie regionalnym podatkiem od transakcji finansowych i by spełniły oczekiwania w tym zakresie.”

Przedstawiony wniosek jest konsekwencją wydanego w zeszłym miesiącu przez ministrów finansów państw UE pozwolenia na stosowanie podatku od transakcji finansowych przez jedenaście państw członkowskich w ramach wzmocnionej współpracy.

Wprowadzenie podatku od transakcji finansowych służy trzem głównym celom: po pierwsze, wzmocnieniu jednolitego rynku poprzez ograniczenie liczby rozbieżnych krajowych strategii w zakresie opodatkowania transakcji finansowych; po drugie, zagwarantowaniu sprawiedliwego i znaczącego wkładu sektora finansowego w dochody publiczne; i po trzecie, podatek od transakcji finansowych będzie uzupełnieniem środków regulacyjnych oraz zachętą dla sektora finansowego, by podejmować bardziej odpowiedzialne działania nakierowane na gospodarkę realną.

Podobnie jak w pierwotnym wniosku podatek od transakcji finansowych będzie charakteryzował się niskimi stawkami, szeroką bazą opodatkowania oraz zabezpieczeniami chroniącymi przed relokacją sektora finansowego. Zachowana zostaje „zasada siedziby”. Zgodnie z tą zasadą podatek będzie należny, jeśli jedna ze stron transakcji ma siedzibę w państwie członkowskim uczestniczącym we wzmocnionej współpracy, bez względu na to, gdzie odbywa się transakcja. Dotyczy to sytuacji, w której instytucja finansowa biorąca udział w transakcji ma siedzibę w

strefie objętej podatkiem od transakcji finansowych lub gdy działa w imieniu strony mającej siedzibę w państwie podlegającym odnośnym przepisom.

Zaprezentowany wniosek zapewnia również dodatkowe zabezpieczenie przed unikaniem opodatkowania, a mianowicie „zasadę miejsca emisji”. Oznacza ona, że obrót instrumentami finansowymi wyemitowanymi we wspomnianych jedenastu państwach członkowskich będzie opodatkowany, nawet jeśli podmioty odpowiedzialne za taki obrót nie mają siedziby w strefie objętej podatkiem od transakcji finansowych. Ponadto zawiera wyraźnie sprecyzowane przepisy dotyczące zwalczania nadużyć.

Podobnie jak w pierwotnym wniosku, w celu ochrony gospodarki realnej podatek od transakcji finansowych nie będzie nakładany na bieżącą działalność finansową obywateli ani przedsiębiorców (np. kredyty, płatności, ubezpieczenia, lokaty). Podatek nie będzie również pobierany od tradycyjnej działalności w zakresie bankowości inwestycyjnej w kontekście podniesienia kapitału ani od transakcji finansowych realizowanych w ramach restrukturyzacji.

Z zakresu wniosku wyłączone zostały również takie zagadnienia jak refinansowanie, polityka pieniężna oraz zarządzanie długiem publicznym. Tym samym transakcje z bankami centralnymi oraz EBC, transakcje w ramach Europejskiego Instrumentu Stabilności Finansowej oraz Europejskiego Mechanizmu Stabilności, a także transakcje, w których Unia Europejska jest stroną, będą zwolnione z tego podatku.

- **Kolejne kroki**

Zaproponowana dyrektywa zostanie teraz poddana pod dyskusję państw członkowskich w celu wprowadzenia jej w życie w ramach wzmocnionej współpracy. W dyskusjach mogą wziąć udział wszystkie państwa członkowskie Unii (27), jednak prawo głosu przysługiwać będzie tylko państwu członkowskiemu, które zdecydowało się na wzmocnioną współpracę. Wdrożenie dyrektywy wymaga ich jednomyślności. Ponadto podjęte zostaną konsultacje z Parlamentem Europejskim.

- **Kontekst**

We wrześniu 2011 r. Komisja przedłożyła wniosek w sprawie wspólnego systemu podatku od transakcji finansowych w celu zapewnienia spójnego podejścia do opodatkowania sektora finansowego w obrębie jednolitego rynku i sprawiedliwego wkładu tego sektora w finanse publiczne oraz przyczynienia się do bardziej wydajnego obrotu w sektorze finansowym, który sprzyja poprawie dobrobytu.

W wyniku zagorzałych dyskusji na temat wniosku na posiedzeniach ECOFIN-u latem 2012 r. zgodzono się co do tego, że nie uda się osiągnąć jednomyślności wszystkich 27 państw członkowskich w rozsądnym terminie. Znacząca grupa państw członkowskich wyraziła jednak duże zainteresowanie kontynuacją działań dotyczących wspólnego podatku od transakcji finansowych. W związku z tym jesienią 2012 r. jedenaście państw członkowskich wystosowało do Komisji pismo z oficjalnym wnioskiem o udzielenie upoważnienia w zakresie wzmocnionej współpracy na podstawie wniosku Komisji z 2011 r.

Komisja dokładnie zapoznała się z wnioskiem i oceniła go według kryteriów dotyczących wzmocnionej współpracy przewidzianej w traktatach. Ustaliła przede wszystkim, że wzmocniona współpraca w zakresie podatku od transakcji finansowych nie będzie miała negatywnego wpływu na funkcjonowanie jednolitego rynku ani na zobowiązania, prawa i uprawnienia państw członkowskich, które na taką współpracę się nie zdecydowały. Na podstawie tej oceny w październiku 2012 r. Komisja złożyła wniosek w sprawie decyzji upoważniającej do podjęcia wzmocnionej współpracy w dziedzinie podatku od transakcji finansowych. W grudniu 2012 r. uzyskała ona poparcie ze strony Parlamentu Europejskiego, a na posiedzeniu ECOFIN-u w styczniu 2013 r. wniosek poparli ministrowie finansów państw członkowskich.

Po otrzymaniu zgody na wzmocnioną współpracę Komisja mogła przystąpić do prac nad przedstawionym szczegółowym wnioskiem w sprawie podatku od transakcji finansowych, który będzie obowiązywał w jedenastu państwach członkowskich.

- **Informacje uzupełniające**

Projekt dyrektywy precyzuje zasady, na jakich podatek miałby obowiązywać od 2014 r. Według propozycji KE, stawka podatku od obrotu akcjami i obligacjami wyniesie co najmniej 0,1 proc., a od obrotu instrumentami pochodnymi - 0,01 proc. Zachowana zostanie zasada rezydencji podatkowej, co oznacza, że podatek będzie należny jeśli jedna ze stron transakcji ma siedzibę w kraju członkowskim, gdzie obowiązuje FTT - bez względu na to, gdzie doszło do transakcji.

Podatek będzie pobierany także wówczas, gdy przedmiotem transakcji są papiery i instrumenty finansowe wyemitowane w jednym z krajów członkowskich z FTT, nawet jeśli uczestnicy transakcji nie mają siedzib w tych państwach.

FTT nie będzie obejmował codziennej aktywności finansowej obywateli i firm (jak pożyczki, opłaty, ubezpieczenia, depozyty) oraz tradycyjnej działalności banków inwestycyjnych, jak gromadzenie kapitału. Z FTT wyłączone będą także transakcje zawierane przez banki centralne, Europejski Bank Centralny, UE i europejskie fundusze ratunkowe.

Celem FTT jest zapewnienie, by banki i inne instytucje finansowe miały udział w ponoszeniu kosztów kryzysu finansowego, do którego się przyczyniły.

Państwa, które zapowiedziały wprowadzenie FTT, wykorzystają przewidziany w traktacie z Lizbony mechanizm tzw. wzmocnionej współpracy, który umożliwia pogłębienie integracji w pewnej dziedzinie, jeżeli taką wolę wyrazi co najmniej 9 krajów. W 2011 r. propozycja KE w sprawie opodatkowania transakcji finansowych nie uzyskała poparcia ze strony wszystkich krajów UE, dlatego zdecydowano się na wzmocnioną współpracę. Głównym inicjatorem tej współpracy były Niemcy, chadecko-liberalny rząd w Berlinie obiecał opozycji postęp w sprawie wprowadzenia FTT w Unii w zamian za poparcie pakietów ratunkowych dla strefy euro.

Aby dyrektywa weszła w życie konieczna jest zgoda 11 państw, które przystąpiły do wzmocnionej współpracy. Jednak w dyskusji na ten temat mogą brać udział wszystkie kraje członkowskie. Do współpracy "11" mogą przyłączyć się też kolejne państwa UE.

Krytycy nowego podatku ostrzegają, iż doprowadzi on do podwójnego opodatkowania transakcji finansowych, a także niekorzystnie wpłynie na oszczędności gromadzone na funduszach emerytalnych. Komisarz Šemeta zapewniał, że koszty dla funduszy emerytalnych będą "bardzo ograniczone".

Projekt dyrektywy nt. wzmocnionej współpracy w zakresie podatku od transakcji finansowych COM (2013) 71 (na razie w języku angielskim):

http://ec.europa.eu/taxation_customs/resources/documents/taxation/com_2013_71_en.pdf

Opracowała:

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² Na podstawie informacji KE i PAP.



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2013/0045 (CNS)

Proposal for a

COUNCIL DIRECTIVE

implementing enhanced cooperation in the area of financial transaction tax

{SWD(2013) 28 final}

{SWD(2013) 29 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Background and history

The recent global economic and financial crisis had a serious impact on our economies and the public finances. The financial sector has played a major role in causing the economic crisis whilst governments and European citizens at large have borne the cost. There is a strong consensus within Europe and internationally that the financial sector should contribute more fairly given the costs of dealing with the crisis and the current under-taxation of the sector. Several EU Member States have already taken divergent action in the area of financial sector taxation.

Therefore, on 28 September 2011 the Commission tabled a proposal for a Council Directive on a common system of financial transaction tax (FTT) and amending Directive 2008/7/EC¹. The legal basis for the proposed Council Directive was Article 113 TFEU, as the proposed provisions aim at the harmonisation of legislation concerning the taxation of financial transactions to the extent necessary to ensure the proper functioning of the internal market for transactions in financial instruments and to avoid distortion of competition. This legal basis prescribes Council unanimity in accordance with a special legislative procedure, after consulting the European Parliament and the Economic and Social Committee.

The main objectives of this proposal were:

- harmonising legislation concerning indirect taxation on financial transactions, which is needed to ensure the proper functioning of the internal market for transactions in financial instruments and to avoid distortion of competition between financial instruments, actors and market places across the European Union, and at the same time
- ensuring that financial institutions make a fair and substantial contribution to covering the costs of the recent crisis and creating a level playing field with other sectors from a taxation point of view², and
- creating appropriate disincentives for transactions that do not enhance the efficiency of financial markets thereby complementing regulatory measures to avoid future crises.

Given the extremely high mobility of most of the transactions to be potentially taxed, it was and still is important to avoid distortions caused by tax rules conceived by Member States acting unilaterally. Indeed, a fragmentation of financial markets across activities and across borders, and among products and actors can only be avoided and equal treatment of financial institutions in the EU and thus ultimately, the proper functioning of the internal market, can only be ensured through action at EU level. The development of a common system of financial transaction tax in the EU reduces the risk of distortion of markets through a taxation-induced geographical delocalisation of

¹ COM(2011) 594 final.

² Financial institutions, either directly or indirectly, largely benefited from the rescue and guarantee operations (pre-)financed by the European taxpayer in the course of 2008 to 2012. These operations, together with the faltering of economic activity caused by the spread of uncertainty about the stability of the overall economic and financial system have triggered a deterioration in the public finance balances across Europe by more than 20% of GDP. Also, most financial and insurance services are exempted from VAT.

activities. Furthermore, such common system can also ensure tax neutrality through harmonisation with a broad scope, notably to also cover very mobile products such as derivatives, mobile actors and market places, thus also contributing to less double-taxation or double-non-taxation.

The proposal therefore provided for harmonisation of Member States' taxes on financial transactions to ensure the smooth functioning of the single market and thus set out the essential features of a common system for a broad based FTT in the EU.

Since around the time of the initial Commission proposal the case for harmonisation has been further illustrated by developments in practice: France has introduced a national tax on certain financial transactions since 1 August 2012 and Spain, Italy and Portugal have recently made announcements of introducing such national taxes as well – all with different scope, rates and technical design features.

The European Parliament delivered its favourable opinion on 23 May 2012³ and the Economic and Social Committee on 29 March 2012⁴ on the Commission's initial proposal. Also the Committee of Regions adopted a favourable opinion on 15 February 2012⁵.

The proposal and variants thereof were extensively discussed in the meetings of the Council which started under the Polish Presidency⁶ and continued at an accelerated pace under the Danish Presidency, but failed to get the required unanimous support because of fundamental and unbridgeable differences amongst Member States.

At the Council meetings of 22 June and 10 July 2012, it was ascertained that essential differences in opinion persist as regards the need to establish a common system of FTT at EU level and that the principle of harmonised tax on financial transactions will not receive unanimous support within the Council in the foreseeable future.

It follows from the above that the objectives of a common system of FTT, as discussed in the Council upon the Commission's initial proposal, cannot be attained within a reasonable period by the Union as a whole.

On the basis of the request of eleven Member States (Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia) the Commission submitted a proposal⁷ to the Council for authorising enhanced cooperation in the area of financial transaction tax.

All Member States specified in their requests that the scope and objectives of the Commission's legislative proposal implementing enhanced cooperation should be based on the Commission's initial FTT proposal. Furthermore, they specified that evasive actions, distortions and transfers to other jurisdictions are to be avoided.

³ P7_TA-(2012)0217.

⁴ ECO/321 – CESE 818/2012 (OJ C 181, 21.06.2012, p. 55).

⁵ CDR 332/2011 (OJ C 113, 18.04.2012, p. 7).

⁶ FTT was first on the agenda of the Council on Economic and Financial Affairs on 8 November 2011 and then at three subsequent meetings in March, June and July 2012. From December 2011 to June 2012 seven Council Working Party meetings on Tax Questions – Indirect taxation were devoted to the subject.

⁷ COM(2012) 631 final/2.

The present proposal for a Directive concerns the implementation of the enhanced cooperation in the area of FTT, in accordance with the authorisation of the Council of 22 January 2013, issued following the European Parliament's consent given on 12 December 2012.

In the light of this new context of enhanced cooperation, the 2011 Commission proposal mentioned above becomes without object and the Commission therefore intends to withdraw it.

The Commission Proposal for a Council Decision on the system of own resources of the European Union of 29 June 2011⁸, as amended on 9 November 2011⁹, set out that part of receipts generated by the FTT shall constitute an own resource for the EU budget. This would imply that the GNI-based resource drawn from the participating Member States would be reduced accordingly.

1.2. Objectives of the proposal

The general objectives of this proposal are those of the Commission's original proposal of 2011. The recent and ongoing global economic and financial crisis had a serious impact on the economies and public finances in the EU. The financial sector has played a major role in causing the economic crisis whilst governments and European citizens at large have borne the costs. Even though it is made of a wide variety of market actors, the financial sector at large has experienced high profitability over the last two decades which could be partially the result of an (implicit or explicit) safety net provided by governments, combined with financial sector regulation and VAT exemption.

Under these circumstances, some Member States started to implement additional forms of financial sector taxation, whilst other Member States already had in place specific tax regimes for financial transactions. The current situation leads to the following undesirable effects:

- a fragmentation of the tax treatment in the internal market for financial services - bearing in mind the increasing number of uncoordinated national tax measures being put in place- with the consequent possibilities of distortions of competition between financial instruments, actors and market places across the European Union and double taxation or double non-taxation;
- the financial institutions do not make a fair and substantial contribution to covering the cost of the recent crisis and a level playing field with other sectors from a taxation point of view is not ensured;
- taxation policy neither contributes to providing disincentives for transactions which do not enhance the efficiency of financial markets but which might only divert rents from the non-financial sector of the economy to financial institutions and, thus, trigger over-investment in activities that are not welfare enhancing, nor does it contribute alongside ongoing regulatory and supervisory measures to avoid future crises in the financial services sector.

The implementation of a common system of financial transaction tax amongst a sufficient number of Member States would entail immediate tangible advantages on all three points listed above, in

⁸ COM(2011) 510 final.

http://ec.europa.eu/budget/library/biblio/documents/fin_fwk1420/proposal_council_own_resources_en.pdf

⁹ COM(2011) 739 final.

http://ec.europa.eu/budget/library/biblio/documents/fin_fwk1420/COM_2011_0739_EN.pdf

regard to financial transactions covered by enhanced cooperation. In connection with these points, the position of the participating Member States in terms of relocation risks, tax revenues and efficiency of the financial market and avoidance of double taxation or non-taxation would be improved.

The decision authorising enhanced cooperation found that all the requirements of the Treaties in regard to such cooperation are fulfilled, and in particular that the competences, rights and obligations of non-participating Member States are respected. The present proposal sets out the necessary substance for the cooperation thus authorised, in line with the Treaty provisions.

1.3. General approach and relationship with the Commission's initial proposal

This proposal is based on the Commission's original proposal of 2011 in that it respects all the essential principles thereof. However, some adaptations were made:

- to take account of the new context of enhanced cooperation; this means in particular that the 'FTT jurisdiction' is limited to participating Member States, that transactions carried out within a participating Member State which would have been taxed under the original proposal remain taxable, and that it is ensured that Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital¹⁰, whose modification had been proposed in the initial proposal, remains unaffected;
- to some of the proposed provisions for the sake of clarity and
- to further strengthen anti-avoidance of taxation; this is achieved through rules whereby taxation follows the "issuance principle" as a last resort, which compounds the "principle of establishment", which is maintained as the main principle. This addition reflects notably the requests of the interested Member States which referred to the need to avoid evasive actions, distortions and transfers to other jurisdictions. Indeed, by complementing the residence principle with elements of the issuance principle, it will be less advantageous to relocate activities and establishments outside the FTT jurisdictions, since trading in the financial instruments subject to taxation under the latter principle and issued in the FTT jurisdictions will be taxable anyway.

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. External consultation and expertise

The original proposal has been formulated against the background of a wide range of external contributions. These contributions took the form of feedback received in the course of a public consultation on financial sector taxation, targeted consultations with the Member States, experts and the financial sector stakeholders, as well as three different external studies commissioned for the purpose of the impact assessment accompanying the original proposal. The results of the consultation process and the external input are reflected in this impact assessment.

¹⁰ OJ L 46, 21.2.2008, p.11.

The present proposal does not differ markedly from the Commission's September 2011 proposal and retains the same solutions of principle for a common system of FTT under enhanced cooperation (e.g. as regards the scope of the tax, the establishment of a financial institution involved in a transaction as the connecting factor, the taxable amount and rates and the person liable to pay the tax to the tax authorities) and thus no new specific consultations were initiated by the Commission.

However, the Commission also benefited from the consultation of all interested parties over the last year, such as Member States, the European and national parliaments, representatives of the financial industry from within and from outside the European Union, the academic world, non-governmental organisations, and the results of ad hoc external studies that had been published in the aftermath of the tabling of the Commission's initial proposal on a common system of FTT for the entire European Union.

Commission representatives participated in numerous public events across and outside Europe on the establishment of a common system of financial transaction tax. Also, the Commission actively participated in a dialogue with those national parliaments and their relevant committees that so wished discussing the original Commission proposal.

2.2. Impact assessment

The Commission services carried out an impact assessment which accompanies its original proposal adopted on 28 September 2011. Further additional technical analysis of this proposal has been presented on the Commission's website¹¹. As requested by the Member States that have sought the authorisation for enhanced cooperation, the scope and objectives of this proposal are based on the Commission's initial proposal. Therefore, the fundamental building blocks of the latter proposal are not changed, so that a new impact assessment covering the same subject area has not been considered appropriate.

However, Member States had weighed different alternative policy options within the framework of the initial Commission proposal. Also, this new proposal is intended to implement enhanced cooperation, as opposed to the initial proposal for a directive to be applied by all Member States, and Member States have specifically shown interest in learning more on the specific mechanisms that might be at work in this context and their main effects. Therefore, the Commission services have undertaken an additional analysis of these policy options and impacts that complements and reviews, where appropriate, the findings of the impact assessment accompanying the initial proposal of 2011.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

Council Decision 2013/52/EU of 22 January 2013 authorising enhanced cooperation in the area of financial transaction tax¹² authorised the Member States listed in its Article 1 to establish enhanced cooperation in the area of FTT.

¹¹ http://ec.europa.eu/taxation_customs/taxation/other_taxes/financial_sector/index_en.htm.

¹² O.J.L 22, 25.1.2013, p.11.

The pertinent legal basis for the proposed Directive is Article 113 TFEU. The proposal aims at harmonising legislation concerning indirect taxation on financial transactions, which is needed to ensure the proper functioning of the internal market and to avoid distortion of competition. Non-participating States' financial institutions will benefit from the enhanced cooperation, as they will be confronted with only one common system of FTT applicable in the participating Member States instead of a multitude of systems.

3.2. Subsidiarity and proportionality

The harmonisation of legislation concerning the taxation of financial transactions necessary for the proper functioning of the internal market and to avoid distortions of competition, be it only among the participating Member States, can only be achieved through a Union act, i.e. by way of a uniform definition of the essential features of an FTT. The common rules are necessary to avoid undue relocations of transactions and market participants and substitution of financial instruments.

By the same token, a uniform definition could play a crucial role in reducing the existing fragmentation of the internal market, including for the different products of the financial sector that often serve as close substitutes. Non harmonisation of FTT leads to tax arbitrage and potential double or non-taxation. This not only prevents financial transactions to be carried out on a level playing field, but also affects revenues of Member States. Furthermore, it imposes extra compliance costs on the financial sector arising from too different tax regimes. These findings remain valid in a context of enhanced cooperation, even though such cooperation implies a more reduced geographical reach than a similar scheme adopted at the level of all 27 Member States.

The present proposal thus concentrates on setting a common structure of the tax and common provisions on chargeability. The proposal thus leaves a sufficient margin of manoeuvre for the participating Member States when it comes to the actual setting of the tax rates above the minimum. On the other hand, it is proposed to confer delegated powers to the Commission as regards the specification of registration, accounting, reporting and other obligations intended to ensure that FTT due to the tax authorities is effectively paid to them. As regards uniform methods of collection of the FTT due, implementing powers conferred to the Commission are proposed.

A common framework for an FTT therefore respects the subsidiarity and proportionality principle as set in Article 5 TEU. The objective of this proposal cannot be sufficiently achieved by the Member States and can therefore, by reason of ensuring the proper functioning of the internal market, be better achieved at Union level, if necessary through enhanced cooperation.

The harmonisation proposed, in the form of a Directive rather than a Regulation, does not go beyond what is necessary in order to achieve the objectives pursued, first and foremost for the proper functioning of the internal market. It thus complies with the principle of proportionality.

3.3. Detailed explanation of the proposal

3.3.1. Chapter I (Subject matter and definitions)

This chapter defines the subject matter of this proposed Directive containing the proposal for implementation of the enhanced cooperation in the area of FTT. Furthermore, this chapter provides for definitions of the main terms used in this proposal.

3.3.2. Chapter II (Scope of the common system of FTT)

This chapter defines the essential framework of the proposed common system of FTT under enhanced cooperation. This FTT aims at taxing gross transactions before any netting off.

The scope of the tax is wide, because it aims at covering transactions relating to all types of financial instruments as they are often close substitutes for each other. Thus, the scope covers instruments which are negotiable on the capital market, money-market instruments (with the exception of instruments of payment), units or shares in collective investment undertakings - which include undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIF)¹³ and derivatives contracts. Furthermore, the scope of the tax is not limited to trade in organised markets, such as regulated markets, multilateral trading facilities or systematic internalisers, but also covers other types of trades including over-the-counter trade. It is also not limited to the transfer of ownership but rather represents the obligation entered into, mirroring whether or not the party concerned assumes the risk implied by a given financial instrument ("purchase and sale").

Furthermore, where financial instruments whose purchase and sale is taxable form the object of a transfer between separate entities of a group, this transfer shall be taxable even though it might not be a purchase or sale.

Exchanges of financial instruments and repurchase and reverse repurchase and securities lending and borrowing agreements are explicitly included into the scope of the tax. For reasons of avoiding tax circumvention exchanges of financial instruments are considered to give rise to two financial transactions. On the other hand, by way of repurchase and reverse repurchase agreements and securities lending and borrowing agreements, a financial instrument is put at the disposal of a given person for a defined period of time. All such agreements should therefore be considered as giving rise to one financial transaction only.

Additionally, in order to prevent tax avoidance, each material modification of a taxable financial transaction should be considered a new taxable financial transaction of the same type as the original transaction. It is proposed to add a non-limitative list of what can be considered a material modification.

Also, where a derivatives contract results in a supply of financial instruments, in addition to the taxable derivatives contract, the supply of these financial instruments is also subject to tax, provided that all other conditions for taxation are fulfilled.

For the financial instruments which may form the object of a taxable financial transaction, the relevant regulatory framework at EU level provides a clear, comprehensive and accepted set of definitions¹⁴. It emerges from the definitions used that spot currency transactions are not taxable

¹³ Reference is made to the definition of financial instruments in Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1). This definition covers units in collective investment undertakings. Consequently, shares and units of undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC (OJ L 302, 17.11.2009, p. 32) and alternative investment funds (AIF) as defined in Article 4(1)(a) of Directive 2011/61/EU (OJ L 174, 1.7.2011, p. 1) are financial instruments.

¹⁴ Notably Directive 2004/39/EC (cf. previous footnote).

financial transactions, while currency derivative contracts are. Derivative contracts relating to commodities are also covered, while physical commodity transactions are not.

Structured products, meaning tradable securities or other financial instruments offered by way of a securitisation can also form the object of taxable financial transactions. Such products are comparable to any other financial instrument and thus need to be covered by the term financial instrument as used in this proposal. Excluding them from the scope of FTT would open avoidance opportunities. This category of products notably includes certain notes, warrants and certificates as well as banking securitisations which usually transfer a large part of the credit risk associated with assets such as mortgages or loans into the market, as well as insurance securitisations, which involve the transfers of other types of risk, for example the underwriting risk.

However, the scope of the tax is focused on financial transactions carried out by financial institutions acting as party to a financial transaction, either for their own account or for the account of other persons, or acting in the name of a party to the transaction. This approach ensures that FTT is comprehensively applied. In practical terms the presence of financial transactions is usually evident via respective entries in the books. The imposition of FTT should not negatively affect the refinancing possibilities of financial institutions and States, nor monetary policies in general or public debt management. Therefore, transactions with the European Central Bank, the European Financial Stability Facility, the European Stability Mechanism, the European Union where it exercises the function of management of its assets, of balance of payment loans and of similar activities, and the central banks of Member States should be excluded from the scope of the Directive.

The provisions of Council Directive 2008/7/EC continue to be fully applicable. Article 5 (1)(e) and (2) of that Directive is relevant to the area covered by the present Directive and prohibits the imposition of any tax whatsoever on the transactions referred to in its terms, subject to Article 6(1)(a) of the same Directive. To the extent Directive 2008/7/EC thus prohibits or could prohibit the imposition of taxes on certain transactions, in particular financial transactions as part of restructuring operations or of the issue of securities as defined in this Directive, they should not be subject to FTT. The aim is to avoid any possible conflict with Directive 2008/7/EC, without it being necessary to ascertain the precise limits of the obligations imposed by that Directive. Moreover, independently from the extent to which Directive 2008/7/EC prohibits taxation of the issuance of shares and units of collective investment undertakings considerations of tax neutrality require the single treatment of issuances by all these undertakings. The redemption of shares and units thus issued are however not in the nature of a primary market transaction and should thus be taxable.

Further to the exclusion of primary markets explained above most day-to-day financial activities relevant for citizens and businesses remain outside the scope of the FTT. This is the case for the conclusion of insurance contracts, mortgage lending, consumer credits, enterprise loans, payment services etc. (though the subsequent trading of these via structured products is included). Also, currency transactions on spot markets are outside the scope of the FTT, which preserves the free movement of capital. However, derivatives contracts based on currency transactions are covered by the FTT since they are not as such currency transactions.

The definition of financial institutions is broad and essentially includes investment firms, organised markets, credit institutions, insurance and reinsurance undertakings, collective investment undertakings and their managers, pension funds and their managers, holding companies, financial leasing companies, special purpose entities, and where possible refers to the definitions provided by the relevant EU legislation adopted for regulatory purposes. Additionally, other undertakings, institutions, bodies or persons carrying out certain financial activities with a significant annual

average value of financial transactions should be considered as financial institutions. The present proposal sets the threshold at 50% of its overall average net annual turnover of the entity concerned.

The proposed Directive provides for further technical details of the calculation of the value of the financial transactions and the average of values referred to in respect of entities that may be regarded as financial institutions only on account of the value of the financial transactions they carry out, and makes provision for situations where such entities no longer qualify as financial institutions..

Central Counterparties (CCPs), Central Securities Depositories (CSDs), International Central Securities Depositories (ICSDs) and Member States and public bodies entrusted with the function of managing public debt, when exercising that function are not considered financial institutions to the extent they are not engaged in trading activity in itself. They are also key for a more efficient and more transparent functioning of financial markets and for a proper management of public debt. However, because of their central role certain obligations relating to ensuring the payment of the tax to the tax authorities and to the verification of the payment should continue to apply.

The territorial application of the proposed FTT and the participating Member States' taxing rights are defined on the basis of the rules laid down in Article 4. This provision refers to the notion of "establishment". In essence, it is based on the "residence principle" supplemented by elements of the issuance principle with a view mainly to strengthen anti-relocation (details regarding this latter aspect are set out further below).

In order for a financial transaction to be taxable in the participating Member States, one of the parties to the transaction needs to be established in the territory of a participating Member State according to the criteria of Article 4. Taxation will take place in the participating Member State in the territory of which the establishment of a financial institution is located, on condition that this institution is party to the transaction, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction.

In case the different financial institutions, as parties to the transaction or acting in the name of such parties, are established in the territory of different participating Member States, according to the criteria of Article 4, each of these different Member States will be competent to subject the transaction to tax at the rates it has set in accordance with this proposal. Where the establishments concerned are located in the territory of a State which is not a participating Member State the transaction is not subject to FTT in a participating Member State, unless one of the parties to the transaction is established in a participating Member State in which case the financial institution that is not established in a participating Member State will also be deemed to be established in that participating Member State and the transaction becomes taxable there.

One particular change due to the new context of enhanced cooperation concerns what was Article 3(1)(a) of the initial proposal. Within that proposal, the reference to a financial institution "authorised" by a Member State covered headquarter authorisations and authorisations provided by the Member State concerned in regard to transactions operated by third-country financial institutions without a physical presence in the territory of that Member State. In the former configuration, transactions may be covered, according to the case, by a "passport" foreseen in EU legislation. The only "authorisation" is then the one granted to the headquarters of the financial institution. In a context of enhanced cooperation, a new configuration may raise, namely of institutions with headquarters in a non-participating Member State that operate on the basis of a "passport" in the FTT jurisdiction (cf. e.g. Article 31 of Directive 2004/39/EC). The latter situation should be assimilated to the situation of third country institutions operating on the basis of a specific authorisation provided by the Member State concerned by the transaction.

The residence principle is supplemented also by elements of the "issuance principle" as a last resort, in order to improve the resilience of the system against relocation. Indeed, by complementing the residence principle with the issuance principle, it will be less advantageous to relocate activities and establishments outside the FTT jurisdictions, since trading in the financial instruments subject to taxation under the latter principle and issued in the FTT jurisdictions will be taxable anyway. This applies where none of the parties to the transaction would have been "established" in a participating Member State, on the basis of the criteria set out in the Commission's initial proposal but where such parties are trading in financial instruments issued in that Member State. This concerns essentially shares, bonds and equivalent securities, money-market instruments, structured products, units and shares in collective investment undertakings and derivatives traded on organised trade venues or platforms. In the context of the issuance principle, which also underlies certain existing national financial sector taxes, the transaction is linked to the participating Member State in which the issuer is located. The persons involved in such transaction will be deemed to be established in that Member State because of this link, and the financial institution(s) concerned will have to pay FTT in that State.

All the above mentioned criteria are subject to a general rule, regarding the case where the person liable to pay the tax proves that there is no link between the economic substance of the transaction and the territory of any participating Member State. In that case, the financial institution or other person shall not be considered established within a participating Member State.

All in all, through the connecting factors chosen in combination with the above mentioned general rule, it is ensured that taxation can only take place in the presence of a sufficient link between the transaction and the territory of the FTT jurisdiction. As in existing EU legislation in the area of indirect taxes, territoriality principles are fully respected.

3.3.3. *Chapter III (chargeability, taxable amount and rates)*

The moment of chargeability is defined as the moment when the financial transaction occurs. Subsequent cancellation cannot be considered as a reason to exclude chargeability of the tax, except in cases of errors.

As transactions in derivatives and in financial instruments other than derivatives have a different nature and characteristics, they have to be associated to different taxable amounts.

For the purchase and sale of financial instruments (other than derivatives), usually a price or any other form of consideration will be determined. Logically, this is to be defined as the taxable amount. However, to avoid market distortions special rules are necessary where the consideration is lower than the market price or for transactions taking place between entities of a group and which are not covered by the notions of "purchase" and "sale". In these cases the taxable amount is to be the market price determined at arm's length at the time FTT becomes chargeable. Such transactions between entities of a group are likely to involve transfers without consideration, while transfers for consideration correspond to the notions of "purchase" and "sale".

For the purchase/sale, transfer, exchange, conclusion of derivative contracts, and material modifications thereof, the taxable amount of the FTT shall be the notional amount referred to in the derivatives contract at the time it is purchased/sold, transferred, exchanged, concluded or when the operation concerned is materially modified. This approach would allow for a straightforward and easy application of FTT on derivative contracts while ensuring low compliance and administrative costs. Also, this approach makes it more difficult to artificially reduce the tax burden through creative contract design for the derivative contract as there would be no tax incentive for example to

enter into a contract on differences in prices or values only. Furthermore it implies the taxation at the moment of the purchase/sale, transfer, exchange, conclusion of the contract or material modification of the operation concerned, as compared to taxing cash-flows at different moments in time during the life cycle of the contract. The rate to be used in this case will need to be rather low in order to define an adequate tax burden.

Special provisions might be necessary in the participating Member States in order to prevent fraud and evasion and a general anti-abuse rule is proposed (see also section 3.3.4). This rule could for example be applied in cases where the notional amount is artificially divided: the notional amount of a swap could for instance be divided by an arbitrarily large factor and all payments could be multiplied by the same factor. This would leave the cash flows of the instrument unchanged but arbitrarily shrink the size of the tax base.

Special provisions are necessary to determine the taxable amount in respect of transactions where the taxable amount or parts thereof are expressed in another currency than that of the participating Member State of assessment.

Transactions in derivatives and transactions in other financial instruments are different in nature. Moreover, markets are likely to react differently to a financial transaction tax applied to each of these two categories. For these reasons, and in order to ensure a broadly even taxation, the rates should be differentiated as between the two categories.

The rates should also take into account differences in the applicable methods for the determination of the taxable amounts.

Generally speaking, the minimum tax rates (above which there is room of manoeuvre for national policies) are proposed to be set at a level sufficiently high for the harmonisation objective of this Directive to be achieved. At the same time, the proposed rates are situated low enough so that delocalisation risks are minimised.

3.3.4. Chapter IV (Payment of FTT, related obligations and prevention of evasion, avoidance and abuse)

This proposal defines the scope of FTT by reference to financial transactions to which a financial institution established in the territory of the participating Member State concerned is party (acting either for its own account or for the account of another person) or transactions where the institution acts in the name of a party. In fact, financial institutions execute the bulk of transactions on financial markets, and the FTT should concentrate on the financial sector as such rather than on citizens. Therefore, these institutions should be liable to pay the tax to the tax authorities of the participating Member States in the territories of which these financial institutions are deemed to be established. However, in order to avoid a certain cascade of the tax, when a financial institution acts in the name or for the account of another financial institution, only that other financial institution should pay the tax.

It is also proposed to ensure as far as possible that FTT is effectively paid. According to the terms of this proposal, therefore, in case the FTT due on account of a transaction has not been timely paid each party to that transaction should be held jointly and severally liable for the payment of the tax. Moreover, participating Member States should have the possibility to hold other persons jointly and severally liable for payment of the tax, including in cases where a party to a transaction has its headquarters located outside the territory of the participating Member States.

This proposal also provides for time limits for the payment of FTT to the accounts determined by the participating Member States. Most financial transactions are carried out by electronic means. In these cases, FTT should be paid immediately at the moment of chargeability. In other cases, the tax should be paid within a period which, while being sufficiently long so as to allow for the manual processing of the payment, avoids that unjustifiable cash-flow advantages accrue to the financial institution concerned. A period of three working days from the moment of chargeability can be considered appropriate in this sense.

The participating Member States should be obliged to take appropriate measures for registration, accounting, reporting and other obligations for the FTT to be levied accurately and timely and effectively paid to the tax authorities. In this regard, it is proposed to empower the Commission to provide for further details. This is necessary in order to ensure harmonised measures reducing compliance costs for operators and to enable speedy technical adaptations whenever they are necessary. In this context, the participating Member States should take advantage of existing and forthcoming EU legislation on financial markets that includes reporting and data maintenance obligations with respect to financial transactions.

The proposed Directive would also oblige Member States to take measures in order to prevent fraud and evasion.

Furthermore, in order to address the risk of abuse which could undermine the proper operation of the common system, it is proposed to set out a number of details in the directive. Thus, the proposal contains a general anti-abuse rule, based on the similar clause included in the Commission Recommendation of 6 December 2012 on aggressive tax planning¹⁵, as well as a provision based on the same principles but addressing the particular problems linked to depositary receipts and similar securities.

In order to avoid complications in the collection of the tax through differing collection methods, and ensuing unnecessary compliance costs, the methods applied by the participating Member States for the collection of the FTT due should be uniform, to the extent necessary for those purposes. Such uniform methods would also contribute to equal treatment of all taxpayers. Therefore, the proposed Directive provides for an empowerment of the Commission to adopt implementing measures to this effect.

In order to ease the administration of the tax, the participating Member States could introduce national (publicly accessible) registries for the FTT entities. In practice, they could make use of existing codification, for instance the Business Identification Codes (BIC/ISO 9362) for both financial and non-financial institutions, the Classification of Financial Instruments (CFI/ISO 10962) for financial instruments and the Market Identifier Code (MIC/ISO 10383) for the different markets.

In addition to discussions on the definition of uniform collection methods in the relevant Committee, the Commission might organise regular expert meetings with a view to discuss with the participating Member States the operation of the Directive once adopted, in particular ways of ensuring the proper payment of the tax and the verification of payment, as well as matters pertaining to the prevention of tax evasion, avoidance and abuse.

The draft Directive does not address issues of administrative cooperation which are covered in existing instruments relating to the assessment and recovery of taxes, in particular Directive

¹⁵ OJ L 338, 12.12.2012, p. 41.

2011/16/EU of the Council of 15 February on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC¹⁶ (applicable as of 1 January 2013), Directive 2010/24/EU of the Council of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures¹⁷ (applicable as of 1 January 2012). The directive proposed here neither adds to those instruments, nor does it diminish their scope. They continue to apply to all taxes of any kind levied by or on behalf a Member State¹⁸, and this encompasses FTT as it does any other tax thus levied. These instruments apply to all Member States who should provide assistance within the limits and conditions thereof. Other instruments which are relevant in this context include the OECD - Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters¹⁹.

Together with the conceptual approach underlying the FTT (broad scope, broadly defined residence principle, no exemptions), the rules outlined above allow to minimise tax evasion, avoidance and abuse.

3.3.5. Chapter V (Final provisions)

It follows from the harmonisation objective of this proposal that the participating Member States should not be allowed to maintain or introduce taxes on financial transactions as defined in this proposal other than the FTT object of the proposed Directive or VAT. Indeed, as far as VAT is concerned, the right of option to tax as provided for in Article 137(1)(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax²⁰ continues to apply. Other taxes like those on insurance premiums etc. have of course a different nature, as have registration fees on financial transactions, in case they represent a genuine re-imburement of costs or consideration for a service rendered. Such taxes and fees are thus not affected by this proposal.

It is proposed for the participating Member States to communicate to the Commission the text of the provisions transposing the proposed Directive into national legal provisions. No provision of explanatory documents is proposed in this respect, given the limited number of articles in the proposal and ensuing obligations on Member States.

4. BUDGETARY IMPLICATION

Preliminary estimates indicate that, depending on market reactions, the revenues of the tax could have been between EUR 30 and 35 billion on a yearly basis in the whole of participating Member States in case the original proposal for EU27 had been applied to EU11. However, when taking account of the net effects of the adjustments made as compared to the original proposal, notably (i) the issue of units and shares of UCITS and AIF is no longer considered not to be a primary market transaction, and (ii) the anti-relocation provisions of the residence principle as initially defined have been strengthened by complementing them with elements of the issuance principle, preliminary estimates indicate that the revenues of the tax could be in the order of magnitude of EUR 31 billion annually.

¹⁶ OJ L 64, 11.3.2011, p. 1.

¹⁷ OJ L 84, 31.3.2010, p. 1.

¹⁸ With certain exceptions in the case of Directive 2011/16/EU but which are no relevant here.

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<http://www.oecdilibrary.org/docserver/download/fulltext/2311331e.pdf?expires=1309623132&id=id&accname=ocid194935&checksum=37A9732331E7939B3EE154BB7EC53C41>

²⁰ OJ L 347, 11.12.2006, p. 1.

The Commission Proposal for a Council Decision on the system of own resources of the European Union of 29 June 2011²¹, as amended on 9 November 2011²², set out that part of receipts generated by the FTT shall constitute an own resource for the EU Budget. The GNI-based resource drawn from the participating Member States would be reduced accordingly.

The European Council of 7/8 February 2013 invited the participating Member States to examine if the FTT could become the base for a new own resource for the EU Budget.

²¹ COM(2011) 510 final.

http://ec.europa.eu/budget/library/biblio/documents/fin_fw1420/proposal_council_own_resources_en.pdf

²² COM(2011) 739 final.

http://ec.europa.eu/budget/library/biblio/documents/fin_fw1420/COM_2011_0739_EN.pdf

Proposal for a

COUNCIL DIRECTIVE

implementing enhanced cooperation in the area of financial transaction tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to Council Decision 2013/52/EU of 22 January 2013 authorising enhanced cooperation in the area of financial transaction tax¹,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the European Economic and Social Committee³,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) In 2011, the Commission took note of a debate on-going at all levels on additional taxation of the financial sector. The debate originates from the desire to ensure that the financial sector fairly and substantially contributes to the costs of the crisis and that it is taxed in a fair way vis-à-vis other sectors for the future, to dis-incentivise excessively risky activities by financial institutions, to complement regulatory measures aimed at avoiding future crises and to generate additional revenue for general budgets or specific policy purposes.
- (2) By Decision 2013/52/EU the Council authorised enhanced cooperation between Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia (hereinafter "participating Member States") in the area of financial transaction tax (FTT).
- (3) In order to prevent distortions through measures taken unilaterally by the participating Member States, bearing in mind the extremely high mobility of most of the relevant financial transactions, and thus to improve the proper functioning of the internal market, it is important that the basic features of a FTT in the participating Member States are harmonised at Union level. Incentives for tax arbitrage between the participating Member States and

¹ OJ L 22, 25.1.2013, p. 11

² OJ C ..., ..., p. .

³ OJ C ..., ..., p. .

allocation distortions between financial markets in those States, as well as possibilities for double or non-taxation should thereby be avoided.

- (4) The improvement of the operation of the internal market, in particular the avoidance of distortions between the participating Member States requires that a FTT applies to a broadly determined range of financial institutions and transactions, to trade in a wide range of financial instruments, including structured products, both in the organised markets and "over-the-counter", as well as to the conclusion of all derivative contracts and to material modifications of the operations concerned.
- (5) In principle, each transfer agreed upon, of one or more financial instruments, is linked to a given transaction which in turn should be subject to FTT on account of such agreed transfer. Since an exchange of financial instruments gives rise to two such transfers, each such exchange should be considered as giving rise to two transactions, so as to avoid circumvention of the tax. By way of repurchase and reverse repurchase and securities lending and borrowing agreements, a financial instrument is put at the disposal of a given person for a specified period of time. All such agreements, as well as their material modification, should therefore be considered as giving rise to one transaction only.
- (6) In order to preserve the efficient and transparent functioning of financial markets or the public debt management, it is necessary to exclude certain entities from the scope of the FTT, in as much as these are exercising functions which are not considered to be trading activity in itself but rather facilitating trade or protecting the management of public debt. However, entities excluded specifically because of their central role for the functioning of financial markets or public debt management should be made subject to the rules that ensure the proper payment of the tax to the tax authorities and the verification of the payment.
- (7) The imposition of FTT should not negatively affect the refinancing possibilities of financial institutions and States, nor monetary policies in general. Therefore, transactions with the European Central Bank, the European Financial Stability Facility, the European Stability Mechanism, the European Union where it exercises the function of management of its assets, of balance of payment loans and of similar activities, and the central banks of Member States should not be subject to FTT.
- (8) With the exception of the conclusion or material modification of derivative contracts, the trade on primary markets and transactions relevant for citizens and businesses such as conclusion of insurance contracts, mortgage lending, consumer credits or payment services should be excluded from the scope of FTT, so as not to undermine the raising of capital by companies and governments and to avoid impact on households.
- (9) The provisions of Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital⁴ continue to be fully applicable. Article 5(1)(e) and (2) of that Directive is relevant to the area covered by this Directive and prohibits, subject to Article 6(1)(a) of that Directive, the imposition of any tax whatsoever on the transactions referred to in its provisions. Transactions in respect of which Directive 2008/7/EC prohibits or could prohibit the imposition of taxes should therefore not be subject to FTT. Independently from the extent to which Directive 2008/7/EC prohibits taxation of the issuance of shares and units collective investment undertakings, considerations of tax neutrality require a single treatment of issuances by all these undertakings. The redemption of shares and units thus

⁴ OJ L 46, 21.2.2008, p.11.

issued are however not in the nature of a primary market transaction and should thus be taxable.

- (10) The chargeability and taxable amount should be harmonised so as to avoid distortions in the internal market.
- (11) The moment of chargeability should not be unduly delayed and should coincide with the moment where the financial transaction occurs.
- (12) In order to allow for the taxable amount to be determined as easily as possible so as to limit costs for businesses and for tax administrations, in the case of financial transactions other than those related to derivatives contracts reference should be made normally to the consideration granted in the context of the transaction. Where no consideration is granted or where the consideration granted is lower than the market price, the market price should be referred to as a fair reflection of the value of the transaction. Equally for reasons of ease of calculation, where derivatives contracts are purchased/sold, transferred, exchanged, concluded or where these operations are materially modified, the notional amount referred to in the contract should be used.
- (13) In the interest of equal treatment, a single tax rate should apply within each category of transactions, namely trade in financial instruments other than derivatives and material modification of the operations concerned, on the one hand, and the purchase/sale, transfer, exchange, conclusion of derivatives contracts, and material modification of these operations on the other hand.
- (14) In order to concentrate the taxation on the financial sector as such rather than on citizens and because financial institutions execute the vast majority of transactions on financial markets, the tax should apply to those institutions, whether they trade in their own name, in the name of other persons, for their own account or for the account of other persons.
- (15) Because of the high mobility of financial transactions and in order to help mitigating potential tax avoidance, the FTT should be applied on the basis of the residence principle. To further minimise the risk of relocation of transactions, while maintaining a single reference to “establishment” for ease of application, this principle should be supplemented by elements of the issuance principle. Thus, for transactions in certain financial instruments, the persons involved should be considered established in the participating Member State in which the instrument has been issued.
- (16) The minimum tax rates should be set at a level sufficiently high for the harmonisation objective of a common FTT to be achieved. At the same time, they have to be low enough so that delocalisation risks are minimised.
- (17) It should be avoided that any side of a single transaction be taxed more than once. Therefore, where a financial institution acts in the name or for the account of another financial institution, only that other financial institution should pay the tax.
- (18) In order for the FTT to be levied in an accurate and timely manner, the participating Member States should be obliged to take the necessary measures.
- (19) In order to prevent tax fraud and evasion the participating Member States should be obliged to adopt appropriate measures.

- (20) In order to prevent tax avoidance and abuse through artificial schemes, it is necessary to provide for a general anti-abuse rule. A specific rule based on the same principles should be added with a view to address the particular problems linked to depositary receipts and similar securities.
- (21) In order to allow the adoption of more detailed rules in certain technical areas, regarding registration, accounting, reporting obligations and other obligations intended to ensure that FTT due to the tax authorities is effectively paid to the tax authorities, and their timely adaptation as appropriate, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of specifying the measures necessary to this effect. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing-up delegated acts, should ensure a timely and appropriate transmission of relevant documents to the Council.
- (22) In order to ensure uniform conditions for the implementation of this Directive, as regards the collection of the tax in the participating Member States, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.⁵
- (23) Since market operators will need some time to adjust to the new rules, an appropriate period of time should be provided for between the adoption of the national rules necessary to comply with this Directive and the application of those rules.
- (24) Since the objective of this Directive, namely to harmonise the essential features of a FTT within the participating Member States at Union level, cannot be sufficiently achieved by these Member States and can therefore, by reason of improving the proper functioning of the Single Market, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective,

HAS ADOPTED THIS DIRECTIVE:

Chapter I

Subject matter and definitions

Article 1

Subject matter

1. This Directive implements the enhanced cooperation authorised by Decision 2013/52/EU by laying down provisions for a harmonised financial transaction tax (FTT).
2. Participating Member States shall charge FTT in accordance with this Directive.

⁵ OJ L 55, 28.2.2011, p. 13

Article 2
Definitions

1. For the purposes of this Directive, the following definitions shall apply:
- (1) 'Participating Member State' means a Member State which participates, at the time when FTT becomes chargeable pursuant to this Directive, in enhanced cooperation in the area of FTT by virtue of Decision 2013/52/EU, or by virtue of a decision adopted in accordance with the second or third subparagraph of Article 331(1) of the TFEU;
 - (2) 'Financial transaction' means any of the following:
 - (a) the purchase and sale of a financial instrument before netting or settlement;
 - (b) the transfer between entities of a group of the right to dispose of a financial instrument as owner and any equivalent operation implying the transfer of the risk associated with the financial instrument, in cases not subject to point (a);
 - (c) the conclusion of derivatives contracts before netting or settlement;
 - (d) an exchange of financial instruments;
 - (e) a repurchase agreement, a reverse repurchase agreement, a securities lending and borrowing agreement;
 - (3) 'Financial instruments' means financial instruments as defined Section C of Annex I to Directive 2004/39/EC of the European Parliament and of the Council⁶, and structured products;
 - (4) 'Derivatives contract' means a financial instrument as defined in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC, as implemented by Articles 38 and 39 of Commission Regulation (EC) No 1287/2006⁷;
 - (5) 'Repurchase agreement' and 'reverse repurchase agreement' means an agreement as defined in Article 3(1)(m) of Directive 2006/49/EC of the European Parliament and of the Council⁸;
 - (6) 'Securities lending agreement' and 'securities borrowing agreement' mean an agreement referred to in Article 3 of Directive 2006/49/EC;
 - (7) 'Structured product' means tradable securities or other financial instruments offered by way of a securitisation within the meaning of Article 4(36) of Directive 2006/48/EC of the European Parliament and of the Council⁹ or by way of equivalent transactions involving the transfer of risks other than credit risk;
 - (8) 'Financial institution' means any of the following:

⁶ OJ L 145, 30.4.2004, p. 1.

⁷ OJ L 241, 2.9.2006, p.1.

⁸ OJ L 177, 30.6.2006, p. 201.

⁹ OJ L 177, 30.6.2006, p. 1.

- (a) an investment firm as defined in Article 4(1)(1) of Directive 2004/39/EC;
- (b) a regulated market as defined in Article 4(1)(14) of Directive 2004/39/EC and any other organised trade venue or platform;
- (c) a credit institution as defined in Article 4(1) of Directive 2006/48/EC;
- (d) an insurance and reinsurance undertaking as defined in Article 13 of Directive 2009/138/EC of the European Parliament and the Council¹⁰;
- (e) an undertaking for collective investments in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council¹¹ and a management company as defined in Article 2(1)(b) of Directive 2009/65/EC;
- (f) a pension fund or an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC of the European Parliament and of the Council¹², an investment manager of such fund or institution;
- (g) an alternative investment fund (AIF) and an alternative investment fund manager (AIFM) as defined in Article 4 of Directive 2011/61/EU of the European Parliament and of the Council¹³;
- (h) a securitisation special purpose entity as defined in Article 4(44) of Directive 2006/48/EC;
- (i) a special purpose vehicle as defined in Article 13(26) of Directive 2009/138/EC;
- (j) any other undertaking, institution, body or person carrying out one or more of the following activities, in case the average annual value of its financial transactions constitutes more than fifty per cent of its overall average net annual turnover, as referred to in Article 28 of Council Directive 78/660/EEC¹⁴:
 - (i) activities referred to in points 1, 2, 3 and 6 of Annex I to Directive 2006/48/EC;
 - ii) trading for own account or for account or in the name of customers with respect to any financial instrument;
 - (iii) acquisition of holdings in undertakings;
 - (iv) participation in or issuance of financial instruments;
 - (v) the provision of services related to activities referred to in point (iv);

¹⁰ OJ L 335, 17.12.2009, p. 1.

¹¹ OJ L 302, 17.11.2009, p. 32.

¹² OJ L 235, 23.9.2003, p. 10.

¹³ OJ L 174, 1.7.2011, p.1.

¹⁴ OJ L 222, 14.8.1978, p. 11.

- (9) 'Central Counter Party' (CCP) means a CCP as defined in Article 2(1) of Regulation (EU) No 648/2012 of the European Parliament and of the Council¹⁵;
- (10) 'Netting' means netting as defined in Article 2(k) of Directive 98/26/EC of the European Parliament and of the Council¹⁶;
- (11) 'A financial instrument referred to in Section C of Annex I to Directive 2004/39/EC and structured products issued within the territory of a participating Member State' means such a financial instrument that is issued by a person who has its registered seat or, in case of a natural person, its permanent address or, if no permanent address can be ascertained, its usual residence in that State;
- (12) 'Notional amount' means the underlying nominal or face amount that is used to calculate payments made on a given derivative contract.
2. Each of the operations referred to in points (a), (b), (c) and (e) of paragraph 1(2) shall be considered to give rise to a single financial transaction. Each exchange as referred to in point (d) thereof shall be considered to give rise to two financial transactions. Each material modification of an operation as referred to in points (a) to (e) of paragraph 1(2) shall be considered to be a new operation of the same type as the original operation. A modification is considered to be material in particular where it involves a substitution of at least one party, in case the object or scope of the operation, including its temporal scope, or the consideration agreed upon is altered, or where the original operation would have attracted a higher tax had it been concluded as modified.
3. For the purposes of point (8)(j) of paragraph 1:
- (a) the average annual value referred to in that point shall be calculated either over the three preceding calendar years or, in the case of a shorter period of previous activity, over that shorter period;
 - (b) the value of each transaction referred to in Article 6 shall be the taxable amount as defined in that Article;
 - (c) the value of each transaction referred to in Article 7 shall be ten per cent of the taxable amount as defined in that Article;
 - (d) where the average annual value of financial transactions in two consecutive calendar years does not exceed fifty per cent of the overall average net annual turnover, as defined in Article 28 of Directive 78/660/EEC, the undertaking, institution, body or person concerned shall be entitled, upon request, to be considered as not being or no longer being a financial institution.

¹⁵ OJ L 201, 27.7.2012, p.1.

¹⁶ OJ L 166, 11.6.1998, p. 45.

Chapter II

Scope of the common system of FTT

Article 3

Scope

1. This Directive shall apply to all financial transactions, on the condition that at least one party to the transaction is established in the territory of a participating Member State and that a financial institution established in the territory of a participating Member State is party to the transaction, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction.
2. This Directive, with the exception of paragraphs 3 and 4 of Article 10 and paragraphs 1 to 4 of Article 11, shall not apply to the following entities:
 - (a) Central Counter Parties (CCPs) where exercising the function of a CCP;
 - (b) Central Securities Depositories (CSDs) and International Central Securities Depositories (ICSDs) where exercising the function of a CSD or ICSD;
 - (c) Member States, including public bodies entrusted with the function of managing the public debt, when exercising that function.
3. Where an entity is not taxable pursuant to paragraph 2, this shall not preclude the taxability of its counterparty.
4. This Directive shall not apply to the following transactions:
 - (a) primary market transactions referred to in Article 5(c) of Regulation (EC) No 1287/2006, including the activity of underwriting and subsequent allocation of financial instruments in the framework of their issue;
 - (b) transactions with the central banks of Member States;
 - (c) transactions with the European Central Bank;
 - (d) transactions with the European Financial Stability Facility and the European Stability Mechanism, transactions with the European Union related to financial assistance made available under Article 143 of the TFEU and to financial assistance made available under Article 122(2) of the TFEU, as well as transactions with the European Union and the European Atomic Energy Community related to the management of their assets;
 - (e) without prejudice to point (c) and (d), transactions with the European Union, the European Atomic Energy Community, the European Investment Bank and with bodies set up by the European Union or the European Atomic Energy Community to which the Protocol on the privileges and immunities of the European Union applies, within the limits and under the conditions of that Protocol, the headquarter agreements or any other agreements concluded for the implementation of the Protocol;

- (f) transactions with international organisations or bodies, other than those referred to in points (c), (d) and (e), recognised as such by the public authorities of the host State, within the limits and under the conditions laid down by the international conventions establishing the bodies or by headquarters agreements;
- (g) transactions carried out as part of restructuring operations referred to in Article 4 of Council Directive 2008/7/EC¹⁷.

Article 4
Establishment

1. For the purposes of this Directive, a financial institution shall be deemed to be established in the territory of a participating Member State where any of the following conditions is fulfilled:
 - (a) it has been authorised by the authorities of that Member State to act as such, in respect of transactions covered by that authorisation;
 - (b) it is authorised or otherwise entitled to operate, from abroad, as financial institution in regard to the territory of that Member State, in respect of transactions covered by such authorisation or entitlement;
 - (c) it has its registered seat within that Member State;
 - (d) its permanent address or, if no permanent address can be ascertained, its usual residence is located in that Member State;
 - (e) it has a branch within that Member State, in respect of transactions carried out by that branch;
 - (f) it is party, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction, to a financial transaction with another financial institution established in that Member State pursuant to points (a), (b), (c), (d) or (e), or with a party established in the territory of that Member State and which is not a financial institution;
 - (g) it is party, acting either for its own account or for the account of another person, or is acting in the name of a party to the transaction, to a financial transaction in a structured product or one of the financial instruments referred to in Section C of Annex I of Directive 2004/39/EC issued within the territory of that Member State, with the exception of instruments referred to in points (4) to (10) of that Section which are not traded on an organised platform.
2. A person which is not a financial institution shall be deemed to be established within a participating Member State where any of the following conditions is fulfilled:
 - (a) its registered seat or, in case of a natural person, its permanent address or, if no permanent address can be ascertained, its usual residence is located in that State;

¹⁷ OJ L OJ L 46, 21.2.2008, p.11.

- (b) it has a branch in that State, in respect of financial transactions carried out by that branch;
 - (c) it is party to a financial transaction in a structured product or one of the financial instruments referred to Section C of Annex I to Directive 2004/39/EC issued within the territory of that Member State, with the exception of instruments referred to in points (4) to (10) of that Section which are not traded on an organised platform.
3. Notwithstanding paragraphs 1 and 2, a financial institution or a person which is not a financial institution shall not be deemed to be established within the meaning of those paragraphs, where the person liable for payment of FTT proves that there is no link between the economic substance of the transaction and the territory of any participating Member State.
 4. Where more than one of the conditions in the lists set out in paragraphs 1 and 2 respectively is fulfilled, the first condition fulfilled from the start of the list in descending order shall be relevant for determining the participating Member State of establishment.

Chapter III

Chargeability, taxable amount and rates of the common FTT

Article 5 *Chargeability of FTT*

1. The FTT shall become chargeable for each financial transaction at the moment it occurs.
2. Subsequent cancellation or rectification of a financial transaction shall have no effect on chargeability, except for cases of errors.

Article 6 *Taxable amount of the FTT in the case of financial transactions other than those related to derivatives contracts*

1. In the case of financial transactions other than those referred to in point 2(c) of Article 2(1) and, in respect of derivative contracts, in points 2(a), 2(b) and 2(d) of Article 2(1), the taxable amount shall be everything which constitutes consideration paid or owed, in return for the transfer, from the counterparty or a third party.
2. Notwithstanding paragraph 1, in the cases referred to in that paragraph the taxable amount shall be the market price determined at the time the FTT becomes chargeable:
 - (a) where the consideration is lower than the market price;
 - (b) in the cases referred to in point 2(b) of Article 2(1).
3. For the purposes of paragraph 2, the market price shall be the full amount that would have been paid as consideration for the financial instrument concerned in a transaction at arm's length.

Article 7

Taxable amount in the case of financial transactions related to derivatives contracts

In the case of financial transactions referred to in point 2(c) of Article 2(1) and, in respect of derivative contracts, in points 2(a), 2(b) and 2(d) of Article 2(1), the taxable amount of the FTT shall be the notional amount referred to in the derivatives contract at the time of the financial transaction.

Where more than one notional amount is identified, the highest amount shall be used for the purpose of determining the taxable amount.

Article 8

Common provisions on taxable amount

For the purposes of Articles 6 and 7, where the value relevant for the determination of the taxable amount is expressed, in whole or in part, in a currency other than that of the taxing participating Member State, the applicable exchange rate shall be the latest selling rate recorded, at the time the FTT becomes chargeable, on the most representative exchange market of the participating Member State concerned, or at an exchange rate determined by reference to that market, in accordance with the rules laid down by that Member State.

Article 9

Application, structure and level of rates

1. The participating Member States shall apply the rates of FTT in force at the time when the tax becomes chargeable.
2. The rates shall be fixed by each participating Member State as a percentage of the taxable amount.

Those rates shall not be lower than:

- (a) 0.1% in respect of the financial transactions referred to in Article 6;
 - (b) 0.01% in respect of financial transactions referred to in Article 7.
3. The participating Member States shall apply the same rate to all financial transactions that fall under the same category pursuant to points (a) and (b) of paragraph 2.

Chapter IV

Payment of the common FTT, related obligations and prevention of evasion, avoidance and abuse

Article 10

Person liable for payment of FTT to the tax authorities

1. In respect of each financial transaction, FTT shall be payable by each financial institution which fulfils any of the following conditions:

- (a) it is party to the transaction, acting either for its own account or for the account of another person;
- (b) it is acting in the name of a party to the transaction;
- (c) the transaction has been carried out on its account.

The FTT shall be payable to the tax authorities of the participating Member State in the territory of which the financial institution is deemed to be established.

2. Where a financial institution acts in the name or for the account of another financial institution only that other financial institution shall be liable to pay FTT.
3. Where the tax due has not been paid within the time limit set out in Article 11(5), each party to a transaction, including persons other than financial institutions shall be jointly and severally liable for the payment of the tax due by a financial institution on account of that transaction.
4. The participating Member States may provide that a person other than the persons liable for payment of FTT referred to in paragraphs 1, 2 and 3 is to be held jointly and severally liable for the payment of the tax.

Article 11

Provisions relating to time limits for the payment of FTT, to obligations intended to ensure payment, to the verification of payment

1. The participating Member States shall lay down registration, accounting, reporting obligations and other obligations intended to ensure that FTT due is effectively paid to the tax authorities.
2. The Commission may, in accordance with Article 16 adopt delegated acts specifying the measures to be taken pursuant to paragraph 1 by the participating Member States.
3. The participating Member States shall adopt measures to ensure that every person liable for payment of FTT submits to the tax authorities a return setting out all the information needed to calculate the FTT that has become chargeable during a period of one month including the total value of the transactions taxed at each rate.

The FTT return shall be submitted by the tenth day of the month following the month during which the FTT became chargeable.

4. The participating Member States shall ensure that financial institutions keep at the disposal of the tax authorities, for at least five years, the relevant data relating to all financial transactions which they have carried out, whether in their own name or in the name of another person, for their own account or for the account of another person.

In specifying that obligation they shall take account, where applicable, of obligations they have already imposed on financial institutions in view of Article 25(2) of Directive 2004/39/EC.

5. The participating Member States shall ensure that any FTT due is paid to the accounts determined by the participating Member States at the following points in time:

- (a) at the moment when the tax becomes chargeable in case the transaction is carried out electronically;
- (b) within three working days from the moment the tax becomes chargeable in all other cases.

The Commission may adopt implementing acts providing for uniform methods of collection of the FTT due. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).

6. The participating Member States shall ensure that the tax authorities verify whether the tax has been correctly paid.

Article 12 *Prevention of fraud and evasion*

The participating Member States shall adopt measures to prevent tax fraud and evasion.

Article 13 *General anti-abuse rule*

1. An artificial arrangement or an artificial series of arrangements which has been put into place for the essential purpose of avoiding taxation and leads to a tax benefit shall be ignored. Participating Member States shall treat these arrangements for tax purposes by reference to their economic substance.
2. For the purposes of paragraph 1 an arrangement means any transaction, scheme, action, operation, agreement, grant, understanding, promise, undertaking or event. An arrangement may comprise more than one step or part.
3. For the purposes of paragraph 1 an arrangement or a series of arrangements is artificial where it lacks commercial substance. In determining whether the arrangement or series of arrangements is artificial, participating Member States shall consider, in particular, whether they involve one or more of the following situations:
 - (a) the legal characterisation of the individual steps which an arrangement consists of is inconsistent with the legal substance of the arrangement as a whole;
 - (b) the arrangement or series of arrangements is carried out in a manner which would not ordinarily be employed in what is expected to be a reasonable business conduct;
 - (c) the arrangement or series of arrangements includes elements which have the effect of offsetting or cancelling each other;
 - (d) transactions concluded are circular in nature;
 - (e) the arrangement or series of arrangements results in a significant tax benefit but this is not reflected in the business risks undertaken by the taxpayer or its cash flows.
4. For the purposes of paragraph 1, the purpose of an arrangement or series of arrangements consists in avoiding taxation where, regardless of any subjective intentions of the taxpayer, it defeats the object, spirit and purpose of the tax provisions that would otherwise apply.

5. For the purposes of paragraph 1, a given purpose is to be considered essential where any other purpose that is or could be attributed to the arrangement or series of arrangements appears at most negligible, in view of all the circumstances of the case.
6. In determining whether an arrangement or series of arrangements has led to a tax benefit as referred to in paragraph 1, participating Member States shall compare the amount of tax due by a taxpayer, having regard to those arrangement(s), with the amount that the same taxpayer would owe under the same circumstances in the absence of the arrangement(s).

Article 14

Abuse in the case of depositary receipts and similar securities

1. Without prejudice to Article 13, a depositary receipt or similar security issued with the essential purpose of avoiding tax on transactions in the underlying security issued in a participating Member State shall be considered issued in that participating Member State, in case a tax benefit would otherwise arise.
2. For the purposes of paragraph 1, paragraphs 4, 5 and 6 of Article 13 shall apply.
3. In applying paragraph 1, regard shall be had to the extent to which trade in the depositary receipt or similar security has replaced trade in the underlying security. Where such replacement has occurred to a significant extent, it shall be for the person liable for payment of FTT to demonstrate that the depositary receipt or similar security was not issued with the essential purpose of avoiding tax on transactions in the underlying security.

Chapter V **Final provisions**

Article 15

Other taxes on financial transactions

The participating Member States shall not maintain or introduce taxes on financial transactions other than the FTT object of this Directive or value-added tax as provided for in Council Directive 2006/112/EC¹⁸.

Article 16

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of powers referred to in Article 11(2) shall be conferred for an indeterminate period of time from the date referred to in Article 19.

¹⁸ OJ L 347, 11.12.2006, p. 1.

3. The delegation of power referred to in Article 11(2) may be revoked at any time by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of the delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it to the Council.
5. A delegated act adopted pursuant to Article 11(2) shall enter into force only if no objection has been expressed by the Council within a period of 2 months of notification of that act to the Council or if, before the expiry of that period, the Council has informed the Commission that it will not object. That period shall be extended by 2 months at the initiative of the Council.

Article 17
Information of the European Parliament

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

Article 18
Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 19
Review clause

Every five years and for the first time by 31 December 2016, the Commission shall submit to the Council a report on the application of this Directive, and, where appropriate, a proposal.

In that report the Commission shall, at least, examine the impact of the FTT on the proper functioning of the internal market, the financial markets and the real economy and it shall take into account the progress on taxation of the financial sector in the international context.

Article 20
Transposition

1. The participating Member States shall adopt and publish, by 30 September 2013 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions.

They shall apply those provisions from 1 January 2014.

When the participating Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their

official publication. The participating Member States shall determine how such reference is to be made.

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

Article 21

Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

Article 22

Addressees

This Directive is addressed to the participating Member States.

Done at Brussels,

For the Council

The President

ANNEX

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Council Directive implementing enhanced cooperation in the area of financial transaction tax

1.2. Policy area(s) concerned in the ABM/ABB structure

14 05 Taxation Policy

1.3. Nature of the proposal/initiative

The proposal relates to **a new action**

1.4. Objective(s)

1.4.1. The Commission's multiannual strategic objective targeted by the proposal

Financial stability

1.4.2. Specific objectives and ABM/ABB activity(ies) concerned

Specific Objective No.3

To develop new tax initiatives and actions to support EU policy objectives

ABM/ABB activity(ies) concerned

Title 14 Taxation and Customs Union; ABB 05 Taxation Policy

1.4.3. Expected result(s)

To avoid fragmentation in the internal market for financial services, bearing in mind the increasing number of uncoordinated national tax measures being put in place.

To ensure that financial institutions make a fair and substantial contribution to covering the costs of the recent crisis, and to ensure even taxation of the sector vis-à-vis other sectors.

To create appropriate disincentives for transactions which do not enhance welfare or the efficiency of financial markets and to complement regulatory measures aimed at avoiding future crisis.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

Contribute to the overall objective of stability in the EU in the aftermath of the financial crisis

1.5.2. *Added value of EU involvement*

A fragmentation of financial markets across activities and across borders can only be avoided and equal treatment of financial institutions in the EU and, ultimately, the proper functioning of the internal market, can only be ensured through action at EU level if necessary through enhanced cooperation.

1.5.3. *Lessons learned from similar experiences in the past*

Introducing a broad-based FTT at national level achieving the three above objectives without serious delocalisation effects has proven to be hardly possible (example of Sweden)".

1.5.4. *Coherence and possible synergy with other relevant instruments*

Taxes are part of the global resolution framework. Levying FTT would facilitate efforts of budgetary consolidation in the participating Member States. Moreover, the Commission has proposed to use part of the proceeds of the FTT as a future own resource – if they were to be used for financing EU budget, the participating Member States would see their GNI-based national contributions reduced.

1.6. **Duration and financial impact**

Proposal of **unlimited duration**

1.7. **Management method(s) envisaged**

N/A.

2. **MANAGEMENT MEASURES**

2.1. **Monitoring and reporting rules**

Participating Member States must take appropriate measures for FTT to be levied accurately and timely, which includes measures of verification.

The provision of appropriate measures to ensure payment of the tax and to monitor and verify correct payment is left to participating Member States.

2.2. **Management and control system**

2.2.1. *Risk(s) identified*

1. Delays in the transposition of the Directive at participating Member States' level
2. Risk of evasion, avoidance and abuse
3. Risk of relocation

2.2.2. *Control method(s) envisaged*

Article 11 of the Directive mentions the specific provisions relating to the prevention of evasion,

avoidance and abuse: delegated acts and administrative cooperation in tax matters.

The risks of relocation are tackled by the choice of an appropriate set of tax rates and a broad definition of the taxable base.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description.....]	Diff./non-diff. ⁽¹⁾	from EFTA ² countries	from candidate countries ³	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
	[XX.YY.YY.YY]	Diff./non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Heading.....]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

¹ Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations.

² EFTA: European Free Trade Association.

³ Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

Heading of multiannual financial framework:	Number	[Heading]
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DG: <.....>			Year N ⁴	Year N+1	Year N+2	Year N+3	... enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
• Operational appropriations										
Number of budget line	Commitments	(1)								
	Payments	(2)								
Number of budget line	Commitments	(1a)								
	Payments	(2a)								
Appropriations of an administrative nature financed from the envelope for specific programmes ⁵										
Number of budget line		(3)								
TOTAL appropriations for DG <.....>	Commitments	=1+1a+3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Payments	=2+2a+3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

• TOTAL operational appropriations	Commitments	(4)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Payments	(5)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes			(6)							
TOTAL appropriations under HEADING <....> of the multiannual financial framework	Commitments	=4+ 6	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Payments	=5+ 6	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

If more than one heading is affected by the proposal / initiative:

⁴ Year N is the year in which implementation of the proposal/initiative starts.

⁵ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Payments	=5+ 6	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Heading of multiannual financial framework:	5	" Administrative expenditure "
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EUR million (to 3 decimal places)

		Year 2013	Year 2014	Year 2015	Year 2016	From 2017 onwards
DG: TAXUD						
• Human resources		0.254	0.762	0.762	0.762	0.762
• Other administrative expenditure		0.040	0.036	0.036	0.036	0.036
TOTAL DG TAXUD		0.294	0.798	0.798	0.798	0.798

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	0.294	0.798	0.798	0.798	0.798
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EUR million (to 3 decimal places)

		Year 2013	Year 2014	Year 2015	Year 2016	From 2017 onwards
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	0.294	0.798	0.798	0.798	0.798
	Payments	0.294	0.798	0.798	0.798	0.798

3.2.2. *Estimated impact on operational appropriations*

- The proposal/initiative does not require the use of operational appropriations

3.2.3. *Estimated impact on appropriations of an administrative nature*

3.2.3.1. Summary

- The proposal/initiative requires the use of administrative appropriations, as explained below:

EUR million (to 3 decimal places)

	Year 2013	Year 2014	Year 2015	Year 2016	From 2017 onwards
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HEADING 5 of the multiannual financial framework					
Human resources	0.254	0.762	0.762	0.762	0.762
Other administrative expenditure	0.040	0.036	0.036	0.036	0.036
Subtotal HEADING 5 of the multiannual financial framework	0.294	0.798	0.798	0.798	0.798

Outside HEADING 5⁶ of the multiannual financial framework					
Human resources					
Other expenditure of an administrative nature					
Subtotal outside HEADING 5 of the multiannual financial framework	N/A	N/A	N/A	N/A	N/A

TOTAL	0.294	0.798	0.798	0.798	0.798
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3.2.3.2. Estimated requirements of human resources

- **X** The proposal/initiative requires the use of human resources, as explained below:

⁶ Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

Estimate to be expressed in full amounts (or at most to one decimal place)

	Year 2013	Year 2014	Year 2015	Year 2016	From 2017 onwards
• Establishment plan posts (officials and temporary agents)					
14 01 01 01 (Headquarters and Commission's Representation Offices)	0.254	0.762	0.762	0.762	0.762
14 01 01 02 (Delegations)	p.m.	p.m.	p.m.	p.m.	p.m.
14 01 05 01 (Indirect research)	p.m.	p.m.	p.m.	p.m.	p.m.
10 01 05 01 (Direct research)	p.m.	p.m.	p.m.	p.m.	p.m.
• External personnel (in Full Time Equivalent unit: FTE)⁷					
14 01 02 01 (CA, INT, SNE from the "global envelope")	p.m.	p.m.	p.m.	p.m.	p.m.
14 01 02 02 (CA, INT, JED, LA and SNE in the delegations)	p.m.	p.m.	p.m.	p.m.	p.m.
XX 01 04 yy ⁸	- at Headquarters ⁹	p.m.	p.m.	p.m.	p.m.
	- in delegations	p.m.	p.m.	p.m.	p.m.
XX 01 05 02 (CA, INT, SNE - Indirect research)	p.m.	p.m.	p.m.	p.m.	p.m.
10 01 05 02 (CA, INT, SNE - Direct research)	p.m.	p.m.	p.m.	p.m.	p.m.
Other budget lines (specify)					
TOTAL	0.254	0.762	0.762	0.762	0.762

14 is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary agents	The current staff allocation of DG TAXUD does not really take the total issue of a common system of FTT into account and will require internal redeployment. Main tasks of the assigned officials will be: to elaborate the technicalities on the practical functioning of the tax so as to help the negotiation process, monitor the subsequent implementation, prepare legal interpretations and working documents, contribute to the delegated acts among others on anti-avoidance/anti-abuse provisions, prepare infringement procedures as appropriate etc.
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3.2.4. Compatibility with the current multiannual financial framework

– **X** Proposal/initiative is compatible the current multiannual financial framework.

⁷ CA= Contract Agent; INT= agency staff ("*Intérimaire*"); JED= "*Jeune Expert en Délégation*" (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert.

⁸ Under the ceiling for external personnel from operational appropriations (former "BA" lines).

⁹ Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

3.2.5. *Third-party contributions*

- The proposal/initiative does not provide for co-financing by third parties

3.3. Estimated impact on revenue

- **X** Proposal/initiative as such has no financial impact on revenue. However, if parts of the proceeds of the FTT were to be used as an own resource, thus reducing the residual GNI-based own resource drawn from the participating Member States, the composition of the revenue sources would be impacted.