



EUROPEAN PARLIAMENT

2009 - 2014

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*Committee on Economic and Monetary Affairs*

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**2013/0045(CNS)**

19.3.2013

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## **DRAFT REPORT**

on the proposal for a Council directive implementing enhanced cooperation in the area of financial transaction tax  
(COM(2013)0071 – C7-0049/2013 – 2013/0045(CNS))

Committee on Economic and Monetary Affairs

Rapporteur: Anni Podimata

### ***Symbols for procedures***

- \* Consultation procedure
- \*\*\* Consent procedure
- \*\*\*I Ordinary legislative procedure (first reading)
- \*\*\*II Ordinary legislative procedure (second reading)
- \*\*\*III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

### ***Amendments to a draft act***

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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## **DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION**

**on the proposal for a Council directive implementing enhanced cooperation in the area of financial transaction tax  
(COM(2013)0071 – C7-00049/2013 – 2013/0045(CNS))**

**(Special legislative procedure – consultation)**

*The European Parliament,*

- having regard to the Commission proposal to the Council (COM(2013)0071),
  - having regard to Article 113 of the Treaty on the Functioning of the European Union , pursuant to which the Council consulted Parliament (C7-00049/2013),
  - having regard to Rule 55 of its Rules of Procedure,
  - having regard to the report of the Committee on Economic and Monetary Affairs and the opinion of the Committee on Budgets (A7-0000/2013),
1. Approves the Commission proposal as amended;
  2. Calls on the Commission to alter its proposal accordingly, in accordance with Article 293(2) of the Treaty on the Functioning of the European Union;
  3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
  4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
  5. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

### **Amendment 1**

#### **Proposal for a directive Recital 1**

*Text proposed by the Commission*

(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

*Amendment*

(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.

institutions, to complement regulatory measures aimed at avoiding future crises and to generate additional revenue for general budgets, *inter alia as a contribution to fiscal consolidation*, or for specific policy purposes.

Or. en

## Amendment 2

### Proposal for a directive Recital 1 a (new)

*Text proposed by the Commission*

*Amendment*

***(1a) According to the European Council's conclusions of 8 February 2013 on the next Multiannual Financial Framework 2014-2020, part of the revenues from FTT should be allocated to the Union budget as genuine own resources. The use of FTT revenue as Union own resources would reduce national contributions of participating Member States to the Union budget by the same amount and would therefore release funds from the national budgets for other uses.***

Or. en

## Amendment 3

### Proposal for a directive Recital 2 a (new)

*Text proposed by the Commission*

*Amendment*

***(2a) The proposal to introduce FTT is the first attempt within the Union to establish enhanced cooperation in the area of taxation. The successful implementation of FTT in 11 Member States will pave the way for deeper policy coordination in the***

*field of taxation, which has been slowed down due to the unanimity rule but has been identified as a target in the Commission's Blueprint for a deep and genuine EMU in the Van Rompuy report 'Towards a genuine Economic and Monetary Union' and the European Parliament's report on the Van Rompuy report.*

Or. en

#### **Amendment 4**

##### **Proposal for a directive Recital 2 b (new)**

*Text proposed by the Commission*

*Amendment*

*(2b) The initiative of the 11 Member States to proceed with the establishment of FTT under enhanced cooperation is the first ever attempt to establish FTT among several states. Taking into account that FTT will truly achieve its objectives if it is introduced at a global level, the successful implementation of FTT under enhanced cooperation will be the first step towards a Union-wide and ultimately a global FTT.*

Or. en

#### **Amendment 5**

##### **Proposal for a directive Recital 3**

*Text proposed by the Commission*

*Amendment*

(3) In order to prevent distortions through measures taken unilaterally by the participating Member States, bearing in mind the extremely high mobility of most

*(3) Several of the 11 participating Member States have already established, or are in the process of establishing, a form of FTT. In order to prevent*

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

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

Or. en

## Amendment 6

### Proposal for a directive Recital 4

*Text proposed by the Commission*

(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.***

*Amendment*

(4) ***To improve*** the operation of the internal market, in particular ***to avoid*** distortions between the participating Member States, ***and to reduce the scope for tax avoidance, relocation risk and regulatory arbitrage,*** FTT ***should apply*** to a broadly determined range of financial institutions, transactions, ***and*** financial instruments including structured products, as well as all derivative contracts. ***Taking into account the ability of the financial sector to innovate, FTT should be as dynamic as possible in order to capture new instruments that might be created in the future.***

Or. en



## **Amendment 7**

### **Proposal for a directive Recital 15 a (new)**

*Text proposed by the Commission*

*Amendment*

***(15a) In order to make tax avoidance a high-cost and low-profit venture and to ensure better enforcement, the residence and issuance principle should be complemented by the "transfer of legal title principle".***

Or. en

## **Amendment 8**

### **Proposal for a directive Recital 15 b (new)**

*Text proposed by the Commission*

*Amendment*

***(15b) Where appropriate, the Commission should enter into negotiations with third countries in order to facilitate the collection of FTT. The Commission should also revise its definition of uncooperative jurisdictions and update its action plan against tax fraud and tax evasion accordingly.***

Or. en

## **Amendment 9**

### **Proposal for a directive Recital 19 a (new)**

*Text proposed by the Commission*

*Amendment*

***(19a) Member States have an obligation for administrative cooperation in the field of taxation pursuant to Directive 2011/16/EU and for mutual assistance for***

*the recovery of claims relating to taxes, duties and other measures pursuant to Directive 2010/24/EU.*

Or. en

## **Amendment 10**

### **Proposal for a directive Recital 19 b (new)**

*Text proposed by the Commission*

*Amendment*

*(19b) Tax avoidance and tax evasion will partly depend on the capability of Member States to verify taxable transactions carried out outside the jurisdiction of FTT . The Commission should establish an expert working group (FTT Committee) comprising representatives from the participating Member States, the European Commission, the ECB and ESMA to assess the effective implementation of this Directive, to detect avoidance schemes and to propose countermeasures. The FTT Committee should make full use of Union law in the field of taxation and financial services regulation and of the instruments for cooperation on tax matters established by international organisations including the OECD and the Council of Europe.*

Or. en

## **Amendment 11**

### **Proposal for a directive Recital 21**

*Text proposed by the Commission*

*Amendment*

(21) In order to allow the adoption of more detailed rules in certain technical areas,

(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.

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 European Parliament and* the Council.

Or. en

## Amendment 12

### Proposal for a directive Article 2 – paragraph 2

#### *Text proposed by the Commission*

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

#### *Amendment*

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.

attracted a higher tax had it been concluded as modified. ***Any novation of transactions carried out for the purposes of clearing or settlement by a CCP or by another clearing house or settlement system operator or interoperable systems as defined in Directive 98/26/EC shall not constitute a material modification under this paragraph.***

Or. en

*Justification*

*Clarification on the clearing function of CCPs and clearing houses.*

**Amendment 13**

**Proposal for a directive**

**Article 3 – paragraph 2 – point a**

*Text proposed by the Commission*

(a) Central Counter Parties (CCPs) where exercising the function of a CCP;

*Amendment*

(a) Central Counter Parties (CCPs) where exercising the function of a CCP, ***or other clearing houses or settlement system operators or interoperable systems under as defined in Directive 98/26/EC where exercising their function of clearing, including any possible novation, or settlement;***

Or. en

*Justification*

*Clarification on the clearing function of CCPs and clearing houses.*

**Amendment 14**

**Proposal for a directive**

**Article 4 – paragraph 1 – point e a (new)**

*Text proposed by the Commission*

*Amendment*

***(ea) it is a branch of an institution established in a participating Member***

*State pursuant to point (c);*

Or. en

## **Amendment 15**

### **Proposal for a directive**

#### **Article 4 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

*For the purposes of this Directive, a financial instrument shall be deemed to be issued within the territory of a participating Member State where any of the following conditions is fulfilled:*

*(i) it is a security or a derivative related to such security and the registered office of the issuer of the security is located in that Member State;*

*(ii) it is a derivative other than the one referred to in point (i) and is admitted to trading in an organised platform and the public law governing the trading conducted under the systems of the platform is the law of that Member State;*

*iii) it is a financial instrument other than the one referred to in points (i) and (ii), which is cleared by a CCP or other clearing or settlement system as defined by Directive 98/26/EC when the law governing the CCP or the system concerned is the law of that Member State;*

*iv) it is a financial instrument other than the one referred to in points (i), (ii) and (iii) and the applicable law related to the agreement under which the transaction in the relevant financial instrument has been carried out is the law of that Member State;*

*v) it is a structured instrument and at least 50% of the value of assets backing the structured instrument are referring to*

*financial instruments issued by a legal person that is registered in a participating Member State.*

Or. en

*Justification*

*The concept of issuance for financial instruments, derivatives and structured instruments should be defined and, in particular, to be broadened as to encompass all issuance cases related to the financial instruments concerned.*

**Amendment 16**

**Proposal for a directive**  
**Article 4 a (new)**

*Text proposed by the Commission*

*Amendment*

**Article 4a**

**Transfer of legal title**

***1. A financial transaction in relation to which no FTT has been levied shall be deemed legally unenforceable and shall not result in a transfer of legal title of the underlying instrument.***

***2. A financial transaction as referred to in paragraph 1 shall be deemed not to fulfil the requirements for central clearing under Regulation (EU) No .../2012 of the European Parliament and the Council of ... on OTC derivatives, central counterparties and trade repositories [EMIR] or the capital adequacy requirements under Regulation (EU) No .../2012 of the European Parliament and the Council of ... on prudential requirements for credit institutions and investment firms [CRD IV].***

***3. In the event of automatic electronic payment schemes with or without the participation of payment settlement agents, revenue authorities of a Member State may establish a system of automatic electronic collection of FTT and***

*certificates for transferring legal title.*

Or. en

*Justification*

*In order to reduce the risk of avoidance, the FTT should involve a system ensuring that if the tax is not paid the contracts to buy or sell an instrument are ruled unenforceable. According to this system, an untaxed instrument would be ineligible for central clearing, which would cost the evader several times more than the tax.*

**Amendment 17**

**Proposal for a directive**

**Article 9 – paragraph 3 a (new)**

*Text proposed by the Commission*

*Amendment*

***3a. Notwithstanding paragraph 3, participating Member States may apply a higher rate to OTC financial transactions referred to in Articles 6 and 7.***

Or. en

*Justification*

*Member States that wish to discourage OTC transactions further to the recent regulatory efforts (EMIR, revised MIFID and MIFIR) by imposing higher rates should have the possibility to do so.*

**Amendment 18**

**Proposal for a directive**

**Article 11 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

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.

2. The Commission ***shall***, in accordance with Article 16 adopt delegated acts specifying the measures to be taken pursuant to paragraph 1 by the participating Member States.

Or. en

### *Justification*

*Harmonisation of registration, accounting and reporting obligations is desirable to ensure effective payment of FTT to the tax authorities.*

## **Amendment 19**

### **Proposal for a directive Article 11 – paragraph 5**

#### *Text proposed by the Commission*

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).

#### *Amendment*

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 *shall* 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).

Or. en

### *Justification*

*There should be uniform methods of collection of the FTT due to ensure the robustness of the FTT.*

## **Amendment 20**

### **Proposal for a directive Article -15 (new)**

#### *Text proposed by the Commission*

#### *Amendment*

#### *Article -15*



### ***Establishment of the FTT Committee***

***1. The Commission shall establish an expert working group (the FTT Committee) comprising representatives from the participating Member States, the Commission, the ECB, and ESMA to assist participating Member States in the effective implementation of this Directive and prevent tax fraud, evasion and avoidance.***

***2. The FTT Committee shall assess the effective implementation of this Directive and detect avoidance schemes including abusive arrangements as defined in Article 14 in order to propose countermeasures, where appropriate, making full use of Union law in the field of taxation and financial services regulation and of the instruments for cooperation on tax matters established by international organisations including the OECD and the Council of Europe.***

Or. en

### ***Justification***

*A mechanism should be put in place to ensure the continuous cooperation of Member States with ESMA and the ECB in order to monitor effective collection of the tax across the 11 Member States and to identify and correct tax avoidance and tax evasion making full use of existing European and international tools.*

## EXPLANATORY STATEMENT

The global financial crisis of 2008 brought to the forefront the weaknesses of a long period of deregulation in financial services. The crisis spread swiftly to the real economy with grave consequences on growth, employment and public finances. The taxpayers were called to bail out failing financial institutions in order to protect the stability of the system.

At the same time, it was commonly agreed that the financial sector was under-taxed compared to other sectors of the economy as they are exempted from VAT and should contribute in a fairer way to the cost of the crisis. In this context, the EP called for the first time in 2010 for the introduction of a financial transaction tax in the Beres mid-term on the financial economic and social crisis. The FTT is a socially fair and progressive tax and the preferred tool to shift the burden from taxpayers to the financial sector, because of its multiple functions:

- It can generate significant new revenues<sup>1</sup> at a time of intense fiscal consolidation efforts by shifting the burden from labour and the productive economy;
- It can become a disincentive for extremely leveraged and harmful speculative transactions and thus contribute along with appropriate regulation and supervision regime to stabilize markets and reorientate the sector towards productive long term investments.
- It is a first step to reduce the fragmentation of the internal market in indirect taxation. Several Member States have already put in place different forms of FTT something which could distort competition across the EU

For these reasons, the European Parliament with its resolution on Innovative Financing at global and EU level (P7\_TA-PROV (2011)0080) of March 2013 stated that "EU should promote the introduction of an FTT at global level, failing which, the EU should implement an FTT at European level as a first step".

In September 2011, The European Commission responded with a legislative proposal to introduce a EU-wide FTT. After months of negotiations among Member States it became clear that the unanimity rule in the field of taxation did not allow for adoption in the foreseeable future. The European Parliament in its report on the initial Commission proposal had signalled that it is ready to support the establishment of FTT by a group of Member States under the enhanced cooperation procedure. In October 2012, 11 Member States decided to proceed with the establishment of the FTT using the enhanced cooperation procedure for the first time in the field of taxation. In December 2012 the European Parliament formally approved the request of the 11 and in January 2013 the ECOFIN gave the green light too. In February 2013, the European Commission adopted its revised proposal for the establishment of FTT by the 11 Member States.

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<sup>1</sup> According to the Commission the FTT can raise up to €57 if implemented by the 27 Member States and €31 under enhanced cooperation by the 11 Member States.

## **The revised Commission proposal**

The participating Member States in their letters of intention to enter into enhanced cooperation requested that the revised Commission proposal be based on the initial one and that evasive actions, distortions and transfers to other jurisdictions are to be avoided.

The EP fully shares these objectives. In its initial report on an EU-27 FTT supported:

- a wide-scoped FTT covering all financial actors, all financial products and all financial markets in order to avoid loopholes and substitution of financial instruments
- the minimisation of tax avoidance and tax evasion by turning undesired activity from a high return and low risk venture to a low return and high risk one.

The revised proposal of the Commission largely addresses these objectives. The EP welcomes the incorporation of one of its key proposal in the revised proposal - the introduction of the issuance principle to impose the tax on every transaction on a financial instrument issued by an entity in the territory of a participating Member State.

In order to be consistent with the EP's position and overarching objectives for the establishment of FTT, the draft report will strengthen the Commission proposal by attempting to close some loopholes and reinforcing mechanisms to prevent tax evasion and tax avoidance:

- Closing the loophole of the issuance principle

Even though the addition of the issuance principle by the Commission is to be welcomed, the exemption of OTC derivatives opens a loophole, which could prove detrimental for the success of the tax. It runs counter to the principle "All financial actors, all financial products and all financial markets" and creates incentives to move trading from transparent markets towards OTC trading and thus undermine recent regulatory initiatives to improve derivatives markets. The FTT should have a wide scope even with the issuance principle including OTC derivatives in order to preserve a level playing field.

- Reintroducing the ownership principle

The Commission did not introduce the proposal of the European Parliament on the "ownership principle", inspired by the success of the UK Stamp Duty. According to the "ownership principle", a financial transaction in relation to which no FTT has been levied is not legally enforceable and does not result in a transfer of legal title of the underlying instrument.

The Commission claims that the ownership principle cannot be included in the Directive as not every MS has the administrative arrangements in place to enforce it. However, this is a key element for the success of the FTT and Member States are responsible for putting in place the necessary arrangements to make it work. This is not a national tax - it is the first regional FTT and Member States that have politically committed to implement it should make it work. The ownership principle is the key in raising the cost of tax avoidance to such a high level so

as to effectively deter it.

- Strengthening the residence principle

The residence principle could also be strengthened by clarifying that branches of EU institutions registered within the FTT jurisdiction would fall within the scope of the FTT. This is important to clarify that branches outside the FTT jurisdiction cannot be used for tax avoidance.

- The FTT Committee

The fact that the FTT will not apply uniformly in all 27 Member States but only in 11 implies that special attention is needed to address potential tax avoidance and tax evasion. It is crucial to ensure maximum harmonisation and efficiency of collection mechanism as weaknesses in one MS would undermine the success of the tax and might even lead to arbitrage within the FTT zone.

The rapporteur proposes to achieve this through obligatory delegated and implementing acts (and not to the discretion of the Commission) but also through the creation of an Expert Working Group (FTT Committee) comprised of representatives from participating Member States, the Commission, ESMA and the ECB. The mandate of this Committee will be to monitor effective implementation of the Directive across participating Member States, to detect avoidance schemes and propose countermeasures. The FTT Committee will also explore how to best make use of existing EU legislation in the field of financial services (EMIR, MIFID and MIFIR) and cooperation in taxation matters in order to facilitate the collection of the tax.

### **The management of resources**

The Commission's Proposal has no direct references to the management of the revenues. However, in the context of the negotiations for the EU's next Multiannual Financial Framework, the Commission has proposed that part of the FTT revenue is used as genuine Union own resources. It is now an opportunity in the context of the next MFF to make progress on the Union's own resources to reduce pressure on national budgets at a time when this is most needed. Moreover, recent negotiations by EU leaders leading up to the European Council of 7/8 February 2013 are a clear sign that the creation of a genuine own resources system is imperative to guarantee that EU priorities are effectively reflected in the EU budget.

The use of FTT revenues as own resources is possible even in the case of enhanced cooperation. National contributions based on the GNI by the 11 would be reduced by the corresponding amount of FTT revenue in each one. This would unlock significant amounts for national budgets and hence facilitate fiscal consolidation or finance other priorities.