Common system of financial transaction tax

2011/0261(CNS) - 03/05/2012 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted, in the framework of a special legislative procedure (Parliaments consultation), the report drafted by Anni PODIMATA (S&D, EL) on the proposal for a Council directive on a common system of financial transaction tax and amending Directive 2008/7/EC.

The committee suggested amending the proposal as follows:

Subject matter and scope: Members propose that the Directive shall apply to all financial transactions where it is issued by a legal entity that is registered in a Member State.

Definitions: the definition of financial transaction shall also cover currency spot transactions except where they are directly related to the commercial activities of a non-financial counterparty that is an end user.

According to the report, a pension fund or an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC, an investment manager of such fund or institution, and an entity set up for the purpose of investment of such funds or institutions acting solely and exclusively in the interest of such funds or institutions, shall not be considered a financial institution for the purposes of this Directive until the review of this Directive.

Establishment: for the purposes of this Directive, a financial institution shall be deemed to be established in the territory of a Member State where 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 in relation to a financial instrument issued within the territory of a Member State or of the Union. Members consider that this additional criterion would ensure that the FTT can also be collected on the basis of the issuance principle.

For the purpose of applying the Directive in a consistent manner, Member States' competent authorities shall closely cooperate with each other and with ESMA for the supervision of financial markets.

Issuance: Members have introduced a new article which defines the concept of issuance for financial instruments, derivatives and structured instruments.

Transfer of legal title: an amendment stipulates that 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. Members consider that 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.

Application, structure and level of rates: Members state that in order to avoid tax arbitrage, Member States shall apply the same rate to all financial transactions that fall under the same category.

With a view to strengthening the position of stock exchange trading, which is strictly regulated, controlled and transparent, against unregulated, uncontrolled and less transparent off-exchange trading, the committee proposes that Member States should apply lower tax rates to financial transactions on stock exchanges than to off-exchange transactions. This will make it possible to effect a shift in trading from markets with little or no regulation to stock exchanges that are subject to strict regulation and control.

Person liable for payment of FTT to the tax authorities: in order to avoid the cascading effect, it should be made clear that, in case a financial institution acts in the name, for the account or by order of another financial institution, the taxable event occurs only once.

Time limits for the payment of FTT, to obligations intended to ensure payment, to the verification of payment: in order to avoid conflict situations whereby two or more Member States have a disagreement where a certain financial institution is deemed to be established, a formal registration requirement is added. A financial institution shall, within six months from the entry into force of this Directive, register at the tax authorities of the Member State where it is deemed to be established. A Member State shall inform other Member States of the financial institutions registered at their territory. Member states shall disclose annually to the Commission and to Eurostat transaction volumes against which revenues have been collected.

Prevention of evasion, avoidance and abuse: Members recommend the adoption of a European Regulation to prevent tax evasion, avoidance and abuse. The report insists on the following issues:

- the Commission shall establish an expert working group (FTT Committee) comprising representatives from the Member States that supervises the application of this Directive. The FTT Committee shall supervise financial transactions in order to detect avoidance schemes, to propose countermeasures and to coordinate the implementation of such countermeasures at national level where appropriate;
- the administrative burden imposed on tax authorities through the introduction of FTT shall be kept to a minimum and, to this end, the Commission shall encourage cooperation between national tax authorities;
- Eurostat shall collect and publish annually the financial flows subject to FTT within the Union;
- in order to verify taxable transactions carried out on a trading venue in a third country, Member States and, where applicable, the Commission shall make full use of instruments for cooperation on tax matters established by relevant international organisations;
- in order to adapt Member States' tax administrations to the provisions of this Directive and, in particular, in relation to administrative cooperation, Member States shall provide them with necessary and adequate human resources and technical equipment.

Lastly, the Commission shall conduct a thorough examination to analyse the administrative costs for regional and local authorities arising from the implementation of this Directive.

Review clause: Members call for the Commission to submit its report to the European Parliament. In that report, the Commission shall :

- examine the impact of the FTT on the proper functioning of the internal market, the financial markets and the real economy and assess the impact of certain provisions such as the appropriate scope of FTT, the possibility to distinguish different categories of financial products and assets with a view to charging higher rates after a certain ratio of cancelled orders, the rate of taxation and the exemption of institutions for occupational retirement provision. Where the Commission finds that distortion or abuse has taken place, it shall propose appropriate remedies;
- analyse and report on national FTT tax revenue collection based on the residency of financial institutions and to what extent that collection differs from tax distribution based on the underlying customer residency, namely to what extent financial consolidation centralises tax revenues in financial centres.

In its reports, the Commission shall take into account different forms of taxation of the financial sector, under discussion or already in place, and progress regarding the introduction of a wider FTT. Where appropriate, the Commission shall put forward proposals or undertake action in order to facilitate convergence and promote the introduction of a global FTT.