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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 (A7-0230/2013),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to demonstrate, in a comprehensive impact assessment and cost benefit analysis, that any enhanced cooperation will respect the competences, rights and obligations of non-participating Member States;
 3. 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;
 4. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 5. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
 6. 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

Amendment

(1) In 2011, the Commission took note of a

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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.

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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 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 is possible under the enhanced cooperation procedure only if national contributions of participating Member States to the Union budget would be reduced by the same amount and would avoid the disproportionate contribution by participating Member States compared to non-participating Member States. Once FTT is implemented at Union level, all or

part of the amount of the own resources originating from FTT should be added to the national contributions of the Member States in order to gather new funding sources for European investment without a reduction of the national contributions of the participating Member States to the Union budget..

Amendment 3

Proposal for a directive Recital 1 b (new)

Text proposed by the Commission

Amendment

(1b) Prior to the introduction of FTT the Commission should demonstrate that enhanced cooperation will not undermine the internal market or economic, social and territorial cohesion. It should also demonstrate that it neither constitutes a barrier to, or discrimination in relation to, trade between Member States, nor distorts competition between them. The Commission should present a new robust analysis and impact assessment, of the consequences the proposal for a common FTT on participating and non-participating Member States and on the internal market as a whole.

Amendment 4

Proposal for a directive Recital 2 a (new)

Text proposed by the Commission

Amendment

(2a) FTT will truly achieve its objectives only if it is introduced at global level. The enhanced cooperation of 11 Member States therefore constitutes a first step towards FTT at Union-level and,

ultimately, at a global level. The Union will continuously advocate the global introduction of FTT and will urge for FTT to be put on the agenda of G-20 and G-8 summits.

Justification

The EP has stated in its position of 23 May 2012 and in its resolution of 12 December 2012 that FTT will truly achieve its objectives only if introduced at global level. The Union therefore needs to strive for this issue to be discussed and resolved by the G-20.

Amendment 5

Proposal for a directive

Recital 3

Text proposed by the Commission

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

Amendment

(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 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.

Amendment 6

Proposal for a directive

Recital 3 a (new)

Text proposed by the Commission

Amendment

(3a) In light of the substantial progress with regard to European financial market regulation, such as Regulation (EU) No .../2013 [CRR], Directive 2013/36/EU and this Regulation, participating Member States that have introduced banking levies in light of the recent financial crisis should review the necessity of such taxes and their compatibility with the rules and the aims of Union law and the internal market.

Amendment 7

Proposal for a directive Recital 3 b (new)

Text proposed by the Commission

Amendment

(3b) Any harmonisation of FTT amongst participating Member States should not result in extra-territorial taxation infringing the potential tax base of non-participating Member States.

Justification

Extra-territorial taxation – extending tax consequences beyond the national borders of countries implementing the tax. This is a form of aggressive tax competition usually considered unwarranted and harmful. Countries should not infringe other countries taxation rights.

Amendment 8

Proposal for a directive Recital 4

Text proposed by the Commission

Amendment

(4) The improvement of the operation of the internal market, in particular the

(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.

avoidance of distortions between the participating Member States, *the reduction of the possibility for tax fraud, tax evasion and aggressive tax planning, the risk of relocation of risk and regulatory arbitrage*, requires that FTT *should apply* 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, *including contracts for difference, currency spot exchange markets and speculative forward transactions*, and to material modifications of the operations concerned.

Justification

An exception for spot currency transactions remains questionable in economic terms. due to the daily volume of foreign currency transactions on the spot market amounted to 1,5 trillion USD in 2010. This constitutes one third of the daily overall foreign currency exchange volume of 4 billion USD. The growing importance of high frequency trade, especially on the spot market, is one of the reasons for an increased volume of transactions since the beginning of the crisis.

Amendment 9

Proposal for a directive

Recital 8

Text proposed by the Commission

(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.

Amendment

(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 *a negative impact on households and the real economy.*

Amendment 10

Proposal for a directive Recital 13 a (new)

Text proposed by the Commission

Amendment

(13a) With a view to strengthening the position of regulated markets, and in particular of stock exchange trading, which is strictly regulated, controlled and transparent, as opposed to unregulated, less controlled and less transparent over-the-counter (OTC) trading, Member States should apply higher tax rates to OTC transactions. This will make it possible to effect a shift in trading from markets with little or no regulation to regulated markets. The higher rates should not apply to financial transactions of OTC derivatives where they objectively reduce risks and therefore serve the real economy.

Justification

The EP has already stated in its position of 23 May 2012 that stock exchange trading should be strengthened against unregulated, uncontrolled and less transparent OTC trading. OTC transactions should therefore be subject to a higher tax rate. OTC derivatives that serve the real economy should not be subject to this higher rate.

Amendment 11

Proposal for a directive Recital 15 a (new)

Text proposed by the Commission

Amendment

(15a) Non-financial enterprises execute significant transactions on financial markets in order to reduce risks directly associated with their commercial business. FTT should not apply to those

institutions when they execute such transactions. However, where non-financial enterprises engage in speculative transactions that are not associated with the reduction of risk in their commercial activities, FTT they should be treated as financial institutions and FTT should apply to them.

Amendment 12

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

Text proposed by the Commission

Amendment

(15b) 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".

Amendment 13

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

Text proposed by the Commission

Amendment

(15c) 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 should update its action plan against tax fraud, tax evasion and aggressive tax planning accordingly.

Amendment 14

**Proposal for a directive
Recital 16**

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Text proposed by the Commission

Amendment

(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. **deleted**

Justification

In order to avoid a distortion of the common system of FTT under enhanced cooperation the level of the applicable rates should be uniform.

Amendment 15

Proposal for a directive Recital 19

Text proposed by the Commission

Amendment

(19) In order to prevent tax fraud **and** evasion the participating Member States should be obliged to adopt appropriate measures.

(19) In order to prevent tax fraud, **tax evasion and aggressive tax planning, such as substitution**, the participating Member States should be obliged to adopt appropriate measures.

Amendment 16

Proposal for a directive Recital 19 a (new)

Text proposed by the Commission

Amendment

(19a) The Commission should establish an expert working group (FTT Committee) comprising representatives from all Member States, the Commission, the European Central Bank (ECB) and the European Supervisory Authority (European Securities and Markets Authority) (ESMA) to assess the effective implementation of this Directive and

prevent tax fraud, tax evasion and aggressive tax planning and to preserve the integrity of the internal market. The FTT Committee should supervise financial transactions in order to detect abusive arrangements as defined in Article 14, propose countermeasures in a duly manner and coordinate their implementation at national level if required. It 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. Where appropriate, the representatives of the participating Member States should be able to form a sub-group in order to address matters that do not affect the non-participating Member States regarding implementation of FTT.

Amendment 17

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

Text proposed by the Commission

Amendment

(19b) Member States have an obligation to cooperate at administrative level in the field of taxation pursuant to Directive 2011/16/EU and to give each other mutual assistance for the recovery of claims relating to taxes, duties and other measures pursuant to Directive 2010/24/EU.

Amendment 18

**Proposal for a directive
Recital 21**

Text proposed by the Commission

(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.

Amendment

(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 ***simultaneous***, timely and appropriate transmission of relevant documents ***to the European Parliament and*** to the Council.

Justification

This amendment reinstates Parliament's prerogatives in accordance with Article 290 TFEU and the standard Recital in the Common Understanding on Delegated Acts.

Amendment 19

Proposal for a directive

Article 2 – paragraph 1 – point 2 – point c

Text proposed by the Commission

(c) the conclusion of derivatives contracts before netting or settlement;

Amendment

(c) the conclusion of derivatives contracts, ***including contracts for difference and speculative forward transactions***, before netting or settlement;

Amendment 20

Proposal for a directive

Article 2 – paragraph 1 – point 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) currency spots on the foreign exchange markets;

Amendment 21

Proposal for a directive

Article 2 – paragraph 1 – point 2 – point e

Text proposed by the Commission

Amendment

(e) a repurchase agreement, a reverse repurchase agreement, a securities lending and borrowing agreement;

(e) a repurchase agreement, a reverse repurchase agreement, a securities lending and borrowing agreement, ***including cancelled orders made when engaging in high-frequency trading;***

Amendment 22

Proposal for a directive

Article 2 – paragraph 1 – point 3 a (new)

Text proposed by the Commission

Amendment

(3a) ‘sovereign issuer’ means a sovereign issuer as defined in Article 2(1)(d) of Regulation (EU) No 236/2012;

Amendment 23

Proposal for a directive

Article 2 – paragraph 1 – point 3 a (new)

Text proposed by the Commission

Amendment

(3b) ‘sovereign debt’ means a sovereign debt as defined in Article 2(1)(f) of Regulation (EU) No 236/2012;

Amendment 24

Proposal for a directive
Article 2 – paragraph 1 – point 7 a (new)

Text proposed by the Commission

Amendment

(7a) 'SME growth market' means a multi-trading facility that is registered as an SME growth market in accordance with Article 35 of Directive [MiFID];

Amendment 25

Proposal for a directive
Article 2 – paragraph 1 – point 12 a (new)

Text proposed by the Commission

Amendment

(12a) 'high-frequency trading' means algorithmic trading in financial instruments at speeds where the physical latency of the mechanism for transmitting, cancelling or modifying orders becomes the determining factor in the time taken to communicate the instruction to a trading venue or to execute a transaction;

Amendment 26

Proposal for a directive
Article 2 – paragraph 1 – point 12 b (new)

Text proposed by the Commission

Amendment

(12b) 'high-frequency trading strategy' means a trading strategy for dealing on own account in a financial instrument which involves high-frequency trading and has at least two of the following

characteristics:

(i) it uses co-location facilities, direct market access or proximity hosting;

(ii) it relates to a daily portfolio turnover of at least 50 %;

(iii) the proportion of orders cancelled (including partial cancellations) exceeds 20 %;

(iv) the majority of positions taken are unwound within the same day;

(v) over 50 % of the orders or transactions made on trading venues offering discounts or rebates to orders which provide liquidity are eligible for such rebates.

Amendment 27

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 attracted a higher tax had it been concluded as modified.

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. ***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.

Justification

Clarification on the clearing function of CCPs and clearing houses.

Amendment 28

Proposal for a directive

Article 2 – paragraph 3 – point d

Text proposed by the Commission

(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.

Amendment

(d) where the average annual value of financial transactions in two consecutive calendar years does not exceed **20 %** 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.

Amendment 29

Proposal for a directive

Article 2 – paragraph 3 – point d a (new)

Text proposed by the Commission

Amendment

(da) in calculating the annual average value of financial transactions referred to in this point, no account shall be taken for financial transactions which, as referred to in Article 10 of Commission Delegated Regulation (EU) No 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical

standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP . This shall be limited to non OTC derivatives.*

** OJ L 52, 23.2.2013, p. 11.*

Justification

Following the example of EMIR, financial transactions which serve to insure against risks directly associated with the business activities of a non-financial institution should not be taken into account in calculating the average value.

Amendment 30

Proposal for a directive

Article 3 – paragraph 1 a (new)

Text proposed by the Commission

Amendment

1a. In the event of the implementation of FTT in Member States other than the 11 participating Member States, it will be extended to those other Member States on mutual terms.

Amendment 31

Proposal for a directive

Article 3 – paragraph 2 – point a

Text proposed by the Commission

Amendment

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

(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;***

Justification

Clarification on the clearing function of CCPs and clearing houses.

Amendment 32

Proposal for a directive

Article 3 – paragraph 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) SME growth markets;

Amendment 33

Proposal for a directive

Article 3 – paragraph 2 – point cb (new)

Text proposed by the Commission

Amendment

(cb) A person who holds himself out on the financial markets on a continuous basis as being willing to deal on own account by buying and selling financial instruments against his proprietary capital (market maker), when performing an essential function with regards to illiquid bonds and shares in its role of liquidity provider as defined in the legal agreement between the market maker and the organised venue where the financial transaction is carried out and when this transaction is not part of a high-frequency trading strategy.

Amendment 34

Proposal for a directive

Article 3 – paragraph 2 – subparagraph 1 a (new)

Text proposed by the Commission

Amendment

The Commission shall adopt, in accordance with Article 16, delegated acts specifying the conditions under which a financial instrument will be deemed to be illiquid for the purposes of this Directive.

Amendment 35

Proposal for a directive

Article 3 – paragraph 4 – point g a (new)

Text proposed by the Commission

Amendment

(ga) the transfer 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 between entities of a group or between entities of a network of decentralised banks, where these transfers are carried out in order to fulfil a legal or prudential liquidity requirement that is set by national law or Union law.

Amendment 36

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);

Amendment 37

Proposal for a directive

Article 4 – paragraph 1 – point g

Text proposed by the Commission

(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.***

Amendment

(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.

Justification

This suggestions aims at ensuring that all derivatives instruments are covered by the issuance principle, including those under points (4) to (10) of Section C of Annex I of Directive 2004/39/EC.

Amendment 38

Proposal for a directive

Article 4 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. 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:

(a) 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;

(b) it is a derivative other than the one referred to in point (a) 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;

c) it is a financial instrument other than the one referred to in points (a) and (b), 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;

(d) it is a financial instrument other than the one referred to in points (a), (b) and (c) 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;

(e) 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.

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 39

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 in relation to which no FTT has been levied shall be deemed not to fulfil the requirements for central clearing under Regulation (EU) No 648/2012 of the European Parliament and the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories [EMIR] or the own funds requirements under Regulation (EU) No .../2013 of the European Parliament and the Council of ... on prudential requirements for credit institutions and investment firms [CRR].

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.

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 40

Proposal for a directive

Article 9 – paragraph 2 – subparagraph 2 – introductory part

Text proposed by the Commission

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.

Amendment

Those rates shall ***be***:

(a) 0.1% in respect of the financial transactions referred to in Article 6 ***except for those referred to in point (5) of Article 2(1). with a maturity of up to three months***;

(b) 0.01% in respect of financial transactions referred to in Article 7;

(ba) 0,01% in respect of the financial

transactions referred to in point (5) of Article 2(1) with a maturity of up to three months;

Justification

In order to avoid a distortion of the common system of FTT under enhanced cooperation the level of the applicable rates should be uniform.

Amendment 41

Proposal for a directive

Article 9 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. Notwithstanding paragraph 3, participating Member States shall apply a higher rate than those specified in paragraph 2 to OTC financial transactions referred to in Articles 6 and 7. Financial transactions of OTC derivatives which are objectively measurable as reducing risks as defined by Article 10 of Regulation (EU) No 149/2013 shall not be subject to this higher rate.

Justification

With a view to strengthening the use of regulated trading venues as opposed to OTC transactions, higher tax rates should be imposed on OTC transactions. This would complement the Union's efforts to divert trade flows towards regulated, controlled and more transparent markets and has been stated by the EP in its position (23 May 2012). OTC derivatives that are used as hedging transactions for the real economy contribute to reducing risks and should therefore not be subject to this higher rate.

Amendment 42

Proposal for a directive

Article 11 – paragraph 2

Text proposed by the Commission

Amendment

2. The Commission **may**, in accordance

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.

with Article 16 adopt delegated acts specifying the measures to be taken pursuant to paragraph 1 by the participating Member States.

Justification

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

Amendment 43

**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 ***and prevention of tax fraud, tax evasion and aggressive tax planning. Member States may adopt additional measures.*** Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 18(2).

Justification

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

Amendment 44

Proposal for a directive Article 11 – paragraph 6 a (new)

Text proposed by the Commission

Amendment

6a. The administrative burden imposed on tax authorities through the introduction of the FTT shall be kept to a minimum. To that end, the Commission shall encourage cooperation between national tax authorities.

Amendment 45

Proposal for a directive Article 11 – paragraph 6 b (new)

Text proposed by the Commission

Amendment

6b. Member States shall, on an annual basis, submit to the Commission and to Eurostat transaction volumes against which revenues have been collected by type of institution. They shall make that information public.

Amendment 46

Proposal for a directive Article 12 – paragraph 1

Text proposed by the Commission

Amendment

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

The participating Member States shall adopt measures to prevent tax fraud, **tax** evasion **and aggressive tax planning**.

Amendment 47

Proposal for a directive Article 15 a (new)

Text proposed by the Commission

Amendment

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

2. The FTT Committee shall assess the effective implementation of this Directive, assess the effects on the internal market 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.

3. In order to assess matters with regard to the effective execution of FTT the participating Member States may form a sub-committee of the FTT Committee, comprising representatives of the participating Member States. The sub-committee shall only be in charge of matters that do not affect the non-participating Member States regarding the effective execution of FTT.

Amendment 48

Proposal for a directive Article 16 – paragraph 2

Text proposed by the Commission

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**.

Amendment

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 **21**.

Amendment 49

**Proposal for a directive
Article 16 – paragraph 3**

Text proposed by the Commission

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.

Amendment

3. The delegation of power referred to in Article 11(2) may be revoked at any time by the **European Parliament or 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 **any** delegated acts already in force.

Amendment 50

**Proposal for a directive
Article 16 – paragraph 4**

Text proposed by the Commission

4. As soon as it adopts a delegated act, the Commission shall notify it to the Council.

Amendment

4. As soon as it adopts a delegated act, the Commission shall notify it **simultaneously to the European Parliament and** to the Council.

Amendment 51

Proposal for a directive

Article 16 – paragraph 5

Text proposed by the Commission

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.

Amendment

5. A delegated act adopted pursuant to Article 11(2) shall enter into force only if no objection has been expressed **either** by the **European Parliament or the** Council within a period of 2 months of notification of that act to the **European Parliament and the** Council or if, before the expiry of that period, the **European Parliament and the** Council **have both** informed the Commission that **they** will not object. That period shall be extended by 2 months at the initiative **of the European Parliament or** of the Council.

Justification

This amendment reinstates Parliament's prerogatives in accordance with Article 290 TFEU and the standard "Article a" in the Common Understanding on Delegated Acts. The reference to the date of entry into force in Paragraph 2 is also corrected.

Amendment 52

Proposal for a directive Article 19 – subparagraph 1

Text proposed by the Commission

1. 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.

Amendment

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

Amendment 53

Proposal for a directive Article 19 – paragraph 2

Text proposed by the Commission

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.

Amendment

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. ***Based on the results of that examination, necessary adjustments shall be undertaken.***

Amendment 54

**Proposal for a directive
Article 19 – paragraph 2 a (new)**

Text proposed by the Commission

Amendment

In addition, the Commission shall assess the impact of certain provisions, such as the appropriate scope of FTT and the rate of taxation with regards to pension funds, taking due account of the diverse risk profiles and business models.

Amendment 55

**Proposal for a directive
Article 20 – paragraph 1 – subparagraph 2 a (new)**

Text proposed by the Commission

Amendment

For instruments referred to in point 3a of Article 2(1) the rate referred to in point (a) of Article 9(2) shall be 0,05% until 1 January 2017.

For institutions referred to in point (f) of point (8) of Article 2(1) , the rate referred to in point (a) of Article 9(2) shall be 0,05% and the rate referred to in point (b) of Article 9(2) shall be 0,005% until 1 January 2017.

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 revenues¹ 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.

¹ 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.

16.5.2013

OPINION OF THE COMMITTEE ON BUDGETS

for the Committee on Economic and Monetary Affairs

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))

Rapporteur: Anne E. Jensen

SHORT JUSTIFICATION

In June 2011, the Commission presented a package of proposals for a reform of the Union system of own resources. One of the underlying ideas was the harmonization of legislation concerning the taxation of financial transactions in EU Member States through the introduction of a financial transactions tax (FTT). The Commission proposed to have 2/3 of the revenues collected through this tax flow into the EU budget in the form of an own resource.

The European Parliament delivered its favourable opinion on the Commission proposal for a directive establishing an FTT on 23 May 2012. At the Council meetings of 22 June and 10 July 2012, however, 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.

11 Member States agreed to proceed with the introduction of a harmonized FTT and the Commission launched an enhanced cooperation procedure for the implementation of such a tax in these Member States only. 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 essence, it closely resembles the initial proposal of the Commission for the introduction of an FTT with the necessary adaptations to take into account the fact the reduced number of participating Member States.

Own resources aspects

The Parliament has, on several occasions, reiterated its view that a reform of the existing

system of own resources is pertinent. Contrary to the spirit and the letter of the Treaty¹, approximately 85% of the Union's revenue today stems from national contributions and not from genuine own resources. This has put the "fair return" logic at the centre of any EU budgetary decision-making, giving birth to a long list of rebates and unjustified exceptions.

In its latest resolution (March 2013), the Parliament once again recalled the importance to return to the letter of the Treaty and called for the application of an own resources system financed by a minimum of 60% from own resources. Parliament also insists on negotiating a binding roadmap on the reform of own resources, defining the next steps of the process. The introduction of genuine own resources will ensure sufficient finances for the EU to fulfil its commitments and meet its objectives without necessarily increasing the EU budget.

Although at this stage the FTT will not be applicable in all Member States, the proceeds from its collection in the participating countries (estimated at about EUR 31 billion annually) could be used wholly or partially to finance the Union budget, which would reduce their respective GNI contributions and would contribute to achieving the goal of having the Union budget financed through own resources. The Commission's FTT proposal meets most of the criteria for a genuine own resource mentioned in the Parliament's Resolution on the Future of the European Union's Own Resources², and more precisely: sufficiency, stability, visibility and simplicity, low operating costs, efficient allocation of resources, vertical and horizontal equity and fair contributions.

AMENDMENTS

The Committee on Budgets calls on the Committee on Economic and Monetary Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1 **Proposal for a directive**

Recital 24 a (new)

Text proposed by the Commission

Amendment

(24a) In order to endow the Union with its own, independent sources of financing to better align Union policy objectives and the EU budget, as provided for in Article 311 of the Treaty on the Functioning of the European Union, funds collected from the FTT should be allocated fully or at least partially to the Union budget as a

¹ Article 311.1 of the TFEU: "without prejudice to other revenue, the budget shall be financed wholly from own resources".

² P7_TA-(2012)0217

genuine own resource.

Amendment 2
Proposal for a directive

Recital 24 b (new)

Text proposed by the Commission

Amendment

(24b) This Directive does not address the management of revenue from FTT. However, having regard to the 2011 Commission legislative proposals on the reform of the EU own resources system, as well as the European Parliament's resolution of 13 March 2013¹ on European Council conclusions of 7/8 February concerning the MFF, at least part of the revenue from the FTT should be accrued to the EU budget, as a genuine own resource. The use of the revenue from the FTT, fully or partially, as a genuine own resource, would reduce proportionally the GNI-based contributions to the Union budget of all participating Member States - irrespective of their individual FTT contributions to the EU budget - therefore reducing the burden on national treasuries.

¹ *Texts adopted, P7_TA-PROV(2013)0078.*

Amendment 3

Proposal for a directive
Article 10 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. The participating Member States shall ensure that the share of the FTT to be used as an EU own resource is transferred to the EU budget according to Council Regulation [.../...] on the

methods and procedure for making available the own resource based on the financial transaction tax¹.

¹ COM (2011)0738.

Amendment 4

Proposal for a directive Article 19 – subparagraph 1

Text proposed by the Commission

1. 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.

Amendment

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

PROCEDURE

Title	Implementing enhanced cooperation in the area of financial transaction tax
References	COM(2013)0071 – C7-0049/2013 – 2013/0045(CNS)
Committee responsible Date announced in plenary	ECON 12.3.2013
Opinion by Date announced in plenary	BUDG 12.3.2013
Rapporteur Date appointed	Anne E. Jensen 28.2.2013
Date adopted	7.5.2013
Result of final vote	+: 26 -: 2 0: 0
Members present for the final vote	Marta Andreasen, Richard Ashworth, Zuzana Brzobohatá, Jean-Luc Dehaene, Göran Färm, José Manuel Fernandes, Eider Gardiazábal Rubial, Salvador Garriga Polledo, Jens Geier, Ingeborg Gräßle, Jutta Haug, Monika Hohlmeier, Sidonia Elżbieta Jędrzejewska, Anne E. Jensen, Ivailo Kalfin, Sergej Kozlík, Jan Kozłowski, Alain Lamassoure, Giovanni La Via, Vojtěch Mynář, Juan Andrés Naranjo Escobar, Dominique Riquet, Alda Sousa, László Surján, Derek Vaughan, Angelika Werthmann
Substitute(s) present for the final vote	Edit Herczog, Georgios Stavrakakis

PROCEDURE

Title	Implementing enhanced cooperation in the area of financial transaction tax		
References	COM(2013)0071 – C7-0049/2013 – 2013/0045(CNS)		
Date of consulting Parliament	28.2.2013		
Committee responsible Date announced in plenary	ECON 12.3.2013		
Committee(s) asked for opinion(s) Date announced in plenary	BUDG 12.3.2013	EMPL 12.3.2013	JURI 12.3.2013
Not delivering opinions Date of decision	EMPL 13.3.2013	JURI 20.2.2013	
Rapporteur(s) Date appointed	Anni Podimata 14.1.2013		
Discussed in committee	11.4.2013	27.5.2013	
Date adopted	18.6.2013		
Result of final vote	+: -: 0:	30 12 3	
Members present for the final vote	Jean-Paul Basset, Sharon Bowles, Udo Bullmann, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Markus Ferber, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Sven Giegold, Sylvie Goulard, Liem Hoang Ngoc, Syed Kamall, Othmar Karas, Wolf Klinz, Jürgen Klute, Philippe Lamberts, Werner Langen, Astrid Lulling, Hans-Peter Martin, Arlene McCarthy, Sławomir Nitrás, Anni Podimata, Antolín Sánchez Presedo, Peter Simon, Theodor Dumitru Stolojan, Kay Swinburne, Sampo Terho, Marianne Thyssen, Ramon Tremosa i Balcells, Corien Wortmann-Kool, Pablo Zalba Bidegain		
Substitute(s) present for the final vote	Herbert Dorfmann, Sari Essayah, Vicky Ford, Robert Goebbels, Krišjānis Kariņš, Mojca Kleva Kekuš, Olle Ludvigsson, Thomas Mann, Marisa Matias, Claudio Morganti, Nils Torvalds		
Date tabled	24.6.2013		