Common system of financial transaction tax

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PURPOSE: to establish a common system of financial transaction tax and amending Directive 2008/7/EC.

PROPOSED ACT: Council Directive.

BACKGROUND: the recent financial crisis has led to debates at all levels about a possible additional tax on the financial sector and in particular a financial transactions tax (FTT).

This debate stems from the desire to:

- ensure the financial sector contribute to covering the costs of the crisis and that it is taxed in a fair way vis-à-vis other sectors for the future;
- dis-incentivise excessively risky activities by financial institutions;
- complement regulatory measures aimed at avoiding future crises;
- generate additional revenue for general budgets or specific policy purposes.

Given the extremely high mobility of most of the transactions to be potentially taxed, it is important to avoid distortions caused by tax rules conceived by Member States acting unilaterally. **It is important that the basic features of a FTT in the Member States are harmonised at Union level**. Indeed, a fragmentation of financial markets across activities and across borders can only be avoided and equal treatment of financial institutions in the EU and, ultimately, the proper functioning of the internal market, can only be ensured at EU level.

The European Commission already explored the idea of implementing a FTT in its Communication of 7 October 2010 on Taxation of the Financial Sector. The issue of financial sector taxation was also part of the Commission Communication on the EU Budget Review of 19 October 2010. The subsequent Proposal for a Council Decision on the system of own resources of the European Union of 29 June 2011identified a FTT as a new own resource to be entered in the budget of the EU.

On 10 and 25 March 2010 and 8 March 2011 the European Parliament adopted resolutions calling the Commission to carry out an impact assessment of a FTT exploring its advantages and drawbacks. Further, it asked to assess the potential of FTT options to contribute to the EU budget and to be used as innovative financing mechanisms to provide support for adaptation to and mitigation of climate change for developing countries, as well as for financing development cooperation.

The present proposal also substantially contributes to the **ongoing international debate** on financial sector taxation and in particular to the development of a FTT at global level.

IMPACT ASSESSMENT: the impact assessment analysed **two basic options**: a financial transaction tax (FTT) and a financial activities tax (FAT), as well as the numerous design options related to them, and concluded that an **FTT was the preferred option**.

The FTT appears to have the potential for raising significant tax revenues from the financial sector, but, like the FAT, it also risks some negative effects in terms of GDP and reduction in the market volume of transactions. Taking into account the mitigating measures provided by the design features of the FTT actually proposed, the negative impact on the GDP level in the long run is expected to be limited to around 0.5% as compared to the baseline scenario.

The impact assessment also shows that: (i) the FTT will impact market behaviour and business models within the financial sector; (ii) a FTT will have progressive distributional effects, i.e. its impact will increase proportionately with income, as higher income groups benefit more from the services provided by the financial sector.

LEGAL BASIS: Article 113 TFEU.

CONTENT: in view of the analysis carried out by the Commission, and also in response to the numerous calls of the European Council, the European Parliament and the Council, the present proposal is a first step :

- **to avoid fragmentation in the internal market for financial services**, bearing in mind the increasing number of uncoordinated national tax measures being put in place;
- **to ensure that financial institutions make a fair contribution to covering the costs of the recent crisis** and to ensure a level playing field with other sectors from a taxation point of view;
- to create appropriate **disincentives for transactions** that do not enhance the efficiency of financial markets thereby complementing regulatory measures aimed at avoiding future crises.

This proposal therefore provides for **harmonisation of Member States' taxes on financial transactions** to ensure the smooth functioning of the single market. It would **create essentially a new revenue** stream for the Member States and the EU budget replacing certain existing own resources paid out of national budgets, which would contribute to budgetary consolidation efforts in the Member States.

The main elements of the proposed Directive are as follows:

Wide scope: the scope of the tax is wide, because it aims at covering transactions relating to all types of financial instruments as they are often close substitutes for each other. Thus, the scope covers instruments which are negotiable on the capital market, money-market instruments (with the exception of instruments of payment), units or shares in collective investment undertakings (which include UCITS and alternative investment funds) and derivatives agreements. Furthermore, the scope of the tax is not limited to trade in organised markets, such as regulated markets, multilateral

The draft Directive also proposes the following:

- the exclusion from the scope of the FTT of transactions on primary markets both for securities (shares, bonds) – so as not to undermine the raising of capital by governments and companies – and for currencies;
- ring-fencing of the lending and borrowing activities of private households, enterprises or financial institutions, and other day-to-day financial activities, such as mortgage lending or payment transactions;
- the exclusion of financial transactions for example with the European Central Bank (ECB) and with national central banks, from the scope of the FTT, so that the directive will not affect the refinancing possibilities of financial institutions or the instruments of monetary policy.

The use of the residence principle: in order for a financial transaction to be taxable in the EU, one of the parties to the transaction needs to be established in the territory of a Member State. Taxation will take place in the Member State in the territory of which the establishment of a financial institution is located, on condition that this institution is party to the transaction, acting either for its own account or for the account of another person, or is acting in the name of party to the transaction.

Chargeability, taxable amount and rates: the moment of chargeability is defined as the moment when the financial transaction occurs. The minimum tax rates should be set at a level sufficiently high for the harmonisation objective of this Directive to be achieved. At the same time, they have to be low enough so

that delocalisation risks are minimised. The rates shall be fixed by each Member State as a percentage of the taxable amount.

Those rates shall not be lower than: **(a) 0.1% in respect of the financial transactions other than those related to derivatives agreements; (b) 0.01% in respect of financial transactions financial transactions related to derivatives agreements**.

BUDGETARYMPLICATION: preliminary estimates indicate that, depending on market reactions, the revenues of the tax could be **57 EUR billion** on a yearly basis in the whole EU.

The revenue arising from the FTT in the EU can be wholly or partly used as own resource for the EU Budget replacing certain existing own resources paid out of national budgets, which would contribute to budgetary consolidation efforts in the Member States. The Commission will separately present the necessary complementary proposals setting out how the FTT could be used as a source for the EU budget.

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.