

Implementing enhanced cooperation in the area of financial transaction tax (FTT)

2013/0045(CNS) - 14/02/2013 - Legislative proposal

PURPOSE: to implement enhanced cooperation in the area of financial transaction tax (FTT).

PROPOSED ACT: Council Directive.

ROLE OF THE EUROPEAN PARLIAMENT: the Council adopts the act after consulting the European Parliament but without being obliged to take account of Parliament's opinion.

BACKGROUND: the recent global economic and financial crisis had a serious impact on Europe's economies and public finances. The financial sector has played a major role in causing the economic crisis whilst governments and European citizens have borne the cost. There is a strong consensus within Europe and internationally that the financial sector should contribute more fairly given the costs of dealing with the crisis and the current under-taxation of the sector. In September 2011 the Commission tabled a [proposal for a Council Directive](#) on a common system of financial transaction tax (FTT) and amending Directive 2008/7/EC. The legal basis proposed was Article 113 TFEU, which requires unanimity in Council. The European Parliament delivered its [favourable opinion on 23 May 2012](#).

However, during the Council meetings of 22 June and 10 July 2012, it was ascertained that essential differences in opinion persist between Member States regarding 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**.

Nonetheless, 11 Member States expressed a strong willingness to proceed with the FTT (Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia) and the **Council authorised enhanced cooperation** through [Council Decision 2013/52/EU](#) following the European Parliament's consent given on 12 December 2012.

IMPACT ASSESSMENT: the Commission services carried out an impact assessment which accompanies its original proposal. Since the scope and objectives of this proposal are based on the Commission's initial proposal, a new impact assessment covering the same subject area has not been considered appropriate. However, Member States showed interest in the specific mechanisms regarding enhanced cooperation and the Commission has undertaken an additional analysis of these areas.

LEGAL BASIS: Article 113 of the Treaty on the Functioning of the European Union and Council Decision 2013/52/EU authorising enhanced cooperation in the area of FTT.

CONTENT: the proposed directive aims to **implement the enhanced cooperation authorised by Decision 2013/52/EU** by laying down provisions for a harmonised financial transaction tax (FTT) whereby the participating Member States mentioned above charge FTT in accordance with the terms of the proposal. The draft directive is based on the Commission's original proposal of 2011. However, some adaptations were made in addition to points for clarity:

Enhanced cooperation: since FTT jurisdiction is limited to participating Member States, transactions carried out within a participating Member State, which would have been taxed under the original proposal, remain taxable. Council Directive 2008/7/EC concerning indirect taxes on the raising of capital, whose modification had been proposed in the initial proposal, remains unaffected.

Anti avoidance of taxation: Member States wished to ensure that the FTT would not be avoided through evasive actions, distortions and transfers to other jurisdictions.

Accordingly, **taxation will follow the "issuance principle" as a last resort**, complementing the "residence principle", which is maintained as the main principle. This means it will be less advantageous to relocate activities and establishments outside the FTT jurisdictions, since trading in the financial instruments subject to taxation under the latter principle and issued in the FTT jurisdictions will be taxable anyway.

Level of rates: this remains the same as the original proposal:

- not lower than 0.1% for shares and bonds, units of collective investment funds, money market instruments, repurchase agreements and securities lending agreements, and
- not lower than 0.01% for derivative products.

Participating Member States shall apply the same rate to all financial transactions

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

Lastly, the [Commission proposal on the system of own resources of the European Union](#) states that part of receipts generated by the FTT shall constitute an own resource for the EU budget. This would imply that the GNI-based resource drawn from the participating Member States would be reduced accordingly.

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.