

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

2013/0045(CNS) - 03/07/2013 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 522 votes to 141 with 42 abstentions a resolution in the framework of the consultation procedure, on the proposal for a Council directive implementing enhanced cooperation in the area of financial transaction tax.

**Financial transaction:** Members expanded the scope of such transactions, and notably include currency spots on the foreign exchange markets within the meaning of the term.

They also add a definition for ‘high-frequency trading’ and “high-frequency trading strategy.”

**Average value:** the report adds a clause to the effect that 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.

**Scope:** the text clarifies the exceptions, notably that the FTT will not apply to SME growth markets.

**Establishment:** Members add that a financial institution shall be deemed to be established in the territory of a participating Member State if it is a branch of an institution established in a participating Member State and therefore subject to FTT. They consider it important to strengthen the residence principle. A new clause states that a financial instrument shall be deemed to be issued within the territory of a participating Member State where any of the **conditions prescribed** is fulfilled. Parliament considers that the concept of issuance for financial instruments, derivatives and structured instruments should be defined and broadened so as to encompass all issuance cases related to the financial instruments concerned.

**Transfer of legal title:** 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". The text provides 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;**
- 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 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].

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.

**Rates:** Parliament amends the rates applicable, which were expressed as minimum rates in the Commission proposal. However, it considers that in order to avoid a distortion of the common system of FTT under enhanced cooperation, **the level of the applicable rates should be uniform (0.01%).**

**Higher rates for OTC transactions:** 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.

**The FTT Committee:** 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.

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.

**Collection of FTT:** 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.**

**Reports:** 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.

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. In that report, 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.

**Management of FTT resources:** lastly, a new recital recalls that 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 are reduced by the same amount and 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.