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DRAFT REPORT

on the proposal for a Council directive on a common system of financial transaction tax and amending Directive 2008/7/EC
(COM(2011)0594 – C7-0355/2011 – 2011/0261(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 on a common system of financial transaction tax and amending Directive 2008/7/EC
(COM(2011)0594 – C7-0355/2011 – 2011/0261(CNS))**

(Special legislative procedure – consultation)

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2011)0594),
 - having regard to Article 113 of the Treaty on the Functioning of the European Union , pursuant to which the Council consulted Parliament (C7-0355/2011),
 - having regard to the reasoned opinions submitted, within the framework of the Protocol (No 2) on the application of the principles of subsidiarity and proportionality, by the Cypriot Parliament and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - 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 opinions of the Committee on Development, the Committee on Budgets and the Committee on the Internal Market and Consumer Protection (A7-0000/2012),
1. Approves the Commission proposal as amended;
 2. 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;
 3. Calls on the Council to notify Parliament if it intends to depart from the text approved by Parliament;
 4. Asks the Council to consult Parliament again if it intends to substantially amend the Commission proposal;
 5. 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) The recent financial crisis has led to

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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; 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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Or. en

Amendment 2

Proposal for a directive Recital 1 a (new)

Text proposed by the Commission

Amendment

(1a) Moreover, in the current period of severe fiscal crisis, and in particular the forecasts for low growth in the Union, a FTT could have a positive impact on the medium and long-term growth perspective by:

(a) reducing the disproportionate contribution of non-productive transactions and thereby significantly contributing to reducing the risks of future systemic crises and thus the severe cost in terms of growth of such crises;

(b) shifting the tax burden from labour and productive investments towards financial activities with severe externalities for the real economy;

(c) generating additional revenue for public expenditure and contributing to lower income taxation, which is an

important prerequisite to boosting demand and consumption and therefore growth.

Or. en

Justification

Recently published studies show that the impact of introducing an FTT on level of GDP is likely to be at around +0.25% as a minimum. Moreover, thanks to an FTT, short-term speculators like hedge funds or high frequency traders would pay most. The FTT would then create disincentives for short-term speculation, as opposed to long-term investment. Finally, an FTT would generate additional revenues.

Amendment 3

**Proposal for a directive
Recital 1 b (new)**

Text proposed by the Commission

Amendment

(1b) An FTT would best serve its double function (generating additional revenue through more fair taxation vis-à-vis other sectors and curbing excessive and harmful speculation in the current financial system) if implemented at a global level. However, given the absence of a legally binding international agreement, the Union, representing the world's largest financial services market, has to assume a leading role by the coordinating, the establishment and the implementation of a taxation of a well designed FTT, that will create a stronger momentum in the process towards concluding an international agreement.

Or. en

Justification

A global tax would be the better solution – but by taking the lead, Europe will give others a strong political incentive to follow the same path.

Amendment 4

Proposal for a directive Recital 17 a (new)

Text proposed by the Commission

Amendment

(17a) Consistent with the commitments of Member States in respect of removing obstacles and promoting further integration in the internal market, as emphasised in the Commission Communication of 13 April 2011 entitled 'Single Market Act – Twelve levers to boost growth and strengthen confidence – Working together to create new growth', this Directive should be implemented at Union level. However, in order to accelerate progress, certain Member States could adopt the provisions of this Directive by way of enhanced cooperation under Article 329 of the Treaty on the Functioning of the European Union.

Or. en

Justification

The enhanced cooperation foreseen in articles 326 - 334 of the TEFU represents a valid alternative to speed up the process.

Amendment 5

Proposal for a directive Recital 17 b (new)

Text proposed by the Commission

Amendment

(17b) This Directive does not address the management of revenue from the FTT. However, having regard to the Commission proposal for a Council regulation laying down the multiannual financial framework for the years 2014 to 2020 and in particular concerning the

provisions on the Union's own resources, part of the revenue from an FTT could be envisaged to be managed at Union level, either as a part of Union own resources or directly linked to specific Union policies and public goods, inter alia, the financing of development aid goals, the fight against climate change, sustainable development and the Union's social welfare state. According to the preliminary estimations and depending on market reactions, the revenue from an FTT could be EUR 57 billion annually, if implemented at Union level.

Or. en

Justification

The management of the FTT resources should be dealt with in the context of the Proposal on the Multiannual Financial Framework for 2014-2020.

Amendment 6

Proposal for a directive Article 1 – paragraph 2

Text proposed by the Commission

2. This Directive shall apply to all financial transactions, **on condition that** at least one party to the transaction is established in a Member State and **that** a financial institution established in the territory of a Member State 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 a party to the transaction.

Amendment

2. This Directive shall apply, **in accordance with Article 3**, to all financial transactions **subject to the following conditions:**

(a) at least one party to the transaction is established in a Member State and a financial institution established in the territory of a Member State 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 a party

to the transaction; *or*

(b) the transaction involves a financial instrument issued by legal entities registered in the Union.

Or. en

Justification

A combination of both the residence and the issuance principles would ensure that the FTT covers all transactions and all actors.

Amendment 7

Proposal for a directive

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

Text proposed by the Commission

Amendment

(ea) it is party to a financial transaction in relation to a financial instrument issued within the territory of a Member State or the Union.

Or. en

Justification

This additional criterion would ensure that the FTT can also be collected on the basis of the issuance principle.

Amendment 8

Proposal for a directive

Article 3 a (new)

Text proposed by the Commission

Amendment

Article 3a

Issuance

1. For the purposes of this Directive a financial instrument is deemed to be issued within the territory of a Member

State or the Union where it is issued by a legal entity that is registered in a Member State.

2. In the case of a derivative, the condition of issuance within the territory of a Member State or the Union is fulfilled where the reference or underlying instrument is issued by a legal entity that is registered in a Member State.

3. In the case of a structured instrument, the condition of issuance within the territory of a Member State or the Union is fulfilled when the structured instrument is based on or backed by a significant proportion of assets or financial instruments and derivatives with reference to financial instruments issued by a legal entity that is registered in a Member State.

Or. en

Justification

This new article defines the concept of issuance for financial instruments, derivatives and structured instruments.

Amendment 9

Proposal for a directive Article 3 b (new)

Text proposed by the Commission

Amendment

Article 3b

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 under paragraph 1 shall not be eligible for central clearing under the provisions of

Regulation (EU) No .../2012 of the European Parliament and the Council of ... on OTC derivatives, central counterparties and trade repositories [EMIR] nor be eligible to fulfil the capital adequacy requirements under Regulation (EU) No .../2012 of the European Parliament and the Council of ... on prudential requirements for credit institutions and investment firms [CRD IV].

3. In the case 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 the tax and certificates of transferring of legal titles.

Or. en

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 10

**Proposal for a directive
Article 9 – paragraph 4 a (new)**

Text proposed by the Commission

Amendment

4a. A financial transaction in relation to which no FTT has been levied shall be deemed legally unenforceable and shall not result in the transfer of legal title of the underlying asset.

Or. en

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.

Amendment 11

Proposal for a directive

Article 11 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. In order to adapt Member States' tax administrations to the provisions of this Directive and, in particular, in relation to administrative cooperation referred to in paragraph 3, they shall be provided with necessary and adequate human resources and technical equipment. Particular attention shall be focused on providing training for officials.

Or. en

Justification

In order to cope with these new requirements, tax authorities would need to be endowed with adequate staff and technological resources.

Amendment 12

Proposal for a directive

Article 16 – paragraph 2

Text proposed by the Commission

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.

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, ***the scope of the FTT and the need to distinguish different financial products and assets categories***

with regard to the rate of taxation.

Or. en

Justification

Depending on the market impact of the FTT, further differentiation of the rates among financial instruments could be envisaged as part of the review of the Directive.

EXPLANATORY STATEMENT

The momentum concerning the Commission's proposal for a common system of financial transaction tax

The global financial crisis of 2008 has spread in the real economies in a rapid and sharp way resulting in deep recession of the global economy and having a large scale impact on employment. The necessity for bailout schemes through public funds for the rescue of too big to fail financial institutions has significantly deteriorated public finances and led to further economic recession at a global and European level.

In this context, the following points are highlighted:

- The financial sector, being one of the main denominators of the financial crisis and having received important public subventions to overcome the crisis effects, is not contributing in a fair way to the cost of this crisis. At a time when EU citizens are faced with important increases in direct and indirect taxation and severe cuts in wages and pensions, the financial sector is still largely exempted from taxation in its activities and transactions;
- The enormous rise of financial transactions the last decade and the turn from long term investments to short termism and highly speculative and risk taking transactions, in particular in activities such as the High Frequency Trade (HFT), are clearly demonstrating a switch of the main role of the financial sector from financing the needs of the real economy to operations which have no productive impact and can severely disturb market prices and the function of national economies.
- The current severe fiscal difficulties in the majority of EU member states are significantly impeding Member States and EU to address major challenges ahead such as financing growth, sustainable and social development, tackling climate change and funding development aid. Increasing the rates and the scope of tradition taxation tools and further cuts in public expenditure can be neither a sufficient nor a sustainable solution to address these challenges. Therefore progressive taxation tools are needed that can shift the taxation burden from labour and productive investments to sectors with important negative externalities to the real economy.

In that view, the debate on the introduction of a Financial Transaction Tax (FTT) has become more relevant than ever. In comparison with other traditional taxation tools and different economic policies FTT has the advantage of a multiple function:

- It can generate important new revenues (according to recent estimations, up to 57 billion euros if implemented at EU level);
- It can shift the burden to activities with negative externalities, such as HFT and extremely speculative financial transactions, ensuring thus a more fair distribution of the tax burden;
- 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.

According to a recent study ("Financial Transaction Taxes" by Stephany Griffith Jones and Avinash Persaud) and the revised impact assessment of the European Commission, the FTT impact on EU growth is estimated to reach a positive level of 0.25%., by:

- reducing systemic risks and the level of "noise" trading along with HFT, the FTT can significantly contribute to reducing the probability of future crisis. The real costs of the crisis on growth being massive, the FTT can therefore absorb that cost and have a positive impact on the long term growth of the EU;
- becoming a new funding source for fiscal consolidation and key investments on growth and employment;
- shifting the tax burden to other activities. In that way, the FTT could lead to reduction or less increases of income and labour taxation, thus stimulating consumption and aggregating demand.

Given the globalised nature of the financial sector and its services, for a FTT to fully assume its multiple function it should be implemented at the broadest possible scale. The absence however of an international agreement makes it necessary for the leading economic partners of the world to assume a more enhanced role. EU represents today the world's largest financial market and as such has the responsibility to make the first step by coordinating the establishment of a well designed and easily implementable FTT that will create a stronger momentum in the process towards concluding an international agreement.

With its resolution on Innovative Financing at global and EU level (P7_TA-PROV (2011)0080), the European Parliament 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" and called on the Commission to "swiftly produce a feasibility study, taking into account the need for a global level playing field, and to come forward with concrete legislative proposals".

In response to that, the European Commission had presented its impact assessment which opted in favour of the feasibility of introducing an EU wide FTT, along with its legislative proposal.

A well designed and easily implementable FTT

The main challenges concerning the introduction of an EU based FTT are

- avoiding the transfer of transactions towards non EU jurisdictions,
- preventing tax avoidance
- avoiding the transfer of the cost to consumers and citizens.

As in every taxation tool, the way to minimize tax avoidance and evasion is turning undesired activity from a high return and low risk venture to a low return and high risk one. In the case of FTT, this means a light tax rate to make avoidance a low-return venture, and enforcing heavy consequences of non compliance to make it risky.

There are several FTT- type tools implemented in different jurisdictions around the world, but in particular the case of stamp duties (deemed to be paid by any counterparty of a transaction on the transfer of ownership of a resident security) is the biggest "success story" so far as they are proved to be very difficult to avoid and are raising significant revenues in the jurisdictions where they are in force.

The main aspects of the Commission's Proposal

The European Parliaments welcomes the decision of the Commission to present a legislative proposal introducing a tax on financial transactions, fully embracing the main argumentation put forward by the European Parliament in its resolution on Innovative Financing at global and EU level (P7_TA-PROV (2011)0080).

- **The scope of the Directive**

The Commission's proposal covers transactions covering all different types of securities (shares, equity, bonds and derivatives related to them) as well as all kind of trades in regulated or non regulated platforms. The exclusion of the primary markets on bonds and shares (but not on derivatives based on them) makes it possible to leave the capital raising needs of the real world intact.

The scope of the tax is limited to financial institutions, either acting for their own account or for the account of another person. National central banks, the European Central Bank and bodies set up by the EU are the only financial institutions excluded and rightly so, as to avoid unwanted externalities on monetary policies or refinancing possibilities of the financial sector. However, it should be made clear that this exception stands as long as the transactions of those entities correspond to their main public function.

- **The residence principle**

The Commission's Proposal makes use of the residence of the counterparty of a transaction being in the territory of a Member State in order for the tax to be chargeable.

This covers all transactions by EU resident financial institutions but not the all financial instruments of EU origin. This way a transaction by an EU financial institution on non EU financial instruments will be taxed, with the positive effects this can have for the market of the non EU instrument, but the transactions by non EU institutions on EU instruments will not, creating thus a competitive disadvantage for EU institutions.

- **The issuance principle**

The best way to avoid legal loopholes and create competitive disadvantages would be to follow the example of the stamp duties and impose the tax on every transaction on a financial instrument issued by an entity in the territory of a Member State or the EU. However and although this is fully applicable in the case of bonds and shares, this can create some problems in the case of derivatives such as swaps where it is difficult to define the issuance.

In order to fully address this problematic, the best option would be to combine both principles and propose an additional condition within article 3 related to the place of the issuance. In that way as long as one of the conditions of article 3 is met the tax is to be paid.

In order to make use of all of the advantages of the issuance principle, the connection of the tax payment with the legal enforceability of the contract should be also added as a legal consequence.

- **The tax rates**

In order for the tax to be easily implementable and avoid distortions within the internal market, the rates envisaged should be simple to implement and reflect the different characteristics of the financial instruments.

The proposal of the Commission to have a minimum rate of 0.1% for shares and bonds and of 0.01% for derivatives is indeed following these principles. Both rates being relatively low and at the same time minimum safeguard harmonisation in the least distortive way and allow for flexibility in case a Member State considers it appropriate to move beyond them.

The differentiation between asset categories is justified as shares and bonds have a more similar market behaviour comparing to derivatives.

In the case of derivatives the estimation of their value being much more difficult, the decision to opt for the notional value - which can be significantly higher than the real market value of a derivative - justifies the choice of a lower rate.

- **The geographic scope**

The adoption of the Directive via unanimity is the best way to implement the proposal in order to avoid distortions and to further integrate financial markets in EU.

Nevertheless, given that several FTT-type taxation tools either are already in place or in discussion in several Member States, EU should speed up the process to remove distortions in the relevant areas. Therefore, if the adoption of this Directive is not feasible through the unanimity rule, Member States can introduce the legal provisions of this Directive through the enhanced cooperation rules.

- **The management of the revenues**

The Commission's Proposal has no direct references to the management of the revenues. The report notes that a currently under discussion legislative proposal on the Multiannual Financial Framework 2014-2020 envisages part of the FTT revenues to become EU own resources. The FTT revenues could also be linked to specific EU policies and public goods, amongst them the financing of development aid goals, the fight against climate change, sustainable development and the social welfare state in EU or to the financing of national budgets, notably as a way to support efforts for fiscal consolidation.