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2011/0261 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on a common system of financial transaction tax and amending Directive 2008/7/EC

{SEC(2011) 1102}
{SEC(2011) 1103}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

1.1. Introduction: Financial and economic crisis context, policy goals and need to ensure the proper functioning of the internal market

The recent global economic and financial crisis had a serious impact on our economies and the public finances. The financial sector has played a major role in causing the economic crisis whilst governments and European citizens at large 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. Several EU Member States have already taken divergent action in the area of financial sector taxation. The purpose of this proposal is to provide a common European approach to this issue that is consistent with the internal market. The present proposal aims at complementing the EU regulatory framework for safer financial services by addressing particularly risky behaviour in some segments of financial markets so as to avoid the repetition of past practices.

The European Commission already explored the idea of implementing a FTT in its Communication of 7 October 2010 on Taxation of the Financial Sector[1]. In view of the analysis carried out by the Commission, and also in response to the numerous calls of the European Council[2], the European Parliament[3] 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[4];

– to create appropriate disincentives for transactions that do not enhance the efficiency of financial markets thereby complementing regulatory measures aimed at avoiding future crises.

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. Indeed, a fragmentation of financial markets across activities and across borders can only be avoided and

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1 COM(2010) 549 final (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0549:FIN:EN:PDF).

2 In particular, at the European Council meeting on 11 March 2011 the heads of state or government of the Euro area agreed that "the introduction of a financial transaction tax should be explored and developed further at the Euro area, EU and international levels." The subsequent European Council of 24 and 25 March 2011 reiterated its earlier conclusion that the introduction of a global financial transaction tax should be explored and developed further.

3 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.

4 Most financial and insurance services are exempted from VAT.

equal treatment of financial institutions in the EU and, ultimately, the proper functioning of the internal market, can only be ensured through action at EU level.

This proposal therefore provides for harmonisation of Member States' taxes on financial transactions to ensure the smooth functioning of the single market.

In line with the Commission Proposal for a Council Decision on the system of own resources of the European Union of 29 June 2011[5], this proposal also aims at creating a new revenue stream with the objective to gradually displace national contributions to the EU budget, leaving a lesser burden on national treasuries.

1.2. The financing of the EU Budget

The issue of financial sector taxation was also part of the Commission Communication on the EU Budget Review of 19 October 2010[6] which states that "The Commission considers that the following non-exclusive list of financing means could be possible candidates for own resources to gradually displace national contributions, leaving a lesser burden on national treasuries: - EU taxation of the financial sector." The subsequent Proposal for a Council Decision on the system of own resources of the European Union of 29 June 2011[7] identified a FTT as a new own resource to be entered in the budget of the EU. Consequently, this proposal will be complemented by separate own resource proposals setting out how the Commission proposes that the FTT will serve as a source for the EU budget.

1.3. Regulatory context

The European Union is in the midst of an ambitious regulatory reform programme in the financial services sector. Before the end of this year the Commission will have proposed all the main necessary elements for a fundamental improvement of the way Europe's financial markets are regulated and supervised. The EU financial services reform is oriented around four strategic objectives, namely improving the supervision of the financial sector; strengthening financial institutions, and providing a framework for their recovery where necessary; making financial markets safer and more transparent; and increasing the protection of consumers of financial services. It is expected that this wide-reaching reform will bring back the financial services sector at the service of the real economy, in particular to finance growth. The FTT proposal is intended to complement these regulatory reforms.

1.4 International context

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. In order to best minimise risks, a coordinated approach at international level is the best option. The present proposal demonstrates how an effective FTT can be designed and implemented, generating significant revenue. This should pave the way towards a coordinated approach with the most relevant international partners.

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5 COM(2011) 510 final. http://ec.europa.eu/budget/library/biblio/documents/fin_fwk1420/proposal_council_own_resources_en.pdf

6 COM(2010) 700 final (http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0700:FIN:EN:PDF).

7 COM(2011) 510 final (http://ec.europa.eu/budget/library/biblio/documents/fin_fwk1420/proposal_council_own_resources_en.pdf).

2. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES AND IMPACT ASSESSMENTS

2.1. External consultation and expertise

The present proposal has been formulated against the background of a wide range of external contributions. These contributions took the form of feedback received in the course of a public consultation on financial sector taxation, targeted consultations with the Member States, experts and the financial sector stakeholders, as well as three different external studies commissioned for the purpose of the impact assessment.

The results of the consultation process and the external input are reflected in the impact assessment.

2.2. Impact assessment

The impact assessment accompanying the present proposal analyses the impacts of additional taxes on the financial sector with regard to the objectives of (1) ensuring a contribution of the financial sector to public finances, (2) limiting the undesirable market behaviour and thereby stabilising markets and (3) avoiding distortions on the internal market. 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. In order to avoid risks of delocalisation a co-ordinated approach is needed both at EU level to avoid fragmentation of the Single Market and at international level, in line with the ambitions for G-20 co-operation.

Furthermore, in order to respond to the risks in terms of market reaction and impact on growth, the design of the FTT contains specific mitigating design features with respect to the economic effects and incidence of the tax, possible avoidance strategies and relocation risks:

- a broadly defined tax scope as regards products, transactions, types of trade and financial actors as well as transactions carried out inside a financial group;

- the use of the residence principle – taxation in a Member State of establishment of financial actors, independent from the location of the transactions. The directive also provides for the taxation in the EU, in case a non-EU financial institution is involved in a financial transaction with a party in the EU, and in case one of its branches in the EU is involved in a financial transaction;

- the setting of tax rates at an appropriate level to minimise eventual impacts on the cost of capital for non-financial investment purposes;

- 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. This exclusion of primary markets is consistent with a longstanding EU policy practice as also enshrined in Directive 2008/7/EC;

- 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.

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 shows that the FTT will impact market behaviour and business models within the financial sector. Automated Trading in financial markets could be affected by a tax-induced increase in transaction costs, so that these costs would erode the marginal profit. This would especially hold for the business model of high-frequency trading physically closely linked to the trading platforms on which financial institutions undertake numerous high-volume but low-margin transactions. These might have to be replaced by algorithms that trigger less numerous but higher-margin transactions (before the tax).

The impact assessment also shows that 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. This holds especially for a FTT limited to transactions with financial instruments such as bonds and shares and derivatives thereof. Private households and SMEs not actively investing in financial markets would hardly be affected by this proposal thanks to the ring-fencing features built in the design of the FTT.

The geographical distribution of the tax revenue depends on the technical design of the tax. Under this Directive the geographical spread will depend on the place of establishment of the financial institutions involved in financial transactions and not on the place of trade of financial instruments. This is likely to result in a lower degree of concentration of the tax revenue, especially for situations where financial institutions intervene on a trading platform on behalf of financial institutions established in another Member State.

The directive also ensures that specific measures to address avoidance, evasion and abuse are defined at the level of the Member States and of the Union through delegated acts. A review clause will allow, after three years of implementation, to examine the impact of the FTT on the proper functioning of the internal market, the financial markets and the real economy, taking into account the progress on taxation of the financial sector in the international context.

3. LEGAL ELEMENTS OF THE PROPOSAL

3.1. Legal basis

The pertinent legal basis for the proposed Directive is Article 113 TFEU. The proposal aims at harmonising legislation concerning indirect taxation on financial transactions, which is needed to ensure the proper functioning of the internal market and to avoid distortion of competition.

3.2. Subsidiarity and proportionality

A uniform definition at EU level of the essential features of a FTT is necessary to avoid undue relocations of transactions and market participants and substitution of financial instruments within the EU. In other words, a uniform definition at EU level is necessary to ensure the proper functioning of the internal market and avoid distortions of competition within the EU.

By the same token, a uniform definition at EU level could play a crucial role in reducing the existing fragmentation of the Internal Market, including for the different products of the financial sector that often serve as close substitutes. Non harmonisation of FTT leads to tax arbitrage and potential double or non taxation. This not only prevents financial transactions to be carried out on a level playing field, but also affects revenues of Member States. Furthermore, it imposes extra compliance costs on the financial sector arising from too different tax regimes.

This is supported by empiric evidence. National taxes on financial transactions so far either resulted in delocalisation of activities and/or institutions or were, so as to avoid this, designed in a way that they were levied on relatively immobile tax bases only, leaving close substitutes often untaxed. Harmonisation of key concepts and coordination of implementation at EU level are thus a prerequisite for an application of financial transaction taxes to be successful and to avoid distortions. Such EU action will also foster the desirable approach.

The present proposal thus concentrates on setting a common structure of the tax and common provisions on chargeability. The proposal thus leaves a sufficient margin of manoeuvre for the Member States when it comes to the actual setting of the tax rates above the minimum and the specification of accounting and reporting obligations as well as prevention of evasion, avoidance and abuse.

A common framework for an FTT in the EU therefore respects the subsidiarity and proportionality principle a set in Article 5 TEU. The objective of this Proposal cannot be sufficiently achieved by the Member States and can therefore, by reason of ensuring the proper functioning of the internal market, be better achieved at Union level.

The harmonisation proposed, in form of a Directive rather than a Regulation, does not go beyond what is necessary in order to achieve the objectives pursued, first and foremost for the proper functioning of the internal market. It thus complies with the principle of proportionality.

3.3. Detailed explanation of the proposal

3.3.1. Chapter I (Subject matter, scope and definitions)

This chapter defines the essential framework of the proposed FTT in the EU. This FTT aims at taxing gross transactions before any netting off.

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[8]) and derivatives agreements. Furthermore, the scope of the tax is not limited to trade in organised markets, such as regulated markets, multilateral

[8] Reference is made to the definition of financial instruments in Annex I to Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1). This definition covers units in collective investment undertakings. Consequently, shares and units of undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC (OJ L 302, 17.11.2009, p. 32) and alternative investment funds (AIF) as defined in Article 4(1)(a) of Directive 2011/61/EU (OJ L 174, 1.7.2011, p. 1) are financial instruments. The subscription and redemption of these instruments are thus considered financial transactions within the meaning of the present proposal.

trading facilities, but also covers other types of trades including over-the-counter trade. It is also not limited to the transfer of ownership but rather represents the obligation entered into, mirroring whether or not the financial institution involved assumes the risk implied by a given financial instrument ("purchase and sale"). Also, where a derivatives agreement results in a supply of financial instruments, in addition to the taxable derivatives agreement the financial instruments supply is also subject to tax, provided that all other conditions for taxation are fulfilled.

Transactions with the European Central Bank and national central banks are however excluded from the scope so as to avoid any negative impact on the refinancing possibilities of financial institutions or on monetary policies in general.

In particular, for both the financial instruments whose purchase, sale and transfer is taxed and for the conclusion or modification of derivatives agreements, the relevant regulatory framework at EU level provides a clear, comprehensive and accepted set of definitions[9]. As regards more particularly the derivative agreements thus referred to, these concern derivatives for investment purposes. It emerges from the definitions used that spot currency transactions are not taxable financial transactions, while currency derivative agreements are. Derivative contracts relating to commodities are also covered, while physical commodity transactions are not.

Financial transactions can also consist of the purchase/sale or transfer of structured products, meaning tradable securities or other financial instruments offered by way of a securitisation. Such products are comparable to any other financial instrument and thus need to be covered by the term financial instrument as used in this proposal. Excluding them from the scope of FTT would open avoidance opportunities. This category of products notably includes notes, warrants and certificates as well as banking securitisations which usually transfer the credit risk associated with assets such as mortgages or loans into the market, as well as insurance securitisations, which involve the transfers of other types of risk, for example underwriting.

However, the scope of the tax is focused on financial transactions carried out by financial institutions acting as party to a financial transaction, either for their own account or for the account of other persons, or acting in the name of a party to the transaction. This approach ensures that FTT is comprehensively applied. In practical terms this is usually evident via respective entries in the books.

The definition of financial institutions is broad and essentially includes investment firms, organised markets, credit institutions, insurance and reinsurance undertakings, collective investment undertakings and their managers, pension funds and their managers, holding companies, financial leasing companies, special purpose entities, and where possible refers to the definitions provided by the relevant EU legislation adopted for regulatory purposes. Additionally other persons carrying out certain financial activities on a significant basis should be considered as financial institutions.

The proposed Directive provides for delegated powers as regards further details.

Central Counterparties (CCPs), Central Securities Depositories (CSDs) and International Central Securities Depositories (ICSDs) are not considered financial institutions in as much as these are exercising functions which are not considered to be trading activity in itself. They are also key for a more efficient and more transparent functioning of financial markets.

[9] Notably Directive 2004/39/EC (cf. previous footnote).

The territorial application of the proposed FTT and the Member States' taxing rights are defined on the basis 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.

In case these establishments of the different financial institutions, parties to the transaction or acting in the name of such parties, are located in the territory of different Member States these different Member States will be competent to subject the transaction to tax at the rates they have set in accordance with this proposal. Where the establishments concerned are located in the territory of a State which is not part of the Union the transaction is not subject to FTT in the EU, unless one of the parties to transaction is established in the EU in which case the third-country financial institution will also be deemed to be established and the transaction becomes taxable in the Member State concerned. Where transactions are carried out on trade venues outside the EU, they will be subject to tax if at least one of the establishments carrying out or intervening in the transaction is located in the EU.

However, in case the person liable to pay the tax was able to prove that there is no link between the economic substance of the transaction and the territory of any Member State, the financial institution may not be considered established within a Member State.

Furthermore, where financial instruments whose purchase and sale is taxable form the object of a transfer between entities of a group, this transfer shall be taxable even though it might not be a purchase or sale.

It follows from the foregoing that many financial activities are not considered to be financial transactions in the logic of the FTT which follows the above-mentioned objectives. Further to the exclusion of primary markets explained above most day-to-day financial activities relevant for citizens and businesses remain outside the scope of FTT. This is the case for the conclusion of insurance contracts, mortgage lending, consumer credits, payment services etc. (though the subsequent trading of these via structured products is included). Also, currency transactions on spot markets are outside the scope FTT, which preserves the free movement of capital. However, derivatives agreements based on currency transactions are covered by FTT since they are not as such currency transactions.

3.3.2. Chapter II (chargeability, taxable amount and rates)

The moment of chargeability is defined as the moment when the financial transaction occurs. Subsequent cancellation cannot be considered as a reason to exclude chargeability of the tax, except in cases of errors.

As the purchase/sale or transfer of certain financial instruments (excluding derivatives), on the one hand, and the purchase/sale, transfer, conclusion or modification of derivatives agreements, on the other hand, have a different nature and characteristics, they have to be associated to different taxable amounts.

For the purchase and sale of certain financial instruments (other than derivatives), usually a price or any other form of consideration will be determined. Logically, this is to be defined as the taxable amount. However, to avoid market distortions special rules are necessary where the consideration is lower than the market price or for transactions taking place between entities of a group and which

are not covered by the notions of "purchase" and "sale". In these cases the taxable amount is to be the market price determined at arm's length at the time FTT becomes chargeable.

For the purchase/sale, transfer, conclusion and modification of derivative agreements the taxable amount of the FTT shall be the notional amount at the time the derivative agreement is purchased/sold, transferred, concluded or modified. This approach would allow for a straightforward and easy application of FTT on derivative agreements while ensuring low compliance and administrative costs. Also, this approach makes it more difficult to artificially reduce the tax burden through creative contract design for the derivative agreement as there would be no tax incentive for example to enter into an agreement on differences in prices or values only. Furthermore it implies the taxation at the moment of the purchase/sale, transfer, conclusion or modification of the contract as compared to taxing cash-flows at different moments in time during the life cycle of the agreement. The rate to be used in this case will need to be rather low in order to define an adequate tax burden.

Special provisions might be necessary in the Member States in order to prevent avoidance, evasion and abuse of the tax (see also section 3.3.3). For example in cases where the notional amount is artificially divided: the notional amount of a swap could for instance be divided by an arbitrarily large factor and all payments be multiplied by the same factor. This would leave the cash flows of the instrument unchanged but arbitrarily shrink the size of the tax base.

Special provisions are necessary to determine the taxable amount in respect of transactions where the taxable amount or parts thereof are expressed in another currency than that of Member State of assessment.

The purchase/sale or transfer of certain financial instruments other than derivatives, on the one hand, and purchase/sale, transfer, conclusion or modification of derivatives agreements, on the other hand, are different in nature. Moreover, markets are likely to react differently to a financial transaction tax applied to each of these two categories. For these reasons, and in order to ensure a broadly even taxation, the rates should be differentiated as between the two categories.

The rates should also take into account differences in the applicable methods for the determination of the taxable amounts.

Generally speaking, the minimum tax rates (above which there is room of manoeuvre for national policies) are proposed to be set at a level sufficiently high for the harmonisation objective of this Directive to be achieved. At the same time, the proposed rates are situated low enough so that delocalisation risks are minimised.

3.3.3. Chapter III (Payment of FTT, related obligations and prevention of evasion, avoidance and abuse)

This proposal defines the scope of FTT by reference to financial transactions to which a financial institution established in the territory of the Member State concerned is party (acting either for its own account or for the account of another person) or transactions where the institution acts in the name of a party. In fact, financial institutions execute the bulk of transactions on financial markets, and the FTT should concentrate on the financial sector as such rather than on citizens. Therefore, these institutions should be liable to pay the tax to the tax authorities. However, Member States should have the possibility to hold other persons jointly and severally liable for payment of the tax, including in cases where a party to a transaction has its headquarters located outside the European Union.

Many financial transactions are carried out by electronic means. In these cases, FTT should be due immediately at the moment of chargeability. In other cases, FTT should be due within a period which, while being sufficiently long so as to allow for the manual processing of the payment, avoids that unjustifiable cash-flow advantages accrue to the financial institution concerned. A period of three working days can be considered appropriate in this sense.

Member States should be obliged to take appropriate measures for FTT to be levied accurately and timely and to prevent evasion, avoidance and abuse.

In this context, Member States should use existing and forthcoming EU legislation on financial markets that includes reporting and data maintenance obligations with respect to financial transactions.

Wherever necessary, they should equally use the available administrative cooperation instruments relating to the assessment and recovery of taxes, in particular Directive 2011/16/EU of the Council of 15 February on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC[10] (applicable as of 1 January 2013), Directive 2010/24/EC of the Council of 16 March 2010 concerning mutual assistance for the recovery of claims relating to taxes, duties and other measures[11] (applicable as of 1 January 2012). Other instruments should also be resorted to where relevant and applicable, for example the OECD - Council of Europe Multilateral Convention on Mutual Administrative Assistance in Tax Matters[12].

The proposed Directive provides for delegated powers as regards further details.

Together with the conceptual approach underlying the FTT (broad scope, residence principle, no exemptions), the rules outlined above allow to minimise tax evasion, avoidance and abuse.

3.3.4. Chapter IV (Final provisions)

It follows from the harmonisation objective of this proposal that Member States should not be allowed to maintain or introduce taxes on financial transactions other than the FTT object of the proposed Directive or VAT. Indeed, as far as VAT is concerned, the right of option tax as provided for in Article 137.1.(a) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax[13] should continue to apply. Other taxes like those on insurance premiums etc. have of course a different nature, as have registration fees on financial transactions, in case they represent a genuine re-imbursement of costs or consideration for a service rendered. Such taxes and fees are thus not affected by this proposal.

The provisions of Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital[14] continue to be in principle fully applicable. This entails for instance that the primary issue – as mentioned in Article 5(2) of Directive 2008/7/EC – of shares or other securities of the same type, or of certificates representing such securities, debentures – including government bonds – or other negotiable securities relating to loans is not subject to FTT in the EU. In order to

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10 OJ L 64, 11.3.2011, p. 1.
11 OJ L 84, 31.3.2010, p. 1.
12 http://www.oecdilibrary.org/docserver/download/fulltext/2311331e.pdf?expires=1309623132&id=id&accname=ocid194935&checksum=37A9732331E7939B3EE154BB7EC53C41
13 OJ L 347, 11.12.2006, p. 1.
14 OJ L 46, 21.2.2008, p. 11.

avoid any potential conflict between the two Directives, it should however be provided that the Directive proposed here has precedence over the provisions of Directive 2008/7/EC.

4. BUDGETARY IMPLICATION

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 proposal would create essentially a new revenue stream for the Member States and the EU budget – in line with the Proposal for a Council Decision on the system of own resources of the European Union of 29 June 2011.

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.

2011/0261 (CNS)

Proposal for a

COUNCIL DIRECTIVE

on a common system of financial transaction tax and amending Directive 2008/7/EC

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 113 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Parliament[15],

Having regard to the opinion of the European Economic and Social Committee[16],

Acting in accordance with a special legislative procedure,

Whereas:

(1) 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; 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.

(2) In order to prevent distortions through measures taken unilaterally by Member States, bearing in mind the extremely high mobility of most of the relevant financial transactions, and thus to ensure the proper functioning of the internal market, it is important that the basic features of a FTT in the Member States are harmonised at Union level. Incentives for tax arbitrage in the Union and allocation distortions between financial markets in the Union, as well as possibilities for double or non taxation should thereby be avoided.

(3) For the internal market to function properly, FTT should apply 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 and modification of all derivative contracts. For the same reason, it should apply to a broadly determined range of financial institutions.

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15 OJ C …, …, p.. .

16 OJ C …, …, p. ..

(4) The definition of financial instruments in Annex I to the Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (MiFID)[17] covers units in collective investment undertakings. This implies that shares and units of undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)[18] and alternative investment funds (AIF) as defined in Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010[19] are financial instruments. Therefore, the subscription and redemption of these instruments are transactions that should be subject to the FTT.

(5) In order to preserve the efficient and transparent functioning of financial markets, it is necessary to exclude certain entities from the personal scope of this Directive, in as much as these are exercising functions which are not considered to be trading activity in itself but rather facilitating trade, or as they enter into financial transactions in order to financially assist Member States.

(6) Transactions with national central banks, just as those with the European Central Bank should not be subject to FTT so as to avoid any negative impact on the refinancing possibilities of financial institutions or on monetary policies in general.

(7) With the exception of the conclusion or modification of derivative contracts, most 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.

(8) Chargeability and taxable amount should be harmonised so as to avoid distortions in the internal market.

(9) The moment of chargeability should not be unduly delayed and should coincide with the moment where the financial transaction occurs.

(10) In order to allow for the taxable amount to be determined as easily as possible so as to limit costs for businesses and for tax administrations, in the case of financial transactions other than those related to derivatives agreements reference should be made normally to the consideration granted in the context of the transaction. Where no consideration is granted or where the consideration granted is lower than the market price, the latter should be referred to as a fair reflection of the value of the transaction. Equally for reasons of ease of calculation, the notional amount should be used where derivatives agreements are purchased/sold, transferred, concluded or modified.

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17 OJ L 145, 30.4.2004, p. 1–44.
18 OJ L 302, 17.11.2009, p. 32–96.
19 OJ L 174, 1.7.2011, p. 1–73.

(11) In the interest of equal treatment, a single tax rate should apply within each category of transactions, namely trade in financial instruments other than derivatives, on the one hand, and the purchase/sale, transfer, conclusion and modification of derivatives agreements.

(12) In order to concentrate the taxation on the financial sector as such rather than on citizens and because financial institutions execute the vast majority of transactions on financial markets, the tax should apply to those institutions, whether they trade in their own name, in the name of other persons, for their on own account or for the account of other persons.

(13) Because of the high mobility of financial transactions and in order to help mitigating potential tax avoidance, the FTT should be applied on the basis of the residence principle.

(14) 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.

(15) In order for the FTT to be levied in an accurate and timely manner, Member States should be obliged to take the necessary measures. In order to render the prevention of evasion, avoidance and abuse efficient, Member should be obliged to resort to existing instruments on mutual assistance in fiscal matters, wherever necessary, and to take advantage of reporting and data maintenance obligations incumbent upon the financial sector according to the pertinent legislation.

(16) In order to allow the adoption of more detailed rules for determining whether certain financial activities constitute a significant part of an undertaking's activity, so that the undertaking can be considered a financial institution for the purposes of this Directive, as well as more detailed rules regarding protection against tax evasion, avoidance and abuse, 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.

(17) In order to avoid conflicts between this Directive and Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital[20] that Directive should be amended accordingly.

(18) Since the objective of this Directive, namely to harmonise the essential features of a FTT at Union level, cannot be sufficiently achieved by the Member States and can therefore, by reason of ensuring the proper functioning of the Single Market, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve this objective,

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[20] OJ L 46, 21.2.2008, p. 11.

HAS ADOPTED THIS DIRECTIVE:

Chapter I
Subject matter, scope and definitions

Article 1
Subject matter and scope

1. This Directive establishes the common system of financial transaction tax (FTT).

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.

3. This Directive shall not apply to the following entities:

   (a) the European Financial Stability Facility;

   (b) subject to point (c) of paragraph 4, an international financial institution established by two or more Member States, which has the purpose to mobilise funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems;

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

   (d) Central Securities Depositories (CSDs) and International Central Securities Depositories (ICSDs) where exercising the function of a CSD or ICSD.

   However, where an entity is not taxable pursuant to the first subparagraph, this shall not preclude the taxability of its counterparty.

4. This Directive shall not apply to the following transactions:

   (a) primary market transactions referred to in point (c) of Article 5 of Commission Regulation (EC) No 1287/2006[21], except for the issue and redemption of shares and units of undertakings for collective investments in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and the Council[22] and alternative investment funds (AIF) as defined in Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and the Council[23];

   (b) transactions with the European Union, the European Atomic Energy Community, the European Central Bank, the European Investment Bank and with bodies set up by the European Union or the European Atomic Energy Community to which the Protocol on the privileges and immunities of the European Union applies, within the limits

[21] OJ L 241, 2.9.2006, p. 1.
[22] OJ L 302, 17.11.2009, p. 32.
[23] OJ L 174, 1.7.2011, p. 1.

and under the conditions of that Protocol and the agreements for its implementation or the headquarters agreements, in so far as it does not lead to distortion of competition;

(c) transactions with international organisations or bodies, other than those referred to in point (b), recognised as such by the public authorities of the host State, within the limits and under the conditions laid down by the international conventions establishing the bodies or by headquarters agreements;

(d) transactions with the central banks of Member States.

Article 2
Definitions

1. For the purposes of this Directive, the following definitions shall apply:

(1) 'Financial transaction' means any of the following:

(a) the purchase and sale of a financial instrument before netting and settlement, including repurchase and reverse repurchase and securities lending and borrowing agreements;

(b) the transfer between entities of a group 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, in cases not subject to point (a);

(c) the conclusion or modification of derivatives agreements;

(2) 'Financial instruments' means financial instruments as defined Section C of Annex I of Directive 2004/39/EC of the European Parliament and the Council[24], and structured products;

(3) 'Derivatives agreement' means a financial instrument as defined in points (4) to (10) of Section C of Annex I to the Directive 2004/39/EC;

(4) 'Repurchase agreement' and 'reverse repurchase agreement' means an agreement referred to in Article 3 of Directive 2006/49/EC of the European Parliament and the Council[25];

(5) 'Securities lending agreement' and 'securities borrowing agreement' mean an agreement referred to in Article 3 of Directive 2006/49/EC;

(6) 'Structured product' means tradable securities or other financial instruments offered by way of a securitisation within the meaning of Article 4(36) of Directive 2006/48/EC of the European Parliament and the Council[26] or equivalent transactions involving the transfer of risks other than credit risk;

(7) 'Financial institution' means any of the following:

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[24] OJ L 145, 30.4.2004, p. 1.
[25] OJ L 177, 30.6.2006, p. 201.
[26] OJ L 177, 30.6.2006, p. 1.

(a) an investment firm as defined in Article 4 of Directive 2004/39/EC;

(b) a regulated market as defined in Article 4 of Directive 2004/39/EC and any other organised trade venue or platform;

(c) a credit institution as defined in Article 4 of Directive 2006/48/EC;

(d) an insurance and reinsurance undertaking as defined in Article 13 of Directive 2009/138/EC of the European Parliament and the Council[27];

(e) an undertaking for collective investments in transferable securities (UCITS) as defined in Article 1 of Directive 2009/65/EC and a management company as defined in Article 2 of Directive 2009/65/EC;

(f) a pension fund or an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC of the European Parliament and the Council[28], an investment manager of such fund or institution;

(g) an alternative investment fund (AIF) and an alternative investment fund manager (AIFM) as defined in Article 4 of Directive 2011/61/EU;

(h) a securitisation special purpose entity as defined in Article 4 of Directive 2006/48/EC;

(i) a special purpose vehicle as defined in Article 13(26) of Directive 2009/138/EC;

(j) any other undertaking carrying out one or more of the following activities, in case these activities constitute a significant part of its overall activity, in terms of volume or value of financial transactions:

(i) activities referred to in points 1, 2, 3, 6 of Annex I of Directive 2006/48/EC;

ii) trading for own account or for account of customers with respect to any financial instrument;

(iii) acquisition of holdings in undertakings;

(iv) participation in or issuance of financial instruments;

(v) the provision of services related to activities referred to in point (iv).

(8) 'Central Counter Party' (CCP) means a legal entity that interposes itself between the counterparties to a trade within one or more financial markets, becoming the buyer to every seller and the seller to every buyer;

(9) 'Netting' shall have the meaning defined in Article 2 of Directive 98/26/EC of the European Parliament and of the Council[29];

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27 OJ L 335, 17.12.2009, p. 1.
28 OJ L 235, 23.9.2003, p. 10.
29 OJ L 166, 11.6.1998, p. 45.

(10) 'Notional amount' means the underlying nominal or face amount that is used to calculate payments made on a given derivative agreement.

2. The Commission shall, in accordance with Article 13 adopt delegated acts laying down detailed rules regarding the determination whether activities as referred to in paragraph 1(7)(j) constitute a significant part of the undertaking's overall activity.

Article 3
Establishment

1. For the purposes of this Directive, a financial institution shall be deemed to be established in the territory of a Member State where any of the following conditions is fulfilled:

(a) it has been authorised by the authorities of that Member State to act as such, in respect of transactions covered by that authorisation;

(b) it has its registered seat within that Member State;

(c) its permanent address or usual residence is located in that Member State;

(d) it has a branch within that Member State, in respect of transactions carried out by that branch;

(e) 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 with another financial institution established in that Member State pursuant to points (a), (b), (c) or (d), or with a party established in the territory of that Member State and which is not a financial institution.

2. Where more than one of the conditions in the list set out in paragraph 1 is fulfilled, the first condition met from the start of the list in descending order shall be relevant for determining the Member State of establishment.

3. Notwithstanding paragraph 1, a financial institution shall not be considered established within the meaning of that paragraph, in case the person liable for payment of FTT proves that there is no link between the economic substance of the transaction and the territory of any Member State.

4. A person which is not a financial institution shall be deemed to be established within a Member State if its registered seat or, in case of a natural person, if its permanent address or usual residence is located in that State, or it has a branch in that State, in respect of financial transactions carried out by that branch.

Chapter II
Chargeability, taxable amount and rates

Article 4
Chargeability of FTT

1. The FTT shall become chargeable for each financial transaction at the moment it occurs.

2. Subsequent cancellation or rectification of a financial transaction shall have no effect on chargeability, except for cases of errors.

Article 5
Taxable amount of the FTT in the case of financial transactions other than those related to derivatives agreements

1. In the case of financial transactions other than those referred to in point 1(c) of Article 2(1) and, in respect of derivative agreements, in points 1(a) and 1(b) of Article 2(1), the taxable amount shall be everything which constitutes consideration paid or owed, in return for the transfer, from the counterparty or a third party.

2. Notwithstanding paragraph 1, in the cases referred to in that paragraph the taxable amount shall be the market price determined at the time the FTT becomes chargeable:

   (a) where the consideration is lower than the market price;

   (b) in the cases referred to in Article 2(1)(b).

3. For the purposes of paragraph 2, the market price shall mean the full amount that would have been paid as consideration for the financial instrument concerned in a transaction at arm's length.

Article 6
Taxable amount in the case of financial transactions related to derivatives agreements

In the case of financial transactions referred to in point 1(c) of Article 2(1) and, in respect of derivative agreements, in points 1(a) and 1(b) of Article 2(1), the taxable amount of the FTT shall be the notional amount of the derivatives agreement at the time of the financial transaction.

Where more than one notional amount is identified, the highest amount shall be used for the purpose of determining the taxable amount.

Article 7
Common provisions on taxable amount

Where the value relevant, under Article 5 or Article 6, for the determination of the taxable amount is expressed, in whole or in part, in a currency other than that of the taxing Member State, the exchange rate applicable shall be the latest selling rate recorded, at the time the FTT becomes chargeable, on the most representative exchange market of the Member State concerned, or at an exchange rate determined by reference to that market, in accordance with the rules laid down by that Member State.

Article 8
Application, structure and level of rates

1. Member States shall apply the rates of FTT in force at the time when the tax becomes chargeable.

2. 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 referred to in Article 5;

(b) 0.01% in respect of financial transactions referred to in Article 6.

3. Member States shall apply the same rate to all financial transactions that fall under the same category pursuant to paragraph 2 (a) and (b).

Chapter III
Payment of FTT, related obligations and prevention of evasion, avoidance and abuse

Article 9
Person liable for payment of FTT to the tax authorities

1. In respect of each financial transaction, FTT shall be payable by each financial institution which fulfils any of the following conditions:

(a) it is party to the transaction, acting either for its own account or for the account of another person;

(b) it is acting in the name of a party to the transaction; or

(c) the transaction has been carried out on its account.

2. Where a financial institution acts in the name or for the account of another financial institution only that other financial institution shall be liable to pay FTT.

3. Each party to a transaction, including persons other than financial institutions shall become jointly and severally liable for the payment of the tax due by a financial institution on account of that transaction, in case that financial institution has not paid the tax due by it within the time limit set out in Article 10(4).

4. Member States may provide that a person other than the persons liable for payment of FTT referred to in paragraphs 1, 2 and 3 of this Article is to be held jointly and severally liable for the payment of the tax.

Article 10
Provisions relating to time limits for the payment of FTT, to obligations intended to ensure payment, to the verification of payment

1. Member States shall lay down registration, accounting, reporting obligations and other obligations intended to ensure that FTT due to the tax authorities is effectively paid.

2. Member States shall adopt measures to ensure that every person liable for payment of FTT submits to the tax authorities a return setting out all the information needed to calculate the FTT that has become chargeable during a period of one month including the total value of the transactions taxed at each rate. The FTT return shall be submitted by the tenth day of the month following the month during which the FTT became chargeable.

3. Member States shall, where financial institutions are not subject to Article 25(2) of Directive 2004/39/EC, ensure the keeping at the disposal of the competent authority, for at least five years, of the relevant data relating to all financial transactions which they have carried out, whether in their own name or in the name of another person, for their own account or for the account of another person;

4. Member States shall ensure that any FTT due is paid to the tax authorities 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.

5. Member States shall ensure that the authorities competent in the matter verify whether the tax has been correctly paid.

Article 11
Specific provisions relating to the prevention of evasion, avoidance and abuse

1. Member States shall adopt measures to prevent tax evasion, avoidance and abuse.

2. The Commission may, in accordance with Article 13 adopt delegated acts specifying the measures to be taken pursuant to paragraph 1 by the Member States.

3. Member States shall, wherever necessary, make use of the provisions adopted by the Union regarding administrative cooperation in tax matters, and in particular by Council Directives 2011/16/EU and 2010/24/EU. They shall also make use of already existing reporting and data maintenance obligations related to financial transactions.

Chapter IV
Final provisions

Article 12
Other taxes on financial transactions

Member States shall not maintain or introduce taxes on financial transactions other than the FTT object of this Directive or value-added tax as provided for in Council Directive 2006/112/EC[30].

Article 13
Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

[30] OJ L 347, 11.12.2006, p. 1–118.

2. The delegation of powers referred to in Articles 2(2) and 11(2) shall be conferred for an indeterminate period of time from the date referred to in Article 18.

3. The delegation of power referred to in Articles 2(2) and 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.

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

5. A delegated act adopted pursuant to Articles 2(2) and 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.

Article 14
Information of the European Parliament

The European Parliament shall be informed of the adoption of delegated acts by the Commission, of any objection formulated to them, or of the revocation of the delegation of powers by the Council.

Article 15
Amendment of Directive 2008/7/EC

Directive 2008/7/EC is amended as follows:

(1) In Article 6(1) point (a) is deleted.

(2) After Article 6, the following Article is inserted:

"Article 6a

Relationship with Directive …/…/EU

This Directive shall be without prejudice to Council Directive …/…/EU[31]."

Article16
Review clause

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 for its modification.

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.

[31] OJ L …..., …., p.

Article17
Transposition

1. Member States shall adopt and publish, by 31 December 2013 at the latest, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

   They shall apply those provisions from 1 January 2014.

   When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 18
Entry into force

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union.*

Article 19
Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the Council
The President

ANNEX

LEGISLATIVE FINANCIAL STATEMENT

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC

1.2. Policy area(s) concerned in the ABM/ABB structure

14 05 Taxation Policy

1.3. Nature of the proposal/initiative

The proposal relates to **a new action**

1.4. Objective(s)

1.4.1. The Commission's multiannual strategic objective targeted by the proposal

Financial stability

1.4.2. Specific objectives and ABM/ABB activity(ies) concerned

Specific Objective No.3

To develop new tax initiatives and actions to support EU policy objectives

ABM/ABB activity(ies) concerned

Title 14 Taxation and Customs Union; ABB 05 Taxation Policy

1.4.3. Expected result(s)

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 even taxation of the sector vis-à-vis other sectors.

To create appropriate disincentives for overly risky transactions and to complement regulatory measures aimed at avoiding future crisis.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term

Contribute to the overall objective of stability in the EU in the aftermath of the financial crisis

1.5.2. Added value of EU involvement

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 through action at EU level.

1.5.3. Lessons learned from similar experiences in the past

Introducing a broad-based FTT at national level achieving the three above objectives without serious delocalisation effects has proven to be hardly possible (example of Sweden)".

1.5.4. Coherence and possible synergy with other relevant instruments

Taxes are part of the global resolution framework. Moreover, the Commission has proposed to use the proceeds of the FTT as a future own resource

1.6. Duration and financial impact

Proposal of **unlimited duration**

1.7. Management method(s) envisaged

The proposal has financial impact on the EU by increasing administrative costs.

Centralised direct management by the Commission

Centralised indirect management with the delegation of implementation tasks to:

A person entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union and identified in the relevant basic act within the meaning of Article 49 of the Financial Regulation.

Shared management with the Member States

Decentralised management with third countries

Joint management with international organisations (**to be specified**).

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Member States must take appropriate measures for FTT to be levied accurately and timely, which includes measures of verification.

The provision of appropriate measures to ensure payment of the tax and to monitor and verify correct payment is left to Member States.

2.2. Management and control system

2.2.1. Risk(s) identified

1. Delays in the transposition of the Directive at Member States' level 2.Risk of evasion, avoidance and abuse 3. Risk of relocation

2.2.2. Control method(s) envisaged

Article 11 of the Directive mentions the specific provisions relating to the prevention of evasion, avoidance and abuse: delegated acts and administrative cooperation in tax matters. The risk of relocation are tackled by the choice of an appropriate set of tax rates and a broad definition of the taxable base.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description…….]	Diff./non-diff [1]	from EFTA[2] countries	from candidate countries[3]	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
	[XX.YY.YY.YY]	Diff./non-diff.	YES/NO	YES/NO	YES/NO	YES/NO

- New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual	Budget line	Type of	Contribution

[1] Diff. = Differentiated appropriations / Non-Diff. = Non-differentiated appropriations.
[2] EFTA: European Free Trade Association.
[3] Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

financial framework		expenditure				
	Number [Heading……..]	Diff./non-diff.	from EFTA countries	from candidate countries	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

Heading of multiannual financial framework:	Number	[Heading ……...…….]

DG: <…….>			Year **N**[4]	Year **N+1**	Year **N+2**	Year **N+3**	… enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
• Operational appropriations										
Number of budget line	Commitments	(1)								
	Payments	(2)								
Number of budget line	Commitments	(1a)								
	Payments	(2a)								
Appropriations of an administrative nature financed from the envelope for specific programmes[5]										
Number of budget line		(3)								
TOTAL appropriations for DG <…….>	Commitments	=1+1a +3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Payments	=2+2a +3	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

• TOTAL operational appropriations	Commitments	(4)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Payments	(5)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

[4] Year N is the year in which implementation of the proposal/initiative starts.

[5] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADING <….> of the multiannual financial framework	Commitments	=4+ 6	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Payments	=5+ 6	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

If more than one heading is affected by the proposal / initiative:

• TOTAL operational appropriations	Commitments	(4)								
	Payments	(5)								
• TOTAL appropriations of an administrative nature financed from the envelope for specific programmes		(6)								
TOTAL appropriations under HEADINGS 1 to 4 of the multiannual financial framework (Reference amount)	Commitments	=4+ 6	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Payments	=5+ 6	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A

Heading of multiannual financial framework:	**5**	" Administrative expenditure "

EUR million (to 3 decimal places)

		Year **2013**	Year **2014**	Year **2015**	Year **2016**	From **2017 onwards**
DG: TAXUD						
• Human resources		0.254	0.762	0.762	0.762	0.762
• Other administrative expenditure		0.040	0.036	0.036	0.036	0.036
TOTAL DG TAXUD		0.294	0.798	0.798	0.798	0.798

TOTAL appropriations under HEADING 5 of the multiannual financial framework	(Total commitments = Total payments)	0.294	0.798	0.798	0.798	0.798

EUR million (to 3 decimal places)

		Year **2013**	Year **2014**	Year **2015**	Year **2016**	From **2017 onwards**
TOTAL appropriations under HEADINGS 1 to 5 of the multiannual financial framework	Commitments	0.294	0.798	0.798	0.798	0.798
	Payments	0.294	0.798	0.798	0.798	0.798

3.2.2. Estimated impact on operational appropriations

– **X** The proposal/initiative does not require the use of operational appropriations

3.2.3. Estimated impact on appropriations of an administrative nature

3.2.3.1. Summary

– **X** The proposal/initiative requires the use of administrative appropriations, as explained below:

EUR million (to 3 decimal places)

	Year **2013**	Year **2014**	Year **2015**	Year **2016**	From **2017 onwards**
HEADING 5 of the multiannual financial framework					
Human resources	0.254	0.762	0.762	0.762	0.762
Other administrative expenditure	0.040	0.036	0.036	0.036	0.036
Subtotal HEADING 5 of the multiannual financial framework	0.294	0.798	0.798	0.798	0.798

Outside HEADING 5[6] of the multiannual financial framework					
Human resources					
Other expenditure of an administrative nature					
Subtotal outside HEADING 5 of the multiannual financial framework	N/A	N/A	N/A	N/A	N/A

TOTAL	0.294	0.798	0.798	0.798	0.798

3.2.3.2. Estimated requirements of human resources

– **X** The proposal/initiative requires the use of human resources, as explained below:

[6] Technical and/or administrative assistance and expenditure in support of the implementation of EU programmes and/or actions (former "BA" lines), indirect research, direct research.

Estimate to be expressed in full amounts (or at most to one decimal place)

		Year **2013**	Year **2014**	Year **2015**	Year **2016**	From **2017 onwards**
• Establishment plan posts (officials and temporary agents)						
14 01 01 01 (Headquarters and Commission's Representation Offices)		0.254	0.762	0.762	0.762	0.762
14 01 01 02 (Delegations)		p.m.	p.m.	p.m.	p.m.	p.m.
14 01 05 01 (Indirect research)		p.m.	p.m.	p.m.	p.m.	p.m.
10 01 05 01 (Direct research)		p.m.	p.m.	p.m.	p.m.	p.m.
• External personnel (in Full Time Equivalent unit: FTE)[7]						
14 01 02 01 (CA, INT, SNE from the "global envelope")		p.m.	p.m.	p.m.	p.m.	p.m.
14 01 02 02 (CA, INT, JED, LA and SNE in the delegations)		p.m.	p.m.	p.m.	p.m.	p.m.
XX 01 04 ***yy*** [8]	- at Headquarters[9]	p.m.	p.m.	p.m.	p.m.	p.m.
	- in delegations	p.m.	p.m.	p.m.	p.m.	p.m.
XX 01 05 02 (CA, INT, SNE - Indirect research)		p.m.	p.m.	p.m.	p.m.	p.m.
10 01 05 02 (CA, INT, SNE - Direct research)		p.m.	p.m.	p.m.	p.m.	p.m.
Other budget lines (specify)						
TOTAL		0.254	0.762	0.762	0.762	0.762

14 is the policy area or budget title concerned.

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

Description of tasks to be carried out:

Officials and temporary agents	The current staff allocation of DG TAXUD does not really take the totally issue of a common system FTT into account and will require internal redeployment. Main tasks of the assigned officials will be: to elaborate the technicalities on the practical functioning of the tax so as to help the negotiation process, monitor the subsequent implementation, prepare legal interpretations and working documents, contribute to the delegated acts on anti-avoidance/antri-abuse provisions, prepare infringement procedures as appropriate etc.

3.2.4. Compatibility with the current multiannual financial framework

– **X** Proposal/initiative is compatible the current multiannual financial framework.

3.2.5. Third-party contributions

– The proposal/initiative does not provide for co-financing by third parties

7 CA= Contract Agent; INT= agency staff ("*Intérimaire")*; JED= "*Jeune Expert en Délégation"* (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert.

8 Under the ceiling for external personnel from operational appropriations (former "BA" lines).

9 Essentially for Structural Funds, European Agricultural Fund for Rural Development (EAFRD) and European Fisheries Fund (EFF).

3.3. Estimated impact on revenue

– **X** Proposal/initiative has no financial impact on revenue.