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COVER NOTE

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COMMISSION STAFF WORKING DOCUMENT

EXECUTIVE SUMMARY OF THE IMPACT ASSESSMENT

Accompanying the document

Proposal for a COUNCIL DIRECTIVE

implementing enhanced cooperation in the area of financial transaction tax

{COM(2013) 71 final}
{SWD(2013) 28 final}

1. INTRODUCTION

On 28 September 2011, the Commission adopted a proposal[1] for a Council Directive on a common system of financial transaction tax (FTT) and amending Directive 2008/7/EC[2].

During the seven meetings of the Council's "Working Party on Tax Questions – Indirect Tax (FTT)" (hereafter "Council Working Party"), first under the Polish and then under the Danish Presidency, in which also numerous alternative design features of an FTT based on the Commission proposal were tabled, examined and discussed, it was clear that unanimous support for a common system of FTT, be it along the lines of the Commission proposal or any variant thereof, could not be reached at the level of all Member States.

At the Council meeting on 22 June 2012, the Member States that had expressed their opposition to a common system of FTT already at earlier stages reiterated their position. In those circumstances, several other Member States voiced their intention to request an authorisation for engaging in enhanced cooperation in accordance with Article 20 TEU and Article 329 TFEU.

In these circumstances, eleven Member States (Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia, Spain) have addressed formal requests to the Commission indicating that they wish to establish enhanced cooperation between themselves in the area of the establishment of a common system of FTT and that the Commission should submit a proposal to the Council to that end.

On 23 October 2012, the Commission presented its findings on these requests. It could not find a single incidence of non-compliance of these requests with Treaty provisions and, after assessing the political opportunity of progress on this file, proposed a Council Decision authorising enhanced cooperation in the area of financial transaction tax. Following the consent of the European Parliament on 12 December 2012, the Council authorised the enhanced co-operation procedure on 22 January 2013.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

As required by the Impact Assessment Guidelines, this analysis has benefited from the consultation of all interested parties. This analysis of policy options and impacts of implementing enhanced cooperation in the area of financial transaction tax actually benefited and builds on the Impact Assessment having accompanied the initial Commission proposal[3] for which an extensive consultation has been conducted, the annexes to that Impact

[1] COM(2011) 594 of 28 September 2011.

[2] Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital, OJ L 46, 21.2.2008, p. 11–22.

[3] SEC(2011)1102 final.

assessment as well as additional analysis undertaken and published by the European Commission[4].

3. PROBLEM DEFINITION

The financial sector and other sectors are currently subject to some non-harmonised national taxes on financial transactions that raise issues of non-taxation and double taxation both in the EU11+ and in the non-participating Member States and, thus, a fragmentation of the Single Market for financial services. One of the main aims of recent initiatives for taxing the financial sector had been and still is to receive a fair and substantial contribution from the financial sector to the financing of the rescue operations from which it benefited either directly or indirectly. The economic development since the outbreak of the economic and financial crisis and the relative successful stabilisation of financial markets do not imply a change of the characteristics of the problems to be tackled, namely huge cost to rescue the financial sector pre-financed by the tax payer, the ever more pressing need for bringing public finances back on a sustainable path and the absence of a fair and substantial contribution from the financial sector.

4. OBJECTIVES

The following general objectives can be defined:

- Harmonising existing legislation;
- Limiting undesirable market behaviour and thereby stabilizing markets;
- Ensuring that financial institutions make a fair and substantial contribution to covering the costs of the recent crisis.

5. POLICY OPTIONS

The baseline scenario against which alternative policy options are to be benchmarked should be a situation where no agreement on a common system of FTT can be found, neither at the level of EU27 nor at the level of EU11+.

This baseline scenario is characterised by a variety of un-coordinated national regimes under constant change (as some Member States decided to change their systems or introduce new forms of FTT)[5], characterised in general by:

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4 See e.g. the FTT-dedicated website of the European Commission http://ec.europa.eu/taxation_customs/taxation/other_taxes/financial_sector/index_en.htm or ECFIN(2012) – Securities Transaction Taxes: Macroeconomic Implications in a General-Equilibrium Model (economic paper by Rafal Raciborski, Julia Lendvai, Lukas Vogel) at http://ec.europa.eu/economy_finance/publications/economic_paper/2012/ecp450_en.htm.

5 In the enhanced cooperation zone, three Member States have different forms of FTT in place, while at least three others – at the time this analysis document was drafted – were planning to introduce their own national schemes in the near future.

- The scope of the tax in most countries is rather narrow and generally covers the trading in securities (especially shares) on regulated markets only, with little or no taxation of derivatives or over-the-counter transactions;
- Significant substitution of financial instruments, in order to avoid taxation;
- Specific exemptions of instruments and actors (e.g. for derivatives, shares/units of UCITS, market makers, broker-dealers etc.);
- The collection of the tax is usually done through intermediaries/brokers and the tax is typically not levied on both ends of the financial transaction.

In consequence, these taxes generate rather little revenue, do not invite for voluntary compliance, and the tax systems in place violate a basic principle of taxation that primarily aims at revenue-raising, i.e. to treat similar events (actors, instruments, market places) in a similar way. This, in turn, triggers a distortion in competition both within individual Member States and within the Single Market.

So as to overcome these shortcomings of the baseline, different alternatives for action could have been envisaged:

- Option A: an FTT at the global level;
- Option B: an FTT at the level of EU27;
- Option C: an FTT at the level of EU11+ through enhanced cooperation;
- Option D: an FTT co-ordinated outside the framework of the EU treaties.

Options A and B are to be discarded for the foreseeable future because of lack of political feasibility.

6. COMPARING POLICY OPTIONS

The impact assessment having accompanied the initial proposal of September 2011 has clearly shown that in the absence of coordinated EU action, none of the objectives of taxing the financial sector would be met. In other words, solely relying on un-coordinated national action would lead to a plethora of different national systems to tax the financial sector, thus, undermining the proper functioning of the Single Market, triggering numerous incidences of double taxation and – more importantly – of double non-taxation despite the overarching aim of ensuring that the financial sector makes a fair and substantial contribution to financing the costs of the crisis. No tax neutrality amongst different products, market places and actors would materialise, and it would be easy for actors to design their transactions, especially the more mobile ones, so that no tax would be due. In consequence, the potential revenue stream would be rather small and tiny (potentially except for countries hosting important financial centres), and taxation would hardly contribute to strengthen the effectiveness of regulation to discourage activities that do not improve the functioning and stability of financial markets while at the same time inviting for myopic behaviour and rent seeking.

Against this benchmark and in the absence of a global solution, a common system of a Financial Transaction Tax (FTT) for EU27 as proposed by the Commission in September

2011 (option B) would perform very positively in all dimensions. It would have been able to avoid any kind of double taxation or double non-taxation within EU27, to design the tax in a way that it is neutral across all actors, all markets and all instruments. Thanks to its broad base and powerful anti-relocation, anti-evasion and anti-avoidance features a EU27 common system would have allowed to make sure that the financial sector makes a fair and substantial contribution to financing the costs of the crisis, while at the same time discouraging some of the activities that do not improve the functioning or stability of financial markets.

However, the option of establishing a common system of FTT for EU27 was not possible for political reasons and will not be possible to be achieved in the foreseeable future. Thus, 11 Member States representing about two thirds of the entire EU27 economy, have requested to be allowed to go ahead under enhanced cooperation (option C) and based on the objectives and scope of the initial Commission proposal. While not being as effective as the same policy implemented at the level of EU27 (it will not be possible to avoid all incidents of double taxation within the entire EU27 for as long as not all Member States will have joined the FTT jurisdiction, and also the anti-relocation / anti-evasion provisions, albeit still being very powerful, will be a little bit less effective than the same FTT under an EU27 regime) a common system of FTT at the level of EU11+ will constitute a major improvement as compared to the baseline scenario.

Under the Danish Presidency, several sub-options of the FTT had also been discussed in the six meetings of the Council Working Party. At that time these discussions took place under the assumption that the common system of FTT would be applied at the level of EU27 and not at a subset of Member States. However, the same discussions might pop up in the discussions at the subset of Member States as well. The different variants discussed could be clustered in the following four sub-options:

- permanently exempting from the scope of the directive certain financial instruments, such as the issue and redemption of shares in UCITS or AIF, the trading of government bonds and bills, or the conclusion and modification of repo and derivative agreements (sub-option C.1);

- permanently exempting from the scope of the directive certain actors, such as the managers of public debt, regional development banks, the activities of pillar II and pillar III pension funds, so-called "internalisers" such as market makers, broker-dealers and proprietary traders (sub-option C.2);

- strengthening the anti-relocation features of the common system by complementing the residence principle with elements of the issuance principle and changing the regional tax incidence by altering the order of criteria also determining the assignment of the power to tax of the different Member States (sub-option C.3), and

- introducing the common system only gradually, i.e. temporarily exempting certain actors, markets and products and broadening the tax base only successively (sub-option C.4). So, it might take several years until the scope and objectives as proposed by the Commission in its initial proposal will have been implemented.

The analysis of the impacts of different policy options has found that both, option C and the four sub-options analysed would still feature better than the baseline scenario of doing nothing on all dimensions (as indicated by the "+" symbols in the below table), except for the criterion "anti-evasion", as in such a case non-taxation of the most mobile tax bases might turn out to be the dominant pattern of national tax regimes. However, only the sub-option C.3

would feature as well or even better (with respect to its revenue-raising and anti-relocation characteristics) than the initial Commission proposal adjusted for EU11+ (option C).

However, the analysis also invites for the conclusion that some of the more tailored measures in the sub-options C.1 to C.3 should be considered for adoption, while sub-option C.4 (phasing in of a fully-fledged FTT) would come with significant shortcomings as compared to the establishment in one go of a common system of FTT covering all products, all actors and all markets.

Thus, given the impossibility of establishing a common system of FTT at the level of EU27, and in the light of this analysis of policy options and impacts, the most promising policy might be to introduce the common system as proposed by the European Commission in September 2011, but at the subgroup of 11 Member States under enhanced cooperation, while adjusting and complementing it with the following elements of sub-options C.1, C.2 and C.3:

- exclude the issue of units and shares of UCITS and AIF from the scope of the directive so as not to run the risk of taxing the raising of capital;
- exclude the managers of public debt from the scope of the directive so as not to interfere with their activity of smoothing the market;
- add elements of the issuance principle, and complement the "authorisation" criterion so as to close a potential loophole under enhanced cooperation, thus, strengthen the anti-relocation features of the proposal.

It could be left to the outcome of negotiations amongst participating Member States to what extent they want to alter the order of criteria determining the Member State of establishment as well as the regional tax incidence, especially when they agreed on what all of them could consider as being a fair revenue-sharing system.

Table 1: Comparing the different policy options*

	Single Market	Tax neutrality	Anti-relocation/ evasion	Potential additional revenue	Discouraging excessive risk taking, rent seeking, myopic behaviour
Baseline (no action)	**0**	**0**	**0**	**0**	**0**
Option C (FTT at EU11)	++	+++	++	+++	++
<u>*Sub-option C.1*</u> *(EU11, but permanently exempting instruments)*					
UCITS/AIF	++	++	+	++	++
Public debt	++	++	++	++	++
Repos	++	++	+	+++	++
Derivatives	++	0	0	+	0
<u>*Sub-option C.2*</u> *(EU11, but permanently*					

exempting actors) Managers of public debt Development banks "Internalisers" Pension funds	 ++ + + +	 +++ ++ + ++	 ++ + + +	 +++ +++ + ++	 ++ ++ 0 +
<u>Sub-option C.3</u> *(EU11, but modifying criteria in Art.4)* Add elements of the issuance principle Change the order or criteria Re-establish the power of the "authorisation" criterion	 ++ ./. ++	 +++ ./. +++	 ++ ./. ++	 +++ ./. +++	 +++ ./. +++
<u>Sub-option C.4</u> *(EU11, but step by step /temporary exemptions)*	++	+	+	0 to +++	0+

* The effects are for within EU11+, as compared to the baseline scenario of non-action.

7. IMPLEMENTATION, MONITORING AND EVALUATION

The evaluation of the macroeconomic and microeconomic consequences of the application of the legislative measure could take place three years after the entry into force of the legislative measures implementing the Directive. The Commission could then submit to the Council a report on the technical functioning of the Directive.