Procedure file

Basic information

CNS - Consultation procedure Directive	2013/0045(CNS)	Awaiting final decision
Implementing enhanced cooperation in the area of financial transaction tax (FTT) See also 2011/0261(CNS) See also Decision 2013/52/EC 2012/0298(APP) Subject 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.04 Banks and credit 2.50.05 Insurance, pension funds 2.50.08 Financial services, financial reporting and auditing 2.70.02 Indirect taxation, VAT, excise duties 5.10.01 Convergence of economic policies, public deficit, interest rates 8.70.01 Financing of the budget, own resources		

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		14/01/2013
		S&D PODIMATA Anni	
		Shadow rapporteur	
		PPE KARAS Othmar	
		ALDE TREMOSA I BALCELLS Ramon	
		Verts/ALE LAMBERTS Philippe	
		ECR STREJČEK Ivo	
		GUE/NGL MATIAS Marisa	
	Committee for opinion	Rapporteur for opinion	Appointed
	BUDG Budgets		28/02/2013
		ALDE JENSEN Anne E.	
	EMPL Employment and Social Affairs	The committee decided not to give an opinion.	
	JURI Legal Affairs	The committee decided not to give an opinion.	
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3506	06/12/2016
	Economic and Financial Affairs ECOFIN	3356	09/12/2014
	Economic and Financial Affairs ECOFIN	3343	07/11/2014
	Economic and Financial Affairs ECOFIN	3310	06/05/2014
European Commission	Commission DG	Commissioner	
	Taxation and Customs Union	ŠEMETA Algirdas	

Key events

14/02/2013	Legislative proposal published	COM(2013)0071	Summary
12/03/2013	Committee referral announced in Parliament, 1st reading/single reading		
18/06/2013	Vote in committee, 1st reading/single reading		
24/06/2013	Committee report tabled for plenary, 1st reading/single reading	A7-0230/2013	Summary
02/07/2013	Debate in Parliament		
03/07/2013	Results of vote in Parliament		
03/07/2013	Decision by Parliament, 1st reading/single reading	T7-0312/2013	Summary
06/05/2014	Debate in Council	3310	
07/11/2014	Debate in Council	3343	Summary
09/12/2014	Debate in Council	3356	Summary
06/12/2016	Debate in Council	3506	

Technical information

Procedure reference	2013/0045(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
	See also 2011/0261(CNS) See also Decision 2013/52/EC 2012/0298(APP)
Legal basis	Treaty on the Functioning of the EU TFEU 113
Stage reached in procedure	Awaiting final decision
Committee dossier	ECON/7/11981

Documentation gateway

Legislative proposal		COM(2013)0071	14/02/2013	EC	Summary
Document attached to the procedure		SWD(2013)0028	14/02/2013	EC	
Document attached to the procedure		SWD(2013)0029	14/02/2013	EC	
Committee draft report		PE507.928	19/03/2013	EP	
Amendments tabled in committee		PE507.999	30/04/2013	EP	
Committee opinion	BUDG	PE506.353	16/05/2013	EP	
Economic and Social Committee: opinion, report		CES1768/2013	23/05/2013	ESC	
Committee report tabled for plenary, 1st reading/single reading		A7-0230/2013	24/06/2013	EP	Summary
Text adopted by Parliament, 1st reading/single reading		T7-0312/2013	03/07/2013	EP	Summary

Commission response to text adopted in plenary		SP(2013)625	24/09/2013	EC	

Additional information	
National parliaments	IPEX
European Commission	EUR-Lex

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

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

PROPOSED ACT: Council Directive.

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

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

However, during the Council meetings of 22 June and 10 July 2012, it was ascertained that essential differences in opinion persist between Member States regarding the need to establish a common system of FTT at EU level and that the principle of harmonised tax on financial transactions will not receive unanimous support within the Council in the foreseeable future.

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

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

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

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

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

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

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

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

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

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

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

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

DELEGATED ACTS: the proposal contains provisions empowering the Commission to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union.

2013/0045(CNS) - 24/06/2013 Committee report tabled for plenary, 1st reading/single reading

The Committee on Economic and Monetary Affairs adopted the report by Anni PODIMATA (S&D, EL) on the proposal for a Council directive implementing enhanced cooperation in the area of financial transaction tax. The committees amendments are made in the framework of the consultation procedure:

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

They also add a definition for high-frequency trading strategy.

Average value: the report adds a clause to the effect that financial transactions which serve to insure against risks directly associated with the business activities of a non-financial institution should not be taken into account in calculating the average value.

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

Establishment: Members add that a financial institution shall be deemed to be established in the territory of a participating Member State if it is a branch of an institution established in a participating Member State and therefore subject to FTT. They consider it important to strengthen the residence principle.

A new clause states that a financial instrument shall be deemed to be issued within the territory of a participating Member State where any of the conditions prescribed is fulfilled. The committee considers that the concept of issuance for financial instruments, derivatives and structured instruments should be defined and broadened so as to encompass all issuance cases related to the financial instruments concerned.

Transfer of legal title: in order to make tax avoidance a high-cost and low-profit venture and to ensure better enforcement, the residence and issuance principle should be complemented by the "transfer of legal title principle". The text provides that:

- a financial transaction in relation to which no FTT has been levied shall be deemed legally unenforceable and shall not result in a transfer of legal title of the underlying instrument;
- a financial transaction in relation to which no FTT has been levied shall be deemed not to fulfil the requirements for central clearing under Regulation (EU) No 648/2012 of on OTC derivatives, central counterparties and trade repositories [EMIR] or the own funds requirements under Regulation (EU) No .../2013 of the European Parliament and the Council of ... on prudential requirements for credit institutions and investment firms [CRR].

In the event of automatic electronic payment schemes with or without the participation of payment settlement agents, revenue authorities of a Member State may establish a system of automatic electronic collection of FTT and certificates for transferring legal title.

Rates: the report amends the rates applicable, which were expressed as minimum rates in the Commission proposal. However, the committee considers that in order to avoid a distortion of the common system of FTT under enhanced cooperation, the level of the applicable rates should be uniform.

Higher rates for OTC transactions: with a view to strengthening the position of regulated markets, and in particular of stock exchange trading, which is strictly regulated, controlled and transparent, as opposed to unregulated, less controlled and less transparent over-the-counter (OTC) trading, Member States should apply higher tax rates to OTC transactions. This will make it possible to effect a shift in trading from markets with little or no regulation to regulated markets. The higher rates should not apply to financial transactions of OTC derivatives where they objectively reduce risks and therefore serve the real economy.

The FTT Committee: the Commission shall establish an expert working group (the FTT Committee) comprising representatives from all Member States, the Commission, the ECB, and ESMA, to assist participating Member States in the effective implementation of this Directive and prevent tax fraud, tax evasion and aggressive tax planning and to preserve the integrity of the internal market.

In order to assess matters with regard to the effective execution of FTT, the participating Member States may form a sub-committee of the FTT Committee, comprising representatives of the participating Member States. The sub-committee shall only be in charge of matters that do not affect the non-participating Member States regarding the effective execution of FTT.

Collection of FTT: the Commission shall adopt implementing acts providing for uniform methods of collection of the FTT due and prevention of tax fraud, tax evasion and aggressive tax planning. Member States may adopt additional measures.

Report: every three years and for the first time by 31 December 2016, the Commission shall submit to the European Parliament and the Council a report on the application of this Directive, and, where appropriate, a proposal. In that report, the Commission shall assess the impact of certain provisions, such as the appropriate scope of FTT and the rate of taxation with regards to pension funds, taking due account of the diverse risk profiles and business models.

Management of FTT resources: lastly, a new recital recalls that according to the European Council's conclusions of 8 February 2013 on the Multiannual Financial Framework 2014-2020, part of the revenues from FTT should be allocated to the Union budget as genuine own resources. The use of FTT revenue as Union own resources is possible under the enhanced cooperation procedure only if national contributions of participating Member States to the Union budget are reduced by the same amount and avoid the disproportionate contribution by participating Member States compared to non-participating Member States. Once the FTT is implemented at Union level, all or part of the amount of the own resources originating from FTT should be added to the national contributions of the Member States in order to gather new funding sources for European investment without a reduction of the national contributions of the participating Member States to the Union budget.

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

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

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

They also add a definition for high-frequency trading and high-frequency trading strategy.

Average value: the report adds a clause to the effect that financial transactions which serve to insure against risks directly associated with the business activities of a non-financial institution should not be taken into account in calculating the average value.

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

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

Transfer of legal title: in order to make tax avoidance a high-cost and low-profit venture and to ensure better enforcement, the residence and issuance principle should be complemented by the "transfer of legal title principle". The text provides that:

- a financial transaction in relation to which no FTT has been levied shall be deemed legally unenforceable and shall not result in a transfer of legal title of the underlying instrument;
- a financial transaction in relation to which no FTT has been levied shall be deemed not to fulfil the requirements for central clearing under Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories [EMIR] or the own funds requirements under Regulation (EU) No .../2013 of the European Parliament and the Council of ... on prudential requirements for credit institutions and investment firms [CRR].

In the event of automatic electronic payment schemes with or without the participation of payment settlement agents, revenue authorities of a Member State may establish a system of automatic electronic collection of FTT and certificates for transferring legal title.

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

Higher rates for OTC transactions: with a view to strengthening the position of regulated markets, and in particular of stock exchange trading, which is strictly regulated, controlled and transparent, as opposed to unregulated, less controlled and less transparent over-the-counter (OTC) trading, Member States should apply higher tax rates to OTC transactions. This will make it possible to effect a shift in trading from markets with little or no regulation to regulated markets. The higher rates should not apply to financial transactions of OTC derivatives where they objectively reduce risks and therefore serve the real economy.

The FTT Committee: the Commission shall establish an expert working group (the FTT Committee) comprising representatives from all Member States, the Commission, the ECB, and ESMA, to assist participating Member States in the effective implementation of this Directive and prevent tax fraud, tax evasion and aggressive tax planning and to preserve the integrity of the internal market.

In order to assess matters with regard to the effective execution of FTT the participating Member States may form a sub-committee of the FTT Committee, comprising representatives of the participating Member States. The sub-committee shall only be in charge of matters that do not affect the non-participating Member States regarding the effective execution of FTT.

Collection of FTT: the Commission shall adopt implementing acts providing for uniform methods of collection of the FTT due and prevention of tax fraud, tax evasion and aggressive tax planning. Member States may adopt additional measures.

Reports: Member States shall, on an annual basis, submit to the Commission and to Eurostat transaction volumes against which revenues have been collected by type of institution. They shall make that information public.

Every three years and for the first time by 31 December 2016, the Commission shall submit to the European Parliament and the Council a report on the application of this Directive, and, where appropriate, a proposal. In that report, the Commission shall assess the impact of certain provisions, such as the appropriate scope of FTT and the rate of taxation with regards to pension funds, taking due account of the diverse risk profiles and business models.

Management of FTT resources: lastly, a new recital recalls that according to the European Council's conclusions of 8 February 2013 on the Multiannual Financial Framework 2014-2020, part of the revenues from FTT should be allocated to the Union budget as genuine own resources. The use of FTT revenue as Union own resources is possible under the enhanced cooperation procedure only if national contributions of participating Member States to the Union budget are reduced by the same amount and avoid the disproportionate contribution by participating Member States compared to non-participating Member States. Once FTT is implemented at Union level, all or part of the amount of the own resources originating from FTT should be added to the national contributions of the Member States in order to gather new funding sources for European investment without a reduction of the national contributions of the participating Member States to the Union budget.

2013/0045(CNS) - 07/11/2014 Debate in Council

The Council discussed a proposal aimed at introducing a financial transaction tax (FTT) in 11 Member States - Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain - through the "enhanced cooperation" procedure. The Commission's proposal now under discussion was tabled in February 2013. It requires unanimous agreement of the participants, while other Member States can also participate in deliberations.

At the ECOFIN Council Meeting of 6 May 2014, the Ministers of ten participating Member States released a Joint Statement which, essentially, contained the following commitments of these Member States:

- they aim to create a harmonised taxation regime to tax financial transactions, work with non-participating Member States and finalize viable solutions by the end of 2014;
- FTT should be implemented progressively, taxation of transactions in shares and some of the derivatives being the first step (at the latest by the end of 2015) and other steps are to be taken when economic impact is duly considered;
- Member States that already have further-reaching national FTT would be able to maintain it.

On this basis, the Italian Presidency has continued negotiations to discuss possible solutions to the open issues. The Italian Presidency has therefore directed its main efforts on: (i) defining the scope of the transactions that would constitute the scope of the FTT at the first phase, and (ii) seeking an agreement on the basic principle of taxation that would apply for the whole structure of the FTT.

Measurable progress has been made towards convergence of views of the Member States on the scope of the FTT. It noted that the participating member states agree that transactions in shares of companies listed on stock exchanges should be subject to the FTT. However, further work is required on derivatives to be subject to the FTT.

Taxation of transactions in derivatives: most participating Member States are in favour of taxing, as a first step of the FTT implementation, transactions in derivatives which are based on the underlying that fall under the scope of the FTT (i.e. the transactions in the underlying of which are subject to FTT - e.g. equity derivatives - where transactions in that equity will be within the scope of the FTT).

Some Member States have concerns with regard to the taxation of interest rate derivatives, at least in the first phase of the FTT. Other Member States have also expressed a preference to tax transactions in certain types of credit default swaps, and some other delegations, however, want to exempt equity derivatives.

Application of "issuance" and "residence" principles to define FTT: a group of participating Member States prefers the approach followed by the Commission proposal, i.e. application of the residence principle, supplemented by the issuance principle as last resort. However, a number of other participating Member States are in favour of the application of the issuance principle: according to this principle, the tax would be levied depending on the place of the establishment of the issuer.

In order to reach a compromise, the Presidency explored the possibility to combine the application of the issuance principle with a revenue allocation mechanism to ensure a distribution of FTT revenues among participating Member States taking into consideration also other parameters (residence principle, combination of residence and issuance, or economic drivers).

The Presidency proposed three possible methods for the allocation of revenues among Participating Member States. However, delegations could not agree on the solution of revenue distribution that would be acceptable to all of them.

The Presidency indicated that work would be intensified to enable an agreement in the near future, with the aim of implementing a first phase of the FTT from 1 January 2016.

2013/0045(CNS) - 09/12/2014 Debate in Council

The Council discussed developments concerning a proposal aimed at introducing a financial transaction tax (FTT) in 11 Member States through enhanced cooperation.

Given the importance that both participating and non-participating Member States attach to the project of introducing FTT in the participating Member States in a harmonised way, the Italian Presidency has continuously maintained this file high on its agenda and conducted work within the Council in a transparent manner.

The Presidency is of the view that the importance of the FTT project remains evident and that further discussions should continue to be driven towards reaching an overall compromise on the FTT. This would be an unprecedented positive step by a group of eleven EU Member States, committed towards a common goal in that area.

Further work: the Presidency considers that the following elements should be taken into consideration:

- Regarding the scope of the FTT, while progress has been made towards convergence of views of the Member States on the scope of the FTT for transactions in shares, the scope of the FTT for derivatives as well as the taxation principles for both transactions in shares and derivatives remain key outstanding issues. Concerning transactions in shares, the Presidency has worked on the categories of financial products to fall within the definition of shares. Participating Member States highlighted the opportunity that transactions in shares of publically listed companies will be covered by the FTT. A solution has been proposed with regard to transactions in non listed shares in order to address the concerns of some Member States about their taxation and to allow the other Member States to tax them within the framework of the Directive.

- Some further work is required on the scope of transactions in financial derivatives. The Presidency has focused its work on identifying the categories of derivatives subject to FTT in the first stage. Although a compromise has not been found yet, better understanding of some critical issues has been achieved. With regard to taxation principles underlying the future FTT (residence and/or issuance principles), further reflections on their application will be necessary.

- Future work on the FTT compromise text will also have to cover particular aspects of a possible collection mechanism of the FTT. Participating Member States have continuously confirmed their agreement on the need to proceed with a progressive implementation of the FTT. This would allow them, before broadening the scope of the FTT, to assess the real economic impact of this tax on the markets.

In conclusion, the Presidency encouraged the incoming Presidency to pursue work in a transparent and inclusive manner, while giving the file political attention, as appropriate, in order to facilitate the participating Member States to reach an agreement on taxation of the financial transactions within the expected deadlines.