Procedure file

Basic information

CNS - Consultation procedure Directive	2011/0261(CNS)	Procedure lapsed or withdrawn

Common system of financial transaction tax

Amending Directive 2008/7/EC 2006/0253(CNS)
See also 2012/0298(APP)
See also 2013/0045(CNS)

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

Key players

European Parliament	Committee responsible	Rapporteur	Appointed
	ECON Economic and Monetary Affairs		
	Committee for opinion	Rapporteur for opinion	Appointed
	DEVE Development		
	BUDG Budgets		
	IMCO Internal Market and Consumer Protection		
	JURI Legal Affairs		
Council of the European Union	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	3189	09/10/2012
	Economic and Financial Affairs ECOFIN	3153	13/03/2012
	Economic and Financial Affairs ECOFIN	3122	08/11/2011
European Commission	Commission DG	Commissioner	
	Taxation and Customs Union	ŠEMETA Algirdas	

Key events

28/09/2011	Legislative proposal published	COM(2011)0594	Summary
25/10/2011	Committee referral announced in Parliament		
08/11/2011	Debate in Council	3122	Summary
13/03/2012	Debate in Council	3153	Summary
25/04/2012	Vote in committee		

03/05/2012	Committee report tabled for plenary, 1st reading/single reading	A7-0154/2012	
23/05/2012	Results of vote in Parliament		
23/05/2012	Debate in Parliament		
23/05/2012	Decision by Parliament	T7-0217/2012	Summary
09/10/2012	Debate in Council	3189	Summary
30/04/2016	Proposal withdrawn by Commission		

Technical information

Procedure reference	2011/0261(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Directive
	Amending Directive 2008/7/EC 2006/0253(CNS) See also 2012/0298(APP) See also 2013/0045(CNS)
Legal basis	Treaty on the Functioning of the EU TFEU 113
Stage reached in procedure	Procedure lapsed or withdrawn
Committee dossier	ECON/7/07286

Documentation gateway

Legislative proposal		COM(2011)0594	28/09/2011	EC	Summary
Document attached to the procedure		SEC(2011)1102	28/09/2011	EC	
Document attached to the procedure		SEC(2011)1103	28/09/2011	EC	
Committee draft report		PE480.888	10/02/2012	EP	
Committee of the Regions: opinion		CDR0332/2011	15/02/2012	CofR	
Amendments tabled in committee		PE483.829	08/03/2012	EP	
Committee opinion	IMCO	PE480.802	20/03/2012	EP	
Committee opinion	BUDG	PE483.532	29/03/2012	EP	
Economic and Social Committee: opinion, report		CES0818/2012	29/03/2012	ESC	
Committee opinion	DEVE	PE480.643	30/03/2012	EP	
Committee report tabled for plenary, 1st reading/single reading		A7-0154/2012	03/05/2012	EP	
Text adopted by Parliament, 1st reading/single reading		T7-0217/2012	23/05/2012	EP	Summary
Commission response to text adopted in plenary		SP(2012)488	27/06/2012	EC	

Additional information

National parliaments	IPEX
European Commission	EUR-Lex

Common system of financial transaction tax

PURPOSE: to establish a common system of financial transaction tax and amending Directive 2008/7/EC.

PROPOSED ACT: Council Directive.

BACKGROUND: 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;
- dis-incentivise excessively risky activities by financial institutions;
- complement regulatory measures aimed at avoiding future crises;
- generate additional revenue for general budgets or specific policy purposes.

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. It is important that the basic features of a FTT in the Member States are harmonised at Union level. Indeed, 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 at EU level.

The European Commission already explored the idea of implementing a FTT in its Communication of 7 October 2010 on Taxation of the Financial Sector. The issue of financial sector taxation was also part of the Commission Communication on the EU Budget Review of 19 October 2010. The subsequent Proposal for a Council Decision on the system of own resources of the European Union of 29 June 2011 identified a FTT as a new own resource to be entered in the budget of the EU.

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.

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.

IMPACT ASSESSMENT: 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. 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 also shows that: (i) the FTT will impact market behaviour and business models within the financial sector; (ii) 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.

LEGAL BASIS: Article 113 TFEU.

CONTENT: in view of the analysis carried out by the Commission, and also in response to the numerous calls of the European Council, the European Parliament 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;
- to create appropriate disincentives for transactions that do not enhance the efficiency of financial markets thereby complementing regulatory measures aimed at avoiding future crises.

This proposal therefore provides for harmonisation of Member States? taxes on financial transactions to ensure the smooth functioning of the single market. It would create essentially a new revenue stream for the Member States and 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 main elements of the proposed Directive are as follows:

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

The draft Directive also proposes the following:

- 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;

- 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.

The use 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.

Chargeability, taxable amount and rates: the moment of chargeability is defined as the moment when the financial transaction occurs. 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. 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 other than those related to derivatives agreements; (b) 0.01% in respect of financial transactions financial transactions related to derivatives agreements.

BUDGETARYMPLICATION: 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 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.

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.

Common system of financial transaction tax

The Council took note of a presentation by the Commission of a proposal for a directive aimed at introducing a financial transaction tax in the EU.

It asked the Council working groups to examine the proposal.

The Commission considers that its proposal will enable the financial industry, currently under-taxed in relation to other sectors, to make a fair contribution, and will also create a disincentive for transactions that do not enhance the efficiency of financial markets.

The Commission estimates that, depending on market reactions, this proposal could yield tax revenues of up to EUR 57 billion a year.

In line with its proposal for a decision on the EU's system of own resources, the Commission proposes that the revenue generated by a financial transaction tax be used, either wholly or partially, to gradually replace member states' contributions to the EU budget, thus alleviating the burden on national treasuries.

Common system of financial transaction tax

The Council was briefed by the presidency on preparatory work undertaken on a proposal for a directive aimed at establishing an EU-wide financial transaction tax, and on its plans for taking work forward on the text. It held an exchange of views.

The Council decided to analyse further the Commission's proposal, whilst also exploring possible compromise solutions and alternative routes. The presidency asked the Commission to contribute to a comprehensive assessment of the tax contribution made by the financial sector and of the impact on growth and employment, and to help provide a clearer picture of the costs associated with financial regulation in general. The issue may be discussed at an informal meeting of EU finance ministers in Copenhagen on 30 and 31 March.

Experts will continue work on the proposal so as to enable the Council to hold a policy debate at its meeting on 21 June.

In line with its proposal for a decision on the EU's system of own resources, the Commission proposes that the revenue generated be used, either wholly or partially, to gradually replace member states' contributions to the EU budget, thereby alleviating the burden on national treasuries.

Interest in the idea of a financial transaction tax, first put forward in 1972 by economist James Tobin as a tax on currency transactions re-emerged in the wake of the 2008-09 financial crisis. The Commission also wants to promote a coordinated initiative at international level. It estimates that, depending on how markets react, yearly revenues could amount to EUR 57 billion on the basis of its proposal.

The proposal was discussed by the Council in November. Work has since continued at technical level, and a first examination of the proposal has been completed by experts.

Based on article 113 of the Treaty on the Functioning of the European Union, the directive would require unanimity for adoption by the Council, after consulting the European Parliament.

Common system of financial transaction tax

The Committee on Economic and Monetary Affairs adopted, in the framework of a special legislative procedure (Parliaments consultation), the report drafted by Anni PODIMATA (S&D, EL) on the proposal for a Council directive on a common system of financial transaction tax and amending Directive 2008/7/EC.

The committee suggested amending the proposal as follows:

Subject matter and scope: Members propose that the Directive shall apply to all financial transactions where it is issued by a legal entity that is registered in a Member State.

Definitions: the definition of financial transaction shall also cover currency spot transactions except where they are directly related to the commercial activities of a non-financial counterparty that is an end user.

According to the report, a pension fund or an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC, an investment manager of such fund or institution, and an entity set up for the purpose of investment of such funds or institutions acting solely and exclusively in the interest of such funds or institutions, shall not be considered a financial institution for the purposes of this Directive until the review of this Directive.

Establishment: for the purposes of this Directive, a financial institution shall be deemed to be established in the territory of a Member State where 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 in relation to a financial instrument issued within the territory of a Member State or of the Union. Members consider that this additional criterion would ensure that the FTT can also be collected on the basis of the issuance principle.

For the purpose of applying the Directive in a consistent manner, Member States' competent authorities shall closely cooperate with each other and with ESMA for the supervision of financial markets.

Issuance: Members have introduced a new article which defines the concept of issuance for financial instruments, derivatives and structured instruments.

Transfer of legal title: an amendment stipulates 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. Members consider that in order to reduce the risk of avoidance, the FTT should involve a system ensuring that if the tax is not paid the contracts to buy or sell an instrument are ruled unenforceable. According to this system, an untaxed instrument would be ineligible for central clearing, which would cost the evader several times more than the tax.

Application, structure and level of rates: Members state that in order to avoid tax arbitrage, Member States shall apply the same rate to all financial transactions that fall under the same category.

With a view to strengthening the position of stock exchange trading, which is strictly regulated, controlled and transparent, against unregulated, uncontrolled and less transparent off-exchange trading, the committee proposes that Member States should apply lower tax rates to financial transactions on stock exchanges than to off-exchange transactions. This will make it possible to effect a shift in trading from markets with little or no regulation to stock exchanges that are subject to strict regulation and control.

Person liable for payment of FTT to the tax authorities: in order to avoid the cascading effect, it should be made clear that, in case a financial institution acts in the name, for the account or by order of another financial institution, the taxable event occurs only once.

Time limits for the payment of FTT, to obligations intended to ensure payment, to the verification of payment: in order to avoid conflict situations whereby two or more Member States have a disagreement where a certain financial institution is deemed to be established, a formal registration requirement is added. A financial institution shall, within six months from the entry into force of this Directive, register at the tax authorities of the Member State where it is deemed to be established. A Member State shall inform other Member States of the financial institutions registered at their territory. Member states shall disclose annually to the Commission and to Eurostat transaction volumes against which revenues have been collected.

Prevention of evasion, avoidance and abuse: Members recommend the adoption of a European Regulation to prevent tax evasion, avoidance and abuse. The report insists on the following issues:

- the Commission shall establish an expert working group (FTT Committee) comprising representatives from the Member States that supervises the application of this Directive. The FTT Committee shall supervise financial transactions in order to detect avoidance schemes, to propose countermeasures and to coordinate the implementation of such countermeasures at national level where appropriate;
- the administrative burden imposed on tax authorities through the introduction of FTT shall be kept to a minimum and, to this end, the Commission shall encourage cooperation between national tax authorities;
- Eurostat shall collect and publish annually the financial flows subject to FTT within the Union;
- in order to verify taxable transactions carried out on a trading venue in a third country, Member States and, where applicable, the Commission shall make full use of instruments for cooperation on tax matters established by relevant international organisations;
- in order to adapt Member States' tax administrations to the provisions of this Directive and, in particular, in relation to administrative cooperation, Member States shall provide them with necessary and adequate human resources and technical equipment.

Lastly, the Commission shall conduct a thorough examination to analyse the administrative costs for regional and local authorities arising from the implementation of this Directive.

Review clause: Members call for the Commission to submit its report to the European Parliament. In that report, the Commission shall :

- examine the impact of the FTT on the proper functioning of the internal market, the financial markets and the real economy and assess the impact of certain provisions such as the appropriate scope of FTT, the possibility to distinguish different categories of financial products and assets with a view to charging higher rates after a certain ratio of cancelled orders, the rate of taxation and the exemption of institutions for occupational retirement provision. Where the Commission finds that distortion or abuse has taken place, it shall propose appropriate remedies;
- analyse and report on national FTT tax revenue collection based on the residency of financial institutions and to what extent that collection differs from tax distribution based on the underlying customer residency, namely to what extent financial consolidation centralises tax revenues in financial centres.

In its reports, the Commission shall take into account different forms of taxation of the financial sector, under discussion or already in place, and progress regarding the introduction of a wider FTT. Where appropriate, the Commission shall put forward proposals or undertake action in order to facilitate convergence and promote the introduction of a global FTT.

Common system of financial transaction tax

The European Parliament adopted by 417 votes to 250, with 4 abstentions, in the framework of a special legislative procedure (Parliaments consultation), a legislative resolution on the proposal for a Council directive on a common system of financial transaction tax and amending Directive 2008/7/EC.

A proposal to reject the Commission proposal, tabled by more than 40 Members, was rejected in plenary by 112 votes to 557, with 7 abstentions.

Through the amendments, Parliament proposed to amend the proposal as follows:

Subject matter and scope: Members propose that the Directive shall apply to all financial transactions where it is issued by a legal entity that is registered in a Member State.

Definitions: the definition of financial transaction shall also cover currency spot transactions except where they are directly related to the commercial activities of a non-financial counterparty that is an end user.

According to the resolution, a pension fund or an institution for occupational retirement provision as defined in Article 6(a) of Directive 2003/41/EC, an investment manager of such fund or institution, and an entity set up for the purpose of investment of such funds or institutions acting solely and exclusively in the interest of such funds or institutions, shall not be considered a financial institution for the purposes of this Directive until the review of this Directive.

Establishment: for the purposes of this Directive, a financial institution shall be deemed to be established in the territory of a Member State where 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 in relation to a financial instrument issued within the territory of a Member State or of the Union. Members consider that this additional criterion would ensure that the FTT can also be collected on the basis of the issuance principle.

For the purpose of applying the Directive in a consistent manner, Member States' competent authorities shall closely cooperate with each other and with ESMA for the supervision of financial markets.

Issuance: Parliament has introduced a new article which defines the concept of issuance for financial instruments, derivatives and structured instruments. This article stipulates, inter alia, that a financial instrument is deemed to be issued within the territory of a Member State or of the Union where it is issued by a legal entity that is registered in a Member State.

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

Application, structure and level of rates: Members state that in order to avoid tax arbitrage, Member States shall apply the same rate to all financial transactions that fall under the same category.

With a view to strengthening the position of stock exchange trading, which is strictly regulated, controlled and transparent, against unregulated, uncontrolled and less transparent off-exchange trading, Parliament proposes that Member States should apply lower tax rates to financial transactions on stock exchanges than to off-exchange transactions. This will make it possible to effect a shift in trading from markets with little or no regulation to stock exchanges that are subject to strict regulation and control.

Person liable for payment of FTT to the tax authorities: in order to avoid the cascading effect, it should be made clear that, in case a financial institution acts in the name, for the account or by order of another financial institution, the taxable event occurs only once.

Time limits for the payment of FTT, to obligations intended to ensure payment, to the verification of payment: in order to avoid conflict situations whereby two or more Member States have a disagreement where a certain financial institution is deemed to be established, a formal registration requirement is added. A financial institution shall, within six months from the entry into force of this Directive, register at the tax authorities of the Member State where it is deemed to be established. A Member State shall inform other Member States of the financial institutions registered at their territory. Member states shall disclose annually to the Commission and to Eurostat transaction volumes against which revenues have been collected.

Prevention of evasion, avoidance and abuse: Parliament recommends the adoption of a European Regulation to prevent tax evasion, avoidance and abuse. The resolution insists on the following issues:

- the Commission shall establish an expert working group (FTT Committee) comprising representatives from the Member States that supervises the application of this Directive. The FTT Committee shall supervise financial transactions in order to detect avoidance schemes, to propose countermeasures and to coordinate the implementation of such countermeasures at national level where appropriate;
- the administrative burden imposed on tax authorities through the introduction of FTT shall be kept to a minimum and, to this end, the Commission shall encourage cooperation between national tax authorities;
- Eurostat shall collect and publish annually the financial flows subject to FTT within the Union;
- in order to verify taxable transactions carried out on a trading venue in a third country, Member States and, where applicable, the Commission shall make full use of instruments for cooperation on tax matters established by relevant international organisations;
- in order to adapt Member States' tax administrations to the provisions of this Directive and, in particular, in relation to administrative cooperation, Member States shall provide them with necessary and adequate human resources and technical equipment. Particular attention shall be focused on providing training for officials.

The Commission shall conduct a thorough examination to analyse the administrative costs for regional and local authorities arising from the implementation of this Directive.

Review clause: Parliament calls for the Commission to submit its report to the European Parliament. In that report, the Commission shall:

- examine the impact of the FTT on the proper functioning of the internal market, the financial markets and the real economy and assess the impact of certain provisions such as the appropriate scope of FTT, the possibility to distinguish different categories of financial products and assets with a view to charging higher rates after a certain ratio of cancelled orders, the rate of taxation and the exemption of institutions for occupational retirement provision. Where the Commission finds that distortion or abuse has taken place, it shall propose appropriate remedies;
- analyse and report on national FTT tax revenue collection based on the residency of financial institutions and to what extent that collection differs from tax distribution based on the underlying customer residency, namely to what extent financial consolidation centralises tax revenues in financial centres.
- In its reports, the Commission shall take into account different forms of taxation of the financial sector, under discussion or already in place, and progress regarding the introduction of a wider FTT. Where appropriate, the Commission shall put forward proposals or undertake action in order to facilitate convergence and promote the introduction of a global FTT.

Common system of financial transaction tax

The Council was informed of developments regarding the possible introduction of a financial transaction tax (FTT), via enhanced cooperation, in a limited number of Member States.

The Commission indicated that it had received letters from seven Member States requesting a proposal to that effect (Belgium, Germany, Greece, France, Austria, Portugal and Slovenia), and four delegations announced that they would shortly follow suit (Estonia, Spain, Italy and Slovakia).

The Commission in 2011 proposed a directive aimed at introducing an EU-wide FTT, but a Council discussion on 22 June this year revealed insufficient support for the proposal.

Formal requirements for enhanced cooperation are laid down in article 20 of the Treaty on European Union and Articles 326 to 334 of the Treaty on the Functioning of the European Union.

The Member States must submit a request to the Commission, specifying the scope and the objectives of the enhanced cooperation, and the Commission may submit a proposal to the Council to that effect.

Authorisation to proceed with the enhanced cooperation can be granted by the Council, via qualified majority vote, after obtaining the consent of the European Parliament. The substance of the enhanced cooperation must be agreed unanimously by the participating Member States.