



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 14 January 2013
(OR. en)**

16977/12

**Interinstitutional File:
2012/0298 (APP)**

**FISC 183
ECOFIN 1000
OC 699**

LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject: Draft COUNCIL DECISION authorising enhanced cooperation in the
area of financial transaction tax
COMMON GUIDELINES
Consultation deadline for Croatia: 18.1.2013

DRAFT

COUNCIL DECISION

of

authorising enhanced cooperation in the area of financial transaction tax

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 329(1) thereof,

Having regard to the requests made by the Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia and the Slovak Republic,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament¹,

¹ OJ C , , p. .

Whereas:

- (1) In accordance with Article 3(3) of the Treaty on European Union (TEU), the Union shall establish an internal market.
- (2) Pursuant to Article 113 of the Treaty on the Functioning of the European Union (TFEU) the Council shall adopt provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonisation is necessary to ensure the establishment and the functioning of the internal market and to avoid distortion of competition.
- (3) In 2011, the Commission took note of a debate which was on-going at all levels on additional taxation of the financial sector. This debate originates from the desire to ensure that the financial sector fairly and substantially contributes to the costs of the crisis and that it is taxed in a fair way vis-à-vis other sectors for the future, to disincentivise 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.
- (4) Against this background, on 28 September 2011, the Commission adopted a proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC¹. The main objective of that proposal was to ensure the proper functioning of the internal market and to avoid distortion of competition.

¹ COM (2011) 594 final of 28 September 2011.

- (5) At the Council meeting of 22 June 2012, it was ascertained that there was no unanimous support for a common system of financial transaction tax (FTT) as proposed by the Commission. The European Council concluded on 29 June 2012 that the proposed Directive would not be adopted by the Council within a reasonable period. At the Council meeting of 10 July 2012, reference was made to persisting and essential differences in opinion as regards the need to establish a common system of FTT at the Union level and it was confirmed that the principle of harmonised taxation on financial transactions will not receive unanimous support within the Council in the foreseeable future.
- (6) In these circumstances, 11 Member States, namely Belgium, Germany, Estonia, Greece, Spain, France, Italy, Austria, Portugal, Slovenia and Slovakia, addressed requests to the Commission by letters received between 28 September and 23 October 2012 indicating that they wished to establish enhanced cooperation between themselves in the area of FTT. These Member States requested that the scope and objectives of the enhanced cooperation be based on the Commission proposal for a Directive of 28 September 2011. Reference was also made in particular to the need to avoid evasive actions, distortions and transfers to other jurisdictions.
- (7) The enhanced cooperation should provide the necessary legal framework for the establishment of a common system of FTT in the participating Member States and ensure that the basic features of the tax are harmonised. To the extent possible, incentives for tax arbitrage and allocation distortions between financial markets, as well as possibilities for double or non taxation, as well as evasive actions, should thereby be avoided.

- (8) The conditions laid down in Article 20 TEU and Articles 326 and 329 TFEU are fulfilled.
- (9) It was recorded at the Council meeting on 29 June 2012 and confirmed on 10 July 2012 that the objective to adopt a common system of FTT cannot be attained within a reasonable period by the Union as a whole. Consequently, the requirement set out in Article 20(2) TEU that enhanced cooperation may be adopted only as a last resort is fulfilled.
- (10) The substantive area within which enhanced cooperation would take place, namely, the establishment of a common system of FTT within the Union, is an area covered by Article 113 TFEU and therefore by the Treaties.
- (11) Enhanced cooperation in the area of the establishment of a common system of FTT aims at ensuring the proper functioning of the internal market. At the scale of this cooperation, it avoids the coexistence of differing national regimes and thus an undue fragmentation of the market, as well as ensuing problems in the form of distortions of competition, deflections of trade between products, actors and geographical areas, and incentives for operators to avoid taxation through operations with little economic value. Such issues are of particular relevance in the area concerned, which is marked by highly mobile tax bases. Thus, it furthers the objectives of the Union, protects its interests and reinforces its integration process in accordance with Article 20(1) TEU.

- (12) The establishment of a common harmonised system of FTT is not included in the list of areas of exclusive competence of the Union set out in Article 3(1) TFEU. Since it serves the functioning of the internal market, in accordance with Article 113 TFEU, it falls under the shared competences of the Union within the meaning of Article 4 TFEU and is thus within the framework of the Union's non-exclusive competence.
- (13) Enhanced cooperation in the area concerned complies with the Treaties and Union law, in accordance with the first paragraph of Article 326 TFEU. In line with the second paragraph of Article 326 TFEU, it will not undermine the internal market or economic, social and territorial cohesion, nor constitute a barrier to or discrimination in trade between Member States or distort competition between them.
- (14) Enhanced cooperation in the area concerned respects the competences, rights and obligations of non-participating Member States, in accordance with Article 327 TFEU. Such system would not affect the possibility for non-participating Member States to keep or introduce an FTT on the basis of non-harmonised national rules. The common system of FTT would attribute taxing rights to the participating Member States only on the basis of appropriate connecting factors.
- (15) Subject to compliance with any conditions of participation laid down in this Decision, enhanced cooperation in the area referred to therein is open at any time to all Member States willing to comply with the acts already adopted within this framework in accordance with Article 328 TFEU,

HAS ADOPTED THIS DECISION:

Article 1

The Kingdom of Belgium, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Austria, the Portuguese Republic, the Republic of Slovenia and the Slovak Republic are hereby authorised to establish enhanced cooperation between themselves in the area of the establishment of a common system of financial transaction tax, by applying the relevant provisions of the Treaties.

Article 2

This Decision shall enter into force on the day of its adoption.

Done at Brussels,

For the Council

The President
