



EUROPEAN COMMISSION

Brussels, 7.5.2012
C/2012/ 2674 final

Dear President,

The Commission would like to thank the Bundesrat for its support for the Financial Transaction Tax (FTT) proposal {COM(2011) 594 final} and apologises for the delay in submitting its response.

The Commission would like to stress that the legal basis for the proposed Directive is Article 113 TFEU which aims at harmonisation of legislation in the field of indirect taxes to the extent that such harmonisation is necessary to ensure the establishment and functioning of the internal market and to avoid distortion of competition. The proposal does not go beyond what is necessary for this purpose and, consequently, only sets out the basic features necessary to avoid distortions of the internal market, including distortions of competition, notably through double or non taxation in the EU. For the same reason, as usual in indirect taxation, the Commission has proposed minimum rates to be applied. The Commission does not expect significant rate differentials between Member States in view of the nature of the transactions subject to tax: rates set at too high a level or large rate differentials would cause excessive market reactions or relocations within the EU.

With regard to the other issues raised by the Bundesrat, the Commission would like to provide the following clarifications:

- The proposal aims at taxing all similar financial instruments to avoid distortions. As far as the taxable amount and tax rates are concerned, the Commission distinguished between transactions related to derivatives and other taxable transactions. The rationale behind this is that these two categories differ in nature and will react differently to tax. Furthermore, for reasons of straightforward and upfront application of the tax, the Commission has proposed taxation of the notional amount in the case of derivatives which could result in a much higher effective tax burden compared to other financial instruments if this was not corrected by setting lower tax rates.
- The Commission used as much as possible references to existing (regulatory) EU legislation for the definition of financial instruments and institutions covered by the proposal. However, the underlying objectives of regulatory and taxation proposals are not equal and thus some additional definitions for tax purposes (e.g. on financial institutions) have been proposed. The scope of the proposed harmonised tax needs to be as broad as possible to avoid distortions.

The proposal concentrates on setting a common structure for the FTT and common provisions on chargeability for the tax to function at EU level and leaves sufficient

Mr Horst SEEHOFER
President of the Bundesrat
Leipziger Straße 3 - 4
D-10117 BERLIN

margin of manoeuvre for the Member States, for example regarding the details in the field of payment and enforcement of the payment of the proposed tax. The Member States' key obligations are though fixed in the proposed Directive itself. The proposal also contains some more specific rules that contribute to ensuring payment of FTT due by financial institutions, whether or not they are established in the territory of a Member State, notably joint and several liability for the payment of the tax due (Article 9(3) of the Proposal). Moreover, according to the proposal, Member States shall make use of existing administrative cooperation instruments wherever necessary.

- *According to the proposal, the taxation rights of Member States are based on the residence principle, which would ensure a fairer attribution of these rights than under its alternatives. This system implies that FTT is levied on both sides of the transaction, in case a financial institution (deemed to be) established in the EU is involved on each side of the transaction or only on one side in case only one such financial institution is involved.*
- *Any double taxation, due to the cumulative application of the harmonised FTT and of taxes levied by countries outside the Union, would need to be addressed in appropriate fora and agreements, also with a view to achieving a more globalised implementation of the tax.*
- *It is widely accepted that a modern (indirect) tax should have wide scope with few exemptions so as to allow for low tax rates. This approach results in better tax neutrality and avoids economic distortions and tax circumvention. It is particularly relevant in the case of a financial transaction tax because of the wide range of 'financial' institutions active on the markets, as well as the large number of instruments – some of which are close substitutes vis-à-vis other instruments concerned - being traded. Exceptions to this approach need to be limited to the greatest extent possible. In the proposal, therefore, exemptions are foreseen only because of (potential) conflict with regulatory objectives (e.g. central clearing parties are out of scope), because of the particular legal status of Union bodies (e.g. the European Investment Bank) or of other international bodies or in order to ring-fence monetary policy (transactions with the European Central Bank and central banks of Member States are out of scope). Equally, there are good reasons for leaving primary market transactions as a rule outside the scope of the harmonised rules, in order not to affect the raising of capital through issuance of shares and bonds. In addition, the Commission considers that the harmonised FTT needs to be neutral with respect to the financing of public on the one hand and private bodies on the other hand. Therefore, primary market transactions relating to bonds, both for public or private financing purposes are excluded from the scope of the proposed tax. However, as a rule, all secondary market transactions are included in the scope.*

The Commission hopes that these explanations serve to clarify the points raised in the opinion and is looking forward to continuing its political dialogue with the Bundesrat.

Yours faithfully,

*Maroš Šefčovič
Vice-President*