



EUROPEAN COMMISSION

Brussels, 5.8.2013
C(2013) 5061 final

Dear President,

The Commission would like to thank the Bundesrat for its Opinion concerning the Proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax {COM(2013) 71 final} and for its support for the objectives and scope of this Proposal.

The Commission would like to stress that one of the objectives of the proposal is to ask a fair and substantial contribution of the financial sector to covering the cost of the recent crisis and to ensure a level playing field with other sectors from a taxation point of view. Consequently, the focus of the proposal is on financial institutions and certainly not on taxation of the real economy or citizens. Strong mitigating measures have been built in, such as leaving consumer and enterprise loans or primary market transactions in shares and bonds outside the scope of the proposed financial transaction tax (FTT). Any impacts on citizens and non-financial undertakings would be extremely moderate and would depend on the possibilities for financial institutions to pass the tax on to customers and thus on the market conditions of financial institutions. Also, certain business models will change and thus reduce the incidence of the FTT for the real economy even further.

Furthermore, the Commission has opted for a broad-scope tax with few exemptions. This approach has the advantage to ensure tax neutrality among actors and to address tax avoidance possibilities. In that respect, pension funds, insurance companies also covering pensions, regional development institutions with substantial financial transactions, are considered to be financial institutions for the sake of the proposal. Also, the cumulative impacts of preferential tax treatment should be kept in mind. Given the fact that investing in pension funds and similar products typically already benefits from substantial tax advantages (in Germany e.g. direct cash and tax subsidies) it was considered inappropriate to provide such activities with an extra tax benefit by exempting pension funds and insurance companies. Similarly, transactions of market-makers are not excluded from the scope of the proposed tax. However, to mitigate the cumulative effect of the tax, the Commission proposed

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that where a financial institution acts in the name or for the account of another financial institution only that other financial institution shall be liable to pay FTT.

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

- *The Commission will continue to promote the proposed FTT at EU and international level.*
- *Regarding the delegated and implementing powers set out in Articles 11(2) and (5), second subparagraph, of its proposal, the Commission maintains that those powers neither allow the Commission to touch upon essential elements of the act proposed, nor to add such elements to it. The Commission maintains that there are good reasons for this aspect of its proposal. Common rules on the details in question are likely to be needed in order to ensure a smooth functioning of the proposed tax and avoid mismatches, as well as to reduce compliance costs for the financial operators. In particular, common methods for collecting the tax are likely to prove to be more effective and efficient, and thus to serve the purposes of the Directive better than a multitude of pure national rules. At the same time, the possibility for the Commission to adopt implementing acts in this area, as opposed to a solution whereby the details of collection methods are set out in the Directive itself, allows for a sufficiently easy adaptation to new circumstances.*
- *Joint and several liability of public debt managers would as a rule only come into play as a last resort. According to the Directive as proposed, such liability supposes that the person designated as the debtor of the tax does not pay FTT within the time limit set. Joint and several liability is not otherwise compelled by the text proposed, and designation of additional (jointly and severally liable) debtors lies in the discretion of Member States: cf. draft Article 10(4). A rule such as draft Article 10(4) would not, in particular, compel Member States to include public debt managers into the scope of the national provision adopted under its terms. In practice, thus, the obligations falling on public debt managers should normally concentrate on reporting and the keeping of relevant data.*

Finally, the Commission would point to the ongoing analysis of the Commission's proposal in the European Parliament and Council where the issues raised by the Bundesrat are further discussed.

The Commission hopes that these clarifications address the concerns raised by the Bundesrat and looks forward to continuing our political dialogue in the future.

Yours faithfully,

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Vice-President*