ASSEMBLEIA DA REPÚBLICA

EUROPEAN AFFAIRS COMMITTEE

WRITTEN OPINION
COM(2013) 71
Proposal for a COUNCIL DIRECTIVE to implement enhanced cooperation in the area of financial transaction tax

PART I – INTRODUCTORY NOTE

In accordance with Article 7 of Law no. 43/2006 of 25 August 2006, as amended by Law no. 21/2012 of 17 May 2012, on the monitoring, assessment and pronouncement by the Assembleia da República within the scope of the process of constructing the European Union, and in accordance with the procedure for the scrutiny of European draft acts approved on 20 January 2010, the European Affairs Committee received, on 18 February 2013, the Proposal for a COUNCIL DIRECTIVE on the implementation of enhanced cooperation in the area of financial transaction tax [COM(2013)71].

The aforementioned draft act was referred to the Committee on Budget, Finance and Public Administration on 19 February 2013, which analysed the draft act and on 3 April 2013 approved the Report of Jorge Paulo Oliveira, MP, annexed to this Written Opinion, of which it forms an integral part.

In this context, the European Affairs Committee (EAC), decided at its regular meeting of 26 March, 2013 to assign the preparation of this Written Opinion to Honório Novo, MP, of the Parliamentary Group of the Portuguese Communist Party.

PART II – RECITALS

1. **Background**

a) Following a debate that had become widespread, essentially imposed by the increasing deterioration in the social and economic situation caused by the financial crisis, the EC itself decided in October 2010 to present a "Communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions" dealing with taxation in the financial sector. A little later, on 28 September 2011, the European Commission took the initiative to publicly present a Proposal for a Directive (594/2011/CE), that by changing Directive 2008/7/EC, proposed the creation of a common system of tax on financial transactions.

b) It should also be noted that this Directive (594/2011/CE), on the creation of a common system of tax on most financial transactions, was prepared following a mandate from the European Council meeting of 11 March 2011, where the Heads of State and Government of the European Union decided to "develop and explore the possibility" of creating this type of financial transaction tax (...).

The proposed Directive was prepared under Article 113 of the Treaty on the Functioning of the European Union. The legal basis therefore requires approval by consensus with a unanimous vote of the European Council.

Following the debate, Directive 594/2011/CE obtained the majority support of the European Parliament on 23 May 2012 and also of the Economic and Social Committee and the Committee of the Regions. However, despite the apparent openness shown by the Council in March 2011, Directive 594/2011/CE was not approved in the Council of the European Union.

In fact, according to the public reports of the Council meetings, this issue was the subject of many discussions in the Council, (as well those also taking place at the meetings of ECOFIN), at least on 8 November 2011, 13 March 2012 and 9 October 2012. It is a matter of fact that there is no consensus on the creation of a tax on financial transactions, particularly from the European Council of 22 June 2012.

c) Under the parliamentary scrutiny of legislative initiatives of the European Commission, and in compliance with Article 7 of Law no. 43/2006 of 25 August, as amended by Law no. 21/2012 of 17 May on monitoring, assessment and pronouncement by the Parliament in the process of constructing the European Union, the European Affairs Committee considered the report drawn up by Carlos Costa Neves, MP, which was approved on 29 November 2012.

It should be noted that the assessment by the Assembleia da República of this European Commission initiative occurred at a time when, there being an absence of the unanimity required under Article 113 of the TFEU to create a tax on financial transactions, the proposed EC directive on a common system of taxation on financial transactions had already in practice been abandoned.

d) With the rejection of the proposal by the Council for the creation of a financial transaction tax (FTT) applicable in the European Union for all of its members, 11 of the 27 Member States, Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain, , i.e. less than half of the member countries of the EU, decided to submit requests to the European Commission to establish amongst themselves, in accordance with Article 20 of the Treaty on European Union and Articles 326 to 329 of the Treaty on the Functioning of the European Union, enhanced cooperation to create a common FTT system.

It is in this context, and in response to the request of those eleven Member States, that the European Commission presented a proposal for a Council Decision "authorising enhanced cooperation in the field of tax on financial transactions (COM(2012)631)."

e) This Proposal for a Decision was subjected to the scrutiny of the Committee on Budget, Finance and Public Administration (CBFPA), and a report was drawn up by Jorge Paulo Oliveira, MP, and approved on 5 December 2012. It concluded, among other things, that the Committee's initiative was not legislative in nature (which was why it was not subject to any check to ascertain whether it violated the principle of subsidiarity). Furthermore, the subject matter did not fall within the exclusive legislative competence of the Assembly, which considered it urgent to adopt a directive on a common FTT system for general application, which was favourable to the Proposal for a Council Decision "authorising enhanced cooperation in the field of tax on financial transactions'', the only aspect that did not achieve the unanimity of the different parliamentary groups.

f) Following the approval of the CBFPA Report on this Proposal for a Council Decision "authorising enhanced cooperation in the area of the FTT [COM(2012)631]," the European Affairs Committee appointed, on 6 December 2012, Vitalino Canas, MP, to prepare the Written Opinion of the EAC on this initiative. Since discussion of this initiative was scheduled for the European Council of 13 and 14 December 2012, the EAC timetabled an appraisal of the Written Opinion of Vitalino Canas, MP, at its regular Parliamentary Committee meeting of 11 December, in order to conclude the scrutiny process before the December meeting of the European Council.

At the regular meeting of 11 December, the EAC considered that the "report and opinion of the Assembleia da República on such an important matter should be more substantive and reflect its possible impact," and concluded that "the vote on the Written Opinion would be delayed to allow hearings to be held on the subject."

In this regard two hearings were held by the EAC on 6 February 2013 with the Portuguese Banking Association and the Secretary of State for Fiscal Affairs.

g) However, the European Council of 13 and 14 December 2012 postponed to a new extraordinary meeting, scheduled for January 2013, the debate and approval of the Proposal for a Council Decision authorising enhanced cooperation in the area of the FTT [COM(2012)631]. This took place on 22 January 2013, when the Council decided to authorise enhanced cooperation in the field of tax on financial transactions.

In these circumstances, given that the hearings timetabled by the EAC were only scheduled for 6 February, and notwithstanding the existence of a Report on the initiative of the European Commission prepared and approved by CBFPA on 5 December 2012, the European Affairs Committee decided to avoid any scrutiny of the initiative [COM(2012)631], and decided not to proceed with the submission of any document to the European institutions on that initiative.

Finally, the EAC decided to resume consideration of the topic when the European Commission, once enhanced cooperation in the area of the FTT was authorised, presented the Directive Proposal, and the CBFPA Report on the initiative [COM(2012)631] would be used and resumed.

It is this Proposal for a Council Directive to "implement enhanced cooperation in the field of tax on financial transactions, COM(2013)71", which has also been the subject of Report approved by a majority of the CBFPA which is now the subject of a Written Opinion from the EAC, to be scrutinised by the Assembleia da República.

2. Content and objectives

During the last few years, particularly between 2008 and 2012, financial institutions have benefited directly and indirectly from emergency measures and guarantees

funded by the taxpayers of the various Member States. These operations, together with the widespread stagnation or contraction in economic activity as a result of austerity policies, have led to a deterioration of public finances across Europe of over 20% of GDP.

This state participation in solving the problems of the financial system is coupled with the fact that most financial and insurance services are exempt from Value Added Tax.

The introduction of a common EU system of Financial Transaction Tax (FTT) could create more appropriate conditions - from the point of view of controlling evasion and relocation, or the phenomena of double taxation or double non-taxation - for a fairer and more substantial contribution by the financial sector to the costs of the financial and economic crisis and, furthermore, discourage the speculative nature of some activities that do not improve the functioning and stability of financial markets.

As the option to introduce a common system of FTT in the EU27 was not approved by the Council, 11 Member States, corresponding to about two thirds of the combined European Union economy, requested enhanced cooperation based on the principles and objectives of the European Commission's initial proposal of September 2011 (Proposal for a Directive 594/2011/CE).

The European Commission states that the introduction of a system of FTT for eleven Member States within the framework of this cooperation will not be as effective as it would be if it covered all of the Member States, regardless of whether they expect that EU11+ would be an improvement on the baseline scenario.

Concerning the initial EC proposal of September 2011, some changes were made, including:

- guaranteeing that the new FTT jurisdiction is limited to the participating Member States, taxing financial transactions made within a Member State in accordance with the original proposal, but ensuring that Directive 2008/7/EC of the Council, of 12 February 2008, which would be amended by the EC proposal of September 2011, will remain unchanged in the remaining field of application;

- meeting the requests of the participating Member States to introduce measures to prevent evasive action, distortions and transfers to other jurisdictions, including linking taxation according to the principle place of business (already in force) with elements of taxation according to the principle of issue, making it less advantageous to relocate activities and establishments outside the jurisdiction of the FTT.

According to the contents of the initial EC proposal, which is now essentially readopted, the new tax will therefore apply to the purchase and sale of financial instruments, namely, shares in companies, bonds, shares of investment funds, structured products and derivatives, money market instruments (with the exception of instruments of payment). It will also focus on the signing and modification of derivative contracts, as well as on transfers between separate entities within the same group, even if they are not effective acquisitions or sales.

The new tax will not focus only on trade in organised and regulated markets, but will also cover other types of commerce, including off-exchange markets.

Moreover, according to the proposal of the European Commission, this new tax will not affect the refinancing possibilities of financial institutions and Member States, or monetary policy in general and the management of public debt. It will not be applicable to transactions made with the European Union, the European Central Bank, the European Investment Bank, the European Atomic Energy Community, the European Financial Stability Facility or the European Stability Mechanism and the central banks of the Member States. Similarly, and in obedience to the directive 2008/7/EC, which remains unchanged, most transactions in the primary markets are also excluded from taxation.

Current financial activities are also left out of this new FTT, namely: the signing of insurance contracts, mortgage lending, consumer credit, loans to companies, payment services and foreign exchange transactions in cash, except derivative contracts based on foreign exchange transactions.

The new tax on financial transactions will therefore apply to most financial transactions with the proviso that at least one financial institution (such as investment firms, organised markets, credit institutions, insurance and reinsurance companies, collective investment organisations and pension funds and fund managers, as well as any other company where a significant part of their activity involves transactions) is a party to that transaction, acting on their own behalf or on behalf of others in this transaction.

According to the proposal, the FTT rates to be applied by Member States shall not be less than 0.1% of all financial transactions not included in derivative contracts, or less than 0.01% on all other financial transactions relating to derivative contracts, focusing on gross transactions before any deductions.

A central role will be assigned to the participating Member States as regards the implementation of mechanisms and tools to ensure that the FTT is applied accurately and in a timely manner. They must at the same time prevent and guarantee effective combat against tax evasion, including the creation of general anti-abuse rules. At the same time power is delegated to the European Commission, under Article 290 of the Treaty of the Functioning of the European Union, to adopt detailed measures and standards for the technical implementation of the new tax system (obligations on registration, accounting and reporting).

As a way to assess the impact of macroeconomic and microeconomic application of the FTT, the EC proposes to submit a report on its technical functioning three years after the entry into force of the legislation implementing the directive in question.

Based on studies done by the European Commission, the total revenue amounts initially estimated come out at between 30 and 35 billion euros per year in all participating Member States, if the initial proposal of the EC, of September 2011, had been fully implemented with EU11 + enhanced cooperation. Taking into account the net effect of the adjustments made in comparison with the original proposal, the EC admits there may be some reduction in the estimate for figures near the lower limit. It should be recalled that the application of this new tax on financial transactions in all 27

Member States, could rise, according to estimates given at the time, to about 57 billion euros.

As for the use of revenue from the FTT tax system, it should be recalled that the Council Decision on the system of the EU's own resources presented to the European Commission on 29 June 2011 and amended on 9 November 2011, provides that a portion of the revenue generated by the FTT is used as an own resource for the EU budget, and hence the GNI-based resource from the participating Member States would be reduced accordingly. In this context, and given that the FTT was rejected as a new tax for the EU27, the European Council on 7 and 8 February 2013 invited the Member States participating in enhanced cooperation to examine whether the FTT could form the basis of new own resources of the EU budget.

3. Legal basis

Enhanced cooperation, involving 11 of the 27 Member States on the establishment of a system of Financial Transaction Tax (FTT) was authorised by Decision 2013/52/UE of the Council adopted on 22 January 2013.

This proposal for a directive presented by the EC for the creation of an FTT applicable to participants of this enhanced cooperation, was drawn up on the basis of Article 113 of the Treaty on the Functioning of the European Union (TFEU), aiming at harmonisation, according to the EC, to ensure the proper functioning of the internal market and avoid distortions of competition. The financial institutions of the Member States not participating, according to the EC, will benefit from the existence of cooperation as they will be confronted with a single, common FTT.

Accordingly, and bearing in mind that the goal of creating an FTT with common and harmonised features cannot be adequately achieved by the Member States, the proposal to establish a single framework for the creation of this new tax, presented in this policy, respects the principle of subsidiarity and proportionality set out in Article 5 of the Treaty of the European Union. In reality, the objectives of harmonisation will be better achieved at Union level, in this case through enhanced cooperation, and the use

of a directive for this purpose does not exceed what is considered necessary and appropriate to achieving the objectives to be obtained.

PART III - OPINION OF THE RAPPORTEUR

The financialisation of the economy - without any corresponding real growth in productive activity - is the centrepiece of the development strategy of the prevailing neo-liberalism. The essential instruments of this strategy are the liberalisation and deregulation of financial markets, the use of tax havens, the extreme contraction of spending and investment and the privatisation of public utilities and companies essential to economic development and social welfare.

With the deepening of the crisis, governments adopted measures that basically allocated vast amounts of public financial resources to the banking system in order to prevent bankruptcies and promote the recapitalisation of many financial institutions. These funds also served to conceal and sanitise harmful and fraudulent management. The public resources mobilised to "bail out" the financial system had, to a large extent, serious consequences in depleting and profoundly damaging public accounts.

In addition to the negative effects on public accounts, the consequence of this mobilisation of public funds to aid the private financial system was to condition or drastically limit support for the real economy, to abandon or postpone public investment projects and, at the social level, to adopt measures to restrain or restrict spending and welfare benefits.

To cope with the growing indignation of the people and workers in the Member States, proposals were announced to promote "profound changes" in the system and rules for the regulation and supervision of the financial system, including measures to disrupt the immense network of tax havens. Nearly six years after the first signs of the financial crisis, tax havens remain in "good health" and transfers to these offshore accounts amount to billions of euros in tax evasion annually, contributing all too easily to a resumption of the financialisation strategies of the world economy, in a repetition of the spiral that led to the current crisis.

Among many other measures to tackle the crisis and its consequences, we have insisted on strengthening the role and intervention of the state in strategic sectors and areas, particularly in the financial sector, and in energy, transport and communications. We continue to advocate the abandonment of the policy of privatisation and an end to tax havens. We insist on the urgency of generating new tax revenue from those who contribute little or nothing but clearly have the means and assets to do so or enjoy extremely high profits with very low taxation.

As an example of these "new" tax revenues, we have for many years proposed that the state starts taxing the essential movement of capital in exchange and financial markets. The introduction of this new tax, despite its modest rate, is inspired by the "Tobin Tax" and was always refused, year after year, by successive governments and respective majorities in Portugal.

The introduction of a tax similar to the "Tobin Tax" raised and raises technical problems in applying it multilaterally. But there are technical issues that have over the years stalled its effective and global introduction. The central question - as in off-shores - is the lack of political will to control the movements of speculative capital, to contribute to self-regulation via taxation, thereby improving very significantly the ability of Member States to intervene to generate substantial additional revenue which can be applied to social goals and public policies. We have always advocated the application of this new tax irrespective of any external decision. It could raise significant funds at a time when, because of the policies dictated by the Troika in Portugal, workers, pensioners and small businesses are being deprived of income and rights. It could also assist the transfer of millions of euros from the state to the financial system.

The lack of political will to globally launch a Tax on the Financial Transactions that would oblige most companies in the financial system to make a small contribution to the fiscal burden that has become so increasingly brutal and unfair to most workers and peoples, has become clear in the debates that occurred in the last two years following the financial and economic crisis.

Within the G20, the opposition soon became apparent of those who wish to keep the financial system in the hands of speculators, at the mercy of high-risk structured products and completely outside any justice in the distribution of the fiscal burden that continues to be imposed on people and states. Even at the level of the EU27, voices raised were stronger in defence of the large financial interests, which was clearly visible in the fierce opposition that they have put up and continue to put up to the introduction of this new tax. This was made clear in the hearing held on 6 February 2013 with the Portuguese Banking Association in the European Affairs Committee. Their opposition eventually made its mark, resulting in the rejection of a proposal for an FTT, despite its limitations and/or uses.

An FTT system applicable in all 27 Member States having been rejected, a new proposal for an FTT was made, which is the subject of this Written Opinion and is intended to be applied in 11 of the 27 Member States, including Portugal. It is proposed that this FTT proceed only in these 11 Member States and that the system have a set of technical and control measures aimed at combating evasion and relocation of capital. This alone demonstrates that the arguments against the introduction of an FTT in Portugal, irrespective of a common and global external decision, on the pretext that this would cause the total migration of financial markets out of our country, had no real basis. If this were the case, the creation of this new proposed FTT would have the same consequences, something which the European Commission itself recognises explicitly would not happen.

One issue that does not seem completely resolved in this Proposal for a Directive, which accompanies the creation of this FTT system applicable in the 11 Member States who are signatories to this enhanced cooperation authorised by the European Council on 22 January 2013, has to do with the fate of the revenue generated by the FTT and which the EC estimates could reach about 30 billion euros in these 11 countries.

In fact, the proposal for a Council Decision on the European Union's system of own resources, presented by the European Commission, provided that a portion of the revenue generated by the FTT be used as an own resource for the EU budget, and

hence that the GNI-based resource drawn from the participating Member States would be reduced accordingly.

In addition to never having been agreed which part would be considered EU own resources and which part would be considered revenue for each Member State, the truth is that, once the global FTT system was rejected, it does not appear that the content of that decision could be applied automatically. The European Council was of the same understanding, in that at its meeting of 7 and 8 February 2013 it invited the Member States participating in enhanced cooperation to consider whether the FTT could form the basis of a new own resource of the EU budget. This possibility allows us to conclude that, in the same way, the revenue generated by the FTT applicable to these 11 countries could be entirely allocated to the different participating states and be delivered in accordance with the territorial allocation of their effective settlement.

This is certainly a controversial issue which has not been resolved and it is important that the Assembleia da República monitors it carefully and in detail, in conjunction with the Government.

PART IV – WRITTEN OPINION

Mindful of the above and having regard to the Report of the Committee responsible, the European Affairs Committee is of the opinion that:

1. This draft directive does not violate the principle of subsidiarity, in that the goal will more effectively be achieved through an action of the Union;

2. The subject matter of this Policy Proposal does not fall within the exclusive legislative competence of the Assembleia da República;

3. Regarding the various issues raised in this opinion, and given the importance of the subject matter, the European Affairs Committee will continue to monitor the legislative process relating to this Proposal for a Directive, in particular as regards the use of revenues generated by the FTT, through an exchange of information with the government.

São Bento Palace, 9 April 2013

Rapporteur, Honório Novo

Committee Chairman, Paulo Mota Pinto

PART V – ANNEX

Report of the Committee on Budget, Finances and Public Administration.

Committee on Budget, Finance and Public Administration

Report

Proposal for a Council Directive

[COM(2013)71]

Rapporteur: Jorge Paulo Oliveira, MP

To implement enhanced cooperation in the area of financial transaction tax.

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PART I – INTRODUCTORY NOTE

Under Article 7(1), (2) and (3) of Law no. 43/2006 of 25 August 2006 (as amended by Law no. 21/2012 of 17 May 2012) on the monitoring, appraisal and pronunciation by the Assembleia da República in the process of constructing the European Union, the *Proposal for a Directive of the Council to implement enhanced cooperation in the field of financial transaction tax [COM(2013)71]* was referred to the Committee on Budget, Finance and Public Administration, given its object, for analysis and preparation of this report.

PART II – RECITALS

1. Context

On 28 September 2011, the European Commission adopted a Proposal for a Council Directive on a system of financial transaction tax (FTT), which amended Directive 2008/7/EC.

The proposal, which defined the essential characteristics of a common, broad FTT system in the EU provided tax harmonisation of the Member States on financial transactions to ensure the smooth functioning of the single market.

The proposal and its variants were the subject of lengthy discussions at Council meetings but did not receive the unanimous support required due to insurmountable fundamental differences between the Member States.

Notwithstanding the foregoing, and based on the request of eleven Member States (Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovenia Slovakia and Spain), the Commission presented a proposal to the Council to authorise enhanced cooperation in the FTT, which would be granted by this Decision 2013/52/EU.

The proposed Directive concerns the implementation of the aforementioned cooperation and defines the content of this cooperation, in accordance with the provisions of the Treaty.

2. Object of the Initiative

Improving the position of the participating Member States in terms of risks of relocation, tax revenue, as well as financial market efficiency and the avoidance of double taxation or non-taxation are the objectives that govern this Proposal for a Directive. It considers that the application of new arrangements for taxing the financial sector by some Member States, such as already exist in other tax systems for specific financial transactions, leads to undesirable effects such as:

- The fragmentation of the taxation of financial services, taking into account the increasing number of uncoordinated national tax measures being applied, which has led to possible distortions of competition between financial instruments, operators and markets across the European Union and to double taxation or double non-taxation;
- Financial institutions do not contribute fairly and substantially to the costs of the recent crisis and do not ensure equity for tax purposes with other sectors;
- A fiscal policy that does not discourage transactions that undermine the efficiency of financial markets and would only serve to divert rents from the non-financial sector of the economy to financial institutions, thus triggering an over-investment in activities that do not improve well-being or help to prevent future crises in the financial services sector, in addition to regulatory measures and supervision.

3. Main Features

Scope of application of the common FTT system

- The aim of the FTT is to tax all transactions, before any deduction, that relate to all types of financial instruments.
- The FTT is applicable to a wide range of financial institutions and transactions, to trade in a wide range of financial instruments, including structured products, both in organised markets and in markets outside the stock market, as well as to the signing of all contracts for derivatives and substantial changes in the operations in question.
- In principle, each transfer agreed from one or more financial instruments is linked to a given transaction, which in turn should be subject to the FTT due for the transfer agreed. Since the exchange of financial instruments gives rise to two such transfers, each transfer should be regarded as giving rise to two transactions, to prevent tax avoidance. Through repurchase and resale agreements and securities or commodities lending or borrowing transactions, a financial instrument is placed at the disposal of a given person for a specific time period. All of these contracts, as well as any material changes thereof, shall be considered as creating only one transaction.
- Certain entities are excluded from the scope of FTT, where their functions are not considered commercial activities themselves, but instead facilitate trade or the protection of public debt management, all with the aim of preserving the effective and transparent functioning of financial markets or public debt management.
- So that the imposition of the FTT does not negatively affect the refinancing possibilities of financial institutions and of Member States, neither monetary policy in general, transactions with the European Central Bank, with the European Financial Stability Facility, with the European Stability Mechanism or with the European Union in the management of its assets, in loans to support the balance of payments and similar activities, or transactions with the central banks of the Member States, are subject to FTT.

- Similarly, most current financial activities relevant to citizens and businesses, as in the case of insurance contracts, mortgage loans, consumer credit, loans to companies, payment services, etc. remain outside the FTT.

Chargeability, Taxable Amounts and Rates

- In order to allow for the taxable amount to be determined as easily as possible, in the case of financial transactions other than those related to derivatives contracts, reference should be made to the consideration granted in the context of the transaction. Where no consideration is granted or where the consideration granted is lower than the market price, the market price should be referred to as a fair reflection of the value of the transaction. Equally, where derivatives contracts are purchased/sold, transferred, exchanged or concluded, or where these operations are materially modified, the notional amount referred to in the contract should be used.
- A single tax rate should apply within each category of transactions, namely trade in financial instruments other than derivatives and material modification of the operations concerned, on the one hand, and the purchase/sale, transfer, exchange and conclusion of derivatives contracts, and material modification of these operations on the other hand.
- The tax should apply to financial institutions, whether they trade in their own name, in the name of other persons, for their own account or for the account of other persons.
- The FTT should be applied on the basis of the residence principle and supplemented by elements of the issuance principle.
- The minimum tax rates should be set at a level sufficiently high for the harmonisation objective of a common FTT to be achieved. At the same time, they have to be low enough so that relocation risks are minimised.

Payment of FTT, Related Obligations and Prevention of Fraud, Evasion and Abuse

- Taxation of any part of a single transaction more than once should be avoided.

- Participating Member States are obliged to take the necessary measures to ensure that the FTT is levied in an accurate and timely manner.
- Participating Member States are obliged to adopt appropriate measures to prevent tax fraud and evasion, to provide for an anti-abuse rule when this may occur through artificial systems.
- The Commission is delegated the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union, for specifying the measures necessary to allow the adoption of more detailed rules in certain technical areas relating to registration, accounting, communication and other obligations to ensure that FTT due to the tax authorities is actually paid to the tax authorities.
- Regarding the collection of the tax in the participating Member States, in order to ensure uniform conditions for the implementation of this Directive, powers should be conferred on the Commission.

4. Principles of Subsidiarity and Proportionality

Since the objective of this Directive is to harmonise the essential features of an FTT within the participating Member States at Union level, in order to guarantee the smooth functioning of the internal market and avoid the distortion of competition, this is only truly achievable through an Act of Union, which shall define the common structure for tax and common provisions on liability.

It should be noted that the non-harmonisation of FTT leads to tax arbitrage and the possibility of double taxation or an absence of taxation, which not only prevents financial transactions being conducted in a fair manner, but also affects the revenue of the Member States.

In these circumstances, the Union may adopt measures, in accordance with the principle of subsidiarity enshrined in Article 5 of the Treaty on European Union.

On the other hand, because the proposal is in the form of a Directive instead of a Regulation, it leaves enough leeway for Member States as regards fixing tax rates above the minimum set, not exceeding, in the same way, what is strictly necessary to achieve the objectives pursued. It can be stated that the principle of proportionality set out in Article 5 as already mentioned, is also respected.

PART III – PERSONAL OPINION OF THE RAPPORTEUR

The rapporteur has chosen not to express his personal opinion.

PART IV – CONCLUSIONS

Mindful of the above, the Committee on Budgets Economics and Public Works is of the opinion that:

1. This initiative does not violate the principle of subsidiarity, in that the goal will more effectively be achieved through an action of the Union;

2. The matters in question do not fall within the scope of the reserved legislative responsibility of the Assembleia da República; accordingly, Article 2 of Law no. 43/2006 of 25 August 2006, which was changed under Law no. 21/2012 of 17 May 2012, does not apply.

3. The Committee considers the scrutiny of this Communication completed and that this Report should be referred to the European Affairs Committee in accordance with the terms of Law no.43/2006 of 25 August 2006, amended by Law no. 21/2012 of 17 May 2012.

São Bento Palace, 26 March 2013

MP acting as Rapporteur, Jorge Paulo Oliveira

President of the Commission, Eduardo Cabrita