



Implementing enhanced cooperation in the area of Financial Transaction Tax (FTT)

23 January 2014

Preparatory and procedural measures taken between 2010 and 2013

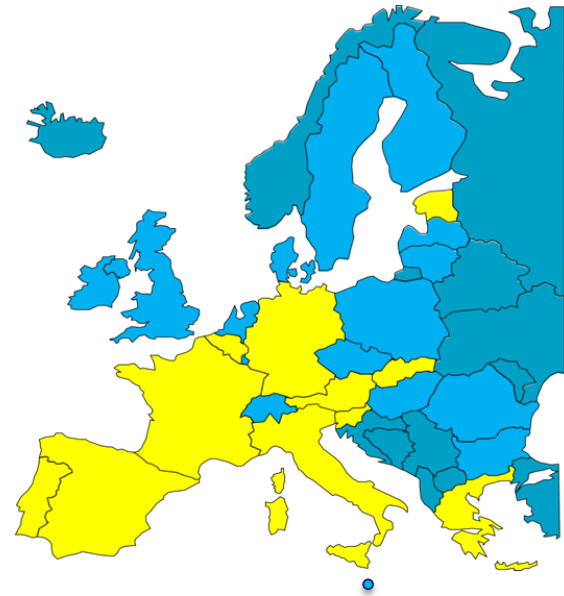
- 10.2010 Communication on the "taxation of the financial sector"
- 02.2011 Public consultation on this subject
- 06.2011 The Commission proposes to use the FTT as a new own resource for the EU budget
- 09.2011 The Commission proposes to harmonise the FTT inside EU27 (legal base: Article 113 TFEU)
- 12.2011 The Council starts the technical discussions on the Commission proposal
- 06.2012 ECOFIN acknowledges that there is no unanimous support – neither for the moment nor in a foreseeable future – for the harmonisation of national FTTs at the European level
- 09.2012 11 Member States (AT, BE, DE, EE, ES, EL, FR, IT, PT, SI, SK) request (the Commission) to analyse the possibility of introducing such a harmonised solution in the framework of the Treaties (enhanced cooperation)
- 09.2012 After a thorough examination of the request the Commission made a proposal to the Council to authorise the enhanced cooperation between these 11 MS
- 12.2012 The European Parliament gives its consent
- 01.2013 The Council (ECOFIN) authorises this form of enhanced cooperation with qualified majority (four abstentions: CZ, LU, SE et UK)
- 02.2013 The Commission proposes the implementation of the enhanced cooperation in this area
- 03.2013 The Council starts the technical discussions on the Commission's proposal
- 04.2013 The United Kingdom challenges the legality of the Council decision to authorise the enhanced cooperation
- 09.2013 A first round of technical discussions in the Council is completed

Part I: The procedure of "enhanced cooperation"

EU27



EU11(+)



Article 20 TEU

1. Last resort ("ultima ratio")

The Council establishes that the objectives of enhanced cooperation (EC) cannot be attained within a reasonable period by the Union as a whole

2. At least nine Member States must participate in EC and must aim at the same objectives

3. All members of the Council may participate in its deliberations, but only those representing Member States participating in EC take part in the vote regarding the measures implementing EC

4. Acts adopted in the framework of EC shall bind only participating Member States

Articles 326 to 334 TFEU

- **Enhanced cooperation can as a rule only take place in areas covered by the Treaties and not yet covered by EU legislation**
- **It shall aim to further the objectives of the Union, and it shall not undermine the internal market or economic, social and territorial cohesion**
- **It shall respect the competences, rights and obligations of non-participating Member States**
- **It shall be open to all Member States, and the participation by as many Member States as possible shall be promoted**
- **Authorisation on the basis of a proposal by the Commission, after consent of the Parliament and granted by the Council**

Part II:

The Commission proposal for a harmonised financial transaction tax (28 September 2011 and 14 February 2013)



Two main objectives:

"Harmonisation of indirect tax legislation!"

**"Fair and substantial contribution
of the financial sector!"**

One secondary objective:

**"Create appropriate disincentives
for certain transactions"**

p.m. objective:

"First tangible step for a global approach"

The taxation of securities trading and of derivatives and "financial-market bets"

- Securities trading (shares and bonds)
 - 0.1% of the market price
 - to be paid by financial institutions involved
 - to be paid by purchasers and sellers (in case both were financial institutions)

- Derivatives agreements and "financial-market bets"
 - 0.01% of the notional amount underlying the product
 - to be paid by financial institutions involved
 - to be paid by all parties (in case they were financial institutions)

The scope of the financial transaction tax

- Transactions on **regulated/organised markets** as well as **over-the-counter transactions**
- Transactions (such as **sale/purchase, lending/borrowing, transfer of ownership, conclusion or modification of derivative contracts**) in financial instruments
- Financial institutions (banking and "shadow-banking" sector) from the EU that are **party to the transaction** acting either for their own account, or for the account of another person, **or are acting in the name of a party to the transaction**

In a nutshell: All markets! All instruments! All actors!

Out of scope of the proposal

- **Ring-fencing Private Households and SMEs:**
 - Enterprise borrowing/lending, mortgage loans and consumer credits
 - Insurance contracts etc.
 - Bank savings plans, payment transactions, credit-card transactions

- **Ring-fencing (international) business, public borrowing and “conservative” pension funds:**
 - the issue of shares and enterprise bonds
 - the issue of public bonds and other public debt instruments
 - the issue of units and shares in UCITS and alternative investment funds
 - the purchase of shares, bonds etc. at issuance
 - transactions in and with foreign currencies
 - "traditional" investment banking

- **Ring-fencing monetary policy, central clearing houses etc.**

The principle of establishment: When will a transaction be taxable?

- The general rule: at least one party to the transaction is established in the territory of the FTT-jurisdiction and at least one financial institution there established is involved
- Liable to pay the tax is/are the financial institution(s) involved
- The following constellations are taxable events:
 - Both parties to the transaction / financial institutions are established in the FTT-jurisdiction
 - Only one of the parties / financial institutions is established in the FTT-jurisdiction
 - None of the parties / financial institutions is established in the FTT-jurisdiction, but the product traded had been issued in the FTT-jurisdiction
- The tax accrues to the participating Member State in which the financial institutions are deemed to be established

On the legality of the "counter-party principle"

- **Is there a "sufficient link" for taxation? – Yes!**
- **Is there a general rule about how issues of "double taxation" must be resolved? – No!**
- **Art. 326 TFEU: Are the rights and competences of non-participating Member States respected? - Yes!**
- **Art. 327 TFEU: Are the fundamental freedoms respected? – Yes!**

Illustrations (1)

- *A bank established in **Germany** carries out a financial transaction with an insurance company established in **Spain**, e.g. sale of share:*
 - **FTT is due both in Germany and Spain at national rates.**
- *A bank established in **France** enters into a Swap-agreement with a bank established in **Switzerland**:*
 - **FTT is due twice in France at national rate, by the Swiss bank deemed to be established in France and the FR bank.**

Illustrations (2)

- A **French** bank **moves its seat to London** and purchases on the **London** Stock Exchange **shares issued in Germany** from an **Italian** bank:
 - FTT due twice in Italy at national rate as the (now) UK bank would be deemed to be established in Italy.

- An **American** hedge fund sales (on the **London** stock exchange) **Greek government bonds** to a **Chinese** bank:
 - As on the one hand none of the parties of the transaction is established in the FTT-jurisdiction while on the other hand the product traded had been issued in Greece, both parties are deemed to be established in Greece and, thus, the FTT is due twice in Greece at the national rate.

Illustrations (3)

- A **fund manager** established in **France** manages a securities portfolio for a **British** client and purchases shares issued in Australia on the **Australian** stock exchange by an Australian pension fund. The French company acts on its own account:
 - **The FTT is due two times in France at the national rate**

- A **Chinese enterprise** wants to cover a currency risk by entering into a (Euro) currency swap contract with a counterparty that is **either an American bank or a French bank**:
 - **In the first case no FTT would be due as none of the parties is established in the FTT zone and the issuance principle for derivatives does apply (it's an OTC contract)**
 - **In the second case the FTT is due two times in France at the national rate**

Part III:

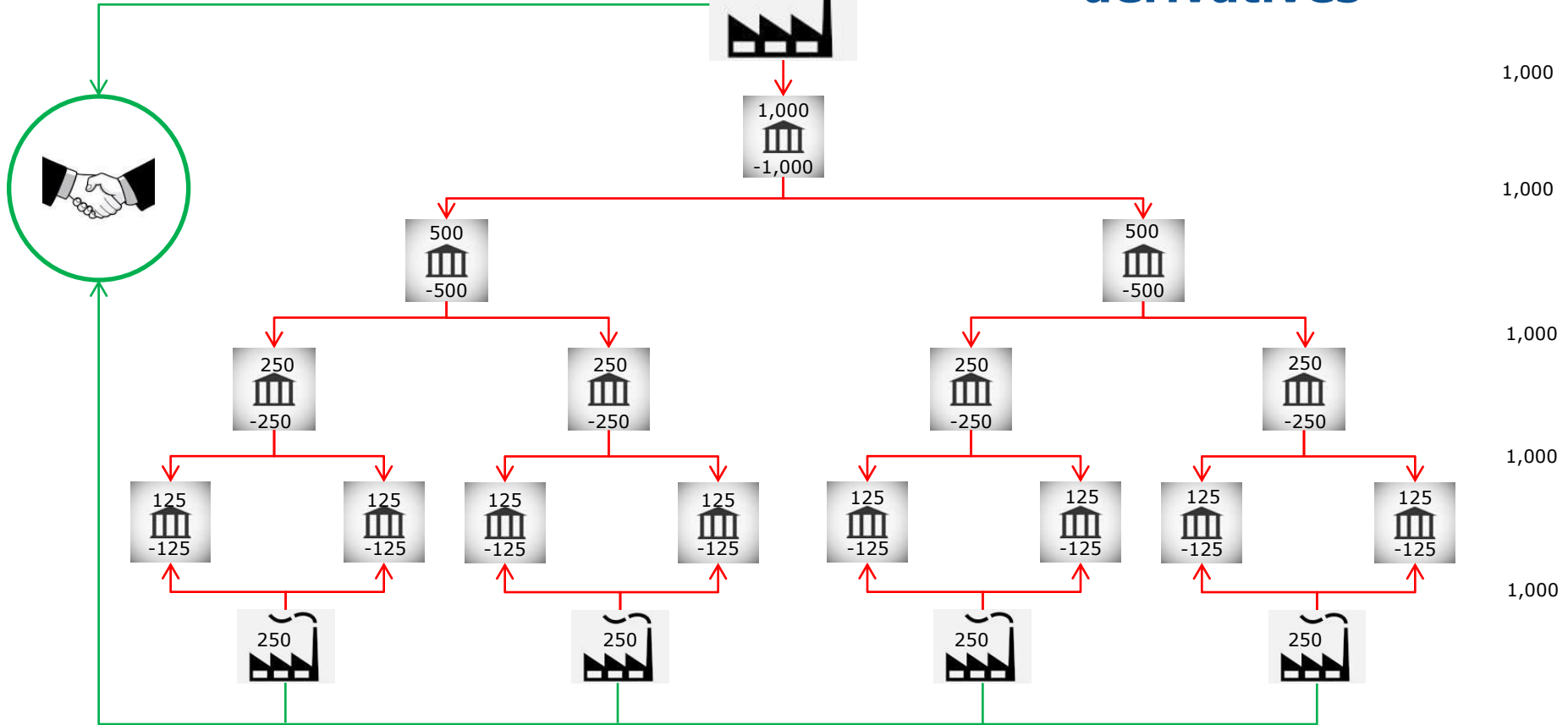
Analysis of economic impacts (and of alternative policy options)





European Commission

FTT – the case of derivatives

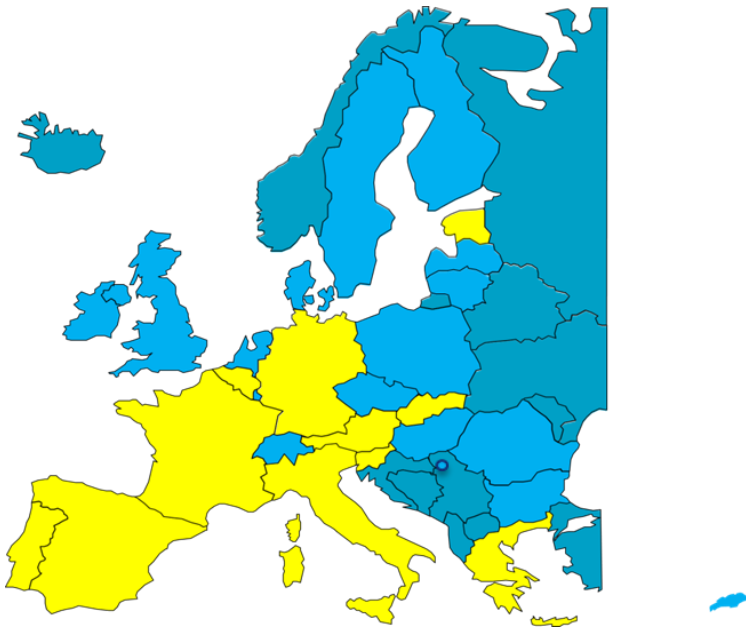


**FTT taxable amount = 1,000
+ 1 x handling fee**

**FTT taxable amount = 5,000
+ 5 x handling fee**

The bottom line:

**Those who want to serve the EU11 market
will have to pay the FTT!**



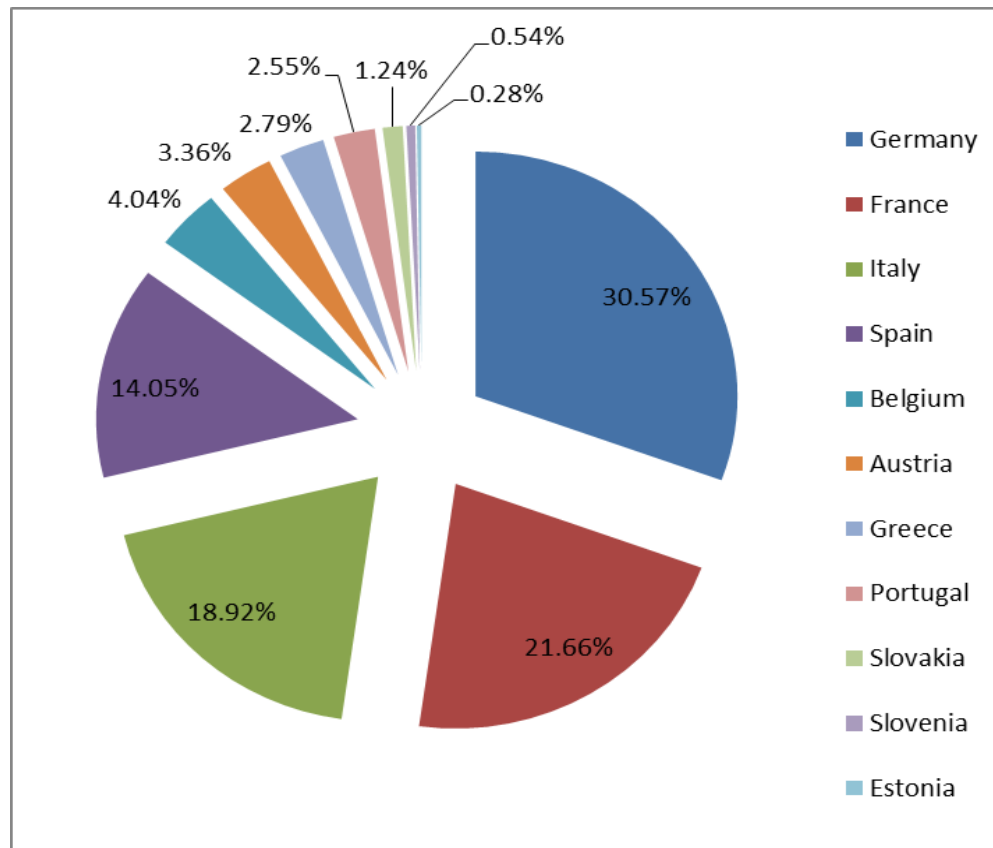
**EU11 is "too big"
a market
for not being served by
financial institutions**

Analysis of alternative policy options

- 1. Should one (fully or partly) privilege/exempt certain products from the scope of the FTT (temporarily or permanently)?**
 - Repurchase agreements
 - Secondary markets for public debt
 - Derivatives and "financial-market bets"
- 2. Should one (fully or partly) privilege/exempt certain actors from the scope of the FTT (temporarily or permanently)?**
 - Regional and multilateral development banks
 - "Internalisers" such as market makers, broker-dealers, proprietary traders etc.
 - Pillar II and pillar III pension funds
- 3. Should one opt for a more sophisticated differentiation?**
 - Bonds vs. other securities
 - Derivatives according to the asset class
 - Transactions on exchanges and other centrally-cleared transactions vs. OTC transactions
- 4. Should one change the order of the criteria that determine the allocation of resources?**

National shares in Gross Domestic Product in EU 11

- 2011, in PPP -





Thank you for your attention!

More information is available at the following web address:

http://ec.europa.eu/taxation_customs