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WORKING PAPER

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MEETING DOCUMENT

From:	Presidency
To:	High Level Working Party
Subject:	Indirect Taxation of the Financial Sector (FTT and VAT; Way forward)

Delegations will find attached a document from the Presidency in view of the High Level Working Party (Taxation) on 18 April 2018.

INDIRECT TAXATION OF THE FINANCIAL SECTOR (FTT AND VAT; WAY FORWARD)

INTRODUCTION

1. In its Tax Policy Roadmap¹, the Bulgarian Presidency underscored the importance of the strategic look by the Council, through the High Level Working Party for Tax Issues (HLWP), at how the EU should be considering tax policy issues.
2. In view of the Presidency, it is appropriate that WPTQ is updated on the state of play in the negotiations that are ongoing in the framework of enhanced co-operation on the financial transaction tax (FTT). The Presidency undertook to ensure that any progress among the FTT-ins, once achieved, is taken forward in a constructive, inclusive and transparent manner among the 28 EU Member States. Moreover, a broader, general exchange of views concerning way forward on taxation of financial services would also be appropriate in a broader, policy-making context.

I. THE COMMON SYSTEM OF FINANCIAL TRANSACTION TAX (FTT) - STATE OF PLAY

3. The proposal for a Directive on a common system of financial transaction tax (FTT) was submitted by the Commission to the Council on 28 September 2011. Given that unanimous agreement by all Member States could not be attained, on the basis of the request of eleven Member States, and in accordance with the authorization of the Council of 22 January 2013², and consent of the European Parliament's of 12 December 2012, the Commission on 14 February 2013 submitted a proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax. The objectives of this Commission proposal are the same as those of the proposal of 28 September 2011 for a common system of financial transaction tax (FTT): to ensure a fair contribution of the financial sector to the costs of the financial crisis, avoid fragmentation of the Single Market and create appropriate disincentives for transactions that do not enhance the efficiency of financial markets.

¹ Doc. 5668/18 FISC 37, point 1.

² OJ L 22, 25.1.2013, p. 11.

4. At this stage, 10 Member States continue to participate in the enhanced co-operation in the area of FTT: Austria, Belgium, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain (hereafter referred to as "participating Member States").³
5. Following the preparatory work by the WPTQ, and, where relevant, by the HLWP, the state of play on this dossier has been discussed at the following meetings of ECOFIN Council:
 - 6 May 2014⁴, 7 November 2014⁵, 9 December 2014⁶, and 8 December 2015⁷;
 - 17 June 2016⁸, where, as a follow-up to the statement of ten participating Member States that was inserted into the minutes of the 8 December 2015 ECOFIN⁹, the Council took note of the state of play on this dossier regarding a number of selected issues (application of "issuance" and "residence" principles and the territorial scope for the FTT¹⁰; exemption from FTT of market making activities¹¹; scope of transactions in derivatives contracts to be subject to the FTT¹²);
 - 6 December 2016¹³, where the Council took note of the ongoing discussion on the constitutive parts (the "building blocks")¹⁴ of the FTT and the assembly of those "building blocks" into possible FTT models. The Council also took note of the discussions on issues relating to cost efficiency of possible FTT collection models.
6. The Council has continuously indicated in its reports to the European Council on tax issues¹⁵, that further work at the Council and its preparatory bodies will be required, before a final agreement on this dossier can be reached among the Member States participating in the enhanced co-operation, that respects the competences, rights and obligations of the Member States not participating in the enhanced co-operation on FTT.

³ On 16 March 2016, the Republic of Estonia has left the enhanced co-operation on FTT. See doc. 7808/16 FISC 47 LIMITE.

⁴ Doc. 9399/14 FISC 79 ECOFIN 445 and doc. 9576/14 PV/CONS 22 ECOFIN 460.

⁵ Doc. 14949/14 FISC 181 ECOFIN 1001.

⁶ Doc. 16498/14 FISC 222 ECOFIN 1159 and doc. 16753/14 FISC 230 ECOFIN 1188 CO EUR-PREP 50, points 36 to 46.

⁷ Doc. 14942/15 FISC 181 ECOFIN 947.

⁸ Doc. 9602/16 FISC 90 ECOFIN 522.

⁹ Doc. 15112/15 PV/CONS 72 ECOFIN 961 ADD 1.

¹⁰ Doc. 9602/16 FISC 90 ECOFIN 522, point 6 to 8, and doc. 14942/15 FISC 181 ECOFIN 947, point 7 to 11.

¹¹ Doc. 9602/16 FISC 90 ECOFIN 522, point 9 to 12, and doc. 14942/15 FISC 181 ECOFIN 947, point 15 to 17.

¹² Doc. 9602/16 FISC 90 ECOFIN 522, point 13 to 15, and doc. 14942/15 FISC 181 ECOFIN 947, point 18 to 19.

¹³ Doc. 13608/16 FISC 164 ECOFIN 948.

¹⁴ Doc. 14942/15 FISC 181 ECOFIN 947, point 3.

¹⁵ Doc. 15254/16 FISC 227 ECOFIN 1160 CO EUR-PREP 48, point 45.

II. INDIRECT TAXATION AND FINANCIAL SERVICES

7. Discussion on indirect taxation of financial services has been ongoing for a number of years in the Council.
8. Before the proposals on FTT were made, technical discussions took place on the Commission proposal to amend the VAT Directive 2006/112/EC as regards the treatment of insurance and financial services. The Commission withdrew this proposal in spring of 2016, as, given the outbreak of the financial crisis, time was needed to complete the overhaul of the EU regulation and supervision of the financial services industry.
9. Further on, it can be noted that certain financial services are explicitly excluded from the scope of the Commission proposal for a Council Directive on the common system of a digital services tax on revenues resulting from the provision of certain digital services (see Article 3(4) of the Commission proposal, as well as Section A of Annex I to MIFID (Directive 2014/65/EU)).

QUESTION FOR DISCUSSION

10. Against this background, the Bulgarian Presidency undertook to facilitate a strategic debate, at HLWP level, on the future of the financial services taxation, in order to assess the need for further action by the Council in the short and medium term in this area.

What are the views of the Commission and of the Member States on:

- a) **the state of play on the negotiations covering enhanced co-operation in the area of FTT?**
- b) **the way forward concerning indirect taxation in the area of financial services / financial transactions in the EU as a whole?**