Financial Transaction Tax – the roller coaster continues

By Peter Wahl, WEED

Summary: The December ECOFIN did not bring a breakthrough for the Financial Transaction Tax (FTT). The stalemate between France and Germany over the inclusion of derivatives into the tax base remains unresolved. The negotiations have turned into a paradigmatic example of the functioning of the EU. Only a broader bilateral package deal, for instance on fiscal policy and/or austerity, will bring a solution.

In May 2014, the Council of EU Finance Ministers (ECOFIN) had announced that an agreement on the Financial Transaction Tax (FTT) would be delivered by the end of the year (see October 2014 Newsletter). However, the ECOFIN failed to reach a breakthrough on 9 December, and therefore talks will have to continue in 2015.

Negotiations between the eleven countries participating in the project had stalled in recent months due to a standoff between, on the one side, Germany and Austria, who insisted on a broad tax base including all derivatives as proposed by the EU-Commission, and France, which made a U-turn by suggesting the exemption of derivatives entirely and to only tax shares. This would mean that more than two-thirds of all transactions would be exempted from the tax, with revenues being reduced accordingly. The background of the obstinate French opposition to a broad-based FTT is not only the general trend of President Hollande and his government towards neoliberal “New Labour”-type policies, but also the specific plan to sell the Paris Stock Exchange. They follow the argument of the finance industry that the strong proposal of the EU Commission has to be substantially watered down if the attractiveness and competitiveness of the Paris financial marketplace is not to suffer.

The other two big economies participating in the negotiations, Italy and Spain, were under heavy pressure from their respective finance industries, too, and were leaning towards the French position, while trying to avoid the impression of an open anti-
German front. According to the leaked minutes of a working group meeting, the Italian presidency (a representative of the finance ministry in Rome) was helplessly quoting the arguments of Italian banks, without being able to formulate an independent comment of its own. The smaller countries are primarily interested in gaining as much revenue as possible and are opposed to the French approach, because they do not expect enough money from it.

All in all, a closer look into the negotiations teach an interesting general lesson about the influence of the finance industry on some governments in the EU: apart from the basic sympathy shown by many civil servants and politicians toward the finance industry, there is a lot of ignorance and incompetence playing into the hands of finance capital, which is well-resourced to make its arguments. As long as the personnel of many ministries lack the capacity and the motivation to make independent and balanced judgments, it is not surprising that public interest is marginalized.

In this context, it is worthwhile mentioning that on the occasion of the inauguration of the new Commission, Business Europe sent a letter to Juncker’s deputy, Frans Timmermans, in which it declares dropping the FTT as one of five top priorities for the new legislature. The letter was leaked and can be found here. Formally, the Commission is not part of the Enhanced Cooperation Procedure on the FTT, and does not even participate in negotiations between the eleven countries. But of course, the functioning of the EU is less based on formal procedures than on the “hidden mechanisms of power”, as Pierre Bourdieu used to say (Ce que parler veut dire, 1982). However, one must also consider that the President of the Commission, Jean-Claude Juncker, has been the head of the government of Luxemburg, the most prominent bridgehead of global finance capital in the Eurozone, and was, together with the UK, the most aggressive opponent of the FTT among the EU-28. In the European Parliament, Juncker said that as President of the Commission, he would support the FTT. But much more famous is his statement: “When things become serious, one must lie.” With Juncker’s Dutch deputy, Timmermans, we have a second high-ranking officer coming from a country which opposes the FTT. But even worse, the Commissioner responsible for tax issues (directorate TAXUD) is now Pierre Moscovici. He was the French Finance Minister when France began its U-turn with regard to the FTT in 2013.

In light of all this, proponents of the FTT were concerned that Schäuble would be ready to compromise, given that Franco-German relations are already in a miserable state in many areas. But after the Social-Democratic Party (SPD), which is part of the governing coalition in Berlin, had made clear that they consider the French proposal unacceptable, Schäuble stood firm. Thus the result of the December ECOFIN can be seen as a positive outcome for the process towards a broad-based FTT.

Nevertheless, the blockade still remains unresolved. Once again it has become obvious that without Franco-German cooperation, it is difficult for EU processes to move forward. This is why the key for a way out of the stalemate lies in an informal bilateral deal between France and Germany. Unless the FTT becomes part of a broader package, which could include other issues such as fiscal policies and austerity, a compromise on the FTT will be difficult and the idea is at risk of being crushed between two milestones.

The political battle over the FTT is increasingly turning into a paradigmatic example of how the EU functions. In spite of overwhelming support among the population of almost all EU countries – even in the UK, where a majority supports the FTT – and in the population of almost all EU countries – even in the UK, where a majority supports the FTT – and in spite of pathetic promises by top politicians like François Hollande, only constant pressure from below can guarantee that the interests of the people prevail over profits.

The very active EU-wide civil society network on the FTT and its allies in parliaments, among heterodox economists and with the input of public opinion will have to maintain pressure in order to prevent another victory for finance capital.

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**Tax evasion: Luxembourg Leaks and beyond**

*By Markus Henn, WEED*

Summary: The fight against legal tax avoidance and illegal tax evasion has gained momentum ever since the media has turned its focus to corporate tax dodging after the revelation of the Luxembourg Leaks beginning in November 2014. In the meantime, tax reform processes proceeded at the international and EU level with disappointing results. The G20/OECD reform process is at risk due to resistance from tax havens and the unwillingness of the other countries, who seek to allow important loopholes. In the fight against personal tax fraud, the automatic exchange of tax information reached new impetus at the end of October 2014, with 51 countries supporting a multilateral agreement which still contains flaws. In the EU, the revision of an important corporate tax law introduced a general rule against tax avoidance.

**International reform at risk**

An action plan to tackle corporate tax avoidance (“base erosion and profit shifting”, BEPS) was agreed on at the G20 Petersburg summit in 2013. The interim results of this G20 reform process, which was taken on board by the OECD, were re-
leased in September 2014 (for details see Newslet-
ter October 2014) and endorsed by the G20 heads
of state in their Brisbane summit communiqué of 15
November 2014. However, these results are still
preliminary and require further work and agree-
ment. The OECD/G20 working groups are now
dealing with the remaining action points from the
action plan.

One of the most controversial and unresolved is-
issues of the interim results were special taxation
regimes, particularly for taxing income from licens-
ing intellectual property rights such as patents,
therefore often called the “patent box”. The OECD
proposed to link such boxes to a kind of economic
“substance”, such as money that had actually been
earmarked for research in a country, with complex
guidance on how to test this substance. But the
G20 did not even agree on this proposal because
some countries, including the United Kingdom, de-
fended their patent box regimes. To solve this quar-
rel, German Finance Minister Wolfgang Schäuble
and British Finance Minister George Osborne re-
leased a joint statement a few days before the
Brisbane summit. They stated that the UK will give
up its current patent box regime in some years and
will then use a “modified” version of the OECD/G20
proposal on the boxes—the details of which remain
unclear. Although this would represent some pro-
gress, it is not clear yet what other reform oppo-
nents such as Luxembourg and the Netherlands
will do. More importantly, the Netzwerk Steuer-
gerichtigkeit (“network tax justice”) argued in a
letter to Finance Minister Schäuble that any patent
box, including the OECD and the German-British
proposals, would mean a permanent and unjustifi-
able tax break, particularly for large corporations.
This would lead to a disastrous downward spiral of
the overall corporate tax regimes, as countries
would compete against one another to attract or
keep foreign direct investment.

European Union: Juncker struggles, but small
progress made

The widely reported revelations by an international
network of investigative journalists (see here and
here) on tax deals by the Luxembourg authorities,
the Luxembourg Leaks, intensified the corporate
tax reform debate in the EU. European Commis-

sion President and former Luxembourg Prime Min-
ister Jean-Claude Juncker has so far attempted to
fend off any real personal accountability for the
harmful practices in his country, stating that all
models were legal. He therefore merely proposed
to reveal all tax rulings. This is not a new idea, as it
was already proposed in the interim results of the
OECD/G20 action plan. It is not clear yet, however,
if all rulings have been legal, given that “wholly arti-
ficial” companies are also illegal within the EU, as
ruled by the European Court of Justice in its “Cad-
bury Schweppes” decision. Importantly, the Euro-

pean competition authorities are investigating
whether tax rulings by Ireland (relating to Apple),
Luxembourg (relating to Fiat Finance and Trade)
and the Netherlands (relating to Starbucks) breach
the EU rules on state aid. In November, the Com-
misson made a preliminary judgment that the
Netherland’s Starbucks ruling constituted illegal
state aid. At the same time, the Commission might
also be biased, given that employees of Pricewater-
houseCoopers sit in many of its expert groups
that advise on tax issues, as Corporate Europe
Observatory showed.

At the Council of Finance Ministers ECOFIN meet-
ing on 9 December 2014, a revision of the EU law
on corporate dividend payments within the EU was
agreed to: all EU member states must implement a
general rule which prohibits any intra-company div-

idend transactions that are primarily or only under-
taken to avoid taxes, but have no further economic
justification. This decision complements a former
ECOFIN decision from 8 July 2014 on the same
law, which provided that one EU member state
should tax a dividend payment in case the other
state does not ultimately tax the payment. While
these two decisions mark real progress, they will
not cover some important loopholes, for example if
an EU state does not tax payments being transfer-
red to non-EU countries.

Automatic information exchange: multilateral
agreement

A remarkable step in the fight against individual tax
fraud was taken at a conference in Berlin in late
October 2014. More than 51 countries agreed on a
multilateral agreement to implement the automatic
exchange of information on tax issues (for back-
ground, see the December 2013 Newsletter). How-
ever, important countries and tax havens, such as
Switzerland, Panama and the United States, did
not join in. Also, the reporting standard underlying
the agreement, which was developed by the OECD
and presented in May 2014, has serious flaws, as
Tax Justice Network points out in a new report. For
example, there are fairly high thresholds above
which the information must be reported by the
banks, i.e. only for owners that hold more than 25%
of a legal entity. Furthermore, the standard cannot
be easily implemented by low-income countries, as
it is strictly based on mutual exchange (“reciproc-
ity”). The standards do not allow for low-income
countries to only receive information and not pro-
vide information, even though the lack of technical
capacity often hampers countries from doing so.
The risks of the new Commission’s “Better Regulation” agenda
By Joost Mulder, Finance Watch

Summary: As part of the “Better Regulation” agenda, the new European Commission is considering the withdrawal of some proposals on financial market legislation on the separation of too big to fail banks and on investor compensation for failing funds. The financial sector lobby and some member states are trying to interpret the “Better Regulation” agenda in order to water down the financial reform agenda.

The “Regulatory Fitness and Performance” (REFIT), in short the “Better Regulation” agenda, of the European Commission (EC), is starting to take shape in order to guarantee that regulation contributes to an overall EC focus to stimulate growth and jobs. The new Commissioners have been sending their input for the 2015 Commission Work Programme to EC Vice-President Frans Timmermans, who is responsible for “Better Regulation”. In a draft version of the Work Programme sent to Commissioners on 7 November, EC President Jean-Claude Juncker and Timmermans propose reviewing the need to continue working on three legislative initiatives in the field of finance: a proposal which would allow financial institutions to reclaim VAT (2007), the review of the Occupational Pension Funds law (IORP II, March 2014) and the European Foundation Statute (2012).

In his response, Jonathan Hill, Commissioner for Financial Stability, Financial Services and Capital Markets Union, proposes instead to formally repeal the 2010 directive on Investor Compensation Schemes in cases in which an investment firm is unable to return assets belonging to an investor. The directive has been stalled in the Council of Ministers. In the cover letter, he also suggests that the EC may withdraw its revision of IORP II as well as the Bank Structure Reform proposal if no significant progress is made in the Council and Parliament negotiations. Finally, he suggests that up to 123 of the 414 technical standards to be decided on (Level 2 measures), which are planned for the coming years, may be adapted to take into account the jobs and growth agenda of the Juncker Commission.

In particular, the IORP proposal has frequently been suggested for reconsideration, given that the two member states most affected by this initiative (the UK and the Netherlands) are also the strongest drivers of the Better Regulation agenda.

A withdrawal of the Bank Structure Reform that would separate the commercial and speculative activities of too big to fail banks (for details see the article in this newsletter) is being pressed for by the financial industry and Business Europe. It is difficult to judge whether Hill's proposal to put Bank Structure Reform “on watch” was inspired by the recent industry lobby letters. In his Parliament hearing, Hill was very clear that he would adopt a wait-and-see attitude towards ongoing legislative negotiations. Whatever is decided, withdrawal of the Bank Structure Reform will politically be very difficult to defend if Finance Ministers succeed to find a so-called “General Approach” in the course of the incoming Latvian Presidency in the first half of 2015. In the current Commission’s logic, proposals which have reached that stage in Council should definitely not be subject to potential withdrawal under the Better Regulation agenda.

In an open letter to former commissioner Michel Barnier in October, Finance Watch warned in 2014 that “Better Regulation” is at risk of being very narrowly interpreted as “Less Regulation”. Currently, business arguments that financial reforms are too burdensome and undermine growth and jobs have resulted in an attitude in EU decision-making circles that no more financial reforms should be undertaken. This hampers the progress of legislative proposals, including those on restructuring large banks and shadow banking (money market funds).

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Banks: missing structural reform
By Markus Henn, WEED

Summary: The reform of the EU banks’ structure, including possible prohibition or separation of business segments, is under heavy pressure from the financial lobby and from some member states. However, civil society and some academics warn that structural reform is urgently needed to manage the remaining risks in the financial system. Previous reforms, particularly on capital requirements, have not addressed these risks and are thus insufficient in preventing a crisis. The European Parliament plans to vote on the reform at the end of April next year.

Restructuring EU’s largest banks and separating their most speculative activities from basic banking in order to make them safer is still an essential task in the European Union. Some member states, such as the UK, Germany, France and Belgium, already adopted such laws last year. The European Commission (EC) published a law proposal in January.
2014 to separate basic banking activities from the most speculative activities. A vote in the EP’s finance committee (ECON) on this draft is now scheduled for 23 March 2015, after an ECON report due to be published on 18 December 2014, and the indicative plenary vote will be held on 28 April 2015. In parallel, the member states are conducting negotiations in the Council of Ministers.

Even though the EC’s proposal has been criticized by civil society for not being strong enough (for a detailed analysis, see the February 2014 Newsletter), the banking lobby is trying hard to seriously soften it, or better yet, have it dropped altogether. One month ago, the British and French banking lobby associations sent a letter to EC Vice President Frans Timmermans, calling for the proposal to be scrapped in the name of “Better Regulation” (on this misleading term, see also the article in this newsletter). The lobby group Association of Financial Markets in Europe (AFME) recently published a study by PricewaterhouseCoopers, threatening that banks may withdraw their market-making operations (i.e. providing liquidity to a market which is too small otherwise) in key markets if separation is enforced. In a letter to Commissioner Timmermans, Business Europe argues that the proposal on the bank structure reform will significantly reduce the level of financing for corporate activities. It demands that the proposal be substantially improved.

The European coalition of NGOs responded to such claims by stating that on the contrary, separation would lower the cost of lending by big banks. Finance Watch addressed the issues with a newspaper comment and in a speech on 2 December at an ECON hearing (see contributions of all speakers), rebutting the finance industry’s arguments. At the hearing, Paulina Przewoska, Finance Watch expert for banking regulation, stressed in her speech that a structural reform including a separation is needed to address the remaining risks in the banking system. Three important remaining risks that have been not sufficiently reduced by previous reforms of the bank’s capital requirements are:

1. systemic risks, such as those stemming from bank interconnectedness, which require macro-economic restructuring of the banking sector as a whole, and not only of individual banks,
2. contagion risk, the spillover of risk from trading activities on basic banking activities, and
3. too big too fail risk, the danger that single banks are too important for the financial system to go bankrupt.

Przewoska argues that an effective reform “may still allow the separated activities to stay within the same group”, but reform should ensure that when a trading entity has losses, creditors cannot get hold of the assets of the deposit-taking entity of the bank group. In such a “ring-fencing” model, activities can still take place within one banking group, but this requires separate legal entities. The question is, however, if separate legal entities within the same group would not entail too many risks. The EC had proposed to normally ring fence derivative trading like market making and even risky products beyond certain thresholds, but also rightfully proposed prohibiting banks from speculating on their own risk (‘proprietary trading’) and having certain relations to hedge funds and other risky funds. This proposal is also supported in a new paper by French professor Laurence Scialom.

The EC proposal is not only in danger of being watered down by the finance lobby, but also by member state politicians defending their national bank models. States such as France and Germany are openly opposed to a strong separation model. Germany, for example, pointed to its own national law from last year. However, this law only prescribes a very weak separation of activities compared to the EC’s proposal or the U.S. Volcker rule (for details see the synopsis in this presentation). Civil society at the member state level can play a crucial role in balancing the arguments and debate. For instance, the Belgian coalition “Split Banks” is putting pressure on its government for a real separation.

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**Brief update: the Banking Union to begin**

Photo by barnyz CC

The Banking Union finally became operational on 1 November 2014 with the supervision of European banks by the European Central Bank (ECB) in execution of the Single Supervisory Mechanism.

Before taking over the supervision, the ECB coordinated a stress test, the results of which were published by the European Banking Authority (EBA) on 26 October 2014. The stress test – the third of its kind for the EU – covered 123 banking groups from 22 EU countries with more than 70% of total EU banking assets. It intended to test what the impact of adverse economic conditions, i.e. a financial crisis, would be on the banks’ balance sheets. Twenty-four banks had insufficient capital to cover the losses stemming from these conditions. This was considered a rather good result. However, the test assumptions have been criticised as being unrealistically positive and thus not providing a valid picture as to whether the current banking system can deal with another financial crisis. For example, the assumed economic downturn was not as severe as in the real crisis of 2009. Important factors of the test model, such as interest rates, were not defined by the EBA, which gave the banks providing the
information wide discretion over their calculations. It is also questionable whether the test can ever cover the risks that will emerge in the future. Finally, the test was based on the current capital requirement laws contingent upon the new international standard Basel III, which has been criticised as being too weak by many observers and academics. According to Finance Watch, the test results thus showed the need for a binding leverage ratio, namely a legally binding limit on the total amount a bank itself can borrow. The EU is still merely considering such a ratio, while the United States has already introduced it.

Another pillar of the Banking Union will also be in operation soon: the Single Resolution Mechanism, the EU instrument for dealing with failing or failed banks. On 9 December 2014, the Council of EU Finance Ministers agreed on the fees that banks have to pay to bear the costs of the new resolution fund, which has been criticized for being too small.

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**Brief update: information for individual investors who buy complex investment products (PRIIPs)**

New EU legislation on packaged retail investment and insurance products (PRIIPs) deals with information about complex products for non-expert individual investors. The PRIIPs market is worth up to €10 trillion in the EU, according to European Commission estimates.

The new law (“Regulation on key information documents for packaged retail and insurance-based investment products”) was published on 9 December 2014, will enter into force 29 December 2014 and be directly applicable from 31 December 2016. It requires that an easy-to-read “key information document” (KID) is issued with the promotion and selling of such investment products. The European supervisory agencies responsible for elaborating and advising on how the KID should be produced and designed have issued a public consultation on how the PRIIP risks can be calculated, based on which the KID has to be presented as simply as possible. The deadline for responding to the consultation is 17 February 2015.

The consultation proposals include information about the risks the buyer faces, e.g. losing the invested money. The KID does not have to inform about the impact of the assets contained in the PRIIP on financial stability, the environment or social aspects. A label for socially and environment-tally responsible investments should, however, be proposed by mid-2018 (Art. 33 of the new regulation).

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**Calendar**

For background to the official agenda of European institutions, see the following websites:

- European Commission (EC)
- Economic and Financial Affairs Council (ECOFIN)
- European Council
- Economics and Monetary Affairs Committee (ECON) of the European Parliament
- Financial Stability Board

**2014**

**December**

- 15-18, EP (Strasbourg): Plenary
- 18-19, European Council (Brussels): Meeting
- 19, ESMA (Paris): Deadline for consultation on prospectus related issues under the Omnibus II Directive
- 22, EBA (London): Deadline for consultation minimum list of services and facilities
- 22, EBA (London): Deadline for consultation on asset separation tool and on the sale of business tool
- 22, EBA (London): Deadline for consultation on triggers for use of early intervention measures
- 22, EBA (London): Deadline for consultation on the interpretation of the different circumstances when an institution shall be considered as failing or likely to fail

**2015**

**January**

- 5, ESMA (Paris): Deadline for consultation on C6 and C7 of Annex I of MiFID
- 8, ESMA (Paris): Deadline for evidence on AIFMD passport and third country AIFMs
- 8, EBA (London): Public hearing on Contributions to DGS
- 9, EBA (London): Public hearing on contractual recognition
- 12, EBA (London): Public hearing on treatment of shareholders and on conversion rates
- 12-15, EP (Strasbourg): Plenary
- 14, EBA (London): Public hearing on past due materiality threshold
- 16, EBA (London): Public Hearing on Past Due Materiality Threshold
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This newsletter is produced by SOMO and WEED and is intended for wide circulation to interested parties. We appreciate receiving feedback as well as announcements of reports, campaigns, and meetings, which can be sent to markus.henn@weed-online.org.

- **16, EBA (London):** Public hearing on valuation
- **19, EBA (London):** Public hearing on MREL
- **20, ECOFIN (Brussels):** Workshop: “Expenditure-based consolidation: experiences and outcomes”
- **21, ECON (Brussels):** Meeting
- **26, Eurogroup (Brussels):** Meeting
- **26-27, ECON (Brussels):** Meeting
- **28, EP (Strasbourg):** Plenary

**February**

- **2-6, TTIP:** Negotiations (to be confirmed)
- **4, FW (Brussels):** Conference “The long term financing agenda – the way to sustainable growth?”
- **9-12, EP (Strasbourg):** Plenary
- **12-13, European Council (Brussels):** Meeting
- **13, ESMA (Paris):** Deadline for consultation on Article 9 of EMIR
- **13, Basel Committee on Banking Supervision (Basel):** Deadline for consultation on identifying simple, transparent and comparable securitisations
- **16, Eurogroup (Brussels):** Meeting
- **17, ESMA (Paris):** Deadline on Key Information Documents (KIDs)
- **23-24, ECON (Brussels):** Meeting
- **25, EP (Strasbourg):** Plenary

**March**

- **6, Basel Committee on Banking Supervision (Basel):** Deadline for consultation on Net Stable Funding Ratio
- **9, Eurogroup (Brussels):** Meeting
- **9-12, EP (Strasbourg):** Plenary
- **19-20, European Council (Brussels):** Meeting
- **5, ECON (Brussels):** Meeting
- **23-24, ECON (Brussels):** Meeting
- **25, EP (Strasbourg):** Plenary
- **31, ECON (Brussels):** Meeting

**April**

- **15, EP (Strasbourg):** Plenary
- **27-30, EP (Strasbourg):** Plenary

**May**

- **11, Eurogroup (Brussels):** Meeting
- **18-21, EP (Strasbourg):** Plenary
- **26-27, G7 (Dresden):** Finance Ministers and Central Bank Governors meeting
- **27, EP (Strasbourg):** Plenary

**June**

- **7-8, G7 (Schloss Elmau):** Heads of State Summit
- **8-11, EP (Strasbourg):** Plenary
- **16, Eurogroup (Luxembourg):** Meeting
- **24, EP (Strasbourg):** Plenary
- **25-26, European Council (Brussels):** Meeting

**July**

- **6-9, EP (Strasbourg):** Plenary

**September**

- **7-10, EP (Strasbourg):** Plenary
- **16, EP (Strasbourg):** Plenary

**October**

- **5-8, EP (Strasbourg):** Plenary
- **14, EP (Strasbourg):** Plenary
- **26-29, EP (Strasbourg):** Plenary

**November**

- **11, EP (Strasbourg):** Plenary
- **15-16, G20 (Antalya):** Summit
- **23-26, EP (Strasbourg):** Plenary
- **25, EBA (London):** Public Hearing on simplified obligations

**December**

- **2, EP (Strasbourg):** Plenary
- **14-17, EP (Strasbourg):** Plenary