Policy Forum: The EU Financial Transaction Tax as an Unsuitable and Unnecessary Proxy Tax

Rita de la Feria and Richard Ness*

**PRÉCIS**
En 2011, la Commission européenne a proposé d’instituer une taxe sur les transactions financières (TTF) pour les membres de l’UE. Cet article traite des récents développements relatifs à l’approbation de cette TTF de l’UE et des principales préoccupations que soulèvent la taxe proposée, en particulier ses caractéristiques en tant que taxe indirecte. Il y est conclu que dans la mesure où la TTF de l’UE est une taxe indirecte, elle est à la fois inappropriée et inutile, et que l’on atteindrait mieux et plus réalistement les objectifs visés de la TTF si l’on imposait la taxe à la valeur ajoutée de l’UE aux services financiers.

**ABSTRACT**
In 2011, the European Commission presented its proposal for an EU financial transaction tax (FTT). This article analyzes the recent developments as regards the approval of that EU FTT, and the main concerns that the proposed tax gives rise to, considering in particular its characteristics as a proxy tax. The authors conclude that insofar as the EU FTT is a proxy tax, it is both unsuitable and unnecessary, and that extension of the EU value-added tax to financial services would serve as a better and more realistic instrument to attain most of the stated aims of the FTT.

**KEYWORDS:** FINANCIAL SERVICES ■ VALUE-ADDED TAX ■ EUROPEAN UNION

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* Rita de la Feria is of the School of Law, University of Leeds, United Kingdom (e-mail: r.delaferia@leeds.ac.uk); Richard Ness is of Linklaters LLP, London, United Kingdom (e-mail: richard-ness@hotmail.com).
INTRODUCTION
The impact of the 2008-9 financial crisis on tax policy can hardly be overestimated. The magnitude of the crisis and its consequences have influenced the debate in almost all areas of tax law and have resulted in concrete change in many of them, including corporate and personal income tax and value-added tax (VAT). Among the most significant effects are a reopening of the debate as to how best to tax the financial sector, the introduction by many European countries of bank levies, and discussion on the possible approval in Europe of a tax of wider scope, applicable to financial transactions. This article focuses in particular on the European Union’s proposed financial transaction tax (FTT).

Three years have now passed since the FTT was proposed in its current form. The latest reports suggest that, despite the political difficulties, the 10 countries still pursuing adoption of the tax through what is designated the enhanced cooperation procedure may be close to agreement on some of the fundamental details. Yet, beyond political dynamics, the FTT as it is proposed raises many concerns. In particular, it is unclear whether the tax would attain the aims that it has set out to achieve, what would be its economic effects, or indeed whether its approval under the enhanced cooperation procedure complies with EU constitutional requirements. This article analyzes the recent developments as regards the approval of an EU FTT, and the main concerns that the proposed tax gives rise to, considering in particular its characteristics as a proxy tax. We conclude that insofar as it is a proxy tax, the EU FTT is both unsuitable and unnecessary, and that extension of the European VAT to financial services would serve as a better and more realistic instrument to attain most of the stated aims of the FTT.

THE EU FTT
An FTT is not the only option for taxing the financial sector: in the aftermath of the financial crisis, various options for taxing the financial sector were presented, and indeed several new taxes were implemented in Europe. Bank levies, which typically

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1 For a summary of the changes to UK policy, for example, see Giorgia Maffini, ed., Business Taxation Under the Coalition Government (Oxford: Oxford University Centre for Business Taxation, February 2015).
3 For an analysis of the VAT changes in Europe, see Rita de la Feria, “Blueprint for Reform of VAT Rates in Europe” (2015) 43:2 InterTax 155-72.
fall directly on bank borrowing and have a clear rationale of discouraging debt and favouring equity,7 proved particularly popular; 11 countries in Europe have reportedly introduced bank levies, which, although varying greatly in terms of their scope and rate, are said to have a net positive effect of reducing total risk taking among financial institutions.8 There has also been strong support for a so-called financial activities tax (FAT)9—a tax that would work similarly to a VAT—including support from the European Commission: after examining the options for how to tax the financial sector, the commission concluded in 2010 that there was “greater potential for a Financial Activities Tax at EU-level.”10 Why the European Commission ultimately opted for an FTT, when its own evidence does not seem to support the tax as the best instrument to obtain its stated objectives, is unclear.11

Be it as it may, the first legislative proposal for an EU FTT came in 2011.12 To some extent the proposed FTT was a classic transaction tax13 in that it sought to discourage a particular transaction, or series of transactions, through the levying of a tax. It was, however, unique in its scope, as well as in its rationale, insofar as it targeted not only currency conversions,14 or general securities,15 but a very broad range of financial transactions, and the arguments presented for its introduction went far beyond mere regulatory objectives. The proposal was initially rejected by a majority of member states in 2011 but resuscitated in 2013, with some minor amendments, through the enhanced cooperation procedure. In between the two proposals, France, Italy, and Hungary followed the lead of Greece and Belgium in implementing an FTT,

9 International Monetary Fund, supra note 6.
bringing the total number of EU member states with an FTT to five,\textsuperscript{16} and offering a sneak preview of what the effects of an EU FTT might be.\textsuperscript{17}

\textbf{The Proposal}

The stated aims of the proposal are as follows:\textsuperscript{18}

1. to disincentivize risky behaviour or, as the proposal puts it, transactions that do not enhance the efficiency of the financial markets;
2. to raise revenue to ensure that the financial sector makes a fair and substantial contribution to cover the costs of government-backed bailouts;
3. to ensure a level playing field with other sectors, and compensate for the undertaxation of the financial sector resulting from the exemption applicable under the EU VAT system to financial services; and
4. to avoid a fragmentation of the internal market that might be caused by the introduction of uncoordinated national tax measures.

The proposal for an EU FTT follows what has been designated the “triple A” approach: it would apply to all markets, all instruments, and all financial sectors.\textsuperscript{19} And, indeed, the main elements of the proposal are its broad definitions of financial transaction, financial institution, and place of establishment.\textsuperscript{20}

With respect to financial transactions, the tax will apply to the purchase, sale, and exchange of financial instruments, intragroup transfers of financial instruments, derivatives contracts, repurchase agreements (repos), reverse repurchase agreements (reverse repos), and securities, lending, and borrowing agreements. Transactions will be subject to tax whether they are carried out in an organized market or over the counter; however, a number of exemptions apply, including the exemption of transactions in primary markets for securities and currencies.\textsuperscript{21}

The tax will apply where one of the parties to the transaction is a financial institution established in a participating member state, a term that is broadly defined


\textsuperscript{17} On the legal difficulties caused by the Italian FTT, for example, see Luca Rossi and Valentina Buzzi, “IPOS and the Italian Financial Transaction Tax” (2015) 43:5 Intertax 424-27.

\textsuperscript{18} European Commission, supra note 12.

\textsuperscript{19} See Rossi and Buzzi, supra note 17.


and encompasses a range of entities;\textsuperscript{22} the concept of establishment is equally far reaching, although recent negotiations indicate that this reach might be limited.\textsuperscript{23} The tax is payable by the financial institution involved in the transaction to the participating member state in which the financial institution is deemed to be established, at the rates set by that member state.\textsuperscript{24} Similar to the approach adopted for the EU VAT, there is no set rate at which the tax will be charged, but merely minimum rates, namely, 0.01 percent of nominal value for derivatives and 0.1 percent for all other financial transactions.\textsuperscript{25}

In early negotiations, the easiest aspect to agree upon was reportedly that almost everything that could be construed as a financial transaction should be subject to the tax.\textsuperscript{26} As talks have progressed, however, what should be subject to the tax has become a more problematic topic. It has been pointed out that some specific financial structures were not covered by the proposal, leading to concerns over the lack of neutrality to which discrepant treatment of similar products could give rise.\textsuperscript{27} Similarly, a number of participating member states have requested carve-outs from the proposal:\textsuperscript{28} Italy is eager to extend the FTT to sovereign debt derivatives;\textsuperscript{29} and, before its departure from the negotiation process, Estonia (as well as Slovenia) had also wanted to broaden the base. More recent discussions also demonstrate an increased focus on the territorial application of the tax.\textsuperscript{30} Whether these requests are genuine attempts to refine and improve the FTT or are motivated by a desire to insulate transactions especially valuable to the member state’s economy is, however, unclear.

The Legislative Procedure
The legal basis used for the initial EU FTT proposal was article 113 of the Treaty on the Functioning of the European Union (TFEU),\textsuperscript{31} which allows the approval of EU harmonizing legislation concerning indirect taxation insofar as this is needed in order to ensure the proper functioning of the internal market and avoid distortion of competition. Whether this is the appropriate legal basis for this proposal, and in

\textsuperscript{22} Supra note 4, at article 3.
\textsuperscript{23} See below under the heading “The State of Play.”
\textsuperscript{24} Englisch et al., supra note 21.
\textsuperscript{25} Supra note 4, at article 9.
\textsuperscript{26} See the “Explanatory Memorandum” accompanying the proposal, supra note 4.
\textsuperscript{28} Rebecca Christie, “EU Transaction Tax Falters as Austria-Imposed Deadline Nears,” Bloomberg, November 25, 2015.
\textsuperscript{29} Guy Dinmore, “Italy Faces Restructured Derivatives Hit,” Financial Times, June 26, 2013.
\textsuperscript{30} See below under the heading “The State of Play.”
particular whether the FTT can be regarded as an indirect tax, has been contested.\textsuperscript{32}
In any event, the legislative procedure set out in the proposal does not differ substantially from that set out in the alternative legal basis for tax measures, namely, article 114 of the TFEU. Indeed, the procedure set out in both provisions is a rarity within the EU treaties, giving the Council of the European Union full power to approve new legislation, but only by unanimity.\textsuperscript{33}

While the procedure followed by the council is strict, enlargement of the European Union’s membership has resulted in it being extremely difficult—indeed, nearly impossible—to approve new tax legislation. It is unsurprising, therefore, that negotiations on the first FTT proposal failed; more surprising, perhaps, was the subsequent move toward the presentation in 2013 of an alternative proposal under the enhanced cooperation procedure.

The EU enhanced cooperation procedure was originally established by the Treaty of Amsterdam in 1997\textsuperscript{34} but remained unused until 2010, owing to its “forbiddingly difficult” and restrictive conditions.\textsuperscript{35} In 2001, the Nice treaty\textsuperscript{36} replaced the requirement for unanimity in the Council of the European Union with qualified majority voting, substantively facilitating the potential use of the procedure. The procedure could henceforth be seen as a method of circumventing the requirement for unanimity still applied in a few areas, including for tax measures.

Yet, despite this loosening of the requirements, the FTT proposal is only the third occasion on which the procedure has been used, and the first as regards tax issues.\textsuperscript{37} This means in practice that some uncertainty persists on the application of the procedural and substantive conditions for its use. The fact that these conditions, summarized in table 1, are split between articles 20 and 326 through 334 of the TFEU increases this uncertainty.\textsuperscript{38}

\begin{itemize}
  \item[33] For a detailed analysis of this provision, see Rita de la Feria, The EU VAT System and the Internal Market (Amsterdam: IBFD, 2009), at 40 et seq.
  \item[34] OJ C340, 10.11.1997.
  \item[36] [2001] OJ C80, 10.3.2001, 70.
\end{itemize}
Whether the FTT respects these conditions for the use of the enhanced cooperation procedure, particularly the substantive ones, has been a heavily debated issue in the last few years. It has been suggested in particular that the FTT could have significant consequences for non-participating member states, including increased costs for government borrowing, new costs of setting up systems to collect the tax and of actually collecting the tax, and reduction of financial activity—leading to lower profits and hence lower income tax receipts, and overall increasing the costs of capital in those countries.39

The arguments presented seem to have influenced the legal challenge to the FTT brought by the United Kingdom.40 Ostensibly, the case focused on the validity of

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39 Englisch et al., supra note 21. Similar findings were reached by the Swedish National Debt Office: see Soone, supra note 32, at 46 et seq.

the council’s decision authorizing the use of the procedure, although in practice it became a vehicle for challenging specific features of the proposal. It was argued in particular that some of those features violated one of the substantive conditions for the use of the enhanced cooperation procedure, namely, that it did not respect the rights of non-participating member states by creating significant new costs for those countries. Unsurprisingly, the challenge was rejected, but not without reference to a possible “subsequent action for annulment,” which, some have argued, was all that the United Kingdom had hoped to gain from the challenge. The case is therefore significant, inasmuch as the result guaranteed that future legal challenges to the FTT can be brought before the court.

The State of Play

It has been suggested that the December statement from the EU Council of Finance Ministers on the FTT negotiations contains less information on what the details of the tax will include and more on how to resolve present concerns, such as the allocation of resulting revenues. This gives an insight into where current priorities lie. Indeed, from a legal design perspective, there is still a lot to decide: questions on what to tax, at what rate, and how to do it remain unanswered.

Notwithstanding, the statement does offer some more detail regarding areas where concerns had been raised. It seems to suggest, for example, that shares and derivatives might be dealt with separately, with exemptions being considered for market-making activities in shares but not derivatives. The proposed approach appears to be a direct response to those who had raised concerns that by taxing market makers the FTT may reduce overall market liquidity, as traders adapt their behaviour to avoid the tax. Also of great interest is the potential concession concerning a departure from the residence and issuance principles, which have caused such controversy to date. Although admittedly this applies only with regard to

41 Ness, supra note 38, at 299.
43 See Council of the European Union, supra note 5.
shares, the statement declares that it might be “more sensible to start taxation with only shares issued in the member states.”

Alongside the negotiations concerning the contents of the proposal, the most significant development has been the recent decision by Estonia to leave the enhanced cooperation procedure. The TFEU does not contemplate the possibility of a member state’s leaving the procedure, and while no explicit prohibition against leaving is included, the absence of provisions on this matter stands in contrast to the copious requirements and information set out as regards joining the process. There is precedent for a member state’s departure from negotiations, but this was before the process was fully under way, not after. Given the unprecedented nature of the move, Estonia’s departure raises a number of constitutional concerns, since consent and authorization were given to 11, not 10, member states by both the European Parliament and the council. Most significant of these concerns is that Estonia may not actually be permitted to leave the process, or that its departure renders void the approval given to the use of the procedure for approval of the FTT. To avoid a future legal challenge on these grounds, the remaining 10 member states could seek new consent from the union to progress without Estonia. This would, however, represent an additional hurdle for the FTT, and it could result in some remaining member states deciding that to continue is more effort than it is worth, and also dropping out of the process. The only other alternative appears to be forcing Estonia to remain in the process, in which case it will surely block any further progress by exercising its veto.

In light of the above, the proposed target for approval of the FTT by June 2016—three years and four months after the initial proposal—seems somehow unambitious and unrealistic at the same time.

47 Council of the European Union, supra note 5, at 4.
48 Greece left during discussions concerning the approval of new legislation regarding divorce, approved under the enhanced cooperation procedure; see European Commission, “The European Union’s First Use of Enhanced Cooperation To Help International Couples Approved by EU Governments,” Press Release IP/10/917, July 12, 2010.
51 TFEU article 330.
THE EU FTT AS A PROXY TAX

The perception of the FTT as a proxy, while never truly spelled out, is subjacent to much of the discussion surrounding the introduction of the tax. As mentioned above, one of the key arguments presented by the European Commission for the introduction of an FTT has been the perceived undertaxation of the financial sector under the European VAT system; indeed, the VAT exemption applied to financial services features in every discussion held on the taxation of the financial sector, as a key justification for the introduction of a new tax.53 In this regard, the rationale presented for the FTT is not distant from that used to justify the existence of insurance premium taxes in many EU member states.54 The characterization of insurance premium taxes as a proxy tax, compensating for the VAT exemption applicable to insurance services, is reaffirmed by the fact that the tax tends to apply only in countries where a VAT (or goods and services tax) exemption is also present.55

The undertaxation of the financial sector under the VAT is, of course, only one of the four reasons presented by the European Commission to justify the introduction of the EU FTT. Indeed, the regulatory dimension of the proposed EU FTT means that the tax cannot be perceived as a mere proxy tax, but rather is a hybrid—partly a proxy tax and partly a regulatory, or Pigouvian, tax.56 However, it is argued that two other reasons for the FTT presented by the commission, namely, revenue collection and harmonization of the taxation of the financial sector, also could be addressed by the removal of the VAT exemption applicable to financial services, and more effectively so.

The ability of the proposed EU FTT to collect revenue that will significantly contribute to the costs of the financial crisis is one of the central aims of the tax. Yet, as the European Commission itself acknowledged in 2011, it is difficult to predict revenue size without knowing the scope of the tax—that is, to what it will apply.57 Indeed, it is worth noting that general vagueness over what will be subject to the tax has in the past resulted in haphazard revenue predictions.58 Moreover, even if this were not the case and the scope of the tax were known, concerns remained over the

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53 See IMF, supra note 6, as well as most of the literature on taxation of the financial sector.
54 Case C-308/01, GIL Insurance and Others, ECLI:EU:C:2004:252, at paragraph 14.
model used by the commission’s impact assessment.\(^{59}\) Indeed, while the most recent discussion offers a more conservative projection of the revenue-gathering capacity of an EU FTT,\(^ {60}\) reported experiences with the FTT in both France and Italy provide sober reading: in 2012, the French FTT collected only 44 percent of estimated revenue; and the revenue impact of the Italian FTT was even lower, having collected in 2013 less than 20 percent of the initial estimated revenue.\(^ {61}\) Of course, both the French and the Italian FTTs are different from the EU FTT proposed by the commission, but nevertheless the results seem to indicate a tendency to systematically overestimate the revenue potential of an FTT.\(^ {62}\)

The revenue impact of removing the VAT exemption applicable to financial services is also unclear, and cannot be dissociated from the question of undertaxation of the sector resulting from that exemption: if the financial sector is indeed undertaxed, removing the exemption will have a significant revenue impact; if the financial sector is not undertaxed, then removing the exemption will have minimal revenue impact. As the European Commission has stated, this is still “an unsettled empirical question.”\(^ {63}\) Some have sought to argue that a significant part of the services supplied by the financial sector should not be subject to VAT,\(^ {64}\) and on this basis conclude that the financial sector is not undertaxed.\(^ {65}\) This is, however, a controversial assumption. Most take the view that financial services should indeed be subject to VAT—\(^ {66}\) in which case, applying an exemption does result in undertaxation of the financial sector, and consequently removing it would yield significant revenue gains.\(^ {67}\) The fact that the Italian regional production tax (IRAP)—a proxy tax on financial services (among other productive business activities) that in economic terms operates similarly to a

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59 Vella et al., supra note 46, at 618.

60 The 2013 proposal estimated an annual revenue intake of €34 billion: see European Commission, supra note 4.

61 Maffini and Vella, supra note 11.

62 Ibid.

63 European Commission, supra note 57, at 14.


VAT—collects, not significant revenue, but considerably more than the Italian FTT is also indicative.

The final stated aim of the proposed EU FTT is to avoid a fragmentation of the internal market that might be caused by the introduction of uncoordinated national tax measures. If the existence of FTTs in a few European countries before 2011 was already an important element, the introduction of FTTs since then in three more member states further legitimizes this aim. Yet it is questionable whether any of these member states would have felt the need to introduce an FTT if the financial sector were not perceived as undertaxed under the VAT. Indeed, the fact that three of these member states—France, Hungary, and Belgium—have also introduced bank levies, which appear to be more effective as a regulatory tool, indicates that the FTT was introduced in those countries more as a proxy tax than a Pigouvian one. Arguably, therefore, the removal of the VAT exemption applicable to financial services not only would limit the fragmentation of the internal market by removing the need for introduction or maintenance of existing FTTs, but also would further limit the fragmentation of the market by harmonizing the VAT treatment of financial services, which at present is far from uniform.

Given the (partial) proxy nature of the EU FTT, the question then is whether the tax is a suitable and necessary proxy, representing “the best tax instrument that was realistically available,” or whether eliminating the VAT exemption for financial services is not only a better, but also a realistic, option.

A Defective and Unnecessary Proxy

Financial services have been exempt from VAT in Europe, for technical rather than concessional reasons, since the inception of the tax in the 1960s. The rationale for exempting these services has traditionally been not a matter of principle, but the difficulty in determining their value added, and their consequent characterization as services that are “too difficult to tax.” Assessing the FTT as the appropriate instrument to fill this hole in the VAT base is essentially dependent on the answer to two questions: whether the proposed FTT is a suitable proxy, and whether the FTT is a necessary proxy.

Seen against the aims that it sets out to achieve, the proposed EU FTT is a defective proxy. The extension of VAT to financial services would not only better address the existing gap in the VAT base, but it would also provide a more promising source...
of revenue, and it would mitigate the current fragmentation of the internal market for taxation of the financial sector. In addition, removing the VAT exemption for financial services would address another set of difficulties, namely, those created by that exemption. As summarized in Table 2, VAT exemptions generally create economic distortions and legal difficulties. However, regarding the financial services exemption in particular, these distortions are arguably aggravated by the significance of the financial sector in the European economy; indeed, there is some evidence that apportionment of tax calculations is particularly problematic for the financial sector, and that engagement in VAT planning and avoidance is also common in that sector. Therefore, removing the VAT exemption for the financial sector would not only better attain the aims set out for the EU FTT, but also address the many difficulties currently caused by that exemption.

In light of the above, it is somewhat unsurprising that the superiority of a VAT extension over the FTT is implicitly accepted by those who have advocated the adoption of a FAT, invoking its similarity to a VAT as the key argument. Indeed, a few have been explicit in advocating the extension of VAT to financial services as the ideal instrument, but dismiss it on the assumption that such an extension would be impossible, either per se, or within Europe. Seen from this perspective, the FTT would present itself as a necessary proxy tax, but is this a correct assumption?

It is true that for many years it was unclear how financial services could be taxed under a VAT. Yet it is now clear that subjecting the financial sector to a VAT is not only possible in theory under a cash flow mechanism, but after the experiment in Europe in the late 1990s, a real and workable possibility. A separate question is

76 In addition to the IMF (supra note 9) and the European Commission (supra note 10), supporters of a FAT include Michael P. Devereux, “New Bank Taxes: Why and What Will Be the Effect?” in Taxation and Regulation of the Financial Sector, supra note 65, 25-54; and Kaiding, supra note 11.
77 Mirrlees et al., supra note 66; and Hernández González-Barreda, supra note 20.
whether an extension of VAT to financial services is possible in the European Union, given that such a change would in principle have to be approved by the unanimity of all 28 member states. History supports the skepticism shown by some: there have been various attempts to amend the European VAT treatment of financial services, the last of which was as recent as 2007, and they have all failed to gather the necessary support. Four factors, however, militate in favour of a more optimistic approach:

1. *Not since the late 1990s has full taxation of financial services under a VAT been considered in Europe.* Indeed, the most recent review did not consider full taxation, but rather changes to the scope of the existing exemption.81 Why this is the case is unclear, but there is a strong argument that should full taxation be proposed, it could gather support, particularly when put as an alternative to another tax on the financial sector.

2. *Technological developments are likely to facilitate the implementation of the VAT in the financial sector.* The main reason presented by the European Commission for the dismissal of full taxation of financial services under the cash flow mechanism was the high compliance costs reported by the financial sector in the context of the late 1990s experiment with the system.82 While these reports are not publicly available, the technological developments that have taken place in the last 15 years could be a game changer in this regard; indeed, the commission’s proposal in 2007 for an option to tax financial services seems to support this view by assuming the interest of the financial sector in opting for full taxation.83

3. *Current public finance pressures and the renewed public interest in taxation of the financial sector are likely to provide an auspicious environment for change.* Concerns over public finances, and the consequent desire to increase tax revenues, have

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81 For a comprehensive analysis, see de la Feria and Lockwood, supra note 67.


already delivered various tax reforms.\textsuperscript{84} Given the ability of the extension of VAT to financial services to address most (if not all) of the aims of the proposed EU FTT, there is every reason to believe that a similar, if not stronger, momentum for this reform could be achieved.

4. \textit{If unanimity cannot be achieved, the door is now open for the enhanced cooperation procedure to be used within the taxation area.} While enhanced cooperation has been a possibility within the EU legislative framework for many years, the proposed FTT has the merit of opening the possibility for its use within taxation. It is unlikely that the genie can be put back in the bottle, and there is certainly a strong argument that if the FTT can be seen to fulfill the conditions for the use of the procedure, so would the extension of VAT to financial services, and probably more so.

**THE EU FTT AS A DISPROPORTIONATE PROXY TAX?**

To the extent that the EU FTT is a proxy tax, it is both unsuitable and unnecessary: unsuitable because it does not fulfill the aims that it sets out to achieve; and unnecessary because taxation of financial services under a VAT is possible, both in theory and in practice. Suitability and necessity are the two key elements for assessing the proportionality of EU legislative measures, a general principle of EU law enshrined in the European treaties with which all legislation must comply.\textsuperscript{85} While proportionality has been mentioned briefly in the context of the use of the enhanced cooperation procedure,\textsuperscript{86} application of the proportionality test to the EU FTT has never been pursued. The unsuitable and unnecessary nature of the FTT as a proxy tax, however, raises questions over its proportionality. This conclusion in turn further challenges the wisdom, from a policy perspective, of introducing a new proxy tax when fixing an existing one would most likely yield more benefits, at lower costs. Abolition of the VAT exemption for financial services will not have a regulatory effect, but from every other perspective, it presents itself as the best instrument for taxing the financial sector in Europe.


\textsuperscript{86} Joint cases C-274/11 and C-295/11, \textit{Spain and Italy v. Council}, ECLI:EU:C:2013:240. See also Englisch et al., supra note 21.