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| Subject: | Draft Report to the Ecofin on financial levies and taxes<br>- State of play |

Delegations will find attached the Draft Report to the Ecofin on financial levies and taxes, dated 11 May 2011.

ECONOMIC AND FINANCIAL COMMITTEE

SECRETARIAT

Brussels, 11 May 2011

**Draft report to the Ecofin on financial levies and taxes**
**– State of play -**

## Introduction

1. On the 17th of June 2010, the European Council agreed that Member States should introduce a system of levies and taxes on financial institutions to ensure a fair burden-sharing of the cost of the financial crises to the financial sector and to set incentives to contain systemic risk. Such levies or taxes should be part of a credible resolution framework and the cumulative impacts should be carefully assessed.

2. The October 2010 European Council called for "further coordination between the different levy schemes in place in order to avoid double-charging". Double charging issues can arise either as Member States introduce levies on subsidiaries of its own financial institutions in other EU countries or foreign branches of EU banks on its own territory.

3. The preliminary analysis of the November 2010 EFC Report on financial levies and taxes concluded that the risk of double charging remained rather limited because (1) only a limited number of Member States have introduced levies with such a scope and (2) the double charging agreement resolves the issues between the UK and France.

4. However, as underlined in the November 2010 EFC Report on financial levies and taxes, the lack of coordination in the short term could generate spill-over effects, distortion of competition and relocation of businesses.

5. In December 2010, the Council agreed on the need to address these problems with practical solutions and underscored that the national levy system should be flexible enough to adjust to the ongoing changes in the regulatory area and to the medium term EU solution.

6. To this end, the December 2010 Council "invited the EFC to continue monitoring national systems of levies and taxes and report back to the March Ecofin on the state of play, in particular in respect of level playing field and coordination".

**State of play, April 2011**

7. Based on a questionnaire on the implementation of taxes and levies on the financial institutions to the Member States, this report provides the state of play in respect of the implementation by Member States of such systems of levies and taxes as well as of short term issues resulting from their implementation.

8. Although the working assumption is that all Member States[1], would introduce systems of levies or taxes, as agreed by the European Council, no precise deadline has been set for their introduction. So far, only ten Member States have introduced systems of levies and taxes (DE, UK, FR, SE, PT, LV, DK[2], AT, HU and CY) whose parameters (base, rate and scope) differ considerably (see annex 1). Belgium[3] has introduced a levy, but not in the sense of a levy or tax to contribute to resolution and has accordingly been removed from the table in annex 1.

9. Four more countries are currently in the process of introducing systems of levies and taxes (SK, PL, IE, SI; see annex 2), whereas other Member States are favourably disposed towards or could consider introducing systems of levies or taxes at a later stage (NL), when there is more clarity in terms of EU coordination, the inference with other regulatory measures and the credit supply effects or, would consider introducing them in the context of an EU-wide approach on crisis resolution (LT, LU, EE, RO and BU).

10. In the presence of an EU-wide agreement for harmonising certain aspects of tax legislation, Italy would consider a reshuffling of existing taxes (but not the introduction of new taxes considering the already high tax burden on the sector). Greece will decide on the issue only after the current tax on most profitable firms is expired (2013). Malta and the Czech Republic do not intend to introduce such systems in the future.

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1 Except for the Czech Republic.

2 DK has introduced a resolution regime in connection to the Deposit Guarantee Scheme, which is financed through an ex post levy on financial institutions.

3 The original Deposit and Financial Instrument Protection Fund ('DFIPF') guarantees banks' deposits in Belgium up to a maximum amount of € 100 000. Besides the DFIPF, the Belgian government created, in 2008, a Special Fund, the Deposit and Life Insurance Special Protection Fund, managed by the Ministry of Finance, to complement indemnification offered by the DFIPF in cases this one would not be sufficient. The Special Fund thus ensures the protection of banks' deposits up to € 100 000 after the intervention of the DFIPF. In addition, it also covers certain life insurance products under the same conditions.

## The double charging issue

11. A double charging issue on cross border financial institutions may arise if a country introduces a levy that also covers:

1) subsidiaries of its own financial institutions in other EU countries (which is the case for both the FR and UK levies) AND/OR,
2) On its own territory, foreign branches of EU banks (which is the case of AT, CY, HU, LV and the UK).

The table 1, published in the November 2010 EFC Report on financial levies, has been updated accordingly.

**Table 1: Scope of systems of levies and taxes across Member States**

| ***Country*** | | | ***Domestically*** | | | | ***Abroad*** | |
|---|---|---|---|---|---|---|---|---|
| | | | Parent | Foreign subsidiaries | Branches of foreign banks | | Parent's | |
| | | | | | Non-EU | EU | subsidiaries | branches |
| **1** | **DE** | All banks | X | X | X | | | X |
| **2** | **FR** | All banks (*except the ones holding less than €500 mn in RWAs*) | X | X | | | **X** | X |
| **3** | **CY** | Banks<br>CCI's | X | X | X | **X** | | |
| **4** | **AT** | All banks (*above 1 bn of liabilities)* | X | X | X | **X** | | X |
| **5** | **PT** | Credit Institutions | X | X | X | | | X |
| **6** | **DK** | All banks | X | X | | | | X |
| **7** | **HU** | Credit institutions,<br>Insurers<br>Other financial organizations | X | X | X | **X** | | X |
| **8** | **SE** | All banks<br>Other credit institutions | X | X | | | | X |
| **9** | **UK** | Banks with *aggregate liabilities above £20 bn* | X | X | X | **X** | **X** | X |
| **10** | **LV** | All banks | X | X | X | **X** | | X |

12. In view of addressing the double charging issue, only the UK-FR agreement, which addresses the issue on a bilateral basis, has been reported. The two countries are in the process of finalizing the agreement, which will give the priority of taxation to the home country,

whereas subsidiaries and branches (if relevant) will be given a tax credit in the host country, corresponding to the share of tax paid in the home country due to these branches' or subsidiaries' activity. The UK is keen to enter into similar double taxation arrangements with other Member States and has started, or is due to start, discussions accordingly.

13. Other Member States have reported that they will assess the possibility and need to enter into bilateral agreements on a case-by-case basis.

**Spill-over effects**

14. In spite of the considerable potential for spill-over effects and competitive distortions reported in the AHWG report and the fact that an increasing –though still limited- number of Member States has been introducing national systems of levies and taxes, only few concrete examples of negative spill-over effects have been reported so far (CZ, SI). This may be due to the fact that most systems have been introduced recently or that banks operate in countries where no levy has been imposed and attenuated by the agreement between the UK and France and influenced by the capital/liquidity management within the group or its business model.

15. However, a number of Member States have expressed some concerns in respect of potential spill-over effects, including competitive distortions within their domestic banking sector, based on the structure of their financial sector (LU, ES, IT, IE, LT), although in some cases it is expected to remain rather limited.

16. No up-to-date quantitative analysis (across the EU) has been carried out so far and the Commission could be invited to include this in its ongoing impact assessment.

17. In view of potentially increasingly spill-over effects as Member States introduce national systems of levies and taxes, enhanced coordination between relevant home and host in these matters would be required and parent Member States should therefore be required to inform host supervisory and fiscal authorities as appropriate in advance when planning the introduction of a system of levies that will impose charges on parent's subsidiaries and foreign branches.

**Resolution framework**

18. On the 17th of June 2010, the European Council agreed that such levies or taxes should be part of a credible resolution framework. Currently this seems to be the case only for a limited number of Member States and this while an increasing number of Member States

has been introducing resolution mechanisms at the national level as well as systems of levies and taxes. From annex 1, however, results that most levies are being introduced with a certain flexibility towards an EU-wide solution at a later stage.

**Way forward**

19. The EFC will continue monitoring national systems of levies and taxes as they are being introduced and implemented to keep track of developments in respect of spill-over effects as well as of built-in flexibility in view of the upcoming Commission proposals in respect of an EU-wide resolution framework in September 2011.

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## ANNEX 1

| Country | | Single entity(S) /consolidated (C) | Intra-group exposures | Rate | Base | Ceiling | Rendez-vous clause |
|---|---|---|---|---|---|---|---|
| 1 | DE | S | NOT deducted | **Progressive FEE for liabilities**<br>• 0.02 percent for liabilities under €10bn<br>• 0.03 percent over €10bn; and<br>• 0.04 percent above €100bn<br>**Flat FEE for derivatives**<br>• 0.00015 percent<br>**Capped at 15% of credit institution's annual profit (after tax)** | • **LIABILITIES** excluding capital and deposits<br>**and**<br>• **Derivatives** (nominal value) | NO<br>€ 1 bn<br>p.a. | NOT needed in law as revision to accommodate for EU developments is both common practice and poss. |
| 2 | FR | C | Not relevant (consolidated basis) | 0.25 percent of the capital requirements (based on RWA) | Risk weighted assets (**RWA**) | NO<br>€500 mn - €1 bn per year | YES |
| 3 | AT [4] | S | Not specified. | NO LEVY < € 1 bn<br>0,055% € 1 bn <Base< € 20 bn; and 0,085% Base > € 20 bn<br>+<br>0,015% on the volume of all financial derivatives | Unconsolidated balance sheet total excluding<br>subscribed capital and reserves, secured deposits and certain liabilities to banks, provided they are necessary to fulfil liquidity provisions +<br>add on for financial derivatives on trading book | NO | YES |
| '4 | PT | S | Not specified. | 0,05% on banks' liabilities<br>0,00015% on off-balance-sheet derivatives | (i) liabilities excluding tier 1 and tier 2 capital and insured deposits (only the amount effectively covered); (ii) notional value of off-balance-sheet derivatives will also be "levied" (excluding those used for hedging). For both cases, the amount on which the levy will be calculated corresponds to the annual average of each end-of-month balance. | NO<br>Around € 170 million per year. | A recital has been included mentioning the need to revise the law in line with the EU developments. |
| 5 | DK | S[5] | N.R. | Ex post levy depending on the need but annual contributions capped at 0.2% of covered deposits and securities | Covered deposits and securities | N.A. | YES in the context of DGS |

[4] The Austrian levy will be deductible as operating expense.
[5] Potential fees calculated on a consolidated basis if all entities in the group are liable for the fee, cf. Table 1.

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| **6** | **HU** | S | Not specified. | 0.15 % below and<br>0.5% above HUF 50 bn | BS corrected for interbank loans | NO<br>HUF 200 bn p.a. | NO |
| **7** | **SE** | S | (see base) | 0.036% after 2010<br>0.018% for 2009 and 2010 | Liabilities excluding equity capital, debt securities included in the capital base, group internal debt transactions between those companies paying the fee and debt issued under the guarantee program | Stability fund targeted to reach 2.5% of GDP over the next 15 years. | NO but revisions possible |
| **8** | **UK** | C | Intra-group exposures fall out for UK groups as well as intra-group liabilities relevant to the levy for non-UK groups | 01 January 2011 – 28 February 2011:<br>0.05 per cent for short-term chargeable liabilities and 0.025 per cent for long-term chargeable equity and liabilities.<br>01 March 2011 – 30 April 2011:<br>0.1 per cent for short-term chargeable liabilities and 0.05 per cent for long-term chargeable equity and liabilities.<br>01 May 2011 – 31 December 2011:<br>0.075 per cent for short-term chargeable liabilities and 0.0375 per cent for long-term chargeable equity and liabilities.<br>1 January 2012 onwards:<br>0.078 per cent for short-term chargeable liabilities and 0.039 per cent for long-term chargeable equity and liabilities. | Liabilities excluding<br>Tier 1 capital, insured deposits, policy holder liabilities and assets qualifying for FSA liquidity buffer | NO<br>£2 bn annually, but only £1.5 bn for 2011 | No but review of effectiveness in 2013 |
| **9** | **LV** | S | | 0.036% | Liabilities excluding equity capital, deposits subject to a deposit guarantee scheme, mortgage bonds and subordinated liabilities that are included in equity capital as subordinated capital | NO | No, but future revisions are possible |
| **10** | **CY** | S | Deducted | 0.095% on the overall level of deposits in Cyprus (see base) for the years 2011 and 2012.<br>Capped at 20% of credit institution's taxable income for the two years 2011 and 2012. | Overall level of deposits (of residents and non-residents) in Cyprus, excluding the interbank deposits of credit institutions operating in Cyprus.<br><br>The tax imposed for 2011 shall be calculated on the basis of deposits at 31/12/2010. Respectively for 2012, the tax imposed shall be calculated | NO | YES<br>25/60 of the total annually received revenue for the years 2011 and 2012 will be deposited in a special account and will be constitute as a part |

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| | | | | | on the basis of the deposits at 31/12/2011. | | of the independent Financial Stability Fund which will be set up. |

## ANNEX 2

| Country | Planned levies and taxes system |
|---|---|
| **PL** | The Ministry of Finance is currently carrying out the legislative work on a draft of The Stabilisation Fund Act. This draft envisages a prudential fee on certain financial institutions whose proceeds will flow into a special resolution fund. It also sets up additional funding in view of support to certain financial institutions, granted under separate laws.<br>The entities which shall pay a fee are as follows:<br>• Domestic banks;<br>• Branches of foreign banks and credit institutions;<br>• Credit unions.<br>The basis for calculating the prudential fee is all liabilities excluding basic funds and the amount of funds guaranteed by the deposit guarantee system.<br>The amount of the prudential fee has not yet been finally determined. |
| **SI** | A proposal of law regarding the taxation of bank balance sheet assets was passed by the government and is now in the process of being approved by the parliament.<br>The aim of the law is to encourage the credit activity thereby enhancing the flow of funds to the real economy. |
| **SK** | The government is currently in the process of drafting the Act on levies. The system of levies should be implemented as from 1 January 2012. No further details are available to date. |
| **IE** | The banks have been charged for the Government's guarantee of their liabilities under the original bank guarantee and under the current Eligible Liabilities Guarantee Scheme. Moreover, the legislation establishing the National Asset Management Agency (NAMA) provides for a levy on the banks should the work of NAMA result in a loss for the taxpayer.<br>Ireland has recently published draft legislation to implement a special resolution regime for banks. The Resolution Fund will primarily be made up of contributions from credit institutions and the rate of contribution will be determined in accordance with Regulations to be made under the Bill by the Minister for Finance. |