European Banking Federation

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Launched in 1960, the European Banking Federation is the voice of the European banking sector from the European Union and European Free Trade Association countries. The EBF represents the interests of almost 5000 banks, large and small, wholesale and retail, local and cross-border financial institutions. Together, these banks account for over 80% of the total assets and deposits and some 80% of all bank loans in the EU only.

EBF COMMENTS ON THE EUROPEAN COMMISSION'S CONSULTATION PAPER ON FINANCIAL SECTOR TAXATION

KEY POINTS

The European Banking Federation (EBF) welcomes the opportunity to comment on the European Commission's consultation paper on financial sector taxation.

Since the financial system and the whole economy seek to emerge from the recession and given the key role the financial sector plays for the rest of the economy, the introduction of any new fiscal tool must be calibrated in a way that does not affect financial stability and/or economic growth. Such a calibration will need to understand where the cost of the tax will be borne in order to understand in full social and economic consequences. Considering the possible magnitude of the economic impact of additional taxes on the financial sector, **the EBF urges the Commission to complete a holistic impact assessment and to publish the findings with full transparency before presenting fiscal initiatives.**

The EBF has not yet seen a clear and comprehensive explanation of the purpose of introducing a financial sector tax (FST) in the EU. The Commission's Communication of October 2010 and the Consultation Paper of February 2011 do not adequately convey which of the cited objectives of introducing such a tax is to prioritise (cf. Q43 & Q44). It is unclear whether an EU fiscal initiative would primarily aim to generate immediate public revenue for Member States, help restore financial stability and economic growth over the longer term, feed into a resolution fund, eliminate double taxation resulting from national measures or target a combination of these. To a certain extent, these objectives appear to be conflicting. Some of them are based on arguments which, in our view, are not peremptory (e.g. the assumption that the financial sector is under-taxed notably because of the VAT exemption regime – cf. Q6 & Q7). There seems to be irreconcilable conflicts between the requirement for banks to rebuild and strengthen their capital base, to lend more and to pay more taxes at the same time. **The EBF calls on the Commission to clarify by which criteria it is to analyse the case for introducing such a measure. This is a prerequisite to the conduct of an objective cost-benefit analysis aimed at determining whether the introduction of an EU FST is advisable, what the consequences are (both direct and indirect) and, if so, the most appropriate and effective option.**

a.i.s.b.l
10, rue Montoyer B-1000 Brussels
+32 (0)2 508 37 11 Phone
+32 (0)2 511 23 28 Fax
www.ebf-fbe.eu

The EBF has identified a number of **possible adverse implications** of introducing additional taxes on the EU banking sector along the lines of the proposed methodologies i.e. the Financial Transactions Tax (FTT) and the Financial Activities Tax (FAT):

- **Double taxation and cumulative effect with other requirements, regulations and bank levies.** A vast array of measures have been put in place in the aftermath of the crisis including new capital requirements, new regulations (cf. Q8), new accounting impairment rules, resolutions mechanisms, bank levies and new domestic taxes on the financial sector (cf. Q2). The cumulative effect of all these measures together with a new EU FST (cf. Q9) and double taxation issues (cf. Q26, Q30 & Q48) may affect banks' capacity to rebuild and strengthen their capital base, impact negatively bank's ability to finance households and businesses (cf Q21 & Q37), place downward pressure on economic growth expectations and deprive public authorities of a greater source of fiscal income. The duplication of banking levies for fiscal and resolution purposes is particularly confusing and worrisome (cf. Q56).

- **Competitiveness and shift effect resulting from an FTT.** The financial sector operates on a global basis with capital able to move freely and easily with trading carried out electronically across many jurisdictions. Consequently a real risk of the imposition of an EU wide FTT is that the tax base would be immediately eroded as a consequence of the migration of transactions outside the scope of the rules (cf. Q10 & Q14).

- **Issues of proportionality and tension on liquidity associated with the administration of a narrow-based FTT.** A narrow-based FTT would specifically target exchange traded transactions. For such transactions, central clearing mechanisms and central depository systems provide a natural connecting factor for the administration and collection of any FTT. A likely consequence of a narrow-based FTT would be the migration of such transactions from the central clearing mechanisms and regulated markets into presumably less secure and transparent channels, with an inevitable impact on the liquidity of EU financial markets (cf. Q 12, Q 15 & Q 16).

- **Issues of proportionality and legal uncertainty associated with the administration of a broad-based FTT.** There are also economic implications of a broad-based FTT, since it is unclear what would be the connecting factor for the collection of the tax for the over-the-counter ("OTC") transactions of non exchange traded securities and derivatives. The practical issues and costs associated with enforcing collection and compliance, as well as legal uncertainty for the presumed collectors of the tax are significant and likely to lead to market distortions (cf. Q11, Q 12 & Q 19).

- **Issues of proportionality and impact on liquidity associated with the FAT.** There are serious concerns about the perspective of introducing a new tax which would impact liquidity and make cash flows more expensive. Data on cash flow based profits and wages may not be readily available in the existing financial reporting framework. Therefore the computation of a FAT along the lines of the 1st option (FAT1) may require banks to develop a specific set of accounts. Such requirement would be particularly costly and detrimental for EU financial institutions (cf. Q 25 & Q27). The FAT2 and FAT3 options would seriously discourage the lending business (cf. Q 27 & Q35) and risk over resulting in a permanent fall in shares prices.

- **FAT-VAT interaction.** The introduction of a new tax based on cash flows and designed outside the scope of VAT would create an overwhelmingly complex tax system for EU financial institutions (cf. Q32).

- **Where the cost of the tax falls.** The consultation focuses on the tax paid by the sector and whether it is under-taxed. In designing any tax care should be taken to understand who will bear the cost of that additional taxation. The cost of additional taxation does not ultimately 'stick' in the sector and there are only three groups that will bear the additional cost. That is, shareholders, employees or customers. We recognise public concern about bonus levels, however, there is mathematically only so much additional tax that employees can bear and the banks still function. That leaves shareholders and customers. With respect to the former, a high proportion of shareholders are pension funds, other institutional investors on behalf of retail customers and retail investors themselves. Governments also have acquired banks equity shares and would be hit as shareholders. The cost borne by shareholders would not be evenly distributed across the tax paying public. The elderly would bear a disproportionate burden because their holding of financial assets (directly or indirectly) is higher than average (cf. Q1, Q 18, Q 20 & Q54).

Therefore the EBF opposes the introduction of additional taxes on the financial sector in the EU.

If additional tax measures were to be adopted in the EU, then the following **recommendations** should be taken into consideration:

- **Double taxation and duplication of domestic bank taxes with any EU fiscal initiative must be avoided. Cumulative impacts and interactions with other mitigation measures** (including capital requirement under CRD IV/Basel III, countercyclical capital buffers and IASB reform on provisioning) **and resolution banking levies** (including stability funding, reformed framework of deposit guarantee schemes and debt write downs) **must be appropriately evaluated** before and during the implementation of the new tax. As tensions on solvability and liquidity were a pivotal element in the run-up to the crisis, **any new EU fiscal measure should be designed and calibrated in a way that takes into account the financial institutions' ability to pay and their ability to comply with new capital requirements** (cf. Q43, Q48, Q49 & Q50).

- **The competitive implications of new taxes on the EU financial sector, with regard to the necessary level playing field between the banking sector and the non-banking sector, the competitiveness of EU banks with non-EU banks and the ability of the banking industry to continue to meet the financial needs of the real economy cannot be ignored** (cf. Q39 & Q51).

- **Any additional tax on the EU financial sector should be developed in respect of proportionality and legal certainty principles**. The practical issues and compliance costs pertaining to the collection of an EU-wide FTT must be carefully examined. Any new tax implying a computation based on financial statements should be designed in a way that is compatible with the information that is readily available to financial institutions in the existing financial reporting framework which is not cash flow based. Any new tax should not require the financial sector's companies to develop a specific set of accounts only for fiscal purposes.

- **If a tax were introduced based on cash flows, then the Commission should assess the merits of designing it within the VAT framework, so as to ensure an administrable system for financial institutions and to mitigate the unforeseen cumulative effect of the collection of additional taxes on top of irrecoverable input VAT.** Elements for such approach are already provided by the proposal for an option to tax which is included in the existing proposed Directive for a reform of the VAT treatment of financial services (cf. Q32).

Against this background, fiscal consolidation efforts should first address the fundamental questions of whether and in which proportions taxation should focus on consumption, labour, capital and other economic factors, taking into account the elasticity of such factors, rather than focusing purely on a punitive tax of the financial sector and its operational structures. Whilst we agree that the financial sector should bear the costs of reinforcing financial stability and of preventing any future crisis, the costs of fiscal consolidation efforts should not fall only on the financial sector, but should rather be shared amongst all economic sectors (cf. Q1).

Our detailed comments are set forth below, including a number of answers to the Commission's questionnaire. However, we have considered that many questions raised in the consultation, in our opinion, start from false assumptions (cf. Q40). In such cases, we have indicated that we consider that we would need further clarity or more objective elements to answer the question and have focused on those questions which we consider the most relevant.

APPENDIX 1: IDENTIFICATION OF THE STAKEHOLDER

- **Name and address of the respondent, relevant contact details (including email address for contact)**

  European Banking Federation (EBF) aisbl
  Rue Montoyer 10
  100 Brussels - BELGIUM

  Contact person: Roger Kaiser (r.kaiser@ebf-fbe.eu)

- **If you are registered with the Commission as an "interest representative"[1] your identification number**

  4722660838-23

- **Are you a recognised European social partner organisation or a representative of a European (sectoral) social dialogue committee**

  Yes

- **Field of activity of the respondent. Please specify your field of activity. Please indicate if you are directly affected by any of the measures and if so, which one and to what extent:**

  Banking

- **If the respondent is an association of stakeholders, how many members do you represent and what is your membership structure?**

  +/- 5.000 member banks; European Federation whose members are national associations

- **Do you object to publication of personal data on the grounds that such publication would harm your legitimate interests?**

  No

- **Do you agree to having your response to the consultation published along with other responses?**

  Yes

[1] https://webgate.ec.europa.eu/transparency/regrin/welcome.do?locale=en

APPENDIX 2: ANSWERS TO THE QUESTIONNAIRE

Q1: Do you consider it justifiable that the revenue side of fiscal consolidation efforts of Member States are targeting the financial sector?
1. Yes, because __________
2. No, because the approach of an indirect tax chosen by Member States is not transparent and does not show who will finally support the burden of the tax/levy: most actors of the financial sector are intermediaries and the final charge is not borne by them, but by their stakeholders (employees, customers or shareholders).
3. Cannot decide
4. Other __________

Please explain further and provide evidence, if you have any.

During the crisis, public interventions to support the financial and banking system and prevent it from a major collapse took the form of deposit-guarantee schemes and government bailouts of financial institutions, i.e. acquisitions of equity shares, acquisitions of bad loans and quantitative easing. The experience of past crises suggests that in aggregate the net direct costs of these interventions may be recouped to a large extent over the medium-term. Nevertheless, in the aftermath of the crisis, many governments had to engage fiscal consolidation efforts so as to be able to face indirect costs of the crisis and wider social and economic consequences and challenges.

The consequential pressure for fiscal consolidation has reduced debate about public finances and sources of revenue simply to the "quick-win" of increasing the tax burden on the financial services sector. This conclusion erroneously assumes that a financial sector tax would be borne by the financial institutions, at no cost to the financial markets or real economy. This underlying hypothesis underestimates the role that financial institutions play in the economy. It also tends to disregard the fact that banks are conduits through which costs will ultimately flow and will inevitably be borne by third parties who will, therefore, be economically penalised by any FST. Moreover we disagree with the tendency to stigmatise banks as promoters of aggressive tax planning since this does not faithfully depict the reality. On the contrary, banks support governments in protecting public revenue. Indeed, they are entrusted with the task of implementing withholding taxes collection and associated reporting requirements, laws to combat fraud, money laundering, crime and terrorism.

- The financial and banking system fulfils fundamental tasks such as the provision of credit, clearing of transactions, and transformation of maturities' spread risk. According to statistics from the European Central Bank, banks provide 75% of funding to households and businesses in the EU. The financial services industry is one of the economic sectors where the EU still has competitive advantages compared to third countries. With a number of employees estimated at 3,1 millions in 2010, the banking industry is one of the major employers in the EU. Banks' activities are of importance to the health of the economy in general through the provision of credit and to those who rely on investment income and have investments in banks, either direct or indirect (i.e. through pensions), who tend to be the more elderly in society. In addition, banks' activities are of general importance to the households and businesses, from enabling exporters to hedge against the risk of monetary fluctuations, to giving savers and investors the means to diversify their investments.

- The main features of the Financial Activities Tax (FAT) when compared to a Financial Transaction Tax (FTT) are that it directly taxes businesses of the financial sector, whilst the FTT taxes financial market participants and thus would only indirectly impact financial institutions' profits. However, since financial institutions are intermediaries or conduits, it should be understood that the burden resulting from any new financial sector tax would be passed on to their employees (in terms of both reduced employment and reduced remuneration), to their shareholders (through lower dividends or step falls in share prices) many of whom are pension funds, and other funds or retail investors, and to their customers (i.e. investors, borrowers, savers), or a combination of these, as it cannot stick at the bank or financial sector participant level. The cost of the financial sector tax would hence to some high degree fall on the general public as customers or investors (whether directly or indirectly through pensions).

- Banks collect and remit tax payments for revenue bodies and also have responsibilities for withholding tax regimes on deposit interest. This function significantly reduces the number of people who need to complete self assessment tax returns and simplifies the overall administration of the tax system, at a cost borne by the financial services sector. Financial intermediaries, which used to act as local collectors of taxes on investment income, are today requested by an increasing number of jurisdictions to act as international tax intermediaries. As such they have to bear huge implementation costs resulting notably from the lack of a global approach to tax requirements. Where the law requires, banks provide certain information on third party income for matching with customer tax records, underpinning tax compliance. They play a major role worldwide in the battle against crime and terrorism by co-operating with law enforcement and revenue bodies, tracking and reporting suspicious transactions and implementing laws to combat fraud and money laundering.

Against this background, fiscal consolidation efforts should first address the fundamental questions of whether and in which proportions taxation should focus on consumption, labour, capital and other economic factors, taking into account the elasticity of such factors, rather than focusing purely on a "punitive" tax of the financial sector and its operational structures. Whilst we agree that the financial sector should bear the costs of reinforcing financial stability and of preventing any future crisis, the costs of fiscal consolidation efforts should not fall only on the financial sector, but should rather be shared amongst all economic sectors.

Q2: Do you find it problematic that Member States introduce patch-work national measures without coordination?
1. Yes, because there may be a double charge, for instance on branches, which will be shifted to stakeholders.
2. No, because __________
3. Cannot decide
4. Other ___________

Please explain further and provide evidence, if you have any.

As emphasized in the Commission's Communication, an increasing number of Member States have already taken unilateral measures with regard to financial sector taxation. They have adopted different taxation schemes, with different tax bases, different effective tax rates and different scopes of application. These patch-work national measures bear the risk of double taxation.

The introduction of an EU-wide tax/levy on the financial sector would duplicate the burden associated with the taxes/levies imposed by Member States on their financial sector in the aftermath of the crisis. It is indeed unclear and uncertain whether and how Member States could be required to repeal their domestic measures. Therefore, any Commission initiative related to financial sector taxation should concentrate on defining a common approach to double tax relief.

Q3: Do you consider that shortcomings in the governance or behaviour of financial markets or financial institutions were one of the major reasons for the financial and economic crisis?
1. Yes, entirely
2. Yes, to a great extent
3. No, just as much as the other sectors
4. No, it was due to government policies mostly
5. Cannot decide
6. Other __________

Please explain further and provide evidence, if you have any.

We agree that excessive risk-taking by a number of borrowers and financial operators has contributed to the crisis, but this statement cannot be generalized to all institutions. Indeed, risk-taking varies very much from one institution to another, depending on their business model. In our view, many other factors and responsibilities outside the financial sector contributed significantly to the financial and economic crisis.

Sanctions which the Commission (DG Competition) is levying on banks which have taken state aid punish the reckless managers and insouciant shareholders with restructuring obligations of the aided bank. To the extent that there is a political or public desire to further 'punish' the banking sector, the EBF would caution strongly against fiscal policy being the means for effecting this.

Q4: Which sectors and activities within the financial sector had to do most with the crisis?
1. Investment banking
2. Insurance sector
3. Investment and pension funds
4. Alternative investment funds
6. Traditional (commercial and retail) banking
7. Cannot decide
7. Other

Please explain further and provide evidence, if you have any.

We don't think that subjective speculation as to the main causes is appropriate or helpful in understanding what happened, addressing future issues around managing systemic risk or informing fiscal policy.

Q5: Do you consider those shortcomings in the governance or behaviour of financial markets or financial institutions to be an EU-wide problem?
1. Yes, it affected all EU Member States
2. Yes, it affected most EU Member States
3. No, it only affected some/very few EU Member States
4. No, it only affected some/very few EU Member States and spilt over to others
5. Cannot decide
6. Other _________

Please explain further and provide evidence, if you have any.

This question has already been the subject of much discussion and analysis and we do not propose to reproduce the extensive material available on the subject here.

Q6: Do you consider the financial sector in the EU to be under-taxed (e.g. because of VAT exemption, exemption from thin capitalization rules, higher economic rent i.e. excess profits) or overtaxed (e.g. because of special additional taxes already implemented) with respect to other sectors of economic activity?
1. It is under-taxed, because it enjoys the following benefits __________
3. It is not under-taxed compared to other sectors
4. It is over-taxed, because it suffers the following additional taxation __________
5. Cannot decide
6. Other __________

Please explain further and provide evidence, if you have any.

It is not clear that there is any objective empirical data available that demonstrates this under-taxation thesis, which was never questioned before the crisis, to be correct. Data from the ECB have revealed that banks pay 17% of European corporate taxes, when they generate 3% of GDP.

In order to verify whether or not the above assumption is well founded, a survey should be conducted on the total tax contribution of the financial services sector in the EU[2], measuring all the different taxes that financial services companies currently and have historically paid, in comparison with other sectors of the economy. Such a survey should cover a significant period, probably measured in decades, so that the extent of the sector's tax contribution can be measured across financial cycles as opposed to by snapshot of years in which profits may have been particularly high or particularly low.

This study may pick up the big picture of corporate tax payments, irrecoverable VAT and the employment taxes supported by banks as employers. Separately, the employee-based taxes should be incorporated as a measure of the wider economic contribution.

Such a study would enable the Commission to verify:

- whether there is symmetry between taxation of the banking sector and its value added; and
- whether the overall tax contribution of the banking sector is lower or higher compared to other key sectors that are active at a global level.

[2] PricewaterhouseCoopers conducts such studies in the UK on an annual basis (see "Total Tax Contribution, PwC second study of the UK Financial Services Sector for the City of London Corporation", last updated December 2009).

On this basis, an aggregation of any new bank tax with the current total tax contribution could be estimated. If a financial sector tax were to be introduced, such study would help calibrate its magnitude both in terms of scope of application and effective tax rate. This exercise may demonstrate that exceeding certain levels, the tax burden of a number of institutions operating in the EU could exceed the profits generated in the Community. A consequence would be that the tax may affect banks' capacity to rebuild and strengthen their capital base in line with international standards. This cannot but impact negatively the banks' capacity to finance households and businesses in the EU and place downward pressure on the EU economic growth expectations, depriving the EU treasury of a far greater source of fiscal income. At certain levels, the tax may also severely penalize the European financial services sector compared to other sectors, creating disparity between the subsectors of the financial industry and putting banks established in the EU at a disadvantage to their competitors.

In the Commission's view, the introduction of a financial sector tax is underpinned *inter alia* by the VAT exemption regime. Under the Council Directive 2006/112/EC on the common system of value added tax ("the VAT Directive"), banking services (as well as insurance and other financial services) are exempt from VAT. The Commission suggests that the VAT exemption for financial services is a justification for the introduction of a new tax.

Under its fundamental principles, VAT is a pure consumption tax, which ultimately is borne by consumers, not by businesses.

In addition to the political reasons (related to inflationary effects) behind the decision adopted in the '70s to exempt financial services from VAT, the primary reason for the exemption is the conceptual and practical difficulty in measuring the value related to financial services rendered by banks. This is especially the case for the traditional financial intermediation services of deposits and loans. The consideration for these services is in the form of the spread between the interest charged on loans and the interest paid on deposits. This margin is a global composite measure of intermediation services rendered by a bank to both depositors and borrowers, which cannot be readily measured for individual transactions for purposes of applying a VAT or any other form of transaction-based consumption tax. So far it has been difficult to develop a methodology for allocating this margin to individual transactions for the purpose of applying a VAT under an invoice-based method. Similar issues arise in the taxation of insurance and other types of financial services, e.g. currency exchange and trading in securities.

The VAT exemption of financial services gives no right to a financial institution to deduct VAT incurred on expenditure unlike most types of other services. VAT is, therefore, a cost to the sector created by the exemption. For example important parts of banking activities such as the development and maintenance of IT-system and back office administration incur irrecoverable input VAT. This irrecoverable part of VAT creates a "hidden VAT cost" which cascades through the chain of services. Indeed, VAT on outsourced services and on intra-group transactions becomes a cost component of downstream exempt supplies. The VAT exemption is, therefore, a cost to the sector and does not lead to a tax benefit. The tax benefit of exemption accrues to the end consumer of financial products. Therefore the VAT exemption regime cannot be viewed as an advantageous system for the financial sector. On the contrary, it is a source of costs, administrative problems and difficult judicial border-line questions.

Q7: Which sectors and/or activities within the financial sector do you think are most under-taxed/over-taxed?
1. Investment banking is under-taxed
2. Insurance sector is under-taxed
3. Alternative investment funds are under-taxed
4. Investment and pension funds are under-taxed
5. Traditional (commercial and retail) banking is under-taxed
6. Investment banking is over-taxed
7. Insurance sector is over-taxed
8. Alternative investment funds are over-taxed
9. Investment and pension funds are over-taxed
10. Traditional (commercial and retail) banking is over-taxed
11. Cannot decide
11. Other None.

Please explain further and provide evidence, if you have any.

We do not believe that there is evidence one way or the other as to whether the sector is under or overtaxed. We do not have the data to be able to answer this question and we are not aware that there is any. We would urge that only responses that are based on objective empirical evidence rather than subjective opinion are taken into account in respect of this answer See also above.

Q8: What do you think of tax measures, versus regulatory measures and levies (connected to the financing of funds to ensure the proper resolution of financial institutions)?
1. Tax measures are sufficient on their own
2. Tax measures may be used for policy aspects not tackled by other measures
3. Tax measures may be used cumulatively with other measures
4. Tax measures must not be used when other measures are in place, the cumulative cost of taxes and regulation is too high
5. Tax measures shall be left to the discretion of Member States due to subsidiarity concerns
6. Taxes would extract cash flow from the financial sector and reduce the ability to increase loss absorbing equity as foreseen by regulatory reforms
7. Cannot decide
8. Other.

Please explain further and provide evidence, if you have any.

The banking industry has two clear priorities. First, the sound functioning of the financial and banking system and the restoration of its stability and effectiveness. Second, a return to profitability, to act as an engine for economic growth. These are mutually dependent priorities, which we believe are the shared objectives of industry and governments alike. The creation of the right conditions for financial institutions to return to stability and profitability, helping restore economic and employment growth, should be ensured first and foremost. This is a prudent and responsible means of ensuring that public revenues are generated over the long term on a recurrent basis. If the EU intends to continue to compete with the rest of the world, the only way forward is a consistent continuation of the Lisbon strategy for growth and employment, including the initiatives and proposals adopted in the field of taxation with the aim to create an efficient European financial services market. The banking industry does not consider it prudent to require simultaneously recapitalisation, increased lending and additional taxes.

The introduction of a financial sector tax risks disturbing the fledgling economic recovery and the frail balance obtained in financial markets as a result of the Lisbon strategy, the Financial Services Action Plan and the exit strategy.

The EBF considers that fiscal policy is too imprecise as a lever to successfully or predictably drive a particular behavioural response. Measures to deter financial institutions from excessive risk-taking and ensure financial stability are more appropriately addressed through regulatory and supervisory means. Unhelpfully, additional taxes may place undue pressure on liquidity and give rise to distorted competition, hence encouraging banks to take additional risks.

If the Commission, knowing of our very grave concerns, decided nevertheless to go ahead with an initiative introducing a new tax for the financial sector, it would be at least consistent with the above objective to ensure alignment between the fiscal and regulatory regimes.

Q9: Do you consider that an FTT or an FAT could lead to cumulative social and economic effects in combination with any of the ongoing regulatory reforms in the financial sector, including the banking levy (see COM 2010(301)final)[3]?
1. Yes, because, like for the other measures, financial intermediaries will not finally support the burden. But there will be at least an indirect effect on the financial intermediaries themselves.
2. No, because__________
3. Cannot decide
4. Other

Please explain further and provide evidence, if you have any.

The cumulative effect of new capital and liquidity requirements, regulations, deposit protection schemes and existing bank levies together with new taxes on the financial sector may affect the real economy in Europe. Attention should therefore be paid to the number of other regulatory requirements that have already built up significant pressure on banks. In particular, there should be no duplication of additional taxes with the Bank Resolution Fund scheme. The coordination of further initiative on the taxation of the financial sector with the ongoing reform of the EU supervisory and crisis management framework is of the utmost importance.

The EU banking industry is concerned that the amount of regulatory changes is making it very difficult to keep a holistic picture and to assess the cumulative impact of the reform, in terms of market's pressure, increase of the remuneration of funding and increase of the price of lending.

The amendments to the Capital Requirements Directive (CRD) to transpose Basel III into the EU framework will increase the level and the quality of capital to be held by banks and therefore will increase the costs and difficulties to attract it. The amendments to the CRD will affect liquidity and funding. The EU Quantitative Impact Study (published by CEBS, the EBA predecessor, in December 2010) indicate shortfalls in stable funding (i.e. longer than 1 year) and liquid assets of €1.8tn and €1tn, respectively. The EBF is committed to further analyse the consequences on the funding and balance sheet structures of EU banks.

[3] http://ec.europa.eu/internal_market/finances/docs/general/com2010_en.pdf

Q10: At what level do you think that the FTT will be most effective?
1. EU level, because there may never be a G20 agreement and the EU must lead by example
2. Global level, because otherwise the trade relocation incentives would be rather big
3. The FTT will not be effective at any level because _________
4. Cannot decide
5. Other

Please explain further and provide evidence, if you have any.

The financial sector operates on a global basis with capital able to move freely and easily and trading carried out electronically and in many jurisdictions. Consequently a very real risk of the imposition of an EU wide FTT is that transactions would immediately migrate outside the scope of the legislation, moving away capital and liquidity and eroding the tax base.

Since it may otherwise bear the potential of fostering the relocation of financial activities in non-EU financial centers, a FTT at anything but a global level is not an option. Only at a global level can such a tax not lead to an unlevel playing field by favourising certain countries or continents at the expense of others.

By way of illustration of the reality of this risk, a 0.003% Swedish transactions tax on fixed income bonds introduced in 1989 was abolished a year later as it significantly impacted taxable trading volumes, including an 85% decline in the first week of introduction as transaction simply migrated to alternative exchanges. There are similar historical precedents in the markets for Eurodollars, Nikkei index put options and American Depository Receipts. For the EU, besides the resulting loss of financial sector activity and jobs that would arise from this migration, any attempt to tackle it through taxation of the end investor would push the cost largely onto non international companies, SME's and retail investors, and or reduce the variety of financial instruments to which they have access. The latter being a drag on economic growth.

Q11: Do you think that a broad based financial transaction tax is a viable instrument?
1. Yes, because it has the potential to provide substantial revenues (fair and substantial contribution)
2. Yes, but a broad based financial transaction tax must exclude (certain) currency transactions in order to comply with the free movement of capital
3. No, because in case of an FTT implemented at EU level only the transactions will simply move outside the EU, hurting EU competitiveness
4. No, because the impacts on markets (e.g. liquidity, volatility) are not predictable
5. No, because this shall be addressed by changing the VAT rules for the financial sector
6. Cannot decide, as the answer depends on the scope of the measure (worldwide vs local, including EU).
7. Other

Please explain further and provide evidence, if you have any.

If the Commission envisaged introducing a new tax under the FTT model, then it should seek consistency with the policy it has developed in recent years to simplify tax procedures that are considered hurdles to post-trading. In April 2004 the Commission adopted a Communication on an action plan to create a genuine single market in securities in the European Union and to make cross-border clearing and settlement effective, safe and efficient at European level. This Communication was based on two reports, produced by an expert group and named after its Chairman, Mr Alberto Giovannini, on the barriers related to the fragmentation of the

European clearing and settlement markets and the resulting inefficiencies. The 12th Giovannini barrier consists in the inefficiencies and inconsistencies of those procedures to collect financial transaction taxes which are integrated into the settlement system. Furthermore, the First Giovannini Report stated that financial transaction taxes form barriers to securities trading by reducing the liquidity of markets. This statement was reiterated in 2006 by the Commission's Fiscal Compliance Expert Group (FISCO) in the First FISCO Report.

Q12: What do you consider as an appropriate connecting factor for the place of levying of the tax?
1. The place of trading, because it is easy to collect (but with potential for relocation issues)
2. The place where the seller of the instrument is established (but with collection issues)
3. The place where the buyer of the instrument is established (but with collection issues)
4. The places where the buyer and the seller of the instrument are established would tax each by ½ of the rate (somewhat complicated, but addressing issues of swaps for example)
5. The place where the initial issuer is established (not always disposing of the info)
6. The place where the financial intermediary of the buyer/seller is established
7. Cannot decide
8. Other (including a combination of the above).

Please explain further and provide evidence, if you have any.

We are concerned about the legal uncertainty which would result from the lack of clarity surrounding the tax chargeable event and the collection of taxes which are associated in the Commission's Consultation Paper with the trading of securities.

Whilst, for exchange traded transactions, for example, central clearing mechanisms provide a natural connecting factor for the administration and collection of any FTT, a likely consequence (particularly of a narrow based FTT) would be the migration of such transactions from the central clearing mechanisms into potentially less secure and transparent channels, and would also give rise to significant national disparities in terms of tax revenues collected, with revenues concentrated in the major financial centers but market participants considerably more widely distributed. Whilst it is questionable as to whether this would be manageable at an EU level it is not clear what mechanism is available for dealing with this disparity at a global level.

A broad based FTT would also need to address the administration and collection of over-the-counter ("OTC") transactions of non-exchange traded securities and derivatives. Regardless of the connecting factor chosen, we consider that the practical issues and associated compliance costs, both for taxpayers and for revenue authorities tasked with enforcing collection and compliance, are significant and highly likely to lead to global market distortions.

Q13: Do you think that the value set for the underlying is (in general) a correct tax base for derivatives?
1. Yes, because the investors' returns are based on it allowing substantial leverage
2. Yes, because the great part of/all such derivatives are speculative transactions and shall bear substantially higher tax.
3. Yes, because there is no other reference value for some derivatives (e.g. forwards, swaps, etc.)

4. No, because the tax as related to the investment is disproportionate and will close that legitimate business without producing the revenues expected.
5. No, because derivatives are often used for risk hedging purposes and that does not deserve a disproportionate tax burden
6. Cannot decide
7. Other (including a combination of the above) _________

Please explain further and provide evidence, if you have any.

Whilst we do not support an FTT, if one were to be introduced we consider it imperative that it should apply to derivatives of all taxed securities and instruments to prevent migration of activity from cash or spot trading to derivative markets. The determination of an appropriate tax base for derivative transactions represents a further significant challenge for the imposition of an FTT, particularly if there is to be any policy distinction made between speculative transactions and those undertaken for, say, risk hedging purposes. Whatever solution may be proposed, we consider that extreme care would be required to mitigate against the arbitrage opportunities that may arise as between the use of alternative derivative instruments. The inadequacy of the FTT and the complex issues to which it would give rise are illustrated by the issues associated with the treatment of derivatives. Derivatives are pivotal tools in risk management. Imposing an FTT on derivatives would increase risk. However, exempting them would create distortions and loopholes.

Q14: Do you consider that there would be a risk of financial engineering around the broad-based or narrow-based FTT that would undermine the objectives of the measure?
1. Yes, there is such a risk to the narrow-based FTT and it relates to the following _________
2. Yes, there is such a risk to the broad-based FTT and it relates to the following _________
3. No, there is no such a risk, because _________
4. Cannot decide
5. Other (including a combination of the above)

Please explain further and provide evidence, if you have any.

There is a significant risk of financial engineering being used to avoid either form of FTT, although clearly the risk is less in the case of the broad based FTT which, by design, should provide less scope for migration to untaxed instruments or regions. Whether driven by regulatory, accounting, tax or other factors, the extent of financial engineering over the recent past suggests that the risk of this arising in response to the introduction of an FTT is considerable. This would impact any revenue raising objective, as noted with reference to Sweden above.

Q15: What do you think of the FTT designed as a cumulative tax, i.e. every subsequent sale is taxed at the full amount of the transaction without any deduction of previously paid FTT?
1. It is justified, because this will target exactly the short-term speculative trading
2. It is justified, because it is an easy approach (less administrative burden) and the rate of the tax is very low
3. It is not justified, because not all short-term trading is speculative
4. It is not justified, because this will hinder the liquidity of the markets
5. Cannot decide
6. Other _________

Please explain further and provide evidence, if you have any.

The cumulative nature of the FTT is a further factor militating against its adoption. Although the cumulative nature of the FTT would reduce the level of short term trading activity, this would not be limited to impacting that trading activity undertaken solely for speculative purposes. The FTT would also impact short term trading undertaken for hedging and other, non-speculative purposes. Further, this reduction in short term trading will inevitably reduce market liquidity and also, arguably, adversely impact efficient price discovery in impacted markets. The cumulative nature of the FTT also results in a cascading effect through financial activity supply chains causing market distortion and inefficiency, with significant potential for the burden of the tax to fall disproportionately and indirectly on certain untargeted activities.

Q16: Would there be a need for specific exemption of certain transactions from the FTT or an exemption threshold?
1. Yes, the FTT must exempt the following transactions: (at least) hedging transactions
2. Yes, the FTT must exempt transactions below the following threshold _________
3. There is no need to exempt any transactions
4. Cannot decide
5. Other _________

Please explain further and provide evidence, if you have any.

There may be activities or sectors potentially impacted by the imposition of an FTT for which, for public policy reasons, there is a need or desire to exempt from the tax. Examples may include transactions undertaken by charities, pensions schemes etc.

To implement such an exemption would impose an additional burden on the administration of the FTT in terms of exempt transactor identification and verification, proportionately greater in the case of a broad based FTT for which administration would fall outside the remit of central clearing mechanisms.

Q17: Do you think FTT rates should be differentiated depending on the type of product traded?
1. Yes, because some are more speculative than others
2. No, because _________
3. Cannot decide
4. Other _________

Please explain further and provide evidence, if you have any.

The determination of FTT rates should be undertaken against a consistent global framework which, at the very least, imposes the same rate of tax against the same or similar products in all markets. As a general matter, applying similar rates across different product types would be necessary in order to prevent tax based market distortions between products.

Q18: Do you think that the tax incidence of the tax will fall on the financial sector, or will it be shifted to the customers?
1. It will fall on the financial sector because _________
2. It will be shifted to the middle class customers because _________
3. It will be shifted to the high net worth customers because _________
4. Cannot decide
5. Other

Please explain further and provide evidence, if you have any.

The incidence of an FTT will, in the first instance, fall on those holding marketable securities that become subject to the FTT (in the form of falling security values) and those engaging in financial transactions that become subject to the FTT.

To the extent that banks or the financial sector participants are intermediaries the cost will be either:

- passed on to the customer or counterparty to the transaction, be it other financial institutions (for example, insurers), corporates or individuals, or
- to the extent not passed directly to the customer, it will be passed on indirectly to customers generally, shareholders or employees.

To the extent that the transaction is own account for the financial sector intermediary (or other corporate), the cost will either be passed on to end consumers in higher prices, borne by employees in reduced salary and bonuses, or borne by shareholders in reduced dividends and declining share values.

The cost can never ultimately fall on corporates themselves, whether they are in the financial sector or not, as companies are simply vehicles through which capital is deployed and business is conducted. An understanding of where the ultimate cost will fall, and whether that is on customers, suppliers, employees or shareholders such as pensioners, and the impact on the growth in GDP and economic consolidation is a key to making sure that such a tax does not have wider social or economic downsides.

We believe that the economic impact of an FTT would largely fall on end-users, as the IMF acknowledged in its report to the G20 last year. In practice, an FTT would inevitably feed through to lower returns on savings and investments, including pensions. The IMF also suggests that an FTT would reduce economic output by introducing price distortions that reduce economic efficiency, through taxation of intra-business transactions. Moreover, lower economic output would likely feed through to lower employment levels.

It is worth noting in this context that a 2007 study by Oxera on the impact of stamp duty on UK equities transactions found that stamp duty levied at 0.5% reduced pension funds at retirement by 0.7-3.49% depending on type of pension, portfolio composition and management strategy. The same study found that stamp duty raised the cost of equity capital by up to 12% in the UK, and that its abolition could result in a permanent increase in GDP of between 0.24 and 0.78%.

An FTT would also be likely to reduce economic incentives for market makers to provide liquidity to markets. This could make capital markets less efficient, with wider bid/offer spreads, thus increasing transaction costs, and increased price volatility.

Q19: What do you think of the administrative costs related to the broad-based FTT?
1. They will be comparatively low, because _________
2. They will be comparatively high, because _________
3. Cannot decide
4. Other

Do you think that it would be the same for a narrow-based FTT?
1. Yes, because _________
2. No, because.

Please explain further and provide evidence, if you have any.

By definition, a broad based FTT would also need to address the administration and collection of over-the-counter ("OTC") transactions of non-exchange traded securities and derivatives. Regardless of the connecting factor chosen, we consider that the practical issues and associated compliance costs, both for taxpayers and for revenue authorities tasked with enforcing collection and compliance, are significant and highly likely to lead to global market distortions.

Whilst a narrow based FTT may avoid these administrative costs by limiting its scope to exchange traded transactions, as noted previously, this form of FTT is likely to result in significant migration of transactions from the central clearing mechanisms and consequential erosion of the tax base.

Q20: What do you think of the effect on employment from broad-based FTT?
1. It will have an overall negative effect on employment and/or remuneration in the financial sector and the economy as a whole
2. It will have a negligible effect on employment and/or remuneration in the financial sector and no effect on the economy as a whole
3. It will have an overall negative effect on employment and/or remuneration in the financial sector, but the financial sector is already bigger than it should be and the qualified workforce will benefit the non-financial sector
4. It will have an overall positive effect on employment because __________
5. In case the FTT is not globally implemented, qualified workforce will benefit companies/branches in non-taxing countries
6. Cannot decide
7. Other __________

Do you think that it would be the same for a narrow-based FTT?
1. Yes, because __________
2. No, because __________

Please explain further and provide evidence, if you have any.

To the extent that the transaction is own account for the financial sector intermediary (or other corporate), the cost will either be passed on to end consumers in higher prices, borne by employees in reduced salary and bonuses, or borne by shareholders in reduced dividends and declining share values. However, we do not have the data to answer this question more precisely.

Q21: What do you think of the effect on small and medium enterprises (SMEs) from broad-based FTT?
1. It will have an overall negative effect SMEs because __________
2. It will have a negligible effect on SMEs because __________
3. It will have an overall positive effect on SMEs because __________
3. Cannot decide
4. Other.

Do you think that it would be the same for a narrow-based FTT?
1. Yes, because, yes in proportion to the scope of the tax.
2. No, because __________

Please explain further and provide evidence, if you have any.

We believe as a general matter that additional taxes and levies on the financial sector may hinder economic recovery by taking funds out of the financial system, making it harder for banks to rebuild their balance sheets and enhance their capital position in line with the new regulatory requirements globally. Due to bank leverage, depleting banks' capital through taxation has a multiplicative impact on those banks' ability to lend to business and facilitate economic recovery and employment in all sectors.

More specifically, we consider that the primary impact of either form of FTT would be to raise the cost of capital with a direct adverse consequence for investment and economic activity and employment in general. We consider that this would be undesirable at any time but most particularly at present given the current fragile state of recovery in much of the global economy. However, we do not have the data to answer this question more precisely.

See also answers under Q10 and Q 18.

Q22: At what level do you think that the FAT will be most effective?
All the following considerations are made under the reserves
- *of a convincing justification for the new tax(es),*
- *that financial intermediaries are intermediaries and*
- *that it is not clear to which extent which stakeholders of banks are hit by the tax(es).*

1. EU level, because there may never be a G20 accord and the EU must lead by example
2. At least G20 level, because otherwise the activities/profits relocation incentives would be rather big
3. The FAT will not be effective at any level because _________
4. Cannot decide
5. Other

Please explain further and provide evidence, if you have any.

We do don't believe that there is a sufficient data available to draw a supportable answer to this question.

Q23: What is your opinion of the industry scope of the FAT?
1. It must encompass strictly only the banking sector since it was mainly responsible for the crisis
2. It must encompass strictly only the banking sector because ________
3. It must encompass the financial sector defined broadly in order to keep the level playing field and prevent a substitution effect
4. It must encompass the financial sector defined broadly because ________
5. Cannot decide
6. Other

Please explain further and provide evidence, if you have any.

We would need further clarity or objective data to answer the question.

Q24: Which form of FAT do you consider most appropriate?
1. Addition method FAT because _________
2. Rent-taxing FAT because _________
3. Risk-taxing FAT because the only one consistent with the pretended aim
4. Cannot decide
5. Other _________

Please explain further and provide evidence, if you have any.

We would need further clarity or objective data to answer the question

Q25: What are the major difficulties with the three forms of FAT?
1. Addition method FAT has the following difficulties hits indistinctly and without any evident reason all kinds of activities, seems to be anti-economic as far as it taxes wages, especially in its cumulative cascading form
2. Rent-taxing FAT has the following difficulties does not seem to be enough selective (under the risk taking aspect), could be adapted to be similar to n° 3 (certain rents only)_________
3. Risk-taxing FAT has the following difficulties: determination/definition of the taxable base
4. Cannot decide
5. Other _________

Please explain further and provide evidence, if you have any.

A FAT, especially in its addition method form based on salaries, is anti-economic and contradicts for instance the new Monti Report (A new strategy for the single market, 9 May 2010) which contains a chapter on "tackling the anti-labour bias" of Member States' tax law (page 79). It would further be prohibitively costly and complex to administer.

Addition method FAT

The commission defines the base of addition method FAT as the aggregate of

- sum of wages
- profit arrived at on cash basis

Calculating the FAT base in cash terms may be possible in enterprises outside the financial sector.

Recalculation of the accounts in the financial sector to reach a cash basis profit will need significant investment in system development. The adoption of IFRS has moved the accounting practices towards a regime of more and more assets/liabilities being accounted for at a mark-to-market value and increased net-value booking. In short, accounting systems were not built to serve the purpose of addition method FAT.

Furthermore, as the FAT is thought to be a substitute to VAT we find it is necessary to adjust for the interaction between the two elements. In this context, the debate on the financial sector tax cannot be separated from the proposed VAT reform. These questions are closely linked and cannot be decided upon without considering the total effects for the sector. Designing outside the scope of VAT a new tax based on cash flows or on similar factors and keeping unchanged the unsatisfactory VAT exemption regime would be a missed opportunity and can also mean devastating tax burdens for banks. See also answer to Q32.

Replacing the cash basis with an accruals basis profit, e.g. the IFRS profit, would reduce complexity, but not eliminate the adverse effects on VAT.

There is also a double taxation issue with corporate income tax or, in some countries, commercial taxes (often municipal) and other taxes, including VAT.

Rent taxing FAT

Defining the level for a notional allowance can be tricky.

The profit of a financial enterprise is a composite figure aggregated from several business lines. Some banks will operate large fee-generating business lines and do little lending, some banks would do the other way round. There is also a difference between retail and investment banking. A large number of banks will perform a mix.

A fixed rate would disadvantage banks with large equity bases – necessary for lending to SMEs and mortgage banking – as these will be punished by a large tax payment. It may also have a counter-effect in connection with the society's expectations of the role of banks – which is the supply of financing to the public.

All this would result in a decrease in profits, with a detrimental impact on the return on equity, putting the financial sector at a competitive disadvantage compared to other sectors.

Risk taxing FAT

The application of a one-size-fits-all FAT rate may discourage banks from entering certain business areas.

If the net-profit after corporate income tax and FAT allocated to a specific product (business) line is insufficient to service the desired profit-margin it may be difficult to encourage banks to engage in such business. This can be counterproductive as it is sometimes desirable – in the society's common interest – that the financial sector actually takes some risks upon its shoulders.

Q26: What do you consider the most appropriate starting point for the addition method FAT?
1. The net profit or loss from the income statement amended with __________
2. The cash flows of all activities amended with __________
3. The accounting rules for the different economic operators in the financial sector, even within a single Member State, are rather diverging to rely upon because __________
*4. The accounting rules for the financial sector across Member States are rather diverging to rely upon because*__________
5. Cannot decide
6. Other

Please explain further and provide evidence, if you have any.

See answer to Q26.

Q27: What do you consider the most appropriate starting point for rent-taxing and risk taxing FAT? *1. The net profit or loss from the income statement amended with per activity P&L statement* *2. The corporate income tax base from the income statement* *3. A harmonised corporate income tax base* *4. The accounting rules for the different economic operators in the financial sector, even within a single Member State, are rather diverging to rely upon because _________* *5. The accounting rules for the financial sector across Member States are rather diverging to rely upon because_________* *6. The corporate income tax rules for the different economic operators in the financial sector, even within a single Member State, are rather diverging to rely upon because _________* *7 The corporate income tax rules for the financial sector across Member States are rather diverging to rely upon because_________* *8. Cannot decide* *9. Other _________* *Please explain further and provide evidence, if you have any.*

See answer to Q26.

Q28: Do you consider individual or consolidated statements as more appropriate? *1. Consolidated statements (as per IAS 27) are more appropriate, because _________* *2. Individual statements are more appropriate, because for consolidated accounts, the apportionment formulas based for instance on assets, wages or the number of employees (sales do not seem to be a useful criteria for financial intermediaries) will favour larger entities in larger Members States and discriminate small and cost effective entities with a higher part of off balance sheet items. This formula will thus lead to interminable discussions between member states.* *3. Cannot decide* *4. Other _________* *Please explain further and provide evidence, if you have any.*

We would need further clarity or objective data to answer the question.

Q29: Would there be a need for specific exemption of certain profit/remuneration from the FAT? *1. The addition method FAT must exempt the following profit/remuneration _________* *2. The rent-taxing FAT must exempt the following profit/remuneration _________* *3. The risk taxing FAT must exempt the following profit/remuneration _________* *4. There is no need to exempt any profit/remuneration* *5. Cannot decide* *6. Other* *Please explain further and provide evidence, if you have any.*

We would need further clarity or objective data to answer the question.

Q30: The state of the head office or group headquarters may tax on the basis of consolidated statements and the state of the branches or group members may also tax those. What do you consider as a suitable solution?
1. Bilateral specific agreements
2. A system of credits must be embedded in the provisions
3. A formulary apportionment must be embedded in the measure
4. Only domestic inflows and/or outflows must be taken into consideration
5. Cannot decide
6. Other

Please explain further and provide evidence, if you have any.

The EBF disagrees with the argument that the introduction of an EU FST will fix the problems of double taxation among those Member States that have already undertaken an initiative to set FSTs at national level.
The introduction of an EU-wide tax/levy on the financial sector would duplicate the burden associated with the taxes/levies imposed by Member States on their financial sector in the aftermath of the crisis. It is indeed unclear and uncertain whether and how Member States could be required to repeal their domestic measures. If any EU wide taxes/levies, e.g. FAT or stability fee, are introduced, no national corresponding levies can be permitted. Hence, any "national" taxes already in place to compensate for the VAT exemption must be eliminated so there is not an unforeseen additional cumulative effect, cf for FAT Denmark, Italy and France and e.g. Sweden and Germany for stability fee.

Any Commission initiative related to financial sector taxation should first concentrate on defining a common approach to double tax relief. It should notably make sure that any differences in costs for banks having a branch structure *versus* a subsidiary structure are eliminated.

If the above consolidated EU wide levy combined with the exemption method for some reason would not be possible, any credit method in combination with national wide levies would be prohibitively costly and complex to administer and there would be a very high risk of at least double taxation significantly decreasing EU based banks global competitiveness.

Q31: Due to the way the tax base in a FAT is derived (their accounting treatment and/or the subsequent adjustment), do you consider that one or more of the following items will be unduly disadvantaged//favoured:
(i) financial instruments;
(ii) activities;
(iii) remuneration packages?
1. Certain financial instruments will be disadvantaged because they are necessary for the economic activity and in competition with other places in the world
2. Certain activities will be disadvantaged, because not prone to risk taking
3. Certain remuneration packages will be disadvantaged, because not based on excessive risk taking (example long term incentives)_________
4. Certain financial instruments will be favoured because _________
5. Certain activities will be favoured, because _________
6. Certain remuneration packages will be favoured, because _________
7. Cannot decide
8. Other _________

Please explain further

We would need further clarity or objective data to answer the question.

Q32: Would the addition-method FAT need to be aligned with the current VAT system to avoid the cascading effect from the interaction between the two?
1. Yes, because it is meant to compensate for the VAT exemption, but the financial sector will still bear the input VAT burden and the alignment shall be done in the following way _________
2. No, it is not practical to align it, because of the of the different nature of the taxes_________
3. No, it is not practical to align it, because of not being able to attribute the FAT per transaction and _________
4. No, it is not practical to align it, because _________
5. Cannot decide
6. Other

Please explain further and provide evidence, if you have any.

The Commission issued in 2007 a proposed Directive to reform the VAT treatment of financial services based on three pillars, including the proposal for an option to tax financial services along the approach proposed by the EBF. The EBF has been very supportive of this work, since the current VAT Directive is out of date and needs to be modernised so as to enable European banks to compete on an equal footing with other actors in the financial sector and with non-European banks. So far, Member States have not reached agreement on this proposal which is still pending. In order to feed into the debate the EBF requested Ernst & Young to conduct a study on the option to tax, which was published in 2009.

In this context, the debate on the financial sector tax cannot be separated from the proposed VAT reform. These questions are closely linked and cannot be decided upon without considering the total effects for the sector. Designing outside the scope of VAT a new tax based on cash flows or on similar factors and keeping unchanged the unsatisfactory VAT exemption regime would be a missed opportunity and can also mean devastating tax burdens for banks.

Q33: Could a FAT rate well below the current standard VAT rate reduce distortions that might arise from missing interaction between VAT and addition-method FAT?
1. Yes, because _________
2. No, because _________
3. Cannot decide
4. Other

Please explain further and provide evidence, if you have any.

We would need further clarity or objective data to answer the question. See also answer to Q32.

Q34: Do you think that the tax incidence of the tax will fall of the financial sector, or it will be shifted to the customers?
1. It will fall on the financial sector because _________
2. It will be shifted to the middle class customers because _________
3. It will be shifted to the high net worth customers because _________
4. Cannot decide
5. Other

Please explain further and provide evidence, if you have any.

See answer under Q18.

Q35: What do you think of the administrative costs related to the FAT?
1. They will be comparatively low, because _________
2. They will be comparatively high, because _________
3. Cannot decide
4. Other

Please explain further and provide evidence, if you have any.

The tax base for any FAT should ideally be designed in a way that is compatible with the information that is readily available to financial institutions in the existing financial reporting framework and the Commission should ensure that the new tax does not require companies to develop a specific set of accounts only for that purpose. The introduction of a new tax based on cash flows and designed outside the scope of VAT may create such a complex tax system for financial institutions, that the proportionality objective would not be met. If a new financial sector tax were based on cash flows or on similar factors, then the Commission should assess the merits of designing it within the VAT framework, so as to ensure an administratively easier approach for the sector.

Q36: What do you think of the effect on employment from the FAT?
1. It will have an overall negative effect on employment and/or remuneration in the financial sector and will therefore be bad for the economy
2. It will have a negligible effect on employment and/or remuneration in the financial sector and no effect on the economy as a whole
3. It will have an overall negative effect on employment and/or remuneration in the financial sector, but the financial sector is already bigger than it should be and the qualified workforce will benefit the non-financial sector
4. It will have an overall positive effect on employment because _________
5. Qualified workforce will benefit companies/branches in non-taxing countries
6. Cannot decide
7. Other _________

Please explain further and provide evidence, if you have any.

A FAT on payroll can have consequences for the employment situation in the financial sector. A Danish Banking Association analysis on the Danish FAT from 2008 concluded, that a 9.13 percent payroll tax on the financial sector resulted in an employment level some 2.800 full-time equivalents below the level without any tax. This corresponds to 4 percent of the total workforce.

The analysis controlled for other factors affecting the employment, e.g. the substitutions elasticity between labour and ICT capital (capital user costs) and wage development. From 2011 the rate has been increased to 10.5 percent, which should only add to the effect.

Q37: What do you think of the effect on small and medium enterprises (SMEs) from FAT?
1. It will have an overall negative effect SMEs because higher taxes, especially anti-economic taxes, like the addition-method FAT, affect smaller companies more than larger; see also the answer to Q 9 above.
2. It will have a negligible effect on SMEs because _________
3. It will have an overall positive effect on SMEs because _________
3. Cannot decide
4. Other _________

Please explain further and provide evidence, if you have any.

We believe as a general matter that additional taxes and levies on the financial sector may hinder economic recovery by taking funds out of the financial system, making it harder for banks to rebuild their balance sheets and enhance their capital position in line with the new regulatory requirements globally. Due to bank leverage, depleting banks' capital through taxation has a multiplicative impact on those banks' ability to lend to business and facilitate economic recovery and employment in all sectors.

Banks play a pivotal role in society, helping individuals and organisations to meet their personal and corporate objectives by facilitating access to financial capital and protecting value for those who make capital available. Payment mechanisms, the provision of long-term credit, trade finance, hedging and other risk management products, deposit, investment and retirement services are only a few of the activities through which banking groups contribute to the financial system. This financial system, operating effectively, is essential to sustainable global economic growth and activity for SMEs and multinationals and, therefore, employment for individuals.

Q38: At what level do you think that the levy will be most effective?
1. EU level, because there may never be a G20 accord and the EU must lead by example
2. At least G20 level, because otherwise the relocation incentives would be rather big
3. The levy will not be effective at any level if there is no prioritisation concerning the protection of certain stakeholders.
4. Cannot decide
5. Other

Please explain further and provide evidence, if you have any.

We would need further clarity or objective data to answer the question.

Q39: What is your opinion of the industry scope of the levy?
1. It must encompass strictly only the banking sector since it was mainly responsible for the crisis
2. It must encompass strictly only the banking sector since the balance sheet concepts for risk-weighted assets and Tier 1 capital are not applicable to other parts of the financial sector
3. It must encompass strictly only the banking sector because ________

4. It must encompass the financial sector defined broadly in order to keep the level playing field and prevent a substitution effect
5. It must encompass the financial sector defined broadly because ________
6. Cannot decide
7. Other __________

Please explain further and provide evidence, if you have any.

In today's complex financial markets we consider it essential that sector specific taxes, such as any levy, are at least applied across the entire financial services industry, rather than being restricted to banks, in order to avoid the migration of financial activities to different sections of the finance industry, which undermines both behavioural and revenue raising objectives.

Moreover, there are legal restrictions on the implementation of sector specific taxes in some Member States which have to be taken into account.

Q40: What is your perception of the risk exposure for the financial sector?
1. It mostly referred to investment in risky assets and (sometimes) not sufficient knowledge / awareness about the risks taken
2. It mostly referred to financing by "risky" (uninsured) liabilities and __________
3. Cannot decide
4. Other __________

Please explain further and provide evidence, if you have any.

We would not advocate tax policy being influenced by perceptions of risk exposure in the financial sector but rather by a reasoned analysis of historical and current facts.

Q41: Therefore, which form of levy do you consider most appropriate?
1. Asset-based FST because __________
2. Liabilities-based FST because __________
3. A combination of asset-based and liabilities-based FST because
3. Cannot decide
4. Other

Please explain further and provide evidence, if you have any.

We would need further clarity or objective data to answer the question.

Q42: What are the major difficulties with the two forms of levy?
1. An asset-based levy has the following difficulties __________
2. A liabilities-based levy has the following difficulties __________
3. Cannot decide
4. Other

Please explain further and provide evidence, if you have any.

The objective to set up common rules to determine the bank levy for the financing of a bank resolution fund creates the need to identify harmonised risk-weighted parameters, as in the case of DGS. A risk-weighted contribution is essential to avoid free riding opportunities and control moral hazard.

The EBF maintains that a risk-weighted assessment should consider the firms' riskiness, its systemic relevance and the structure (mainly duration) of funding. The setting up of such parameters should be ruled at European level in order to ensure a level playing field in the context of the EU single market; therefore the EBF believes that EBA technical standards are needed.

Q43: What do you consider the most appropriate starting point for the asset-based levy?
1. The balance sheet assets side amended with _________
2. The accounting rules for the different economic operators in the financial sector, even within a single Member State, are rather diverging to rely upon because _________
*3. The accounting rules for the financial sector across Member States are rather diverging to rely upon because*_________
4. Cannot decide
5. Other

Please explain further and provide evidence, if you have any.

In the first instance we consider it essential that the objectives of any new tax are clearly set out and agreed and that the potential consequences (both the first order consequences and subsequent) are fully considered, understood and factored into decision making related to the imposition and design of that tax.

We consider that an asset-based levy should, if implemented, have a consistent measure of risk weighted assets as its starting point. As suggested, for this purposes, the adoption of Basel based risk weighting measures would appear to be most appropriate. However, for the reasons outlined above, we do not consider this to be the optimal tax base for any levy introduced.

Q44: What do you consider the most appropriate starting point for the liabilities-based levy?
1. The balance sheet liabilities side amended with _________
2. The accounting rules for the different economic operators in the financial sector, even within a single Member State, are rather diverging to rely upon because _________
*3. The accounting rules for the financial sector across Member States are rather diverging to rely upon because*_________
4. Cannot decide
5. Other

Please explain further and provide evidence, if you have any.

Again, subject to clarity of objectives and consequences, the most appropriate starting point for a liabilities-based levy would be the balance sheet liabilities as reflected in the individual financial statements of those entities subject to the levy.

We recognise that, if adopted at a global level, this approach may give rise to certain inconsistencies with regard to the determination of the tax base to the extent that internationally consistent accounting standards have not been implemented. The extent to which this is an issue in practice will depend upon the degree of progress on convergence efforts between international accounting standards over the medium term (most notably IFRS and US GAAP). However, similar issues exist currently in the determination of corporate income taxes globally and are not unduly problematic when aligned with national, rather than global, taxing rights and global principles to eliminate double taxation.

Q45: Would there be a need for specific exemption of certain assets/liabilities from the FST?
1. The asset-based levy must exempt the following assets _________
2. The liabilities-based levy must exempt the following liabilities _________
3. There is no need to exempt any assets
4. There is no need to exempt any liabilities
5. Cannot decide
6. Other_________

Please explain further and provide evidence, if you have any.

Under an asset-based levy we do not consider that significant exemptions would be necessary, with the targeting of the tax base relying to a significant extent on the risk weighting process.

Under a liabilities-based levy, the broad tax base facilitates a greater degree of flexibility to exclude certain items and therefore to adapt the levy to target specific behaviours and market conditions considered to be amongst the causes of the financial crisis. For example, exclusions from the tax base for insured deposits, equity, and other forms of stable, long term domestic funding would enable the levy to target forms of wholesale funding and short term or foreign currency debt considered particularly problematic during the crisis. Also, we consider that an exclusion in respect of intra group balances would be appropriate where not to do so would result in double taxation in a given jurisdiction.

Q46: Would there be a need for a threshold (i.e. the levy is levied only on financial institutions with large balance sheets) or allowance (i.e. for all financial institutions there would be a "tax-free" allowance for a certain amount of assets/liabilities) from the levy?
1. Yes, there must be a threshold for the levy _________
2. Yes, there must be an allowance for the levy _________
3. There is no need for a threshold or an allowance
4. Cannot decide
5. Other

Please explain further and provide evidence, if you have any.

We would need further clarity or objective data to answer the question.

Q47: Do you consider individual or consolidated statements as more appropriate?
1. Consolidated statements (as per IAS 27) are more appropriate, because _________
2. Individual statements are more appropriate, because _________
3. Cannot decide
4. Other

Please explain further and provide evidence, if you have any.

We would need further clarity or objective data to answer the question.

Q48: The state of the head office or group headquarters may tax on the basis of consolidated statements and the state of the branches or group members may also tax those. What do you consider as a suitable solution?
1. Bilateral specific agreements

2. A system of credits by the Member State of the group/head office must be embedded in the provisions (credit method in the home Member State, because the risk is borne by the host market)
3. A system of credits by the Member State of the branch/subsidiary must be embedded in the provisions (reverse credit method in the host Member State, because the risk is borne by the home market)
4. A system of exemption by the Member State of the group/head office must be embedded in the provisions (exemption method in the home Member State, because the risk is borne by the host market)
5. A system of exemption by the Member State of the branch/subsidiary must be embedded in the provisions (reverse exemption method in the host Member State, because the risk is borne by the home market)
6. A formulary apportionment must be embedded in the measure
7. Cannot decide
8. Other

Please explain further and provide evidence, if you have any.

A system of exemption by the Member State of the branch/subsidiary must be embedded in the provisions (reverse exemption method in the host Member State, because the risk is borne by the home market).

Q49: What would be the solution for attribution of assets/liabilities to bank branches (not subsidiaries)?
1. The authorised OECD approach for attribution of assets/liabilities must be used
2. A modified approach taking into consideration only taxable assets/liabilities must be used
3. Cannot decide
4. Other

Please explain further and provide evidence, if you have any.

The authorised OECD approach for attribution of assets/liabilities must be used.

Q50: Since some Member States have already implemented such levies, which are different in their features, what do you think the interaction should be with those levies?
1. All individual levies/taxes based on the balance sheet must be repealed
2. All individual levies based on the balance sheet must allow for a credit for the EU-wide levy. This is probably the only realistic approach
3. The national and EU-wide levy may coexist
4. Cannot decide
5. Other __________

Please explain further and provide evidence, if you have any.

There should be no duplication with those taxes already introduced or being considered by Member States. Indeed if the EU is to adopt an EU wide tax, all national measures must be repealed. Whatever conclusion is reached from the consultation, the EU should at the very least ensure that there is a framework within which double tax relief, preferably the exemption method, for the growing Member State measures is achieved.

Q51: Due to the way the tax base in a levy is derived (their accounting treatment and/or the subsequent adjustment, do you consider that one or more of the following items will be unduly disadvantaged/favoured:
(i) investments;
(ii) financing means;
(ii) activities in general?
1. Certain investments will be disadvantaged, because _________
2. Certain financing means will be disadvantaged, because _________
3. Certain activities will be disadvantaged, because _________
4. Certain investments will be favoured because _________
5. Certain financing means will be favoured because _________
6. Certain activities will be favoured, because _________
7. Cannot decide
8. Other _________

Please explain further, detailing the investments, financing means, and activities that you considered above and provide evidence, if you have any.

Whilst the exact nature of this question is unclear, as we have noted elsewhere in our response to this consultation, we consider that, as a general matter, additional taxes and levies on the financial sector may hinder economic recovery by taking funds out of the financial system, making it harder for banks to rebuild their balance sheets and enhance their capital position in line with the new regulatory requirements globally It therefore follows that we consider that the imposition of a levy on the financial sector will tend to disadvantage activities in general, both within the financial sector and the wider economy.

More specifically, to the extent that a levy is appropriately designed and structured, it should effectively disadvantage certain assets and/or certain liabilities in accordance with the policy intent of the levy itself. So, for example, an appropriately structured liabilities-based levy should disadvantage wholesale or other short term funding whilst an equivalent asset-based levy should disadvantage riskier assets.

Q52: Some authors argue that overnight secured credit (through repos mainly) necessitates special treatment of those types of funding because of the cheap, but unstable funding leading to systemic risk. Do you agree to such an argument and if so, what treatment do you suggest?
1. Yes, because _________
2. No, because _________
7. Cannot decide
8. Other _________

Please explain further and provide evidence, if you have any.

We do not consider that all forms of overnight secured credit or repo arrangements necessitate special treatment. Such arrangements should be considered in the context of their specific characteristics and treated in a manner consistent with other sources of funding with similar characteristics.

For example, under the recently introduced UK bank levy, repo liabilities secured against sovereign and supranational debt have been excluded from the levy base on the grounds that these represent a relatively low risk funding source given the deep markets for the associated collateral.

Q53: Would there be a necessity for a harmonization of certain accounting concepts (e.g. creation of provisions/reserves, netting of derivatives and other related positions) and to what extent?
1. Yes, because __________
2. No, because __________
3. Cannot decide
4. Other

Please explain further and provide evidence, if you have any.

No since the majority of banks provide consolidated IFRS-Statements and even for banks which do not so, a certain framework is already in place due to European rules also applying to national GAAP. The differences between the national accounting concepts seem to be negligible.

Q54: Do you think that the incidence of the levy will fall of the financial sector, or it will be shifted to the customers?
1. It will fall on the financial sector because __________
2. It will be shifted to the middle class customers because __________
3. It will be shifted to the high net worth customers because __________
4. Cannot decide
5. Other __________

Please explain further and provide evidence, if you have any.

In either form, any levy introduced will become an incremental cost of operating in the financial sector for those within its scope. As such we would anticipate that the burden of the levy will be taken into consideration in the pricing of products and other commercial decision making in the same manner as other, non levy incremental costs. As such we consider it inevitable that the burden will to some extent be passed on to customers of the financial sector.

To the extent not borne by customers, the cost can never ultimately fall to any corporate whether they are in the financial sector or not, as entities are solely corporate vehicles. An understanding of where the ultimate cost will fall, and whether that is on customers, employees or shareholders (such as pensioners and other retail investors), and the impact on the growth in GDP and economic consolidation is a key to making sure that such a tax does not have wider social or economic downsides.

Q55: What do you think of the administrative costs related to the levy?
1. They will be comparatively low, because __________
2. They will be comparatively high, because __________
3. Cannot decide
4. Other __________

Please explain further and provide evidence, if you have any.

We consider that the administrative costs of the levy will depend to a large extent on the level of complexity that any such tax adopts. A simple, consistent framework driven primarily from individual financial statements with appropriate exclusions dealt with through simple and objective adjustments should help to minimize the administrative costs of any levy, both for taxpayers subject to the tax and revenue authorities administering and collecting it.

Q56: What do you think of the effect on employment from the levy?
1. It will have an overall negative effect on employment and/or remuneration in the financial sector and the economy in general
2. It will have a negligible effect on employment and/or remuneration in the financial sector and no effect on the economy as a whole
3. It will have an overall negative effect on employment and/or remuneration in the financial sector, but the financial sector is already bigger than it should be and the qualified workforce will benefit the non-financial sector
4. It will have an overall positive effect on employment because _________
5. Qualified workforce will benefit companies/branches in non-taxing countries
6. Cannot decide
7. Other _________

Please explain further and provide evidence, if you have any.

We believe as a general matter that additional taxes and levies on the financial sector may hinder economic recovery by taking funds out of the financial system, making it harder for banks to rebuild their balance sheets and enhance their capital position in line with the new regulatory requirements globally. Due to bank leverage, depleting banks' capital through taxation has a multiplicative impact on those banks' ability to lend to business and facilitate economic recovery and employment in all sectors.

Banks play a pivotal role in society, helping individuals and organisations to meet their personal and corporate objectives by facilitating access to financial capital and protecting value for those who make capital available. Payment mechanisms, the provision of long-term credit, trade finance, hedging and other risk management products, deposit, investment and retirement services are but a few of the activities through which banking groups contribute to the financial system. This financial system, operating effectively, is essential to sustainable global economic growth and activity for SMEs and multinationals and, therefore, employment for individuals.

Q57: What do you think of the effect on small and medium enterprises (SMEs) from the levy?
1. It will have an overall negative effect SMEs because see Q 21
2. It will have a negligible effect on SMEs because _________
3. It will have an overall positive effect on SMEs because _________
3. Cannot decide
4. Other _________

Please explain further and provide evidence, if you have any.

See answer to Q56.

Please include any further comments below, in particular, but not limited to the definition of the problem, other policy options or tax design features and impacts.