


Goals, Effects and Challenges of the Financial Transaction Tax: A Comparative Law Study in France, Italy and Spain

Juan Benito Gallego López

PhD, Assistant Professor of Tax Law, Faculty of Social and Legal Sciences, Miguel Hernández University of Elche; correspondence address: Avda. de la Universidad S/N, 03202 Elche (Alicante), Spain; e-mail: jb.gallego@umh.es

 <https://orcid.org/0009-0002-6549-8818>

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Abstract: The Preamble of the Spanish Financial Transactions Tax Law establishes that “[t]he shaping of the tax follows the line taken by our neighbouring countries, including France and Italy, thus contributing to greater coordination of these taxes across Europe.” In this sense, the Spanish tax shows important similarities with those established in France and Italy in relation to the levy on the acquisition of certain shares and securities representing the capital of a company for consideration. Nevertheless, both the French and the Italian taxes apply to other types of transactions, not covered by the Spanish Law, which is why it is necessary to carry out the corresponding comparative study. Furthermore, the effects that have arisen from the application of this kind of taxes to financial transactions merited a proper analysis in order to determine if the main goals pursued by these taxes have been achieved in an efficient way. In any case, there are emerging tax challenges in financial markets connected, on the one hand, to the use of crypto-assets and distributed ledger technology, and, on the other hand, to the implementation of artificial intelligence and machine learning and the fair taxation of these operations.

1. Introduction

The controversial idea of establishing a tax on financial transactions¹ at the European Union (hereinafter “EU”) level has been gaining prominence for a while now. An example of this is the European Commission’s Proposal for a Council Directive on a common system of financial transaction tax and amending Directive 2008/7/EC of 28 September 2011² that intended to establish a common tax on financial transactions in all Member States. This attempt failed because the necessary unanimous agreement could not be reached.

Faced with this situation, another group of States continued to pursue this objective. In this context, the European Commission approved, on 14 February 2013, the Proposal for a Council Directive implementing enhanced cooperation in the area of financial transaction tax (hereinafter “2013 Proposal”),³ which enabled the creation of a tax of this nature in the eleven countries adhering to it, namely Austria, Belgium, Estonia, France, Germany, Greece, Italy, Slovakia, Slovenia, Spain and Portugal. However, on 16 March 2016, Estonia completed the necessary procedures to abandon this initiative.⁴

The main goals of the above-mentioned proposals were: (1) harmonizing legislation concerning indirect taxation on financial transactions, which is needed to ensure the proper functioning of the internal market for transactions in this area and to avoid distortion of competition between its participants across the EU; (2) ensuring that financial institutions make a fair and substantial contribution to covering the costs of the financial crises and creating a level playing field with other sectors from a taxation point of view; and (3) implementing appropriate disincentives for transactions that

¹ Taxation is a measure to offset negative externalities generated by the financial sector, especially during economic crises. In this area, taxes could be classified as follows: (1) financial stability contribution or bank levy (on some balance components); (2) financial activities tax on total profits of corporations; and (3) financial transaction tax levied on specific operations (Karolina Puławska, “Taxation of the Financial Sector: Is a Bank Levy the Answer to the Financial Crisis?”, *Journal of Banking Regulation* 23, no. 4 (2022): 390, <https://doi.org/10.1057/s41261-021-00178-w>).

² COM(2011) 594 final.

³ COM(2013) 71 final.

⁴ See doc. 7808/16 FISC 47 LIMITE.

do not enhance the efficiency of financial markets thereby complementing regulatory measures to avoid future crises.⁵

The subject matter and scope of those proposals⁶ were very wide, covering almost all kind of transactions, financial instruments and market stakeholders. In this sense, instruments which were negotiable on the capital market, money-market instruments (excluding means of payment), units or shares in collective investment undertakings and derivatives contracts were levied. Furthermore, those financial instruments that could be traded, either in multilateral trading systems (e.g. regulated markets) or in a bilateral manner (i.e. over-the-counter; hereinafter “OTC”), were taxed. The territorial scope of application was limited, according to the 2013 Proposal, to the precited Member States.

In the 2011 Proposal, the subjection criterion was the “residence principle,” meaning that the tax would be due if any party to the transaction was established in a participating Member State, regardless of where it takes place. This criterion was extended in the 2013 Proposal, adding the “issuance principle”; therefore, transactions of financial instruments issued in any of those States would also be taxed.

Both proposals established (as a minimum threshold) a 0.1 % tax rate for transactions in all types of financial instruments, except for financial derivatives which would be subject to a reduced 0.01 % tax rate.⁷

Although the 2013 Proposal has never been implemented, the idea of a common FTT has been regularly discussed at the periodical meetings of the Economic and Financial Affairs Council (hereinafter “ECOFIN”). During the 2019 ECOFIN meeting, the Council was informed of the state of play and the European Parliament’s support for the introduction of the FTT as an own resource of the EU budget and based on the French model of the tax.⁸ This model, similar to a stamp duty, levies only purchases of shares issued by domestic listed companies with a market capitalization higher than 1 billion euros.

⁵ Gabriela Lagos Rodríguez, “Financial Transaction Taxes,” *EC European Review*, no. 4 (2021): 152–3.

⁶ Articles (1)–(3) of the 2011 Proposal and Articles (1)–(4) of the 2013 Proposal.

⁷ Article (8) of the 2011 Proposal and Article (9) of the 2013 Proposal.

⁸ ECOFIN Report to the European Council on tax issues, 14863/19, accessed April 25, 2024, <https://data.consilium.europa.eu/doc/document/ST-14863-2019-INIT/en/pdf>.

The Spanish legislator, bearing in mind the aforementioned and pending cooperation procedure, considered the establishment of a tax of this nature at the internal level. Thus, the Spanish Tax on Financial Transactions (hereinafter “Spanish FTT”) was approved by Law 5/2020 of 15 October⁹ (hereinafter “Spanish FTTL”) and came into force on 16 January 2021. Some aspects of this tax have been developed by the Royal Decree 366/2021 of 25 May (hereinafter “Spanish Royal Decree 366/2021”).¹⁰ According to the Preamble of the Spanish FTTL, the main goals of the tax are: (1) consolidating public finances; and (2) strengthening the principle of fairness in the tax system of Spain, given that, so far, the transfer of shares and securities representing capital of a company for valuable consideration was not effectively subject to any indirect tax.¹¹

The Spanish levy follows the line established in other EU Member States,¹² such as France and Italy, and it has many elements in common with the modalities of the French and Italian taxes on the acquisition of certain shares and securities for consideration, but not with the rest of financial transactions that are levied in these two States.

The following sections of the paper will analyze: (1) the fundamental aspects of the legal regime of the French and Italian taxes, pointing out the similarities and differences with the Spanish levy; (2) the goals, achievements and effects of the FTT in those countries; and (3) the remaining challenges. The paper will conclude with final remarks.

⁹ Spanish Official Gazette of 16 October 2020, as amended.

¹⁰ Spanish Official Gazette of 23 May 2021, as amended.

¹¹ Currently, Article 314 of Spanish Law 6/2023 of 17 March, on Securities Markets and Investment Services (hereinafter “Spanish SMISL”), provides the exemption for transferring securities from: (1) Value-Added Tax and (2) Transfer Tax and Stamp Duty. Nevertheless, there is a *iuris tantum* presumption that concrete operations on some securities linked to real estate are developed to avoid tax payment and, therefore, must be levied (Spanish Official Gazette of 18 March 2023, as amended).

¹² Other EU countries where a FTT has been passed are: (1) Belgium; (2) Cyprus; (3) Finland; (4) Ireland; (5) Malta; and (6) Poland (Gabriela Lagos Rodríguez, “Financial Transaction Taxes,” 161 et al.).

2. The French and Italian Taxes as Precedents of the Spanish Tax

2.1. Preliminary Questions

Due to the above-mentioned paralysis of the process of approving a financial transaction tax at the EU level, France enacted its own levy on this type of transactions. Indeed, Article 5 of the 2012 Supplementary Budget Law no. 2012–354 of 14 March (Loi de finances rectificatives pour 2012),¹³ modified the French General Tax Code (Code Général des Impôts – hereinafter “CGI”) with effect from 1 August 2012.

Initially, the common name of *taxe sur les transactions financières* (hereinafter “French FTT”) included three different modalities or kinds of taxes: (1) tax on acquisitions of equity securities and similar instruments (Article 235 ter ZD of the CGI); (2) tax on cancelled orders in high-frequency trading (hereinafter HFT) (Article 235 ter bis ZD of the CGI); and (3) tax on certain sovereign debt credit default swaps (hereinafter “CDS”)¹⁴ (Article 235 ter ter ZD of the CGI).

The goals of the tax are: (1) enabling the financial sector to contribute to the recovery of the French public finances; (2) restricting or limiting the most speculative financial activities; and (3) initiating a movement for the accession of other EU Member States to the Commission’s project for a common EU financial transaction tax. Tax on acquisitions of equity securities and similar instruments was intended as a way to raise revenue and consolidate French public finances, while taxes on certain sovereign CDS and on HFT were an attempt to reduce some highly speculative activities.¹⁵

Nevertheless, the tax on certain sovereign CDS is not currently in force, because the aforementioned Article 235 ter ter ZD of the CGI was repealed

¹³ French Official Gazette of 15 March 2012, as amended.

¹⁴ According to Article 2(1)(c) of the Regulation (EU) no. 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps, a CDS is “a derivative contract in which one party pays a fee to another party in return for a payment or other benefit in the case of a credit event relating to a reference entity and of any other default, relating to that derivative contract, which has a similar economic effect” (O.J.E.C. L86, 24 March 2004). This kind of derivative could be used for hedging the risk of sovereign debt default.

¹⁵ “La taxe sur les transactions financières et sa gestion,” Court des Comptes, July 5, 2017, 1–2, accessed February 20, 2024, <https://www.ccomptes.fr/fr/publications/la-taxe-sur-les-transactions-financieres-et-sa-gestion>.

by Article 26(V) of the 2019 Budget Law n° 2018–1317 of 28 December 2018 (Loi de finances pour 2019), with effect from 1 January 2019.¹⁶

For its part, Italy has introduced a tax in this field (hereinafter “Italian FTT”) by virtue of Article 1 of Law no. 228 of 24 December 2012, laying down the provisions for drawing up of the annual and multi-annual State budget – Legge di stabilità 2013 (hereinafter “Italian Law no. 228/12”),¹⁷ throughout paragraphs 491 to 500.

The Italian FTT levies three different transactions: (1) transfer of ownership of shares and other participating financial instruments referred to in Article 2346(6) of the Italian Civil Code (paragraph 491); (2) regarding some derivative financial instruments (paragraph 492); and (3) specific HFT transactions on financial instruments provided for in paragraphs 491 and 492 (paragraph 495). The legal regime of the Italian FTT was supplemented by the Decree of Minister of Economy and Finance of 21 February 2013 (hereinafter “Italian Decree of 21 February 2013”)¹⁸ and its explicatory memorandum. Article 21, paragraphs 2, 3 and 4 of this Decree provides that the liability for transactions related to financial instruments mentioned in paragraph 491 came into effect on 1 March 2013, while for transactions on financial derivatives and HFT transactions this date was 1 July 2013.

According to paragraph 11 of the request for a preliminary ruling from the Regional Tax Court of Lombardy (Commissione Tributaria Regionale per la Lombardia) in the Case C-565/18, *Société Générale*,¹⁹ the main goal of the Italian FTT is “ensuring that persons who carry out transactions in financial instruments in the relevant markets and who have a link to the territory of the Italian State contribute to public expenditure.”

As mentioned above, the Spanish lawmaker has followed, as a model, the taxation of some acquisitions of shares and securities representing capital of a company for valuable consideration. However, and taking into account the purpose of this paper, the author considers it appropriate to also analyze, in summary form, the other modalities that are currently applied in France and Italy.

¹⁶ French Official Gazette of 30 December 2018, as amended.

¹⁷ Italian Official Gazette of 29 December 2012, ordinary supplement, as amended.

¹⁸ Italian Official Gazette of 28 February 2013, as amended.

¹⁹ CJEU Judgement of 30 April 2020, *Société Générale S.A. v Agenzia delle Entrate – Direzione Regionale Lombardia Ufficio Contenzioso*, Case C-565/18, ECLI:EU:C:2020:318.

2.1.1. France

Regarding the French FTT, it must be reminded that the tax on certain sovereign bond CDSs is not currently in force, although some HFT transactions²⁰ are levied. Nevertheless, the following requirements must be met with regard to transactions:²¹ (1) they must be carried out by a company which operates in France²² and is a taxpayer; (2) they must affect equity securities as defined under Article L. 212(1) A of the French Monetary and Financial Code (hereinafter French MFC); (3) they must be executed on the company's own account; (4) a computer algorithm determines whether to issue, modify or cancel orders and determines price and quantity parameters; and (5) orders for a given security produced by the algorithm are issued, modified or cancelled according to a time period which may not exceed half a second.

The HFT tax is set at 0.01 % of the amount of orders cancelled or modified over a percentage of the orders issued on one trading day (80%),²³ excluding exempt operations.²⁴

In practice, the only modality that, in general terms, has been efficient in achieving the above-mentioned goals is the one on the acquisition of capital shares and similar securities for consideration, as will be apparent

²⁰ It should be remarked that, under Article 4(1)(40) of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/E (hereinafter Directive 2014/65/EU, O.J.E.C. L173, 12 June 2014), there is a legal definition of the term “high-frequency algorithmic trading technique” which means “an algorithmic trading technique characterised by: (a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high-speed direct electronic access; (b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and (c) high message intraday rates which constitute orders, quotes or cancellations”.

²¹ Juan Benito Gallego López, “El Impuesto francés sobre las transacciones financieras como modelo del proyectado impuesto español: un análisis crítico,” *Documentos de Trabajo-Instituto de Estudios Fiscales*, no. 4 (2020): 152–3, https://www.ief.es/docs/destacados/publicaciones/documentos_trabajo/2020_05.pdf.

²² In the sense of Article 209(I) of the CGI. This circumstance is considered to occur when the economic activities are usually conducted in France (either as an autonomous establishment or through a representative who is not independent) or when a full business cycle is completed there.

²³ Article 58(S) (II) of the Annex III of the CGI.

²⁴ Market-making activities are exempt according to Article 235 ter ZD (III)(3º), of the CGI.

later. The revenue regarding HFT transaction tax has been almost nil and some reasons for this could be the high level of the exemption threshold (80%), and the relocation of the operating companies abroad of France.²⁵ Nevertheless, its main goal is to avoid certain highly speculative transactions, and the amount of tax revenue may not be the best parameter to measure tax efficiency. Despite the difficulty in finding several conclusive studies on this topic,²⁶ it is possible to note a reduction in the trading volume achieved by HFT firms after the implementation of the French FTT.²⁷

2.1.2. Italy

In the case of Italy, there are another two modalities of financial transactions subject to taxation. On the one hand, these are transactions involving derivative financial instruments provided for in Article 1(3) of Legislative Decree no. 58 of 24 February 1998, concerning financial intermediation.²⁸ According to Article 1(492) of the cited Italian Law no. 228/2012, taxation is imposed on: (1) transactions whose underlying instruments are mainly one or more of the financial instruments provided for in paragraph 491, or whose value depends essentially on such instruments; and (2) transactions related to securities²⁹ allowing the purchase or sale mainly of one or more financial instruments referred to in the precited paragraph 491, or involving a cash payment determined mainly by reference to such instruments (including warrants, hedged warrants and certificates).

Article 1(492) also provides that the accrual of the tax will be independent of the place of conclusion of the transaction and the State of residence of the contracting parties. The tax due is a flat-rate tax, which is determined by reference to the specific type of underlying instruments and the value of the contract, in accordance with Table 3 of the Italian Law

²⁵ Court des Comptes, “La taxe sur les transactions financières et sa gestion,” 3.

²⁶ Antonio Weiss and Laura Kawano, “A Proposal to Tax Financial Transactions,” in *Tackling the Tax Code: Efficient and Equitable Ways to Raise Revenue*, eds. Jay Shambau and Ryan Nunnm (Washington: Brookings, 2020), 149–89, https://www.brookings.edu/wp-content/uploads/2020/01/TaxBookforWeb_12320.pdf.

²⁷ Jean-Edouard Colliard and Peter Hoffmann, “Financial Transaction Taxes, Market Composition, and Liquidity,” *ECB Working Paper*, no. 2030 (2017): 5; and Iryna Veryzhenko et al., “The Impact of the French Financial Transaction Tax on HFT Activities and Market Quality,” *Economic Modelling* 67 (2017): 314, <https://doi.org/10.1016/j.econmod.2017.01.021>.

²⁸ Italian Official Gazette of 26 March 1998, ordinary supplement, as amended.

²⁹ Provided for in Article 1(1bis)(c) and (d) of aforementioned Legislative Decree no. 58.

no. 228/2011. For transactions which take place on regulated markets or in multilateral trading systems, the same fixed-rate tax is reduced to one fifth of the amount.

On the other hand, under Article 1(495), some transactions carried out in the Italian financial market are subject to the HFT tax in respect of the financial instruments referred to in paragraphs 491 and 492 when certain requirements are fulfilled: (1) they are generated by computer-based algorithms which automatically determine whether to issue, modify or cancel orders, and price and quantity parameters of those transactions; and (2) they are made at intervals of not more than half a second. The tax is applied at a rate of 0.02% of the exchange value of the cancelled or modified orders which in one day of stock market trading exceed the numerical threshold established by Article 13 of the above-mentioned Ministerial Decree of 21 February 2013 (i.e. 60% of total orders in one trading day – excluding exempt operations).

In the author's view, the experience of what has happened in Italy and France, especially in the latter case, may have influenced the specific determination of the tax event of the Spanish FTT, exclusively limited to the acquisition, for consideration, of some shares and securities. The next pages of this paper will examine the differences and similarities between the legal regime of the Spanish tax and the French and Italian taxes.

2.2. Legal Framework of the French and the Italian Taxes on Acquisition of Shares and Securities: Similarities and Differences with the Spanish Tax

2.2.1. Taxation Criteria: The Controversial “Issuance Principle”

Both the French FTT³⁰ and the Italian FTT³¹ follow the so-called “issuance principle” as a taxation criterion, taxing determined acquisition of shares, as well as securities that are representative of such instruments, for consideration, when they are issued by companies resident in those countries. Pursuant to Article 1(2) and Article 2(1) and (2) of the Spanish FTTL, certain transactions on shares – and securities representing them – of Spanish companies are taxed; therefore, the above-mentioned “issuance principle” is established as a taxation criterion as well. According to the Preamble of the

³⁰ Article 235 ter ZD(I) of the CGI.

³¹ Article 1(492) of the Italian Law no. 228/2012.

Spanish FTTL, this criterion “minimises the risk of relocation of financial intermediaries in comparison with the residence principle.”

Without doubt, the application of the “issuance principle” is a widely controversial issue. In the case of Spain, firstly, it should be remarked that the Spanish FTTL does not provide a definition of a “Spanish Company”; nevertheless, Article 8 of the Spanish consolidated text of the Corporate Enterprise Law and approved by Legislative Royal Decree 1/2010 of 2 July (hereinafter “Spanish CTCEL”),³² links that requirement to the company’s legal registration in Spain. Secondly, the “issuance principle” is an oddity in the Spanish legal framework; under Article 11 of Law 58/2003 of 17 December on General Taxation,³³ in the absence of a specific criterion in a concrete tax regulation, the residency criterion shall be applied for personal taxes, while the territorial criteria shall be applied in other kind of levies.³⁴

Moreover, the “issuance principle” has also been controversial when taking into account the EU legal framework. From this perspective, it is necessary to highlight the judgment of the Court of Justice of the European Union of 30 April 2020, *Société Générale*, Case 65/18.³⁵ In this judgment, the Court has resolved a preliminary ruling requested by the Regional Tax Court of Lombardy on whether the establishment of a financial transaction tax based on the residence of the entity issuing the share, which is the underlying instrument of a financial derivative, but not of the participants and the intermediary in the transaction, could be infringing the EU rules, specifically the prohibition of discrimination and the freedoms of providing services and capital movement established in the Treaty on the Functioning of the European Union³⁶ (Articles 18, 56 and 63, respectively).

The Court’s judgment focuses on Article 63, recognizing that there is equal tax treatment of residents and non-residents in the application of the

³² Spanish Official Gazette of 3 July 2010, as amended.

³³ Spanish Official Gazette of 18 December 2010, as amended.

³⁴ Alejandro Menéndez Moreno, “Un <<nasciturus>> esperado, aunque no por todos deseado. A propósito del aspecto espacial de aplicación del Impuesto sobre las Transacciones Financieras,” *Quincena Fiscal*, no. 4 (2019): 8–9.

³⁵ CJEU Judgement of 30 April 2020, *Société Générale S.A. v Agenzia delle Entrate – Direzione Regionale Lombardia Ufficio Contenzioso*, Case C-565/18, ECLI:EU:C:2020:318.

³⁶ O.J.E.C. C326, 26 October 2012.

Italian tax and, therefore, no discrimination prohibited by the EU law can be observed, but that the tax collection duties must comply with the proportionality principle.

2.2.2. Tax Event and Accrual

In the three jurisdictions analyzed,³⁷ the tax event is characterized by the existence of an acquisition, for valuable consideration, of shares³⁸ and securities related to the capital of companies and admitted to trading on a regulated market³⁹ (national, European or foreign) and issued by national companies of each country, provided that the company's stock market capitalization value is, at 1 December of the year prior to the acquisition, more than 1 billion euros. Nevertheless, in the case of Italy, the threshold is set at 500 million euros with average market capitalization in November of the year preceding the year in which the transfer of ownership occurs.

The tax event takes place irrespective of: (1) the place of conclusion of the transaction and the State of residence of the contracting parties or intermediaries; (2) the market or venue where transaction is concluded, including OTC transactions.

The objective scope of the levy on shares is similar in the examined jurisdictions (except certain kinds of financial instruments),⁴⁰ including both capital securities and other similar instruments (i.e. shares or those

³⁷ Articles 235 ter ZD(I) of the CGI, 1(491) of the Italian Law no. 228/2012 and 2(1) of the Spanish FTTL.

³⁸ Article 2(1) of the Spanish FTTL refers to the acquisition of shares, as defined in article 92 of the aforementioned Spanish CTCEL, that can be represented by titles or book entries. Nevertheless, under Article 6(1) of the Spanish SMISL, tradeable securities can be represented also through distributed ledger technology (e.g. Blockchain) according to Regulation (EU) 2022/858 of the European Parliament and of the Council of 30 May 2022 on a pilot regime for market infrastructures based on distributed ledger technology, and amending Regulations (EU) No 600/2014 and (EU) No 909/2014 and Directive 2014/65/EU (O.J.E.C. L151, 2 June 2022).

³⁹ Under Article 4(1)(21) of abovementioned Directive 2014/65/EU, a regulated market is "a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with Title III of this Directive."

⁴⁰ Article 235 ter ZD(I) of the CGI refers to some Articles of the French MFC.

securities that grant access to a company's capital or voting rights). As regards shares, they include, among others, both ordinary and preferred shares, certificates of participation in profits,⁴¹ as well as shares with preference for the collection of dividends.

In Spain⁴² and France,⁴³ the acquisitions of derivative financial instruments (e.g., options and futures) or convertible or exchangeable debentures or bonds are not levied, but the physical delivery of the underlying financial instrument (when it is a share or equivalent title) is subject to taxation as it is qualified as an acquisition. This is an important difference with Italy, where those derivative financial contracts are within the scope of the tax. Therefore, in France⁴⁴ and Spain,⁴⁵ the application of the tax could be avoided by contracting derivative financial instruments on shares with monetary settlement (e.g. contracts for differences – hereinafter “CFDs”). Nevertheless, in France, there has been no noteworthy relocation of investment assets in favor of non-taxable investment, such as CFDs.⁴⁶

Moreover, the acquisition, for consideration, of transferable securities in the form of depositary receipts⁴⁷ representing the precited shares and irrespective of the place of establishment of the issuer is also subject to tax, but not the rest of operations that structure this financial instrument (e.g. the certificate issuer's purchase of the shares).

In relation to the meaning of the term “acquisition,” in the three countries there must be an effective transfer of the financial instrument's ownership, considered in a broad sense (e.g. a purchase – including in connection with the exercise of an option or a forward purchase under an existing

⁴¹ Association Française des Marchés Financiers, *French Financial Transaction Tax. Guidelines* (29 March 2023), 11, accessed April 24, 2024, <https://www.amafi.fr/download/pages/iL61u5gDgmVsuH9lZpqjUIF8WLYS5Vf0xGDW7GbA.pdf>.

⁴² Article 2(2)(b) of the Spanish FTTL.

⁴³ Article 235 ter ZD(I)(2°) and (II)(9°) of the CGI.

⁴⁴ Filip Šramko, “The Impact of Securities Transaction Tax on Market Quality: Evidence from France and Italy,” *International Journal of Economic Sciences* 4, no. 3 (2015): 53.

⁴⁵ Gallego López, “El Impuesto francés sobre las transacciones financieras como modelo del proyectado impuesto español: un análisis crítico,” 158.

⁴⁶ Gunther Capelle-Blancard, “The Taxation of Financial Transactions: An Estimate of Global Tax Renewes,” *Documents de Travail du Centre d'Economics de la Sorbone*, no. 09R (2023), 8. https://centredeconomiesorbonne.cnrs.fr/wp-content/uploads/23009R_english.pdf.

⁴⁷ For example, Article 2(2)(a) of the Spanish FTTL.

forward contract – or a swap),⁴⁸ which occurs when the settlement of the operation takes place. Thus, acquisitions of a security that are not materialized by a book entry and subsequent settlement, to the extent that they are preceded or followed by sales of the same security, within the same day and in respect of the same purchaser (i.e. intraday transactions) are not taxed; only the net position of the acquisitions at the end of the day is levied in this case. Consequently, in France, for example, between 60% and 70% of transactions may be exempt from tax.⁴⁹

A FTT on intraday transactions has been a really controversial issue. An important argument for their taxation is their highly speculative purpose and the risk of market manipulation, which could be further increased by the use of new technologies and the development of techniques in the area of artificial intelligence (hereinafter “AI”) and machine learning.⁵⁰ A key argument against taxation is that this kind of trading makes it possible to carry out a great number of transactions, thus allowing the financial instrument pricing and market optimization.⁵¹

A clear example of this controversy is France. In this country, Article 62 of Law no. 2016–17 of 29 December 2016 on Finance for 2017,⁵² with effect from 1 January 2018, modified Article 235 ter ZD of the CGI, repealed the requirement that there must be a transfer of ownership for the

⁴⁸ Gallego López, “El Impuesto francés sobre las transacciones financieras como modelo del proyectado impuesto español: un análisis crítico,” 158.

⁴⁹ Capelle-Blancard, “The Taxation of Financial Transactions,” 3.

⁵⁰ Alessio Azzutti, “AI Trading and the Limits of EU Law in Deterring Market Manipulation,” *Computer Law and Security Review*, no. 45 (2022): 5 et al., <https://doi.org/10.1016/j.clsr.2022.105690>. According to Article 3(1) of the European Parliament legislative resolution of 13 March 2024 on the proposal for a regulation of the European Parliament and of the Council on laying down harmonized rules on Artificial Intelligence (Artificial Intelligence Act) and amending certain Union Legislative Acts (COM(2021)0206 – C9-0146/2021 – 2021/0106(COD)): “‘AI system’ means a machine-based system designed to operate with varying levels of autonomy, that may exhibit adaptiveness after deployment and that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments.”

⁵¹ Ministerio de Hacienda, “Memoria del Análisis del Impacto Normativo del Anteproyecto de Ley del Impuesto sobre las Transacciones Financieras” (2018), 14, accessed February 10, 2024, <http://www.hacienda.gob.es/Documentacion/Publico/NormativaDoctrina/Proyectos/Tributarios/MAIN%20APL%20ITF.pdf>.

⁵² French Official Gazette of 30 December 2016, as amended.

taxable event, so that all acquisitions made, and not just the net balance, would be subject to tax. Nevertheless, Article 39 of Law no. 2017–1837 of 30 December 2017 on Finance for 2018⁵³ has re-established said effective transmission requirement.

Finally, with regard to the tax accrual, neither France nor Italy make a specific reference to this moment, but to the moment when the tax is due, which is the first day of the month following the taxable event (France),⁵⁴ and the sixteenth day of this following month (Italy).⁵⁵ In Spain, the tax accrual takes place when the transaction is settled.⁵⁶

2.2.3. Transactions Out of the Scope of the Tax and Exemptions

The French⁵⁷ and Italian⁵⁸ legal systems, as well as the Spanish⁵⁹ one, establish a series of exemptions, many of which are similar, whose fundamental purpose is to promote the proper functioning of the financial markets in relation to the financial instruments analyzed in this paper. As for those of a coincident nature, they can be systematized into the following groups of acquisitions:

(1) In the primary market (i.e. resulting from the issue of those instruments). This also includes acquisitions made: (a) instrumentally, by underwriters and insurers engaged by issuers or offerors for the purpose of the ultimate distribution of these instruments to final investors; (b) in fulfilment of their obligations as underwriters and, in particular, as insurers, of such transactions, where applicable; and (c) by financial intermediaries in charge of price stabilization in the framework of a stabilization order.⁶⁰

⁵³ French Official Gazette of 31 December 2017, as amended.

⁵⁴ Article 235 ter ZD(IV) of the CGI.

⁵⁵ Articles 15 et al. of the Italian Decree of 21 February 2013.

⁵⁶ Article 4 of the Spanish FTTL and Article 9 of the Spanish Royal Decree 366/2021.

⁵⁷ Article 235 ter ZD(II) of the CGI.

⁵⁸ Articles 15 et al. of the Italian Decree of 21 February 2013.

⁵⁹ Article 3 of the Spanish FTTL.

⁶⁰ Defined in Article 2(1)(k) of Regulation (EU) 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC – hereinafter “Regulation (EU) 596/2014” (O.J.E.C. L173, 12 June 2014).

(2) Resulting from certain transactions made by a central counterparty⁶¹ or central securities depository in the exercise of their respective functions in the field of securities clearing or settlement and registration.⁶²

(3) Made in the framework of market-making activities.⁶³

(4) Made by financial intermediaries on behalf of the issuer in the exercise of their functions as liquidity providers, whose sole objective is to promote the liquidity of transactions and the regularity of the listing of their shares.⁶⁴

(5) Between entities forming part of the same group and regarding certain corporate restructuring operations (e.g. mergers or divisions) according to the domestic law.

(6) Related to securities financing transactions,⁶⁵ as well as title transfer collateral transactions resulting from a title transfer financial collateral arrangement.

Having stated the above, it should be noted that the French, Italian and Spanish rules, respectively, establish specific exemption cases. In this sense, the Spanish FTTL exempts the acquisitions arising from the application of the resolution measures adopted by the Single Resolution Board, or the competent national resolution authorities⁶⁶; the French FTTL exempts the

⁶¹ The central counterparty is located between the two parties to a securities transaction (e.g. a purchase and sale of shares) to limit the risk of their non-compliance. The above entails a novation of the initial contract as a consequence of the intervention of said entity.

⁶² The purpose of this exemption is to guarantee the functioning of the post-trading securities management entities.

⁶³ These activities provide liquidity to the financial markets throughout the process of buying and selling securities.

⁶⁴ Under the aforementioned Regulation (EU) 596/2014.

⁶⁵ As referred to in Article 3(11) of Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (O.J.E.C. L337, 23 December 2015).

⁶⁶ Under the terms provided for in: (1) Regulation (EU) no. 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser – hereinafter Regulation (EU) no. 600/2014 (O.J.E.C. L225, 30 July 2014); and (2) the Spanish Law 11/2015 of 18 June on the recovery and resolution of credit institutions and investment service undertakings (Spanish Official Gazette of 19 June 2015, as amended).

acquisitions of bonds that are convertible or exchangeable into shares (in Spain, they are out of the scope); France and Italy exempt the acquisitions linked to certain employee savings schemes including those related to pension fund.⁶⁷

In the author's opinion, the absence in the Spanish Law of a specific case of exemption for the acquisitions of shares carried out by pension funds must be highly criticized, as it represents an inconsistency in relation to what is provided for in the regulations of France and Italy, countries that have recognized the adverse effect of the entry into force of a tax of this nature for this type of entities.

2.2.4. Tax Base, Tax Rate and Tax Due

In the three jurisdictions analyzed,⁶⁸ there is a general method for calculating the tax base and a few special cases. Generally, the tax base is the price paid for the security during a spot purchase. If no such amount is indicated (e.g. a swap), it is the price of the security in the most relevant market in terms of liquidity⁶⁹ at the end of the trading day preceding the day on which the transaction occurs. With regard to special rules, for example in the case of acquisitions linked to the execution of a derivative instrument, that base is the strike price, while in the case of conversion, redemption or exchange of a bond, the tax base is the price established in the bond indenture.

There is another important special tax base scheme for intraday operations⁷⁰ (i.e. acquisitions and transfers of the same taxable security, ordered or executed by the same tax person, in respect of the same acquirer and settled on the same day), which is calculated by multiplying the positive difference (resulting from subtracting from the number of securities acquired those transferred on the same day) by the quotient resulting from dividing the sum of the consideration for the said acquisitions by the number of securities acquired.⁷¹

⁶⁷ Article 16(1)(5) of the Italian Decree of 21 February 2013.

⁶⁸ Article 235 ter ZD(III) of the CGI, Article 4 of the Italian Decree of 21 February 2013 and Article 5 of the Spanish FTTL.

⁶⁹ These markets shall be determined in accordance with Article 4 of the Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing above-mentioned Regulation (EU) no. 600/2014.

⁷⁰ Article 58(Q)(I)(h) of Annex III of the CGI.

⁷¹ Excluding exempt operations.

The tax due is calculated by applying a tax rate, which depends on the country, to the tax base. In France, the tax rate is currently 0.3%⁷²; in Spain, it is 0.2%.⁷³ A special comment should be made regarding Italy, where the tax rate is linked to the place where the transaction occurs: 0.1% on transactions effected on regulated markets or in multilateral trading facilities (on-exchange), and 0.2% on OTC transactions.⁷⁴

2.2.5. Persons Liable to Tax and Tax Management

In France, the person or entity liable to tax is the investment service provider regardless of where such provider is established (if it executes bid orders on behalf of third parties or purchases for its own account) or, in the absence of such person, the custodian assumes this role. Nevertheless, there is no legal disposition to transfer the tax due to the final customer.

However, as the French Court of Auditors points out,⁷⁵ in practice, service providers have transferred (throughout fees and charges) the economic effect of the levy to investors, so it has not effectively fallen on the financial sector. Having stated the above, it should be noted that due to the difficulties that the existence of taxable persons outside French territory may entail in terms of management, the French legislation has granted a predominant role to the French Central Securities Depository,⁷⁶ since, in many cases, it is in charge of collecting the tax and depositing the corresponding amounts of money in the French Public Treasury.

In the case of Italy, the person liable to tax is the acquirer of the levied shares and securities, but collection is made by the financial providers to the acquirer or directly by the acquirer if there is no financial provider.⁷⁷

Finally, in Spain,⁷⁸ the taxpayer is the acquirer. Moreover, the Spanish FTTL identifies other persons liable to tax – using cumbersome terminology: (1) investment service firms or credit institutions making the acquisition on their own shall pay the tax, regardless of where they are

⁷² Article 235 ter ZD(III) of the CGI.

⁷³ Article 7 of the Spanish FTTL.

⁷⁴ Article 1(491) of Italian Law n° 228/2012 and Article 6 of the Italian Decree of 21 February 2013.

⁷⁵ Court des Comptes, “La taxe sur les transactions financières et sa gestion,” 2–3.

⁷⁶ In France, this role is played by Euroclear France, accessed April 30, 2023, <https://www.euroclear.com/services/en/provider-homepage/euroclear-france.html>.

⁷⁷ Articles 1(491) of the Italian Law n° 228/2012 and Article 19 of the Italian Decree of 21 February 2013.

⁷⁸ Article 6 of the Spanish FTTL.

established if acting for their own account; (2) if the latter is not the case, there are some persons that shall be taxable as substitutes for the taxpayer, depending on the transaction made (e.g. in the event that the acquisition is made in a trading venue, the taxable person shall be the member of the market that executes it); and finally (3) the acquirer who has communicated erroneous or inaccurate information to the above-mentioned other liable persons in order to enjoy an undue exemption or a lower taxable base shall be jointly and severally liable for the tax debt.

As in France, the Spanish central counterparty located in this territory⁷⁹ plays a very important role in the tax collection procedure, since taxpayers provide said central counterparty with all the relevant information for the self-assessment, as well as pay the resulting amount, either directly to it or through an entity participating in it. Subsequently, the aforementioned central counterparty will present the self-assessment and pay the amount of tax due that corresponds to each taxable person, acting in the name and on behalf of the latter. The procedure for the presentation and payment of self-assessments may be extended to other central securities depositories established in other Member States, or in third states that are recognized as providing services in the EU, under collaboration agreements signed with a central securities depository established in Spanish territory. The settlement period will be the calendar month.

3. Goals, Achievements and Effects

As stated above, one of the main goals of the FTT is to become a new means of obtaining tax revenue. In France, in the first two years of its entry into force (2012 and 2013), there were substantial differences between the collection initially planned (537 and 1,600 million euros, respectively) and actually obtained (199,05 and 765,99 million euros, respectively).⁸⁰ In 2023, tax revenue has reached a volume of 1,077 million euros, very close to the forecast amount for this year, which was 1,100 million euros.⁸¹ In the case of

⁷⁹ Namely Iberclear, accessed April 30, 2024, <https://www.iberclear.es/esp/>.

⁸⁰ Gallego López, “El Impuesto francés sobre las transacciones financieras como modelo del proyectado impuesto español: un análisis crítico,” 165.

⁸¹ Service de la fonction financière et comptable de l'Etat, “Situation Mensuelle de l'Etat. Décembre 2023 Définitive” (2023), 11, accessed March 15, 2024, https://www.economie.gouv.fr/files/files/directions_services/dgfp/SME/sme_2024-02.pdf?v=1712318878.

Italy, in 2023, and according to the Ministry for the Economy and Finance (Ministero Dell'Economia e Delle Finanze), there is no specific information in the last published Bolletino delle Entrate Tributario,⁸² which should mean that the tax revenue is not significant. In Spain, on the other hand, the tax revenue forecast was initially overvalued in the Memorandum on the Regulatory Impact Analysis of the Spanish FTT draft bill,⁸³ with an amount of 850 million euros; subsequently, the Spanish Independent Authority for Fiscal Responsibility (Autoridad Independiente de Responsabilidad Fiscal)⁸⁴ estimated a yearly collection range with a maximum of 850 million euros and a minimum of 420 million euros. Finally, in 2023, the real figure has been only 58 million euros.⁸⁵

In general terms and according to the above-mentioned data, the author's view is that the establishment of the FFT, as a new source of tax revenue in the jurisdictions analyzed, should be currently qualified as unsuccessful, excluding France. In this last country, another of the tax goals is curbing the most speculative transactions (i.e. certain HFT transactions); nevertheless, as explained above, the tax collection of HFT transactions has been almost nil, probably due to the high threshold (cancelled or modified orders must be higher than 80% of all trading orders) and the possibility to move levied entities abroad of France, although the amount of tax revenue should not be the only item to measure the effectiveness of this levy and it can be appreciate a reduction of HFT trade.

⁸² Ministero Dell'Economia e Delle Finanze, "Bolletino delle Entrate Tributario 2024. Gennaio 2024" (2024), accessed March 15, 2024, https://www.finanze.gov.it/export/sites/finanze/galleries/Documenti/entrate_tributarie_2024/Bollettino-entrate-Gennaio2024.pdf.

⁸³ Ministerio de Hacienda, "Memoria del Análisis del Impacto Normativo del Anteproyecto de Ley del Impuesto sobre las Transacciones Financieras" (2018), 10, accessed March 16, 2024, <http://www.hacienda.gob.es/Documentacion/Publico/NormativaDoctrina/Proyectos/Tributarios/MAIN%20APL%20ITE.pdf>.

⁸⁴ Autoridad Independiente de Responsabilidad Fiscal, "Informe sobre las Líneas Fundamentales de los Presupuestos de las Administraciones Públicas 2019. Informe 45/18" (2018), 10, accessed March 16, 2024, <https://www.airef.es/es/centro-documental/informes/informe-sobre-las-lineas-fundamentales-de-los-presupuestos-de-las-administraciones-publicas-2019/>.

⁸⁵ Intervención General de la Administración del Estado, "Principales indicadores de la actividad económica y financiera del Estado. Febrero 2024" (2024), 9, accessed March 17, 2024, https://www.igae.pap.hacienda.gob.es/sitios/igae/es-ES/Contabilidad/ContabilidadNacional/Publicaciones/Documents/Ind-2024/2024_02.pdf.

A key argument against the FTT is that it could increase transaction costs and, therefore, reduce shares trading and affect market liquidity. In the academia, there are conflict positions regarding this economic issue: one of them considers that this levy has a significant negative impact on the markets,⁸⁶ while the other estimates that there are no important consequences for them.⁸⁷ In Spain, a recent technical research conducted by the Spanish Securities Market Commission (Comisión Nacional del Mercado de Valores) concluded that shares trading has decreased after the introduction of the tax in this country, and its design may have reduced the incentives for some long-term investors to participate, since the tax base is calculated on the basis of net intraday acquisitions. Regarding illiquidity, this factor has increased only in a short time period (40 sessions), with no observed effects in the medium and long term.⁸⁸

4. Challenges

In the author's view, there are two main challenges that a FTT in the EU should face. One of them relates to the current national levies and the taxation of HFT (specially used for intraday transaction) in a fair way, which is an area in constant evolution due to the increasing use of AI and machine learning in the financial sector. And the other one is the establishment of a common EU financial tax and what its legal framework should look like.

Regarding the first challenge, technological development has provided benefits to stakeholders, such as wider participation in markets, increased liquidity, narrower spreads, reduced short term volatility and the means to obtain better execution of orders for clients. Nevertheless, there are

⁸⁶ Regarding this, see relevant literature on transaction cost in Filippo Luigi Giambrone, "Possibilities of the Introduction of a Financial Transaction Tax in Germany: Comparison and Evaluation on the Basis of the Italian and French Transaction Tax With Regard of the EU Taxation Principles," *Journal of Accounting and Finance* 23, no. 5 (2023): 5–6, <https://doi.org/10.33423/jaf.v23i5.6562>.

⁸⁷ Capelle-Blancard, "The Taxation of Financial Transactions," 15; and Capelle-Blancard, "The Financial Transaction Tax: A Really Good Idea," *AMF-Scientific Advisory Board Review* (2017): 3, https://www.amf-france.org/sites/institutionnel/files/2020-02/201710_etude_ttf_va.pdf.

⁸⁸ Ramiro Losada and Albert Martínez Pastor, "Analysis of the Implementation of the Spanish Financial Transaction Tax in Equity Markets," *CNMV Working Paper*, no. 83 (2023): 3, <http://dx.doi.org/10.2139/ssrn.4430801>.

important risks linked to the use of this kind of technology in the financial sector: (1) the issuance of multiple duplicate or erroneous orders (or other anomalies in the issuance or execution of said orders), which may cause serious disruption to investors; (2) trading systems can react in an exacerbated manner to certain events or situations that affect the market, extremely increasing volatility and thereby causing very significant damage; and (3) market manipulation.

In the author's view, the French and Italian HFT taxes seek to avoid those negatives effects, and in France a reduction of transactions made by localized HFT entities could be appreciated as indicated above. Nevertheless, and in order to avoid them, some rules have been passed at the EU level, but not in the tax field.⁸⁹ In first place, it is the above-mentioned Directive/65/EU 2014; among the main measures adopted by this directive, the author would like to highlight that trading venues must have control mechanisms over activities that can be classified as HFT. In addition, they must establish systems that guarantee that this kind of negotiation cannot generate (or contribute to) anomalies in the contracting conditions by approving measures that allow, for example, limiting the proportion of orders issued and not executed. Finally, fee and charge structures should not create incentives that disrupt trading conditions or encourage market abuse practices. In second place, it is the aforementioned Regulation (EU) no. 596/2014; in Article 12(2)(c), it qualifies as conduct that constitutes market manipulation (and therefore is sanctionable), the formulation of orders, their modification or cancellation through the high frequency strategy when: (1) false signals are transmitted to the markets; or (2) an abnormal or artificial price is set for financial instruments, with said conduct producing some negative effects (e.g. exacerbating a buying or selling tendency). In the third place, it is Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive);⁹⁰ according to its Article 5(1):

⁸⁹ Juan Benito Gallego López, "Aspectos tributarios de las negociaciones algorítmicas de alta frecuencia (*high-frequency algorithmic trading*) en los impuestos que gravan las transacciones financieras: un estudio de Derecho comparado," in *Retos del Derecho Financiero y Tributario ante los desafíos de la economía digital y la inteligencia artificial*, dir. Amparo Navarro Faure (Valencia: Tirant lo Blanch, 2021), 490.

⁹⁰ O.J.E.C. L173, 12 June 2014.

“States shall take the necessary measures to ensure that market manipulation as referred to in paragraph 2⁹¹ constitutes a criminal offence at least in serious cases and when committed intentionally.”

In the author’s view, a HFT tax following the current French and Italian model is controversial in the light of the ability-to-pay principle established in the constitutional texts,⁹² since a tax event based only on the number of modified and/or cancelled orders exceeding a certain threshold of the total amount of orders bears no relation to that principle. Moreover, and as explained above, the regime of the HFT tax is certainly complex and difficult to apply. Regarding the results obtained, the tax revenue is irrelevant, but, as explained above, a reduction of HFT trading could be appreciated in France.

In any case, and as indicated in previous pages, there are various market regulation bodies in the EU that have established concrete and specific provisions with the purpose of correcting and limiting certain negative practices linked to HFT transactions that can be applied at the EU level, although some of them should be updated taking into account the continuous technological development.

The other challenge is the implementation of the idea of a common FTT at the EU level, repealing domestic taxes in force, and how this EU tax should be implemented. In this sense, according to the Commission’s view:⁹³ (1) this common tax could be used as a new source of funds for the EU budget; (2) the latter proposal, still under discussion, is similar to the French and Spanish FTTs (i.e. a stamp duty that would apply only to purchases of shares issued by domestic listed companies with a market capitalization higher than 1 billion euros and with a common tax rate); (3) the revenues to the EU budget would likely be more limited than those estimated in the above-mentioned 2011 and 2013 FTT Proposals; and (4) there would be a system of tax collection through financial intermediaries and allocated to the relevant Member States. Nevertheless, there is little expectation that any proposal would be agreed in the short term.

⁹¹ Among others, gives false or misleading signals to the market participants.

⁹² For example, in Article 31(1) of the Spanish Constitution (Spanish Official Gazette of 28 December 1978, as amended).

⁹³ European Commission, “Commission Staff Working Document Accompanying the Document Amended Proposal for a Council Decision Amending Decision (EU, Euratom) 2020/2053 on the System of Own Resources of the European Union,” SWD/2023/331 (2023), 20–2.

5. Final Remarks

The taxation of financial transactions is a very controversial topic in the EU. A proposal for a common tax, with a very wide subject matter and scope (as in the case of the 2011 FTT Proposal) has been rejected.

Meanwhile, some Member States have decided to enact their own domestic taxes on this issue. Regarding the three jurisdictions analyzed in this paper, Italy has the widest scope, as it taxes specific transactions on shares, derivatives and HFT transactions, while France taxes shares and HFT transactions, and Spain only shares. Essentially, the goals of the levies are to attract new public funding sources and, in the case of France or Italy, curb short-term speculative transactions linked to HFT. The achievement of these goals could be described in general terms, as unsatisfactory.

In the author's opinion, a special reflection should be encouraged on some of those speculative transactions. Firstly, intraday transactions enjoy a special and more beneficial tax treatment and the net balance of shares at the end of the trading day is only levied due to the requirement of ownership transfer. In this sense, it is very important to obtain reliable information on these kinds of transactions, and the central security depositaries could play a very important role in this, given that they centralize information about the balance of shares acquired and sold at the end of the trading day.⁹⁴ Moreover, the number of transactions could be increased by the use of distributed ledger technology in the financial market (e.g. Blockchain) and it would be fundamental to establish measures to obtain information of this higher volume of operations for an adequate tax collection.

Secondly, according to the author, the relevance of HFT trading is going to be greatly increased by the development of AI and machine learning in short and medium term on financial markets.⁹⁵ France and Italy have implemented HFT taxes in order to avoid certain transactions that could affect the proper functioning of the financial market; the tax revenue has been almost nil, but the efficiency of this kind of taxes should be measured by the reduction of negative transactions; according to some empirical

⁹⁴ Capelle-Blancard, "The Taxation of Financial Transactions," 12.

⁹⁵ Mohammad El Hajj and Jamil Hammoud, "Unveiling the Influence of Artificial Intelligence and Machine Learning on Financial Markets: A Comprehensive Analysis of AI Applications in Trading, Risk Management, and Financial Operations," *Journal of Risk and Financial Management* 16, no. 45 (2022): 1–16, <https://doi.org/10.3390/jrfm16100434>.

studies, a reduction of transactions carried out by HFT entities could be appreciated in France. Nevertheless, these levies could be controversial according to the ability-to-pay constitutional principle, as their tax event, based only on the amount of modified and/or cancelled orders exceeding a certain threshold of the total amount of orders, has no link to this principle. Moreover, there are other legal bodies in the EU that can be used to avoid such transactions, but they should be regularly updated taking into account the continuous technological development.

Finally, the proposal for implementing a common FTT in the EU as a budget funding source, but only as a stamp duty, is on the table, but it seems that it will not be implemented in the short term.

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