



27.3.2013

## NOTICE TO MEMBERS

**Subject: Petition 0991/2012 by Richard Parsons (British), on a proposal for a transaction tax**

### 1. Summary of petition

The petitioner raises questions regarding the compliance of a transaction tax proposed by the Hungarian government with European legislation.

### 2. Admissibility

Declared admissible on 30 November 2012. Information requested from Commission under Rule 202(6).

### 3. Commission reply, received on 27 March 2013

The petitioner contests the Hungarian financial transaction levy established by Law CXVI of 2012 with effect from 1 January 2013 (published in the National Gazette of 23 July 2012). He claims that the above tax constitutes a restriction on the free movement of capital, and is a disguised form of import as well as export duties. The petitioner finally argues that the tax puts importers and exporters at a disadvantage compared to operators trading solely in Hungary since the latter persons can pay their transactions in cash which is not subject to the transaction tax.

#### The Commission's observations

- The Hungarian financial transaction levy is payable by Hungarian companies engaged in the provision of payment and currency exchange services (keeping accounts, making financial transactions and money orders, provision of internet banking services, etc.). The taxable events include in particular the wire transfer, money transfer by the post, direct debit, card payments,

the cashing of checks, money withdrawal from bank accounts and ATM machines, and the issuance of letters of credit.

- The levy is payable by the financial services provider of the payer and only financial institutions established in Hungary by way of a registered office or a branch are subject to the levy. Consequently, money flows coming from other Member States do not fall within the scope of the levy.

- The amount of the financial transaction levy is 0.2% of the taxable amount, with the exception of 0.3% for cash withdrawals, and a maximum of HUF 6000 (EUR 20) per transaction.

As regards the free movement of capital, Article 63 of the Treaty on the Functioning of the European Union (TFEU) generally prohibits all restriction on the cross-border movement of capital and payments. However, Article 65 TFEU allows Member States to apply the relevant provisions of their tax law which distinguish between taxpayers who are not in the same situation with regard to their place of residence or with regard to the place where their capital is invested. At the same time, restrictions may not constitute a means of arbitrary discrimination.

It should be observed that the levy applies to money flows effected by all companies resident in Hungary and engaged in the provision of payment and currency exchange services. No element in the Act suggests the existence of arbitrary discrimination in the application of the levy.

The levy applies regardless whether the payment is effected domestically or to a destination (account) held in another Member State. As a consequence, no possible discrimination may be established to the detriment of cross-border transactions compared to purely domestic ones.

As regards the alleged advantage granted to cash transactions, it should be recalled that cash withdrawals are subject to the levy at a 1.5 times higher rate than money transfers between bank accounts. Therefore, no discrimination to favour cash payments may be established.

As to the argument related to exports and import duties, Article 28 TFEU provides that the customs union in the EU shall cover all trade in goods, shall prohibit customs duties or all charges having equivalent effect on imports and exports between Member States and shall adopt a common customs tariff in the relations with third countries.

Based on the above provision, as interpreted by the Court in its settled case-law<sup>1</sup>, imports and exports custom duties are considered as a pecuniary charge levied on *goods by reason of crossing the border*. Given that the levy does not appear to be levied by reason of goods crossing the border, the prohibition of exports and import duties does not appear to be relevant to this case.

## Conclusion

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<sup>1</sup> Judgment of the Court of 2 April 1998 in Case C-213/96 *Outokumpu Oy*, paragraph 20.

Based on the foregoing, the financial transaction levy does not appear to be in conflict with EU law.