Chapter 13

Fiscal Sovereignty vs. Coordination: The Struggle for Equality in Tax Regulation

Michal Radvan

Abstract

This chapter primarily aims to find the relationship between the cooperation and harmonisation tendencies of the EU in the area of taxation, as well as the competition between the tax systems of individual EU Member States. The request for unanimous consent in tax harmonisation in the area of direct taxes regulation is also an issue to be investigated. To achieve these aims, the chapter defines basic terms such as tax law and tax itself. Subsequently, the role and position of the tax law in the EU law are analysed and specified, and the essential terms 'tax sovereignty' and 'tax harmonisation' are defined. The chapter investigates the limits of taxation at the EU level and national levels in the EU Member States according to the Treaty on European Union and the Treaty on the Functioning of the European Union. Specific parts of the chapter focus on direct and indirect taxes. These parts analyse the EU politics published on the EU website and describe the EU law dealing with individual types of taxes by considering selected national specifics in the legal regulation of the EU Member States. The conclusions state that the ideal path is somewhere in the middle of tax harmonisation and tax sovereignty: tax issues should never become a coordinated policy at the EU level, and the EU's task should be to prohibit tax discrimination, i.e., tax neutrality, to fight against harmful tax competition and tax evasion, and to promote greater cooperation between tax administrations in ensuring control and combating fraud.

Keywords: tax cooperation, tax harmonisation, tax sovereignty, tax law, tax discrimination

Michal Radvan (2026) 'Fiscal Sovereignty vs. Coordination: The Struggle for Equality in Tax Regulation'. In: David Sehnálek (ed.) *Unequal Equals? The Status of Member States in an Integrating European Union*, pp. 417–455. Miskolc–Budapest, Central European Academic Publishing.

https://doi.org/10.54237/profnet.2026.dsuesmsieu_13

1. Introduction

The draft of the project ‘Equality in an Ever-Integrating Europe’ states that the tax law of the European Union is characterised not only by unanimity but also by the existence of a number of exceptions, in primary law, including accession treaties as well as in secondary law. The old Member States appeared to be in a more advantageous position than the new Member States due to these exceptions. The draft enquires whether this is really the case and how this system works in terms of cooperation and equality between States (in law and in fact).

I am afraid that the statements in the project draft are too simplified. Much deeper research in the area of tax law at the EU level and the national levels of EU Member States is required to answer both the questions. The statement that the free movement of persons, goods, services, and capital is the most important goal of the EU and that taxes play a crucial role in the harmonisation process is a fact. However, the national economic and political interests and historical and cultural traditions are the arguments for tax competition. From a historical perspective, it is also visible that gradual integration in the area of taxation is not only possible and acceptable but is also a fact, especially in the legal regulation of indirect taxes. It is crucial to pay attention to the definitions, as, for example, taxes on motor vehicles are considered indirect taxes by the EU but direct taxes according to most EU Member States. Regardless of the fact that EU Member States mostly prefer independent and non-harmonised tax systems, it is evident that there are successful harmonisation initiatives, mainly in the sphere of tax administration and tax administration cooperation, fight against tax havens, ambition to tax multinational online platforms and cooperation in the recovery of arrears.

These are the reasons leading to the extension of the purpose of the chapter. As the main aim, finding the relationship between the cooperation and harmonisation tendencies of the EU in the area of taxation, as well as the competition between the tax systems of individual EU Member States is necessary. The request for unanimous consent in tax harmonisation in the area of direct taxes regulation is also an issue to be investigated. The chapter is based on the hypothesis that the balance between the tax harmonisation at the EU level and tax cooperation of national tax administrations on one side and the tax competition between EU Member States on the other side expresses the equality among EU Member States.

To achieve the aims of the chapter, basic terms such as tax law and tax itself must be defined. This part generally brings no new knowledge, as it is based on the findings I have published several times previously.[1] Only this part necessitates dealing specifically with customs duties and their characteristics, as they play a key role within the EU and have many tax characteristics. However, the text itself is not focused on customs duties (customs). Subsequently, the role and position of the tax law in the EU law must be analysed and specified. Within this subchapter,

1 E.g., Radvan, 2024.

the essential terms 'tax sovereignty' and 'tax harmonisation' are defined. The limits of taxation at the EU level and national levels in the EU Member States according to basic treaties should be investigated: Treaty on European Union and Treaty on the Functioning of the European Union. There are several books dealing with the general EU policies and legal regulations. When investigating these issues mainly from Czech perspectives, Týč[2] and Tomášek[3] are the most detailed and cited authors in the Czech Republic. Concerning the tax law itself, the relations between the EU tax law regulation and the Czech national regulation, Široký[4] and Nerudová[5] are to be considered. The next area that must be analysed in sufficient detail is the sphere of EU taxation principles. The best books dealing with this topic are those by Kokott[6] and Pistone.[7]

The general part of the chapter is succeeded by the specific part with its two sub-parts. The first focuses on direct taxes, while the second investigates indirect taxes. The structure of these parts is more or less the same: it analyses the EU politics published on the web of the EU and describes the EU law dealing with individual types of taxes by considering selected national specifics in the legal regulation of the EU Member States. The findings demonstrate whether national taxes are and/or should be in line with EU law (cooperation and harmonisation aspects) or whether the EU Member States use them to enforce their own national (not just tax) policies (competition aspects).

All the observations and lessons learned are summarised in the concluding part of the chapter so that the hypothesis can be confirmed or refused, research questions as stated above can be answered, and the relationship between the cooperation and harmonisation tendencies of the EU in the area of taxation, as well as the competition between the tax systems of individual EU Member States can be determined.

2. Tax Law and Taxes (*Sensu Lato*)

In old EU Member States, tax law is regarded as an independent branch of law. Tax law science and tax law have a longstanding tradition in Western Europe. Contrarily, in Central and Eastern Europe (new EU Member States), according to the local legal sciences, tax law is (still) a sub-branch of financial law. Particularly, it belongs to the fiscal part of financial law, which deals with specific legal relationships. These relationships are created, implemented, and expired in connection with

2 Týč, 2017.
3 Tomášek et al., 2021.
4 Široký, 2018.
5 Nerudová, 2008.
6 Kokott, 2022.
7 Pistone, 2018.

public budgets, specifically when creating, distributing, and using public monetary funds. This fiscal part deals not only with tax law (a legal regulation of public budget revenues) but also with the budgetary law, and the public subsidies law (legal relationships concerning public budget expenditures).[8]

The tax law is defined as a system of legal norms regulating social relationships created, implemented, and expired in the process of creating public monetary funds. These social relationships regulated by the tax law are taxes *sensu lato* (in the broader sense). Taxes as social and legal relationships (similar to other legal relationships) have three structural components: subjects, objects, and content.

There are two or three subjects of tax law relationships. The weaker party, having fewer rights and more obligations, is the taxpayer or paying agent. The taxpayer is a person whose income, property, or acts are liable to tax. This person is directly affected by the tax burden. The paying agent is responsible for collecting the tax from the taxpayer and remitting it to the tax authorities. The tax administrator is the stronger party in tax law relationships. The tax administrator is the party with the decision-making powers. There are also other subjects (third parties) in the tax proceedings, such as witnesses, experts, interpreters, etc.

The object of the tax law relationship is tax in the economic sense, that is, public payment into public funds. The most important public funds are the State budget and local self-government budgets, State funds, etc. Taxes *sensu stricto* are those public payments called 'tax'. Simultaneously, taxes *sensu lato* also include charges, fees, customs duties, and similar levies such as contributions, levies, tolls, excises, tariffs, insurance, etc., incl. many other varieties in national languages. Regardless of the chosen title for taxes *sensu lato* by the legislator, each such public payment to the public fund will always theoretically be classified as either a tax or a charge (fee).[9] Therefore, from a legal perspective, the tax as the tax relationship can be defined as a power relationship of an economic nature, monetary, irrecoverable, usually regular, with no equivalent and no direct counter-performance by the public monetary fund to the entity fulfilling its tax law obligation (e.g., paying taxes). Charges (fees) are also economic, monetary, and irrecoverable power relationships; however, they are usually irregular, with certain direct counter-performance to the person paying them. The *conditio sine qua non* for every tax sensu lato is the act imposing a tax (*nullum tributum sine lege* principle).

The content of the tax law relationship is the rights and obligations of both parties of the relationship (taxpayer or paying agent and the tax administrator).

Tax law relationships are specific legal relationships with a specific legal regulation. When studying the structure of legal acts regulating taxes and charges, more specific structural components of tax law relationships can be identified, such as the

8 Mrkývka, 2012; Boháč, 2006, pp. 6–10. In this subchapter, several parts from Radvan, 2020; Hulkó and Radvan, 2022, pp. 63–73; Radvan, 2024, are used.

9 Hulkó and Radvan, 2022, p. 63.

object of taxation, tax subject, tax base, tax rate, corrective elements, payment conditions, tax administrator, and budget destination.

It should be highlighted that a very specific method of legal regulation is being applied in tax law, that is, a modified version of the administrative law method.[10] Compared to administrative law, there is a much lower level of application of substatutory regulations in tax regulation. The legal regulation includes many economic instruments to affect recipients, such as tax credits and other corrective elements, including tax holidays, etc. Tax law uses some private law elements, mainly in tax administration (possibilities of tax negotiations, tax postponing, repayment plans, etc.), and elements of choice moderating the mandatory nature of tax law relationships (voluntary value-added taxpayer, method of depreciation, lump-sum tax, lump-sum expenditures for income taxes, etc.) in the substantive part of tax law. Some private law entities can also (to a certain limit) replace the tax administrators, as specific administrative activities can be delegated to them. For example, in a labour law relationship, this private law entity is the employer who must deduct a personal income tax advance payment, social security contributions, and health contributions (or even other levies stipulated by law) from the employee's wages. The employee must permit such conduct. The same procedures are applied in the case of withholding taxes: e.g., a bank is responsible for the tax on the interest accrued, a joint-stock company for the tax on dividends, etc.

The most essential modification is the principle of self-application, rarely used in public law. According to this principle, the taxpayer applies tax law norms to itself and its specific conditions. The taxpayer, using its knowledge, determines the tax base, uses the relevant tax rate, and may apply the corrective elements. The taxpayer must know when and how to deliver the completed tax return to the tax administrator. The tax administrator ideally assesses the tax tacitly, i.e., implicitly. In practice, such an approach means that the tax office has no reservations regarding the tax return and its correctness and completeness. When applying the self-application principle in this way, no direct interaction between the tax administrator and the taxpayer takes place.

A tax system is created by taxes *sensu lato*. According to the tax law theory described above, the division between taxes and charges (fees) is the most common. Dealing with taxes *sensu stricto*, the most traditional is the classification of taxes according to their impact. Direct taxes are paid directly by the taxpayer based on their income or property. In contrast, indirect taxes are paid in the prices of goods and services; they do not respect the taxpayer's personal situation. EU law defines direct and indirect taxes differently. While direct taxes are levied on income, wealth, and capital, all other taxes, such as VAT and excise taxes, including energy and other environmental taxes, belong to the group of indirect taxes. Nonetheless, EU law does not fully follow this approach. For example, the tax on motor vehicles should be a direct tax as the object of taxation is the property (wealth). However, for the EU,

10 Hulkó and Radvan, 2022, pp. 59–60.

it is environmental, and environmental taxes belong to the group of indirect taxes. The reason is that the tax base is somehow connected with CO_2 emissions or other environmental criteria in several countries.

All EU Member States collect two direct income taxes: personal and corporate income taxes. Besides, there are other income taxes or surcharges to traditional income taxes, such as gambling taxes or windfall taxes on profits from a sudden windfall gain to a particular industry or company. Additionally, social security contributions and health contributions are income taxes *sui generis*.[11] Typical property taxes are recurrent taxes on immovable property and motor vehicles. Some Western European countries collect general wealth taxes. In many Central and Eastern European countries, traditional property transfer taxes were abolished in the last decade. The abolishment applies in particular to inheritance tax, gift tax, and different types of immovable transfer taxes (on the acquisition of immovable property and from the sale of immovable property). According to the Minimum Corporate Taxation Directive,[12] from 2024, the Global Anti-Base Erosion Model Rules (GloBE rules) shall be applied in all EU Member States, and the additional amount of tax (a top-up tax) should be collected.

The group of indirect taxes is more complex compared to direct taxes. The reasons are probably the harmonisation efforts of the EU, which is why all EU Member States collect VAT as the general tax on consumption. Moreover, the basic list of selective taxes on consumption – the excise taxes – is obligatory: every EU Member State must have taxes on mineral oils, spirits, beer, wine, tobacco products, gas, solid fuels, and electricity. As certain ecological aspects exist in the construction of the last three excise taxes, some authors prefer a specific group of ecological (excise) taxes. However, I prefer not to call them ecological or environmental taxes, as some constructions contrast with ecology, and, generally, almost all tax regulations include some ecological elements. Under certain conditions (see below), EU Member States can impose other selected non-harmonised excise taxes. Usually, these taxes have some connection to the environment (such as registration taxes on motor vehicles, taxes on fertilisers, etc.) or health (different taxes on sugar or salty products).

Concerning charges (fees), three basic groups of charges can be identified: court charges connected with court proceedings, administrative charges for the activities of administrative bodies, and local charges. Local charges vary widely from State to State, usually covering tourist charges, charges on communal waste, charges connected with the usage of public places, and charges on advertisements. Less frequently, municipalities collect local charges on animals (usually dogs). In several countries, parking fees create a specific group of local public payments, while in other countries, drivers pay (regulated and private law) prices for parking. Besides three basic groups of charges, there are many other charges connected with ecology

11 This chapter does not deal with social security contributions and health contributions.

12 Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

and environmental protection, charges connected with the usage of highways (tolls and vignettes), radio and television charges, etc.

As stated above, all public payments (taxes *sensu lato*) can have only tax or charge characteristics, no matter what the official title of the payment is. However, previous paragraphs did not deal with customs duties (customs). From my theoretical perspective, a customs duty fulfils all the characteristics of a charge: it is an economic, monetary, and irrecoverable power relationship, mostly irregular, with a direct counter-performance to the person paying customs duty in the form of the possibility to import or export goods to or out of the country or other (EU) territory.[13] Even if customs duties play a crucial role in the EU, from the EU perspective, they have a different purpose and nature, unlike other taxes *sensu lato*. These are the reasons why the following text does not deal with customs in detail. The TFEU also includes the term 'charges having equivalent effect as customs duties on imports and exports'.[14] This term is not defined in the treaty or in secondary law. However, the case law states that it is

> any pecuniary charge, however small and whatever designation and mode of application, which is imposed unilaterally on domestic or foreign goods when they cross a frontier, and which is not a customs duty in the strict sense, constitutes a charge having equivalent effect within the meaning of Arts. 9, 12, 13 and 16 of the treaty, even if it is not imposed for the benefit of the state, is not discriminatory or protective in effect or if the product on which the charge is imposed is not in competition with any domestic product.[15]

3. Role and Position of Tax Law in the EU Law

Every EU Member State has its own financial and fiscal policy, and the competencies of the EU in this area are only limited. Tendencies to keep the *status quo* are evident, as the fiscal policy is *conditio sine qua non* for the proper functioning of every State.[16] Taxes *sensu lato* are the crucial source of public budget revenues, and the power to impose taxes is a critical part of the sovereignty of every EU Member State. Tax policy and tax sovereignty have always been measured as symbols of the national sovereignty of the State.[17] Only a sovereign State has the power to impose (and also collect and subsequently enforce) taxes and autonomously redistribute the

13 This chapter does not deal with customs.
14 Art. 28 and Art. 30 TFEU.
15 Judgment of the Court of 1 July 1969. *Commission of the European Communities v. Italian Republic*. Case 24/68.
16 Kosikowski, 2008, p. 169.
17 Široký, 2018, p. 21.

tax revenue at its own discretion and need.[18] Tax sovereignty is closely connected to political and economic sovereignty: every government needs to retain decision-making power over how to spend tax revenues and how to finance public goods and services according to its primarily political intents.[19] In this regard, Kokott distinguishes between two kinds of fiscal sovereignty: the power to adopt tax legislation and the power to dispose tax revenues.[20] The primary political intent is to win over voters who will re-elect the government in the next term. Every government needs enough power to create an adequate mix of taxes and use optimal tax rates as one of the instruments of domestic economic policy.

Additionally, the structure of tax systems is based on historical consequences and traditions. Sometimes, the structure of tax administrators can influence the system of taxes. Every state reflects a different economy and economic background in terms of taxation issues. Sociological aspects and economic conditions may also play an important role when adopting a tax law regulation (individual taxes, persons liable to tax, objects of taxation, tax bases, tax rates, exemptions from taxation, etc.). It is also important to highlight the competitiveness issues. Competitiveness requires a complex set of individual tax regulations; however, the general public usually imagines low taxes attracting workers, business people, and companies to become tax residents in the given country.

All the arguments for tax sovereignty, as stated above, are the reasons why the tax law regulation in EU Member States (sometimes significantly) differs. Nevertheless, taxes influence the prices of goods and services. Indirect taxes (mainly VAT but also selective excise taxes) directly affect the price of every product or service offered. Direct taxes are not so evident, but the prices are increased by all the taxes imposed on and paid by the taxpayer (income taxes, property taxes, etc.), as these taxes are the costs associated with the offered goods and services. As the free movement of goods and services is the basis of an internal EU market and taxes are reflected in the prices of goods and services, the differences in taxation and the resulting tax competition between individual EU Member States is a disruptive element negatively influencing the internal market and its smooth running.

An opinion from the Neumark Report should be highlighted in this context:

> The negative influence on the competition between the Member States is caused to a lesser degree by differences in the extent of the total tax burden but to a greater degree by structural diversification concerning specific taxes or groups of taxes. This is the source of the problem of adopting an adequate harmonization model.[21]

18 Mrkývka, 2015, p. 111.
19 Týč, 2017, p. 275.
20 Kokott, 2022, p. 299.
21 Kosikowski, 2008, p. 169.

The other argument for why uniform rules in taxation and tax harmonisation within the EU are needed is the globalisation and corresponding issues, such as the increase in international trade, increased number and associated importance of multinational companies and their subsidiaries, and movement of capital and people (e.g., workers with a residency in one country working in another country).[22] The reason concerns the increasing efforts by taxpayers to avoid taxes, especially in the international context. National governments have to cooperate in fighting tax avoidance. One of the tools for fighting tax avoidance is the effective sharing of information about taxpayers and their tax duties. The EU should play a crucial role in these areas.

3.1. Tax Unification vs. Tax Harmonisation

Authors use several terms when discussing the elimination of tax differences within the EU. Týč prefers two stages in this area: tax coordination and tax harmonisation. The first stage interferes less with the sovereignty of EU Member States, as the coordination sets the common schemes of taxation by way of recommendations. The second stage – the harmonisation – creates common rules in the form of directives, especially to set the tax, tax base, and tax rates.[23] Kosikowski, referring to Dosser,[24] describes three forms of harmonisation of tax systems: (1) levelling tax rates; (2) levelling tax system structures with maintaining the diversification between tax rates (diverse conception); (3) standardised approach.[25] Economic science in the Czech Republic usually uses just one term: tax harmonisation. Kubátová defines tax harmonisation at the EU level as the process of approximation of the tax systems of the EU Member States on the basis of common rules.[26] Nerudová offers a more complex definition of tax harmonisation as a mechanism used to eliminate tax provisions that either create obstacles to the functioning of the single internal market or distort competition. However, she also recognises that tax harmonisation is not aimed at achieving a single tax system but rather at the approximation and synchronisation of the individual tax systems.[27]

My opinion is similar to the concept presented by Široký.[28] When eliminating tax differences within the EU and approximating tax systems, the first necessary stage is tax coordination. Tax coordination aims to limit harmful tax competition using the conclusion of agreements and recommendations. The aim is to set minimum transparency standards and to ensure the exchange of information necessary for fair tax administration. Tax coordination is not meant for uniform tax systems.

22 For tax harmonisation issues, several parts from Radvan, 2011 are used.
23 Týč, 2017, p. 275.
24 Dosser, 1967, pp. 33–40.
25 Kosikowski, 2008, pp. 169–170.
26 Kubátová, 1998, pp. 2–7.
27 Nerudová, 2008, p. 18.
28 Široký, 2010, p. 28.

The most common tools of tax coordination are bilateral agreements focused on the avoidance of double taxation and on the exchange of information between national tax administrations (in the assessment procedures or for the purposes of tax recovery). Even unilateral and spontaneous acts can be seen as tax coordination. Decreasing rates of corporate income taxes in European countries are the result of the tax competition between EU Member States, and they can serve as a good example of unilateral tax coordination.

The second stage in eliminating tax differences within the EU Member States is the approximation of tax systems. Tax harmonisation itself is then the third and final stage.

European tax law science connects the definition of tax harmonisation with fundamental EU principles. E.g., Terra defines tax harmonisation as an instrument leading to the main objective, i.e., creating a single market. He recognises several obstacles to a single market: the taxation of the free movement of, in particular, legal persons and free transboundary movement of goods, services, capital, and revenues; the difference in the tax treatment of domestic and imported goods and services; substantial differences between national tax legislations that result in distorted market; and differences in the tax treatment of residents and non-residents and domestic and foreign investments and income (particularly, double taxation of income from sources located outside the territory of the country).[29]

In summary, tax harmonisation means adapting and aligning tax systems and individual taxes on the principle of compliance with the common rules of participating countries. Tax harmonisation covers not only the construction of individual taxes but also the tax administration (tax collection, tax control, etc.). The tax harmonisation process has three stages. First, the tax to be harmonised must be identifies. In the second stage, the tax base (and possibly other structural components of the tax, e.g., a taxpayer) can be harmonised. The third stage is the harmonisation of the tax rate(s). Monitoring the historical development at the EU level, the third stage of tax harmonisation is not always necessary. EU Member States are left with discretion regarding the available rates; different rates lead to a competitive environment.[30]

Kokott also confirms that the EU is not a tax union; it has neither comprehensive competencies to adopt tax laws nor the power to collect taxes or to dispose of the tax revenues. The EU can only tax its civil servants and other staff.[31] She highlights the principle of safeguarding the balanced allocation of taxing powers, i.e., safeguarding taxing powers in cross-border transactions between EU Member States.[32] However, Kokott also warns that at the moment, when the EU borrowed 750 billion euros on the capital markets for transfers to EU Member States in need of recovery assistance and for generally improving the economies in the mid and long term, making them,

29 Terra and Wattel, 2008, p. 1.
30 Radvan, 2024, pp. 488–489.
31 Kokott, 2022, p. 300.
32 Kokott, 2022, p. 354.

for example, greener and more digitalised ('Next Generation EU'), the EU took a remarkable step towards a fiscal union.[33]

In summary, tax harmonisation is not merely a resulting objective. It can also be seen as the actual process, both positive and negative. Positive harmonisation means the process of approximation of the national tax systems when implementing directives (and also other European legislative instruments). Under the condition that the directives are correctly implemented, the final stage means that all EU Member States apply the same rules. Negative harmonisation is the result of the decisions of the Court of Justice of the European Union: measures are taken in national laws on the basis of the tax-related case law of the CJEU. One may argue that only the party to the proceedings (a specific EU Member State) must remove the defective provision concerned. However, the case law also forces other EU Member States to control their national regulation. If there is any conflict, they must adopt the necessary amendments. The other role of case law is in the legal interpretations: decisions provide good interpretation guidance.[34]

3.2. Legal Regulation of EU Tax Policy

Art. 4 of the TEU states that the EU shall respect the equality of Member States before the Treaties as well as their national identities. Moreover, the EU shall respect essential State functions. Particularly, national security remains the sole responsibility of each Member State. In this regard, it must be stated that tax systems reflect national identities. State functions cannot be executed without adequate tax revenues. Tax collection is also a condition to ensure national security. Considering the importance of tax sovereignty for every EU Member State, tax issues never became a coordinated policy at the EU level. The aim of the EU is relatively minimal: the prohibition of tax discrimination, i.e., tax neutrality. The primary EU law generally grants the EU Member States the right to an autonomous tax policy and to adopt their own tax acts. However, these rights are limited. Primarily, it is the principle of equality expressed in multiple provisions of the TEU and the TFEU. For example, Art. 18 TFEU prohibits any discrimination on grounds of nationality. Art. 107 sets the prohibition of State aid, while Art. 110 TFEU prohibits discriminatory internal taxation on the products of other EU Member States. The equality principle is also mentioned in the Charter of Fundamental Rights of the EU.[35] However, this Charter includes more fundamental rights and principles with regard to taxation, such as the protection of privacy,[36] protection of personal data,[37] freedom to choose an

33 Kokott, 2022, p. 300.
34 Radvan, 2024, p. 489.
35 Art. 20. TFEU.
36 Art. 7. TFEU.
37 Art. 8. TFEU.

occupation and right to engage in work,[38] freedom to conduct a business,[39] right to property,[40] right to good administration,[41] and right to fair justice.[42]

The following two limitations of the right of EU Member States to an autonomous tax policy and to adopt their own tax acts are expressed in the TFEU, specifically in its 'tax provisions':[43] the prohibition of tax restrictions on free movement and tax harmonisation. The prohibition of tax restrictions on free movement relates to goods, services, persons, and capital. This principle is one of the pillars of the EU and its functioning. Especially, Art. 30 TFEU prohibits any customs duties on imports and exports, charges having equivalent effect, and customs duties of a fiscal nature between EU Member States as the basis of the customs union. This rule cannot be interpreted in the way that every imported good must not be taxed. The EU law

> does not prohibit Member States from establishing a system of taxation differentiated according to various categories of products provided that the tax benefits granted serve legitimate economic or social purposes. (...) a system of taxation (...) (must be) free from any discriminatory or protective effect. Therefore, a system of taxation (...), which is intended to achieve legitimate social objectives and which procures no fiscal advantage for domestic products to the detriment of similar or competing imported products, is not incompatible with (...) the Treaty.[44]

Art. 110 TFEU prohibits discriminatory and protectionist measures in the national tax system, stating that

> No Member State shall impose, directly or indirectly, on the products of other Member States any internal taxation of any kind in excess of that imposed directly or indirectly on similar domestic products. Furthermore, no Member State shall impose on the products of other Member States any internal taxation of such a nature as to afford indirect protection to other products.

In other words, imported products must not be liable to more strict taxation than equivalent domestic products. Art. 110 TFEU creates one of the pillars of a single internal market not only because it ensures a non-discriminatory approach but also eliminates protectionist taxation (i.e., protection of own national products or own market). Typical examples include cases of different taxation of bananas and other

38 Art. 15. TFEU.
39 Art. 16. TFEU.
40 Art. 17. TFEU.
41 Art. 41. TFEU.
42 Arts. 47–50 TFEU; Kokott, 2022, p. 2.
43 Arts. 110–113.
44 Judgment of the Court of 3 March 1988. *Gabriel Bergandi v. Directeur général des impôts*. Case 252/86.

fruits in Italy[45] or different tax rates on beer and wine in the United Kingdom.[46] It must be highlighted that discrimination and protectionism are not reflected only in tax rates but also in other structural components such as the definition of the object of taxation, taxpayer, tax base, or any corrective elements.

Art. 111 TFEU prohibits any repayment of internal taxation higher than internal taxation imposed directly (on final products) or indirectly (on semi-finished products and raw materials) on products exported to the territory of any Member State. The same prohibition applies to re-exports.

Tax harmonisation is the third possibility of limiting the rights of EU Member States to an autonomous tax policy and adopting their own tax acts. Important provisions in the TFEU are included in chapters on tax provisions[47] and approximation of laws.[48] Art. 113 TFEU requires unanimity (in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee) when adopting provisions for the harmonisation of legislation concerning turnover taxes, excise duties and other forms of indirect taxation; i.e., tax measures must be adopted unanimously by the Member States. Moreover, harmonisation must be necessary to ensure the establishment and functioning of the internal market and to avoid distortion of competition. The interesting fact is that indirect taxes are included in specific Art. 113 TFEU, while direct taxes are included in a general chapter on approximation of (not only tax) laws, specifically in Art. 115 TFEU. The phrasing itself is more or less analogous:

> The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, issue Directives for the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market.

However, in practice, distinguishing between the usage of Art. 113 TFEU and Art. 115 TFEU is absolutely necessary because the CJEU does not accept European legislation that is passed on the basis of incorrect provisions establishing the EU's competence to adopt legislation. While Art. 113 TFEU allows harmonisation 'necessary to ensure the establishment and functioning of the internal market and to avoid distortion of competition', Art. 115 TFEU allows approximation directly affecting 'the establishment or functioning of the internal market'. As a food-related example,

45 Judgment of the Court of 7 May 1987. *Commission of the European Communities v. Italian Republic*. Case 184/85.

46 Judgment of the Court of 27 February 1980. *Commission of the European Communities v. United Kingdom of Great Britain and Northern Ireland*. Case 170/78.

47 Art. 113.

48 Art. 115.

the Titanium Dioxide case[49] and corresponding papers by Barents[50] and Dougan[51] should be mentioned. The term 'internal market' is used for both indirect taxes[52] and direct taxes.[53] De Búrca draws attention to the fact that 'the 'internal market' is a very general notion, and its 'proper functioning' could mean many things, depending on how strong a vision of the internal market is being adopted'.[54] He gives examples of product liability, tobacco advertising, and equal pay between men and women, where the centrality of such matters to the functioning of the single market could certainly be debated. He concludes that 'almost any difference in the laws of the different Member States is capable of being construed as a potential distortion in the conditions of competition between states, or as a barrier to the effective functioning of the single market'.

Similarly, Antón points out the lack of univocal meaning of the 'internal market' in relation to the coexistence of several approaches to access the compatibility of national measures with the EU freedoms. He also adds two other difficulties and uncertainties connected with the EU Rousseauian 'social contract' in which EU Member States have limited their tax sovereign rights in exchange for achieving the goal of the internal market: the rise of territoriality in the case law of the CJEU erecting barriers that lead to a compartmentalisation of the internal market, and the doubts regarding the competence to harmonise in areas like anti-avoidance confirming that the goal of the internal market goes beyond the mere elimination of distortions in trade.[55]

In accordance with de Búrca, I believe that the issue of harmonizing direct taxation in Europe is precisely the case of these debates.

The other difference when comparing Arts. 113 and 115 TFEU are the requests to avoid distortion of competition, which are included only in Art. 113 TFEU. To conclude, the differences between Arts. 113 and 115 TFEU are essential for setting the basis of regulations for direct and indirect taxes. That is why having specific and very detailed definitions of direct and indirect taxes is crucial. I am afraid the differences in these definitions in individual EU Member States, different law schools, and within the EU itself are one of the obstacles to proper harmonisation processes.

Other provisions relevant to tax policy are hidden in the TFEU Arts. connected with the free movement of persons, services, and capital, the environment, and competition. Enhanced cooperation[56] can be applied in respect of tax matters.[57]

49 Judgment of the Court of 11 June 1991. Commission v. Council. Case 300/89.
50 Barents, 1993.
51 Dougan, 2000.
52 Art. 113 TFEU.
53 Art. 115 TFEU.
54 De Búrca, 1999.
55 Antón, 2018, pp. 482–483.
56 Arts. 326–334.
57 Paternoster, 2016, p. 1.

The other essential documents dealing at least partially with taxation are the accession treaties, i.e., intergovernmental treaties of the EU specifying the terms under which an applicant State becomes an EU Member State. Concerning taxes, the accession treaties stipulate that the tax law of the applicant State must comply with EU tax law. However, accession treaties also grant temporary exceptions for an applicant State not to have to apply European law. The most significant exceptions are connected to indirect taxes: in the 1970s–1990s, deadlines were set by which the new Member States had to apply the VAT system or certain excise taxes. For countries acceding after 2000, the conditions were in some ways stricter, as all VAT and excise tax rules had to be met at the time of accession. However, for example, each country could negotiate a different length of exemption for the new so-called energy taxes (on coal, gas, and electricity).

In the area of secondary EU law, the role of directives is crucial. EU Member States must implement the directives into the national legal system within the deadline set in the directive. The form is free; however, the content of directives is usually transposed into the acts and not into bylaws. The transposition itself (i.e., the formal transfer of the directive's content into national regulation without immediate practical effect) does not imply compliance with the obligation of the EU Member State to achieve the result set out in the directive. Only if the EU Member State did all that was under the circumstances reasonable to require so that the citizens can claim their rights under the directive will the aims of the directive be met. Such a resulting state is called implementation.

The directives generally do not have a direct effect compared to the regulations. Only if several conditions are fulfilled, the directive gets the direct effect: the implementation period is over, and the directive was not implemented into the national legal system within the deadline; the text of the directive is clear and understandable; the directive has a vertical effect (i.e., it concerns relations between the State and the citizen) and upward effect (only the citizen can claim the direct effect). In tax issues, it means that the direct effect can be claimed only by the taxpayer, never by the tax administrator to the taxpayer's disadvantage. Moreover, the indirect effect of the directive is possible in tax issues if the directive is not implemented within the deadline. Such a situation might happen when defining and interpreting terms in tax law, where the 'euroconform' interpretation is needed. The interpretation then becomes binding for tax administration bodies, also retrospectively.[58]

Besides regulations and directives, the important role in the interpretation and application of European tax law also plays other legal acts not generally binding, such as opinions and recommendations. These acts belong to the group of soft law. Usually, these acts show possible future developments in the area of (not only) taxation. They may serve as drafts for future directives. Opinions also often summarise the existing status quo, while recommendations include advice for future development. The soft law cannot be enforced, and non-compliance cannot be sanctioned.

58 Široký, 2013, pp. 60–61. See also Král, 2011; Sehnálek, 2008; Týč, 1999; Timmermans, 1979.

The soft law also includes White Books and Green Books (less specific) that are sets of proposals for action that the Commission considers appropriate to achieve a particular objective. Kokott further expands the list of soft laws to include OECD model conventions, their comments and guidelines, International Financial Reporting Standards, explanatory notes by the Customs Code Committee, VAT Committee guidelines, Explanatory notes on VAT, opinions of VAT Expert Group, etc.[59]

The role of the CJEU case law as a negative legislator is also crucial. Even if the case law is directed to national regulation, the interpretation is the same for all EU Member States. The case law then pushes all EU Member States to check if the national regulation is in line with the decision. If not, necessary amendments must be adopted. These results, called negative tax harmonisation, have the consequent positive effect of integrating tax systems.

European tax law and tax law in EU Member States are also influenced by international tax law. In these circumstances, the most frequently mentioned are (usually bilateral) double-tax treaties. However, in the last decade, the OECD initiatives started to play an important role. The initiative to combat base erosion and profit shifting (BEPS) emphasised the need to ensure that taxes are paid where profits and value are generated. In order to increase the level of protection of the tax system of the individual EU Member States against aggressive tax planning within the internal market, the EU adopted the Anti-Tax Avoidance Directive (ATAD).[60] The ATAD aims to harmonise the laws of all Member States to establish rules against the erosion of the corporate tax base in the internal market and, simultaneously, to prevent the shifting of profits outside the internal market. The ATAD also seeks to prevent the emergence of further obstacles in the internal market, such as double taxation.

Another OECD initiative aimed to address the problem of international taxation of the provision of digital services. Consequently, the so-called Pillar 2, which is part of the OECD/G20 project 'Tax Challenges Arising from the Digitalisation of the Economy – Global Anti-Base Erosion Model Rules (Pillar 2)', was enshrined. The result is the Model Rules of December 2021, which enshrine a common approach by the Member States of the BEPS Inclusive Framework to minimum effective taxation of large (multinational) corporations. The stated objectives of Pillar 2 are to minimise exorbitant tax competition between countries (in other words, to reduce the so-called race to the bottom in corporate taxation). The introduction of a minimum tax will result in large companies' profits being taxed at least at a minimum effective level of 15%. The results of the initiative are also part of the Minimum Corporate Taxation Directive, which ensures a global minimum level of effective taxation of multinational enterprise groups and large domestic groups in the EU.[61] However,

59 Kokott, 2022, pp. 9–17.

60 Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

61 Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union. See also Haslehner et al., 2024.

the Directive provides for exemptions in relation to selected types of entities. In the Czech Republic, the Directive was implemented by the Act on equalisation taxes for large multinational groups and large domestic groups.

However, the adoption of the Model Rules, Directive, and national legal act is not the end of the work on these projects. Negotiations are ongoing, particularly in the OECD field, focusing on specific contentious issues with the aim of unifying procedures and thereby ensuring a consistent and uniform approach sustainable across the cross-section of all jurisdictions involved, taking into account legislative, tax, and accounting diversity. These discussions have resulted in the production of supporting material referred to as 'Administrative Guidance', the results of which jurisdictions have committed to implement in already adopted legislative standards. The 'Administrative Guidance' is binding on jurisdictions applying the Pillar 2 rules. There is a presumption that, in addition to the Administrative Guidance already adopted, other such materials will be approved on an ongoing basis at the OECD level, additionally specifying certain aspects of the application of the Model Rules, which will also trigger the need for their subsequent implementation in the national law.

Dourado also warns that the measures to implement minimum taxation raise serious doubts about their compatibility with tax treaties and recommends a multilateral treaty to amend the existing bilateral treaties.[62]

Art. 8.3 of the Model Rules obliges implementing jurisdictions to ensure that national regulations are consistent with any Administrative Guidance issued. The Directive adopts a similar approach in Point 24 of its explanatory memorandum. This obligation is then reflected in national law.[63] Therefore, it is not technically possible for the amendment of the Directive and the amendment of national law to be adopted in time, thus violating the principle of retroactivity. Although it is debatable whether such retroactivity is possible, I believe that it is not unconstitutional. First, it is due to the construction of the Directive and national law, which implicitly provides for retroactivity. Second, other conditions must be met: it must be a clarification of the implementing framework of the Model Rules, not a clarification of the Model Rules themselves, the functionality of the system of equalisation must not be impaired, and the taxpayer must not be harmed. The legitimate expectations of all the stakeholders regarding the proper functioning of the system of equalisation taxes must also be met.

62 Dourado, 2024.

63 Art. 2(4d) of the Act No. 416/2023 Sb., on compensatory taxes for large multinational groups and large domestic groups.

4. A Few Notes on EU Taxation Principles

EU tax law is built on several principles and rules. The most complex study about the principles of EU tax law was published by Kokott.[64] Most of the principles are derived from constitutional traditions common to EU Member States and they are being applied by the European legislator and also by the CJEU. Principles are important not only for the uniform interpretation and application of harmonised tax law in the EU Member States but also for the uniform interpretation of directives, with regard to the Art. 288 TFEU stating that 'directive shall be binding, as to the result to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods'. Kokott,[65] referring to Papis,[66] adds that the 'teleological interpretation of a directive's provisions in the light of general principles can serve to determine how a directive is to be interpreted with regard to the result to be achieved'. Thus, general principles must be used not only when interpreting EU secondary law but also when dealing with national law: general principles take precedence over national law.

Kokott defined several categories of principles being applied in EU tax law. The 'general, general' principles are those whose application is not restricted to tax law. The group of 'general, general' principles includes principles of legality, legal certainty, proportionality, equality, effectiveness, and equivalence, etc. Some general principles have developed a specific meaning in tax law (e.g., the principle of equality with its tax-specific subprinciples of ability to pay, neutrality, and cohesion of tax systems). The principle of prohibition of abuse and the principle of economic reality follow the 'general, general' principles. Other State-related general principles of autonomy of legal systems, territoriality, and mutual recognition are connected with the aim of avoiding double taxation.[67]

The principle of legality seems to be one of the most important legal principles in general and is also extremely important in tax law. Very often, the principle of legality is connected with the rule of law; according to Art. 2 TEU, the EU is founded on the rule of law. The Charter of Fundamental Rights of the EU, in its Art. 52(1), provides a rule that 'any limitation on the exercise of the rights and freedoms recognised by this Charter must be provided for by law and respect the essence of those rights and freedoms'. The principle of legality provides that national Constitutions and EU law take priority over lower-ranking law and also expresses that infringements of individual rights require a legal basis. The principle 'no taxation without representation' (*nullum tributum sine lege*) is strongly connected to the principle of legality. The question is whether this principle is applicable in the globalised world and whether and how it applies to the taxation of residents who are nationals of

64 Kokott, 2022, pp. 18–228.
65 Kokott, 2022, p. 20.
66 Papis, 2014, p. 365.
67 Kokott, 2022, p. 21.

another country (they do not have the right to vote in the country of residency) or of citizens (entitled to vote) who are residents in other countries.

The principle of legal certainty requires that legal rules are precise and clear to allow individuals to ascertain unequivocally what their rights and obligations are and take steps accordingly.[68] To achieve this principle, tax provisions should be included in separate legal acts. Simultaneously, following a uniform terminology in law is necessary. The tax law should not provide tax-specific definitions, but the definitions from other branches of law should be applied, generally even without an express reference.[69] It is inappropriate to impose unorthodox tax[70] or tax components. The taw law norms must be unambiguous in formulating the addressees' rights and obligations in an understandable and unambiguous form. Ideally, there will be no need to apply any of the contradictory principles *in dubio pro libertate* (*in dubio mitius*) and *in dubio pro fisco*. Concerning the self-application of tax law norms, tax duties should be formulated briefly and clearly; they should consider the level of legal and economic knowledge of the taxpayers. The title of the legislative instrument must clearly suggest that it concerns tax matters. It is necessary to keep an adequate *vacatio legis* so that the taxpayers have enough time to get acquainted with the new law's content.

The principle of legal certainty is tightly connected to the principle of legitimate expectations, the principle of time limits, and the principle of non-retroactivity (*lex retro non agit*). The last principle means the prohibition of taxation of facts that occurred in the past. It means that the obligation arising during the effectiveness of a particular regulation is governed by this regulation until its fulfilment. It can be breached if the new regulation is advantageous for the obligated tax subject. Concerning the retroactivity in the case of minimum effective taxation of large (multinational) corporations, see above.

The other general principle is the principle of proportionality, expressing the rule that measures adopted by EU institutions shall not exceed the limits of what is appropriate and necessary to attain the objective legitimately pursued by the legislation. Additionally, if there is a choice of appropriate measures, the resource must be had to the least onerous, and the disadvantages caused must not be disproportionate to the aims pursued.[71]

The group of general principles also includes the principle of effectiveness and the principle of equivalence. Effectiveness means that national procedural rules must not render the exercise of the rights practically impossible or excessively difficult. The equivalence requires equal treatment of claims based on a breach of national law end EU law.[72]

68 Kokott, 2022, pp. 27–28.
69 Nykiel and Sęk, 2015, p. 202.
70 Nykiel and Sęk, 2015, p. 203.
71 Kokott, 2022, p. 37.
72 Kokott, 2022, pp. 39–41.

Kokott adds one more 'general, general' principle of the reimbursement of unjust enrichment.[73] She also gives the principle of equality a separate space in a specific chapter. Generally, the principle of equality is expressed in Art. 20 of the Charter of Fundamental Rights of the EU: 'Everyone is equal before the law'. Equality means not only equal application of tax law but also tax neutrality, tax consistency (coherence), and the ability to pay taxes. The last principle of ability to pay is related to the principle of endurance: the tax must not be of a liquidating nature. The implementation of corrective components (exemptions, relieves, etc., or deferral and waiver of the tax by administrative means) should ensure that the tax does not have a choking effect. There should be no double taxation, not only internationally but especially in the interstate tax system. Of course, protecting the interests of the majority from the intrusion of different lobbies' interests is necessary. The ability to pay principle is also reflected in tax progressivity; however, Kokott connects tax progression with the principle of social welfare state or redistributive justice.[74]

The principles of equality and proportionality are closely connected to the principle of (tax) justice. It is being applied in two ways: as a horizontal tax justice and vertical tax justice. A horizontal tax justice means that the same objects of taxation should be taxed equally. A vertical tax justice expresses that an entity with higher incomes (or higher valued property, higher consumption) should pay a higher tax, but not in the sense that the tax rate will increase highly progressively with an increasing tax base; the tax rate should remain the same or be progressive proportionally.

Kokott adds several more tax law principles. The principle of 'prohibition of abuse' expresses that 'law cannot be relied on for abusive or fraudulent ends and that the application of legislation cannot be extended to cover abusive practices by economic operators'.[75] The principle is most commonly reflected in the general anti-avoidance rule (GAAR) as expressed in Art. 6(2) of the Anti-Tax Avoidance Directive (ATAD). Very close to GAAR are also the principle of economic reality and the 'substance over form' principle.

Other tax law principles are connected with the territory where the law is applied. The principle of territoriality encompasses the unimpeded exercise of sovereignty on one's own territory,[76] and it is reflected in the distinction between residents and non-residents. The principle of autonomy of tax systems expresses that EU Member States do not have a duty to adapt their own tax systems to those of other EU Member States in order to prevent taxable persons from being adversely affected.[77] The principle of mutual recognition includes recognition of foreign acts of the State (judgments and administrative acts) and admitting their legal consequences in domestic legal order.[78] Dealing with territorial principles, the principle of avoiding

73 Kokott, 2022, p. 41.
74 Ibid., p. 132.
75 Ibid., p. 54.
76 Ibid., p. 76.
77 Ibid., p. 85.
78 Ibid., p. 89.

double taxation should also be mentioned. However, such a principle is not fully applicable within the EU: the EU is not a tax union. Nevertheless, there are certain efforts to limit double taxation, primarily in the common VAT system.

The last (but not least) tax law principle is strictly connected to tax law drafting only: tax law should be drafted exclusively by professionals. The proposals for the acts and other norms should be consulted with stakeholders and discussed by the professional committees. An adequate explanatory report should be provided regarding the legal norm, etc. Amendments by the members of the Parliament and other non-professionals seem to be breaking many tax law principles. The argument for amendments in the Parliament procedure is the democracy and the legislative power of the Parliament. Interestingly, in the USA (the cradle of democracy), tax bills are sometimes voted under so-called close rules, i.e., 'yes or no vote' without the possibility of introducing amendments.[79]

5. Direct and Indirect Taxation in the EU

The general knowledge about taxes and tax law, the role and position of tax law in the EU law, tax unification and tax harmonisation, legal regulation of EU tax policy, and EU taxation principles allows us to deal with specific regulation of taxes in the EU. As stated above, the differences between Arts. 113 and 115 TFEU are essential for setting the basis of regulations for direct and indirect taxes.

As stated above several times, the EU does not have a direct role in tax law; the level of taxation is at the discretion of national governments. Nevertheless, in some areas, the EU oversees national tax rules to ensure a single market (the free flow of goods, services, and capital), fair competition (businesses in one EU Member State do not have an unfair advantage over competitors in another), and non-discrimination (taxes do not discriminate against consumers, workers or businesses from other EU Member State). The EU efforts are visible mainly in VAT and excise taxes regulation, less noticeably in corporate and personal income taxation.[80]

5.1. Direct Taxes

Concerning the direct taxes, the importance of Art. 115 TFEU, which allows approximation directly affecting 'the establishment or functioning of the internal market', was explained above. Generally, it can be stated that the harmonisation process stagnates. However, there are certain areas where the cooperation works

79 Nykiel and Sęk, 2015, p. 198.
80 European Union, 2024.

well: avoiding double taxation, tax heavens fights, sharing tax information,[81] tax recovery,[82] tax dispute resolution mechanisms (i.e., a harmonised procedure to resolve disputes over the interpretation and application of double taxation treaties),[83] faster and safer relief of excess withholding taxes,[84] or global minimum tax (see below). All these primarily procedural tax law areas support the establishment or functioning of the internal market.

Concerning substantive tax law, the main reason why the harmonisation efforts are much less successful is mainly the aversion of the EU Member States to relinquish sovereignty. I also strongly support the other reason expressed by Široký, which are the differences in accounting systems (tax accountings in continental Europe vs. Anglo-Saxon accountings). It is nearly impossible to harmonise the (corporate income) tax base without harmonizing the accounting rules.

Direct taxes are divided into two groups: income taxes and property taxes. The income taxes group includes personal income tax and corporate income tax. The property taxes group usually covers recurrent (annual) property taxes (incl. wealth taxes), property transfer taxes, and taxes on motor vehicles. With regard to the harmonisation efforts at the EU level, the only taxes totally unaffected by these efforts are recurrent property taxes. The primary reason is the impossibility of transferring immovable property between EU Member States. In most States, the annual property tax is also a local tax: municipalities have the right to influence the amount of tax by setting tax rates and exemptions from taxation, and they are the beneficiaries of the tax revenue. The probability that the EU will start any harmonisation process in the area of recurrent property taxes is close to zero. Harmonisation is not required from an economic perspective. Recurrent property taxes cannot influence the establishment or functioning of the internal market.

The same conclusions are applicable to property transfer taxes (on sale or on acquisition) and partially to gift taxes. However, inheritance taxes (estate taxes) could cause double taxation of the same inheritance in different EU Member States, as some States apply a tax on the heirs while others do so on the basis of the estate. Moreover, the tax liability could be determined based on the residence, domicile, or nationality of the deceased and/or of the beneficiary, the location of the property, etc. EU Member States also apply different valuation methods for the same property. While several EU Member States abolished the inheritance tax in the last two

81 Council Directive 2011/16/EU of 15 February 2011 on administrative cooperation in the field of taxation and repealing Directive 77/799/EEC. Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value-added tax.

82 Council Directive 2010/24/EU of 16 March 2010 on mutual assistance for the recovery of claims relating to taxes, duties, customs duties and other measures.

83 Council Directive (EU) 2017/1852 of 10 October 2017 on tax dispute resolution mechanisms in the European Union.

84 FASTER Directive - Council Directive on Faster and Safer Relief of Excess Withholding Taxes. European Commission, 2024e.

decades (e.g., the Czech Republic,[85] Slovakia, and other Central and Eastern European countries), some other States apply extremely high inheritance tax rates (up to 80% over a certain threshold amount), especially in cases where the deceased and the beneficiary are not related. Some solutions to face double taxation on estate and inheritance tax are possible at the national legal level (tax relief) or bilaterally in double tax treaties. Considering double inheritance taxation, the EU presented a Recommendation consisting of suggestions in the forms of credit for tax paid in another EU Member State or an exemption of certain items of foreign property from the domestic tax base. The Commission also recommended an order of taxing rights (i.e., which EU Member State has the primary right to tax inheritance).[86] These rules are also partially applicable to gift taxes. Currently, EU Member States imposing inheritance tax more or less follow the recommendations, and there is no need to harmonise inheritance and estate taxes at the EU level.

The level of motor vehicle taxation in individual EU Member States differs in the number and type of taxes imposed on motor vehicles and in the legal construction of individual structural components (taxpayer, object of taxation, tax base, tax rate, corrective elements, etc.). At the European level, only the Council Directive 83/182/EEC restricts the rights of Member States to apply consumption taxes to vehicles. In all other aspects, each EU Member State has almost full discretion to regulate car taxation, especially the recurrent (circular, annual) taxes on motor vehicles. Taxes on motor vehicles are an ideal example of reflecting environmental elements such as CO_2 emissions. In the future, it would be helpful to solve the problems connected with extremely high registration taxes on motor vehicles in some EU Member States, causing significant differences in final prices for consumers. The proposal of the Directive on passenger car related taxes[87] from 2005 aiming to abolish registration taxes altogether was unfortunately withdrawn in 2015.[88] Moreover, in November 2022, the Czech Republic opened the discussion and presented a proposal to amend the Eurovignette Directive[89] so that there is no obligatory tax on motor vehicles.[90]

Personal income taxes are in the competence of the EU Member States. However, they have to follow the fundamental TFEU principles on the free movement of workers, services, and capital and the freedom of establishment, eliminate tax obstacles to cross-border activities, and prevent any direct or indirect discrimination on the basis of nationality. All EU Member States collect personal income tax. Generally, there are three categories of incomes of natural persons to be taxed: incomes from employment and other dependent activities, income from business and other independent activities (e.g., from intellectual property, rent), and other incomes

85 Boháč, 2022; Radvan, 2022; Radvan and Svobodová, 2021

86 European Commission, 2024l.

87 European Commission, 2005.

88 Radvan, in press.

89 Directive 1999/62/EC of the European Parliament and of the Council of 17 June 1999 on the charging of heavy goods vehicles for the use of certain infrastructures.

90 Ministry of Finance, 2022.

(typically incomes from the capital and other similar incomes liable to withholding tax, and occasional minor incomes). However, individual EU Member States are free to set more specific categories with specific construction of partial tax bases. For example, in the Czech Republic, between 2008 and 2020, the tax base for incomes from employment was the 'super-gross wage': the brutto salary increased by social and health contributions paid by the employer at 34% (later 33.8%).[91]

The sovereignty of EU Member States in personal income taxation is evident from many other provisions. Typically, the lower taxation of self-employed persons than employees expresses the motivation to run a business. The efforts to make tax administration easier for small businessmen lead to a lump-sum tax. Different rules are used for the deductibility of a tax loss and costs for research and development. Western European countries prefer progressivity in tax rates, while Eastern European countries turned to one linear tax rate, usually much lower compared to old EU Member States. Tax benefits for low-income subjects can be defined as non-taxable income, amount deductible from the tax base, or basic tax relief[92] deductible from the tax itself. The most significant differences are reflected in 'social' correction elements: tax exemptions (e.g., no taxation of pensions, scholarships, social benefits, alimony payments, specific time-tests for incomes from the sale of immovable property), tax allowances (e.g., motivating charitable gifts, pension insurance and life insurance, living in own apartment or house), and tax reliefs general for all natural persons (e.g., reflecting children in the family, spouse with limited income, disability of the taxpayer, studies) or specific for businessmen (e.g., stimulating the employment of disabled employees or research and development).

The double tax treaties are the most crucial legal acts in the international taxation of personal income. The only EU legal act connected with the personal income tax is the Savings Directive.[93] The Savings Directive was adopted to avoid distortions to the movement of capital and to ensure effective taxation of interest payments received by individuals in EU Member States other than the EU Member State of residence. The Savings Directive enables such interest payments to be made subject to effective taxation in accordance with the laws of the EU Member State of residence.[94]

From the economic perspective, the most significant direct tax is the corporate income tax when discussing harmonisation. However, business entities are liable to a number of other corporate taxes, usually in various forms of windfall tax. A windfall tax usually means a higher tax rate on profits that ensue from a sudden windfall gain to a particular company or industry.[95] It is, in fact, a special tax on profit or a surcharge to existing (corporate) income tax. Additional taxes on the financial and banking sectors (Austria, Bulgaria, Cyprus, Hungary, Poland, etc.) and gambling,

91 Radvan and Neckář, 2016; Radvan and Svobodová, 2021, pp. 79–80.

92 Tyniewicki and Kozieł, 2021, p. 67.

93 Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.

94 European Commission, 2024f.

95 Wikipedia, 2023.

including lotteries (Croatia, Czech Republic, Estonia, Lithuania, Netherlands, etc.) are typical.[96] The Czech Republic also adopted a levy on electricity from solar radiation in 2012.[97] The second Czech windfall tax – extraordinary tax on unexpected profits – is closely related to the global energy crisis in 2021–2023 and the Russian aggression in Ukraine and follows the IMF recommendations to institute windfall profits taxes targeted at economic rents in the energy sector, excluding renewable energy, to prevent hindering its further development.[98] Besides electricity and gas producers and traders, fossil fuel miners, fuel wholesalers, and refineries, provided annual sales are more than CZK 2 billion, it is also applied to banks whose annual interest yield exceeds CZK 6 billion.[99]

Differences in taxation of business entities can cause differences in their competitive position and influence mergers and acquisitions. Higher taxation decreases the effect of invested capital, while lower taxation stimulates the inflow of capital. All these facts historically led to increasing competition between EU Member States. For example, the German tax rate on corporate income, including corporation tax, solidarity surcharge, and local trade tax, decreased from 37% in 1995 to 30% in 2008.[100] Moreover, the Czech corporate income tax fell from 45% in 1993 to 19% in 2010.[101] Decreasing corporate income tax rates are visible not only in the EU but in almost all countries worldwide.

The first two directives, partially harmonising corporate income taxes, were adopted in 1990. The Merge Directive[102] regulates the common system of taxation applicable to mergers, (partial) divisions, transfers of assets, and exchanges of shares. The Directive aims to remove fiscal obstacles to cross-border reorganisations involving companies situated in two or more EU Member States.[103]

The Parent-Subsidiary Directive[104] is designed to facilitate smooth functioning in the taxation of groups of companies across the EU. The Directive aims to exempt dividends and other profit distributions paid by subsidiary companies to their parent company[105] from withholding taxes and to eliminate the double taxation of such

96 European Commission, 2024n.

97 Act No. 165/2012 Sb., on Supported Energy Sources and on Amendments to Certain Acts, as amended.

98 Wikipedia, 2023.

99 Mazars, 2023.

100 European Commission, 2008.

101 Ernst & Young, 2022.

102 Council Directive 2009/133/EC of 19 October 2009 on the common system of taxation applicable to mergers, divisions, partial divisions, transfers of assets and exchanges of shares concerning companies of different Member States and to the transfer of the registered office of an SE or SCE between Member States.

103 European Commission, 2024i.

104 Council Directive (EU) 2015/121 of 27 January 2015 amending Directive 2011/96/EU on the common system of taxation applicable in the case of parent companies and subsidiaries of different Member States.

105 A parent company is a company from an EU Member State that has a minimum holding of 10% in the capital of a company from another EU Member State.

income at the level of the parent company. In 2015, the anti-abuse rule was added to the Directive to prevent misuse in terms of tax evasion, tax fraud, or abusive practices. These rules are designed to tackle arrangements that are not genuine and do not reflect economic reality.[106]

The third important Directive called the Interest & Royalty Directive was passed in 2003.[107] The Directive ensures that cross-border intra-group interest and royalty payments are treated as purely domestic payments (when the conditions of the Directive are met). It aims to avoid double taxation by abolishing withholding taxes on royalty and interest payments levied at the EU Member State of source when received by a group company in another EU Member State.[108]

Given the need to ensure that taxes are paid where profits and value are generated, the Anti-Tax Avoidance Directive (ATAD)[109] was adopted in 2013 as one of the consequences of the OECD's initiative to combat base erosion and profit shifting (BEPS).[110] The ATAD aims to harmonise the laws of all EU Member States to establish rules against the erosion of the corporate tax base in the internal market and simultaneously prevent the shifting of profits outside the internal market. At the same time, the ATAD seeks to prevent further obstacles in the internal market, such as double taxation. The ATAD contains five anti-abuse measures against common forms of aggressive tax planning. The CFC rule (controlled foreign company rule) deters profit shifting to a low/no tax country. The switchover rule prevents the double non-taxation of certain income. The exit taxation rule prevents companies from avoiding tax when re-locating assets. The interest limitation rule discourages artificial debt arrangements designed to minimise taxes. The rule on hybrid mismatches aims to prevent companies from exploiting national mismatches to avoid taxation.[111] Besides these substantial law rules, one more procedural rule was adopted within the ATAD: the GAAR (general anti-abuse rule) to counteract aggressive tax planning when other rules do not apply.[112]

As mentioned above, the GloBE rules shall be applied in all EU Member States. A global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the EU was unanimously agreed by EU Member States in 2022 and is ensured from 2024 by the Minimum Corporate Taxation Directive.[113] The Directive rules apply to any large group, both domestic and international, with

106 European Commission, 2024k.

107 Council Directive 2003/49/EC of 3 June 2003 on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States.

108 European Commission, 2024h.

109 Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market.

110 Boháč and Hrdlička, 2018.

111 Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries.

112 European Commission, 2024o.

113 Council Directive (EU) 2022/2523 of 14 December 2022 on ensuring a global minimum level of taxation for multinational enterprise groups and large-scale domestic groups in the Union.

combined annual financial revenues of more than EUR 750 million, with a presence in an EU Member State. The minimum corporate tax rate should be 15%. For example, if the effective tax rate for the entities in a particular jurisdiction is below the 15% minimum, the group must pay a top-up tax to increase its rate to 15%.[114]

The efforts of the EU to achieve the gradual harmonisation and alignment of tax law have not ended. One of the most important initiatives is the 'Business in Europe: Framework for Income Taxation' (BEFIT) adopted in September 2023, introducing common rules for computing the taxable results of group members that operate in the internal market. The purpose is for all members of the same group (the 'BEFIT group') to calculate their tax base in accordance with a common set of rules applied to their already prepared financial accounting statements. BEFIT should decrease tax compliance costs, support cross-border investments, and increase tax certainty for businesses operating in more than one EU Member State.[115]

For micro, small, and medium-sized enterprises (SMEs), the 'Head Office Taxation System (HOT)' is proposed to allow SMEs operating cross-border by way of permanent establishments the option to interact with only one tax administration that of its Head Office.[116]

The other proposal from September 2023 aims to set new rules to harmonise transfer pricing: a mechanism to determine the pricing of transactions between companies that are part of the same group (intra-group transactions). Nowadays, the 'arm's length' principle (international OECD's standards) is being applied: transactions between related entities of a multinational group must be priced on the same basis as transactions between third parties under comparable circumstances.[117]

Other older proposals are focused on the fight against the misuse of shell entities (entities in the EU with minimal to no economic activity) for tax purposes (the 'Unshell proposal' of 2021) so that they cannot benefit from any tax advantages.[118] A debt-equity bias reduction allowance proposal (the 'DEBRA proposal' of 2022) aims to support businesses by introducing an allowance that will grant the same tax treatment to equity as debt.[119]

5.2. Indirect Taxes

The harmonisation efforts of the EU in the area of taxation are focused primarily on indirect taxes. Art. 113 TFEU which renders harmonisation 'necessary to ensure the establishment and functioning of the internal market and to avoid distortion of competition' is crucial. Regarding the proper functioning of the internal market, harmonisation is related to VAT (as general excise tax) and selected excise

114 European Commission, 2024j.
115 European Commission, 2024.
116 European Commission, 2024g.
117 European Commission, 2024m.
118 European Commission, 2024p.
119 European Commission, 2024a.

taxes. However, EU Member States have the right to adopt additional indirect taxes within their sovereignty, provided that these excise taxes follow the principles of free movement of persons, services, and capital.

When the European Economic Community was founded, except for France, all its Member States applied a multi-stage cumulative tax. Such a cascade tax was assessed on every transfer of raw materials, components, or final product, which led to the tendency of companies to become artificially concentrated. In 1954, France introduced a new type of indirect tax – a value-added tax – assessed only on the added value in every stage of the production of the final product. A new French tax served as an example of the first harmonised indirect tax being effective since 1970.

The core EU legislative text on VAT is now the VAT Directive.[120] According to the Directive, VAT is applied to transactions in various economic activities, encompassing the supply of goods and services, intra-Community acquisitions, imports, and other relevant transactions. It sets basic rules for VAT rates, rules for determining the place of supply, invoicing and record-keeping, deductions procedures for VAT refunds, and it accommodates special VAT schemes for specific categories of taxpayers, such as small businesses, and exemptions for certain types of supplies. Concerning the rates, EU law requires a standard VAT rate of at least 15% to be applied to most goods and services. EU Member States have the competence to set up to two reduced rates of at least 5%, one super-reduced rate lower than 5%, and one zero rate to a limited set of goods and services. To support small businesspersons, EU Member States may exempt taxable persons up to a certain annual turnover; interestingly, Hungary, Slovakia, and the Czech Republic negotiated the highest possible turnover. The other special schemes are VAT One Stop Shop – rules on cross-border business-to-consumer (B2C) e-commerce from 2021, and special schemes for farmers (engaged in agricultural, forestry, or fishing activities), travel agents, businesses dealing with second-hand goods (incl. works of art, collectors' items, and antiques; also incl. organisers of public auctions), and investment gold activities.[121] EU Member States are allowed to use the reverse charge mechanism as an anti-fraud tool within the EU. Reverse charge means the liability to pay tax is on the recipient of the supply of goods or services instead of the supplier of such goods or services in respect of notified categories of supply.

Besides the VAT Directive, other legal documents are important for the proper functioning of VAT in the EU. There are two Council Regulations: VAT Implementing Regulation[122] and VAT Administrative Cooperation Regulation,[123] and several other

120 Council Directive 2006/112/EC of 28 November 2006 on the common system of value-added tax.

121 European Commission, 2024q.

122 Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax.

123 Council Regulation (EU) No 904/2010 of 7 October 2010 on administrative cooperation and combating fraud in the field of value added tax.

Directive dealing with VAT refunds (EU business[124] and non-EU business),[125] VAT-free importation,[126] private consignments,[127] and travellers' allowances.[128] Based on Art. 395 of the VAT Directive, EU Member States may be authorised to derogate from common VAT rules to simplify the procedure for charging VAT or to prevent certain types of tax evasion or avoidance. The list of VAT derogations currently applied throughout the EU is available on the EU web page.[129]

New forms of digital businesses are reflected in the EU's ambition to amend existing European rules in the area of indirect taxation. The 'VAT in the Digital Age (ViDA)' is a proposal to modernise and improve the EU's VAT system in connection with the development of the platform economy.[130]

Selected excise taxes are imposed on the sale or use of specific products. The harmonised excise taxes are those on alcohol, tobacco, and energy. Harmonisation aims to prevent trade distortions in the single market. A unified approach should also ensure fair competition and reduce administrative burdens. The most important legal act at the European level is the 'Horizontal Directive',[131] which lays down the general arrangements for excise tax and includes common provisions applicable to all products liable to excise taxes under EU law. The Directive defines the categories of products liable to excise taxes, principles of how to assess excise taxes, the types of authorised excise operators, and rules on the production, storage, and movement of excise products, incl. tax warehouses regulation. Tax warehouses are facilities authorised to produce, receive, store, and dispatch excise goods in duty suspension. If the goods are moving to another tax warehouse (or registered consignee), the excise tax is not paid. However, once these goods are released for consumption, the excise taxes must be paid. With regard to these rules, supervision is essential. Since 2013, the supervision has been fully digitalised, using the Excise Movement Control

124 Council Directive 2008/9/EC of 12 February 2008 laying down detailed rules for the refund of value added tax, provided for in Directive 2006/112/EC, to taxable persons not established in the Member State of refund but established in another Member State.

125 Council Directive 86/560/EEC of 17 November 1986 on the harmonization of the laws of the Member States relating to turnover taxes – Arrangements for the refund of value added tax to taxable persons not established in Community territory.

126 Council Directive 2009/132/EC of 19 October 2009 determining the scope of Art. 143(b) and (c) of Directive 2006/112/EC as regards exemption from value added tax on the final importation of certain goods.

127 Council Directive 2006/79/EC of 5 October 2006 on the exemption from taxes of imports of small consignments of goods of a non-commercial character from third countries.

128 Council Directive 2007/74/EC of 20 December 2007 on the exemption from value added tax and excise duty of goods imported by persons travelling from third countries.

129 European Commission, 2024r.

130 European Commission, 2024s.

131 Council Directive (EU) 2020/262 of 19 December 2019 laying down the general arrangements for excise duty.

System (EMCS). The administrative cooperation in the field of excise taxes is also included in the Council Regulation.[132]

Excise taxes are regulated by the ‘Structural Directives’ and the ‘Rates Directives’ (directives on the approximation of rates), particularly for alcohol, tobacco products, and energy products, including electricity. Concerning alcohol, the directives[133] set the structures of excise taxes on alcohol and alcoholic beverages (beer, wine, intermediate products like port or sherry, and spirits), the categories of alcohol and alcoholic beverages liable to excise tax, and the tax bases. The directives include some special provisions; for example, small breweries and small distilleries benefit from reduced rates. Additionally, certain products and geographical regions are advantageous at lower rates (certain Greek, Italian, and Portuguese regions, ‘traditional’ rum produced in Guadeloupe, French Guiana, Martinique, and Réunion, certain alcoholic products produced in the autonomous regions of Madeira and of the Azores). The directives set only minimum rates that must be applied to each category of alcoholic beverage; EU Member States are free to set excise tax rates above these minima, according to their own national needs.[134]

The directive regulating excise taxes on manufactured tobacco[135] defines the categories of manufactured tobacco products (cigarettes and ‘other tobacco products’), the principles of tobacco products’ taxation, and also the minimum rates to be applied. The minimum rate for cigarettes must consist of a specific component (of between 7.5% and 76.5% of the total tax burden expressed as a fixed amount per 1000 cigarettes) and an ad valorem component expressed as a percentage of the maximum retail selling price. The minimal tax of EUR 90 per 1000 cigarettes or at least 60% of the weighted average retail selling price must be achieved. However, if the excise tax of EUR 115 or more is applied, the criterion of 60% of the weighted average retail selling price must not be met. Portugal regions of the Azores and Madeira are allowed to use a reduced rate of up to 50% less than the required overall minimum excise tax on cigarettes. For ‘other tobacco products’, EU Member States are free to decide between a specific component or an ad valorem component, or a mixture of the two (50% of the weighted average retail selling price or EUR 60 per kilogram of the fine-cut smoking tobacco, 5% of the retail selling price or EUR 12 per 1000 items or per kilogram of cigars and cigarillos, 20% of the retail selling price or EUR 22 per kilogram of other smoking tobacco.[136]

132 Council Regulation (EU) No 389/2012 on administrative cooperation in the field of excise duties as regards the content of electronic registers (subsequently amended by Council Regulations 2020/263, 2021/774 and 2023/246).

133 Council Directive 92/83/EEC of 19 October 1992 on the harmonization of the structures of excise duties on alcohol and alcoholic beverages; Council Directive 92/84/EEC of 19 October 1992 on the approximation of the rates of excise duty on alcohol and alcoholic beverages.

134 European Commission, 2024b.

135 Council Directive 2011/64/EU of 21 June 2011 on the structure and rates of excise duty applied to manufactured tobacco.

136 European Commission, 2024c.

The Energy Tax Directive[137] covers the excise taxes on all energy products used for heating and transport and on electricity. Fiscal marking of gas oils and kerosene to identify gas oil and kerosene subject to a reduced excise rate is regulated by the specific directive.[138] Similar to other excise taxes, the Directive sets the minimum excise tax rates that EU Member States must apply to energy products for fuel and transport and electricity (motor fuels: leaded and unleaded petrol, gas oil, kerosene, LPG, and natural gas; motor fuels used for commercial and industrial use: gas oil, kerosene, LPG, natural gas; heating and electricity: gas oil, heavy fuel oil, kerosene, LPG, natural gas, coal and coke, and electricity). The exemption for aircraft fuel (other than that used in private pleasure flying) from taxation is generally set in the Directive. However, EU Members States can tax aviation fuel for domestic flights and even for intra-EU flights (in the second case, under the bilateral agreements), not following the minimum excise tax rates.[139]

Excise taxes on alcohol, tobacco, and energy are the only harmonised excise taxes in the EU. However, following the principles of free movement of persons, services, and capital, EU Member States can adopt additional indirect taxes (excise taxes) within their sovereignty. Several types of non-harmonised excise taxes collected in EU Member States can be identified. Taxes connected with motor vehicles were analysed above in the chapter on direct taxes. The other group of excise taxes aims to limit the consumption of unhealthy (sweet or salty) food and beverages: Denmark taxes ice cream, chocolate, and sweets, and non-alcoholic soft beverages are taxed in Belgium, Croatia, and Finland. Coffee is liable for tax in Croatia, Denmark, and Belgium. To limit the number of plastic bags, tax regulation is applied in Denmark, Sweden, Ireland, and Portugal. Finland has a specific tax on beverage packages. Additionally, Denmark collects tax on certain packaging. Almost all EU Member States have (usually local) taxes or charges on waste. Some others impose additional excise taxes on pollution (e.g., Denmark, Lithuania, Sweden. Slovenia, Estonia, and Italy) or fertilisers (Denmark, Sweden, etc.). Scandinavian and Baltic countries in particular, collect many more taxes connected with environmental protection (e.g., taxes on sealed NiCad-batteries in Denmark, tax on petroleum and natural gas resources in Lithuania, natural resources tax in Latvia, tax on natural gravel, and tax on chemicals in certain electronics in Sweden). Moreover, Finland adopted a pharmacy tax, and Malta, Greece, and Hungary taxed telecommunication services. Several EU Member States imposed taxes in connection with nuclear power plants (Sweden, Slovakia, and Germany). As there are several alternatives to harmonised tobacco products, several countries collect other non-harmonised taxes on tobacco products, such as chewing tobacco, heated tobacco products, and electronic cigarette

137 Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity.

138 Council Directive 95/60/EC of 27 November 1995 on fiscal marking of gas oils and kerosene.

139 European Commission, 2024d.

liquid (Denmark, Lithuania, Sweden, France, etc.).[140] The Czech Republic adopted four additional excises to the list of harmonised excise taxes on tobacco products: tax on rough tobacco, tax on heated tobacco products, tax on other tobacco products (with nicotine), and tax on products related to tobacco products (electronic cigarette liquids, nicotine sachets).[141]

6. Concluding Part

Tax law is defined as a system of legal norms regulating social relationships created, implemented, and expired in the process of creating public monetary funds. These social relationships regulated by the tax law are taxes *sensu lato* (in the broader sense). However, this chapter is focused only on several taxes *sensu lato* and deliberately omits charges and fees (because they are not harmonised and this situation does appears to remain unchanged in the future), customs (because the EU is the customs union and from the EU perspectives, customs have a completely different purpose and nature than taxes), and social security and health contributions (neither the EU nor the EU Member States consider these contributions as taxes).

Tax harmonisation in the EU is not merely an aim and a resulting condition. It is also the actual (positive or negative) process. Positive harmonisation means the process of approximation of the national tax systems when implementing directives and other legal instruments. Negative harmonisation results from the activities of the CJEU. The positive harmonisation process is politically complicated because of the importance of tax sovereignty for every EU Member State. A good example might be the corporate income tax rate. For several countries, mainly in Western Europe, low corporate income taxes might be an obstacle in terms of higher tax revenues, and they tend to harmonise the tax. Contrarily, economically weaker states prefer tax competition. They believe it might be a tool for catching up with economically more developed countries. This conflict of interest can also be perceived as a battle between (but not exclusively) old and new EU Member States. Simply, a car with the same engine cannot catch the car in front of it.[142] Tax competitiveness issues play a crucial role when dealing with tax harmonisation. In addition, there are other arguments for national tax sovereignty: EU Member States should have the power to impose taxes to autonomously redistribute the proceeds of these taxes at their own discretion and need. They should use tax rates as one of the instruments of domestic economic policy with regard to specific economic backgrounds and development and historical consequences.

140 European Commission, 2024n.
141 Act No. 353/2003 Sb., Excise Taxes Act, as amended.
142 Kysilka, 2019.

Supporters of tax harmonisation disagree with the benefits of tax competition. For example, Nerudová[143] states that

> tax competition and the exploitation of mismatches between national tax systems have allowed many of the multinationals that use European infrastructure and other European public goods to use tax planning tools in a very aggressive way. … Their economic power even allows them to negotiate with EU Member States on the tax advantages they will grant them in order to build a warehouse or a factory in that country.

Nerudová believes that unification would mean significantly eliminating aggressive tax planning techniques. However, Nerudová is a fan of competition in the area of tax rates. Skořepa[144] adds that low tax rates could serve as ‘an incentive to use low-taxed profits for reinvestment in the Czech Republic instead of sending them abroad’.

I believe that the ideal path is somewhere between tax harmonisation and tax sovereignty. Taxes are definitely a national tool that affects economic development. Tax issues should never become a coordinated policy at the EU level. The role of the EU should be relatively minimal and rather complementary. The EU’s task should be to prohibit tax discrimination, i.e., tax neutrality. I agree with Angerer that the EU should focus on ‘the elimination of tax obstacles to cross-border economic activity, the fight against harmful tax competition and tax evasion, and the promotion of greater cooperation between tax administrations in ensuring control and combating fraud’.[145] Tax coordination and harmonisation at the EU level can also solve new problematic issues such as the taxation of electronic businesses, demographic trends and pension system reforms, taxation of artificial intelligence, etc. Tax harmonisation can limit threats such as overexploitation of foreign capital and excessive protection of the national markets. Fair taxation of every taxpayer based on economic stimulation should be supported by sharing information between tax administrators so that the fight against tax evasion and tax avoidance[146] can be effective.

However, if tax harmonisation exceeds its limits, it could cause the ineffectiveness of the tax systems (both at the EU level and in individual countries) and increase administrative costs. Excessive harmonisation could also eliminate new good practices and sharing existing ones. I am not an advocate of unanimous decision-making in tax law issues at the EU level.[147] I believe that the rules stated in TFEU concerning taxation and the taxation principles expressed in the EU law and analysed in this

143 Nerudová, 2019.

144 Skořepa, 2019.

145 Angerer, 2023. European Commission, 2015.

146 Kozieł, Krügerová and Bučková, 2021, p. 267.

147 Pros and cons of the unanimous decision-making in tax law issues at the EU level are discussed by Vanistendael, 2018, pp. 99–121; and Schoueri, 2018, pp. 123–127.

Art. are sufficient for the future development of the EU tax law and tax law in EU Member States.

I have faith that the EU tax law is characterised by unanimity, and the EU tax law system works in terms of cooperation and equality between EU Member States in law and in fact. Old EU Member States are not in a more advantageous position than the new EU Member States with regard to these exceptions. Historically, an exception has been granted to all new EU Member States to provide for a transitional period within which the national tax regulation must be in line with European law. Exceptions were granted, for example, for VAT regulations in the late 1960s and early 1970s or for newly acceding countries in 2004, 2007, and 2013 with respect to energy excise taxes. National taxes are in line with EU law, where it is necessary with regard to cooperation and harmonisation aspects. EU Member States have adequate powers to enforce their own national policies, including tax policies. Contrary to popular belief, it should be stressed that harmonisation and cooperation policies at the EU level are focused mainly on intra-Union business when prohibiting tax discrimination, strengthening tax neutrality, eliminating tax obstacles to cross-border economic activities, fighting against harmful tax competition and tax evasion, promoting greater cooperation between tax administrations in ensuring control and combating fraud, sharing information between tax administrators, etc.

All these statements and findings are also confirmed by the fact that new initiatives significantly amending substantive tax law are not coming from the EU but from the OECD.[148] The two most important examples are the initiative to combat base erosion and profit shifting (BEPS), which emphasises the need to ensure that taxes are paid where profits and value are generated, and the minimum effective taxation of large (multinational) corporations introduction of 15% replacing any debates concerning the common consolidated corporate tax base. Moreover, the new initiatives of the EU itself focus on intra-Union and international business. This applies, for example, to BEFIT, HOT, new transfer pricing rules, Unshell, or DEBRA in the area of direct taxes, or ViDA, FitFor55 package, or Europe's Beating Cancer Plan in the area of indirect taxes. I strongly believe that digital and green transitions will significantly influence the EU tax law in the future.

All the concluding remarks confirm the hypothesis that the balance between the tax harmonisation at the EU level and tax cooperation of national tax administrations on one side and the tax competition between EU Member States on the other side expresses the equality among EU Member States.

148 Kokott, 2022, pp. 4–5; Tenore, 2018, pp. 19–20.

References

Angerer, J. (2023) 'General Tax Policy' [Online]. Available at: https://www.europarl.europa.eu/factsheets/en/sheet/92/general-tax-policy (Accessed: 9 August 2023).

Antón, R.G. (2018) 'The Limits on Tax Sovereignty Imposed by the Interpretation of Supranational Law' in Pistone, P. (ed.) *European Tax Integration: Law, Policy and Politics*. Amsterdam: IBFD, pp. 463–484.

Barents, R. (1993) 'The Internal Market Unlimited: Some Observation on the Legal Basis of Community Legislation', *Common Market Law Review*, 30(1), pp. 86–109 [Online]. Available at: https://doi.org/10.54648/COLA1993005 (Accessed: 9 August 2023).

Boháč, R. (2006) 'Daňové a finanční právo', *Daně a finance*, 2(3), pp. 6–10.

Boháč, R. (2022) 'Labutí píseň daně z nabytí nemovitých věcí', *Acta Universitatis Carolinae – Iuridica*, 68(4), pp. 7–14 [Online]. Available at: https://doi.org/10.14712/23366478.2022.42 (Accessed: 9 August 2023).

Boháč, R., Hrdlička, L. (2018) 'Transpozice směrnice ATAD do právního řádu České republiky' [Online]. Available at: https://www.dauc.cz/clanky/8001/transpozice-smernice-atad-do-pravniho-radu-ceske-republiky (Accessed: 11 August 2023).

De Búrca, G. (1999) 'Reappraising Subsidiarity's Significance after Amsterdam', *Harvard Jean Monnet Working Paper,* 7(99) [Online]. Available at: https://jeanmonnetprogram.org/archive/papers/99/990701.html (Accessed: 9 August 2024).

Dosser, D. (1967) 'Analysis of Tax Harmonization' in Shoup, C.S. (ed.) *Fiscal Harmonization in Common Market.* 1967/1, New York, London: Columbia University Press.

Dougan, M. (2000) 'Minimum Harmonization and the Internal Market', *Common Market Law Review*, 37(4), pp. 853–885 [Online]. Available at: https://doi.org/10.54648/272669 (Accessed: 9 August 2024).

Dourado, A.P. (2024) 'Chapter 11: The Pillar Two top-up taxes and tax treaties' in Haslehner, W., Kofler, G., Pantazatou, K., Rust, A. (eds.) *The 'Pillar Two' Global Minimum Tax*. Cheltenham: Edward Elgar Publishing, pp. 282–303; https://doi.org/10.4337/9781035308743.00016.

European Commission (2005) 'Proposal for a Council Directive on passenger car related taxes' [Online]. Available at: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2005:0261:FIN:en:PDF (Accessed: 25 July 2024).

European Commission (2008) 'Taxation Trends in the EU' [Online]. Available at: https://upload.wikimedia.org/wikipedia/commons/3/39/German_tax_rate_on_corporate_income_1995-2009.png (Accessed: 7 August 2023).

European Commission (2015) 'The European Union explained: Taxation', *Publications Office of the European Union* [Online]. Available at: https://doi.org/10.2775/150928 (Accessed: 28 August 2024).

European Commission (2024) 'Business in Europe: Framework for Income Taxation' (BEFIT) [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/business-taxation/business-europe-framework-income-taxation-befit_en (Accessed: 28 August 2024).

European Commission (2024a) 'Debt-Equity Bias Reduction Allowance' (DEBRA) [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/business-taxation/debt-equity-bias-reduction-allowance-debra_en (Accessed: 28 August 2024).

European Commission (2024b) 'Excise Duty on Alcohol' [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/excise-duties/excise-duty-alcohol_en (Accessed: 30 August 2024).

European Commission (2024c) 'Excise Duty on Tobacco' [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/excise-duties/excise-duties-tobacco_en (Accessed: 2 September 2024).

European Commission (2024d) 'Excise Duty on Energy' [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/excise-duties/excise-duty-energy_en (Accessed: 2 Septermber 2024).

European Commission (2024e) 'FASTER Initiative Directive' [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/business-taxation/faster-initiative_en (Accessed: 28 August 2024).

European Commission (2024f) 'General overview' [Online]. Available at: https://taxation-customs.ec.europa.eu/general-overview-0_en (Accessed: 26 August 2024).

European Commission (2024g) 'Head Office Tax System for SMEs' (HOT) [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/business-taxation/head-office-tax-system-smes-hot_en (Accessed: 28 August 2024).

European Commission (2024h) 'Interest & Royalty Directive' [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/business-taxation/interest-royalty-directive_en (Accessed: 27 August 2024).

European Commission (2024i) 'Merge Directive' [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/business-taxation/merger-directive_en (Accessed: 27 August 2024).

European Commission (2024j) 'Minimum Corporate Taxation' [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/business-taxation/minimum-corporate-taxation_en (Accessed: 28 August 2024).

European Commission (2024k) 'Parent-Subsidiary Directive' [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/business-taxation/parent-subsidiary-directive_en (Accessed: 27 August 2024).

European Commission (2024l) 'Paying inheritance tax twice?' [Online]. Available at: https://taxation-customs.ec.europa.eu/paying-inheritance-tax-twice_en (Accessed: 26 August 2024).

European Commission (2024m) 'Proposal for harmonised transfer pricing rules in the EU' [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/business-taxation/transfer-pricing-eu/proposal-harmonised-transfer-pricing-rules-eu_en (Accessed: 28 August 2024).

European Commission (2024n) 'Taxes in Europe Database' [Online]. Available at: https://ec.europa.eu/taxation_customs/tedb/#/home (Accessed: 28 August 2024).

European Commission (2024o) 'The Anti Tax Avoidance Directive' [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/business-taxation/anti-tax-avoidance-directive_en (Accessed: 28 August 2024).

European Commission (2024p) 'Unshell Proposal' [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/business-taxation/unshell-proposal_en (Accessed: 28 August 2024).

European Commission (2024q) 'Value Added Tax (VAT)' [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/vat_en (Accessed: 28 August 2024).

European Commission (2024r) 'VAT Derogations Schedule' [Online]. Available at: https://taxation-customs.ec.europa.eu/document/download/b71ba13e-4e65-440a-a4ee-e1787e833998_en?filename=2024.04.19_vat_index_derogations.pdf (Accessed: 30 August 2024).

European Commission (2024s) 'VAT in the Digital Age (ViDA)' [Online]. Available at: https://taxation-customs.ec.europa.eu/taxation/vat/vat-digital-age-vida_en (Accessed: 30 August 2024).

European Union (2024) 'Towards fair, efficient and growth-friendly taxes' [Online]. Available at: https://european-union.europa.eu/priorities-and-actions/actions-topic/taxation_en (Accessed: 26 August 2024).

Ernst & Young (2022) 'Vývoj sazby daně z příjmů právnických osob v České republice' [Online]. Available at: https://www.ey.com/cs_cz/tax/tax-alerts/2022/vyvoj-sazby-dane-z-prijmu-pravnickych-osob-v-ceske-republice (Accessed: 7 August 2023).

Haslehner, W., Kofler, G., Pantazatou, K., Rust, A. (eds.) (2024) *The 'Pillar Two' Global Minimum Tax*. Cheltenham: Edward Elgar Publishing; https://doi.org/10.4337/9781035308743.

Hulkó, G., Radvan, M. (2022) 'Regulation of Public Finances in the Czech Republic in Light of Financial Constitutionality' in Nagy, Z. (ed.) *Regulation of Public Finances in Light of Financial Constitutionality*, Miskolc–Budapest: Central European Academic Publishing, pp. 57–81; https://doi.org/10.54171/2022.zn.ropfatilofc_4.

Kokott, J. (2022) *EU Tax Law*. Munich: C.H. Beck; https://doi.org/10.17104/9783406792755.

Kosikowski, C. (2008) *Financial Law of the European Union*. Bialystok: Temida 2.

Kozieł, M. (2021) 'Taxes in the Czech Republic at the Time of COVID-19', *Analyses and Studies CASP*, 12(2), pp. 21–31 [Online]. Available at: https://doi.org/10.33119/ASCASP.2021.2.3 (Accessed: 7 August 2023).

Kozieł, M., Krügerová, M., Bučková, M. (2022) 'Identification of tax fraud and analysis of their impact', *Proceedings of the 16th International Scientific Conference INPROFORUM - DIGITALIZATION. Society and Markets, Business and Public Administration*, České Budějovice: University of South Bohemia, pp. 267–273 [Online]. Available at: https://doi.org/10.32725/978-80-7394-976-1.39 (Accessed: 7 August 2023).

Kubátová, K. (1998) 'Harmonizace daní v Evropské unii (Harmonisation of Taxes in the European Union)', *Daně*, 6(7–8), pp. 2–7.

Kysilka, P. (2019) 'Snaha vyvézt vlastní problémy', *Macháček, J. Bez práva určit si výši daní není suverenita* [Online]. Available at: https://www.lidovky.cz/ceska-pozice/bez-prava-urcit-si-vysi-dani-neni-suverenita.A190117_093527_machackova-debata_houd (Accessed: 8 August 2023).

Mazars (2023) 'Tax Changes in 2023: The Windfall Tax, the End of EET and a Higher VAT Limit' [Online]. Available at: https://eng.mazars.cz/Home/Insights/Latest-news/Tax-in-2023-The-windfall-tax-and-the-end-of-EET (Accessed: 7 August 2023).

Mrkývka, P. (2012) *Determinace a diverzifikace finančního práva*. Brno: Masaryk University.

Mrkývka, P. (2015) *Propedeutika finančního práva I. Obecná část.* Brno: Masaryk University.

Nerudová, D. (2008) *Harmonizace daňových systémů zemí Evropské unie*. Prague: ASPI.

Nerudová, D. (2019) 'Srovnání podmínek pro všechny subjekty', *Macháček, J. Bez práva určit si výši daní není suverenita* [Online]. Available at: https://www.lidovky.cz/ceska-pozice/bez-prava-urcit-si-vysi-dani-neni-suverenita.A190117_093527_machackova-debata_houd (Accessed: 8 August 2023).

Nykiel, W., Sęk, M. (2015) 'Standards, Trends and Challenges of National Tax Legislation' in Nykiel, W., Sęk, M. (eds.) *Tax Legislation. Standards, Trends and Challenges*. Warsaw: Wolters Kluwer, pp. 191–206.

Papis, M. (2014) 'The Principle of Neutrality in EU VAT' in Brokelind, C. (ed.) *Principles of Law: Function, Status and Impact in EU Tax Law.* Amsterdam: IBFD, pp. 365–390; https://doi.org/10.59403/2cjspcc016.

Paternoster, D. (2016) 'General Tax Policy' [Online]. Available at: https://www.europarl.europa.eu/thinktank/cs/document/04A_FT(2013)051101 (Accessed: 4 August 2023).

Pistone, P. (ed.) (2018) *European Tax Integration: Law, Policy and Politics*. Amsterdam: IBFD; https://doi.org/10.59403/rtz11a.

Radvan, M. (2011) 'Tax Harmonization' in Seng, M.P., Týč, V., Sehnálek, D. (eds.) *One or Many? The Law and Structure of the European Union and the United States*. Rock Island, IL: East Hall Press.

Radvan, M. (2017) 'Municipalities and Gambling Taxation in the Czech Republic', *Lex Localis – Journal of Local Self-Government*, 15(3), pp. 529–540 [Online]. Available at: https://doi.org/10.4335/15.3.529-540(2017) (Accessed: 4 August 2023).

Radvan, M. (2020) *Czech Tax Law*. Brno: Masaryk University.

Radvan, M. (2022) 'Are Changes in (Czech Direct) Tax Law Necessary, or Is It Just a Politicum?', *Public Governance, Administration and Finances Law Review*, 7(1), pp. 39–49 [Online]. Available at: https://doi.org/10.53116/pgaflr.2022.1.3 (Accessed: 4 August 2023).

Radvan, M. (2024) 'Czech Republic: Independent Tax Policy as a Part of Czech Fiscal Policy' in Nagy, Z. (ed.) *Economic Governance - The Impact of the European Union on the Regulation of Fiscal and Monetary Policy in Central European Countries*. Budapest: Central European Academic Publishing, pp. 477–501; https://doi.org/10.54237/profnet.2024.znecogov_21.

Radvan, M. (in press) 'Motor Vehicles Taxation in EU – Cooperation or Competition?'.

Radvan, M., Neckář, J. (2016) 'Taxation of Professional Team Sport Athletes in the Czech Republic', *Public Governance, Administration and Finances Law Review*, 1(1), pp. 40–46 [Online]. Available at: https://doi.org/10.53116/pgaflr.2016.1.4 (Accessed: 4 August 2023).

Radvan, M., Svobodová, T. (2021) 'Reformy daňového práva v (ne)souvislosti s Covid-19 (Tax Law Reforms in the (In)Context of Covid-19)', *Studia Iuridica Cassoviensia*, 9(2), pp. 69–84 [Online]. Available at: https://doi.org/10.33542/SIC2021-2-06 (Accessed: 4 August 2023).

Schoueri, L.E. (2018) 'Commentary on Chapter 3 – On Democratic Legitimacy of European Tax Law and the Role of the European Parliament' in Pistone, P. (ed.) *European Tax Integration: Law, Policy, and Politics*. Amsterdam: IBFD; https://doi.org/10.59403/rtz11a007.

Široký, J. (2010) *Daně v Evropské unii.* Prague: Linde.

Široký, J. (2013) *Daně v Evropské unii.* Prague: Linde.

Široký, J. (2018) *Daně v Evropské unii.* Prague: Leges.

Skořepa, M. (2019) 'Nevzdávejme se nástroje hospodářské politiky', *Macháček, J. Bez práva určit si výši daní není suverenita* [Online]. Available at: https://www.lidovky.cz/ceska-pozice/bez-prava-urcit-si-vysi-dani-neni-suverenita.A190117_093527_machackova-debata_houd (Accessed: 8 August 2023).

Tenore, M. (2018) 'Trends and Facts in European Tax Integration: Harmonization and Coordination' in Pistone, P. (ed.) *European Tax Integration: Law, Policy, and Politics*. Amsterdam: IBFD; https://doi.org/10.59403/rtz11a002.

Terra, B.J.M., Wattel, P.J. (2008) *European Tax Law.* The Hague: Kluwer Law International.

Timmermans, C.W.A. (1979) 'Directives: their Effect within the National Legal Systems', *Common Market Law Review*, 16(4), pp. 534–535 [Online]. Available at: https://doi.org/10.54648/COLA1979042 (Accessed: 7 August 2023).

Tomášek, M. (2021) *Právo Evropské unie.* Prague: Leges.

Týč, V. (2017) *Základy práva Evropské unie pro.* Prague: Leges.

Tyniewicki, M., Kozieł, M. (2021) 'Current Problems of Financial Law in Poland and in the Czech Republic Including Effects of the COVID-19 Pandemic', *Bialystok Legal Studies*, 26(4), pp. 53–71 [Online]. Available at: https://doi.org/10.15290/bsp.2021.26.04.04 (Accessed: 7 August 2023).

Vanistendael, F. (2018) 'On Democratic Legitimacy of European Tax Law and the Role of the European Parliament' in Pistone, P. (ed.) *European Tax Integration: Law, Policy, and Politics*. Amsterdam: IBFD, pp. 99–122; https://doi.org/10.59403/rtz11a006.

Wikipedia (2023) 'Windfall Tax' [Online]. Available at: https://en.wikipedia.org/wiki/Windfall_tax (Accessed: 7 August 2023).

Part V

COMMON REGULATION FOR STRENGTH – UNITED TO BE EFFECTIVE