FISCAL REFORM IN THE CONTEXT OF EU INTEGRATION. A ROMANIAN PERSPECTIVE

Mihaela TOFAN
Professor habil.
Faculty of Economics and Business Administration
Department of Finance, Money and Public Administration
University Alexandru Ioan Cuza of Iasi, Romania
mtofan@uaic.ro

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Abstract: *Acting as EU member, Romania participates in the legislative process at this level and recognizes the principles of direct, immediate and priority applicability of EU legislation in national legal framework. Even if specialized legal literature has presented consistently the principle of fiscal sovereignty of member states within the European Union, we note the need for tax harmonization and the progress that has already been made in this direction. Tax harmonization at EU level is the complex process of aligning the normative rules in taxes levied by the Member States in order to reduce (and, if possible, eliminate) the negative effects the differences between Member States tax systems are generating on the common market. The most effective instrument for implementing tax harmonization is, in our view, achieving a Fiscal Union among the Member States. Inside the EU, the level of tax harmonization is far outweighed by the monetary harmonization, despite the fact that fiscal policy and monetary policy are linked. This lack of coordination was even more evident throughout the global financial crisis that appeared globally. In this framework, the EU Member States have negotiated and signed the Fiscal Treaty, a legal tool that provides mandatory measures on the supervision and control towards financial and fiscal stability. The effects of this piece of regulation are present, but they are not sufficient to insure the macro-economic stability of the European Union. In our opinion, the solution could be to regulate a single European tax, but the subject is currently only a research hypothesis.*
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1. INTRODUCTION

The Romanian legislation expressly establishes the direct, immediate and priority character of the norms within EU law, by the provisions of art.148 of the Romanian Constitution, which contains a precise rule regarding the hierarchy of the sources of law after EU integration. Par.2 and 3 of the same article stipulate that the provisions of the constitutive treaties of the European Union, as well as the other compulsory Community regulations, have priority over the contrary provisions of the internal laws, respecting the provisions of the accession act. At the same time, the effects of the revision acts of the constitutive treaties of the European Union are considered.

In this context, the financial and fiscal regulations are no exception.
Compared to the classical approach to the notion of source of law, European Union law implies a series of characteristic features, deriving from the particular way of issuing and applying legal acts by European institutions. Instead of the classical division of the sources of a branch of law into material sources and formal sources, the sources of EU law involve a first classification into primary sources and derived sources. The Community legal order is constituted by an assembly organized by norms that derive their value from the basic legal norms contained in the treaties (primary law). Based on the norms contained in the treaties, the derivative law is adopted, which includes regulations, directives, decisions, opinions and recommendations.

2. THE CURRENT CHALLENGES FOR FISCAL HARMONIZATION AT EU LEVEL

European regulations have a general role, as well as a special character, for example in the area of finance and taxation; the adoption procedure also involves the legislative authorities, but also the economic actors, who will be consulted. Of course, they can show passivity, but the observance of the mandatory norms implies their knowledge and, consequently, taking the possible sanctions for the violation of the law. If not from their own legal conscience, then, at least as a result of the sanctions eventually suffered, the behavior of the taxpayer will change in order to pay due attention to the legislative process, first in the observance of the mandatory rules and, later, in the adoption phase, when precise interests are affected.

In the context of the policies of the European Union, the fiscal provisions that the member countries have to take into account when developing their own fiscal policies are included. So,

- no Member State directly or indirectly applies to the products of other Member States internal taxes, of any kind, higher than those directly or indirectly applicable to similar national products;
- the products exported by one Member State to the territory of another Member State cannot benefit from any refund of internal taxes, which exceed the taxes applied directly or indirectly;
- with regard to tax, other than turnover, excise duties and other indirect taxes may not exempt or reimburse exports to other Member States and no clearing duties may be imposed on imports from Member States;

a European framework rule establishes the measures to harmonize the legislation regarding the turnover tax, excise duties or other indirect taxes in order to ensure the smooth functioning of the internal market and to avoid distortion of competition within the European Union.

The stage of fiscal harmonization is far beyond the monetary harmonization in the EU, despite the fact that fiscal policy and monetary policy are, or rather should be, in close interdependence. A complete monetary union demands close coordination between national fiscal policies and the reduction of public sector deficits and debt, all the more imperative amid international financial crises. In our opinion, the solution for the macro-

economic stability of the Union could be the regulation of a single European tax. This measure, also avant-garde and profound in equal measure, has been discussed with other occasions, with many points of view in favor of this proposal.

In order to argue for a possible European tax, a multitude of situations and conditions must be considered. When analyzing the fiscal policy, we have to consider not only the prerogatives of the public sector, but also the level at which the decision-making act in the field of taxes and taxes is shaped. The traditional theory of fiscal federalism assumes that each level of public administration authorities has its own competence, including in the matter of taxes and other contributions to the public budget.

Each level of government must assume the responsibility of ensuring the well-being of its citizens, and the system of taxes and duties imposed on them must be tolerable and efficient at the same time. The main advantage of decentralization, the approximation of the governing act to the level of the governed one, has a number of consequences, including in the field of fiscal policies. Each administrative-territorial unit existing at the level of the EU states has its own tax system, which fragments the unit of the fiscal system 28 times more. However, when the existing differences are interpreted by the central state administration as detrimental to the citizens and to the state regarded as a unitary law subject, a series of measures can be taken in order to reduce the disparities existing between different regions.

We note, however, that this hypothesis is difficult to solve in the context of the single market that the construction and legal foundation of the EU implies. Even if notable differences are possible between the tax systems between neighboring areas of the Union, when these areas are located in the territory of two different states, then the possibility of central public administration intervention does not exist. The gap that can be created between two neighboring areas means that, at least from a fiscal point of view, the EU cannot be compared to any model of federalism, no matter how decentralized it may be. Overcoming the difficulties of accepting collaboration with less economically developed countries, the four times the number of countries initially members in the European project makes the process of fiscal harmonization even more difficult and disputed.

3. THE IMPERATIVE OF FISCAL HARMONIZATION IN THE EU

Harmonization of law in the field of taxes and duties has proved to be a thorny topic for the European Union, as each state has the right to veto the issue of fiscal harmonization (the principle of fiscal sovereignty). The existence of European taxes would be possible only if the Member States accepted the respective taxes. A number of progresses have been made along the lines of cooperation between Member States, including in this area, primarily in the field of customs duties, excise duties, VAT and even in the field of income tax and wealth tax.

Another argument for harmonizing EU tax and tax rules is the ability of national tax systems to collect revenue, which is affected by the tax regime practiced by another state within the common European market. For example, the revenues collected from the taxation of the tobacco trade will depend on the level of taxation of this trade in the

neighboring states. Therefore, there may be positive or negative influences between the tax systems practiced by different Member States. The movement of the factors of production can be affected by the taxation policy and the expenditure policy. Administrative and compliance costs for public administration and taxable subjects can be affected, and the ability of Member State governments to apply redistribution policies is subject to restrictions.

The harmonization of taxes and duties at the European Union level can only be taken into account if strict rules regarding the beneficiary of the amounts received, the usefulness of the collection operations and the coherence of the regulatory framework responsible for the single taxes are respected.

In this landscape, it is not surprising that fiscal harmonization at EU level remains a difficult topic. Such a large geographical area, where national sovereignty still largely belongs to the Member States, is facing the interest of removing obstacles to achieving the single market. It should be noted in this direction the adoption of the fiscal compact or the Fiscal Treaty.

In Romania, the tax legislation is constantly changing, both as an effect of the general macroeconomic context and as a response to EU integration. The fiscal code in force has long been negotiated in the national legislation and its entry into force also responds to the need to transpose imperative EU regulations. But what prevails in the decision to adopt new regulations in the field of fiscal policy is in the end the political factor, translated into the government program and the lines of action considered by the national executive. Surely, the fight for political power of the parties puts further pressure on the stability of the taxation legal framework.

Subject to unquestionable autonomous law within international law, the EU functions as and effect of integration, a complex phenomenon that necessarily includes legislative harmonization. In accordance with the fundamental principles of freedom of movement that characterize the common market, the need for uniform rules for all Member States has been present since the first steps of the cooperation between the Member States and has increased progressively, as the number of members and the directions of European cooperation. The reform of the tax systems at the level of each of the Member States would ultimately benefit the citizen, by removing barriers to the freedom of movement of goods and services. At the same time, the sovereign right of the states to legislate in the areas that have not been exclusively assigned to the competence of the European Union and the principle of subsidiarity of the norms of European law maintain the legitimacy of adopting the specific rules of each state in the field of taxes and other contributions to the state budget.

With regard to fiscal policy, EU member states (still) enjoy sovereignty, with uniform imperative rules being adopted only with the unanimous vote of members. Equally, it should be borne in mind that the current state of European integration could not be built in the absence of harmonization of fiscal law rules, even if this process was carried out with slower steps than in other areas of cooperation. In the field of direct taxation, the harmonization of the law rules regarding corporate taxation has proved to be necessary, as there is a risk that very low tax rates in one country or various tax facilities will unfairly attract firms from competing countries in the single market, with effects in

eroding the tax bases of their countries of origin. In this regard, we should mention the efforts to establish a common consolidated tax base (CCCTB) that would apply to the entire activity of companies, regardless of where they operate in the European Union.

4. THE PRINCIPLE OF FISCAL SOVEREIGNTY OF THE EU MEMBER STATES

Even if fiscal sovereignty and harmonization can be analyzed as antagonistic concepts, the Treaty on the Functioning of the European Union TFEU regulates in the same title (Title VII) common imperative rules on competition, taxation and legislative harmonization. Thus, Article 110 (ex Article 90 TEC) expressly states that no Member State directly or indirectly applies to the products of other Member States internal taxes of any kind higher than those, which apply, directly or indirectly, to similar national products. In addition, no Member State shall apply to the products of other Member States internal taxes likely to indirectly protect other sectors of production.

Moreover, Article 111 (ex Article 91 TEC) states that products exported to the territory of one of the Member States cannot benefit from a refund of domestic taxes higher than taxes applied directly or indirectly. As regards taxes other than turnover, excise duties and other indirect taxes, exemptions or refunds may be granted for export to the other Member States and countervailing duties may be introduced on imports from Member States only if the measures envisaged have been approved in advance for a limited period by the Council, which decides on a proposal from the Commission, in accordance with Article 112 (ex Article 92 TEC).

In order to respect the fiscal sovereignty of the EU member states, art.115 (ex Article 94 TEC) establishes that for the approximation of the laws, regulations and administrative provisions of the Member States, which have a direct impact on the establishment or functioning of the internal market, the Council shall act unanimously, in accordance with a special legislative procedure and afterwards consultation of the European Parliament and the Economic and Social Committee.

The fiscal sovereignty of EU member states, as regulated by art.115 of the TFEU, enjoys the legal force recognized by the sources of primary law at EU level, which makes possible a possible annotation only by unanimous vote of the states, at least until the moment of this article being modified by a legal norm with the same power (through - another treaty). This is why some well-known authors in the field of tax law have appreciated that we cannot talk about a European tax law, in the true sense of the word, but, rather, we can analyze the tax law of the Member States.

However, the literature states that the fiscal sovereignty of the EU member states can be legitimately circumvented by using the gateway clauses, but activating this procedure is also triggered by the unanimous vote of the members of the Council of the European Union. Article 48 (7) of the Treaty on European Union Reform (TFEU) provides for a general passerelle clauses. This provision allows the measures subject to the unanimous vote until then to be adopted by a qualified majority or through the ordinary legislative procedure. The possibility of using this procedure for adopting the necessary rules for the implementation of the fiscal policy was invoked by the President

of the European Commission, Mr. Jean-Claude Junker, in his speeches on the Status of the European Union - A stronger union (2017) and in the Message for the EU Member States (2018).

5. CONCLUSIONS

At EU level, the complexity of the integration process and the cooperation that the Member States carry out necessarily impose the adoption of harmonized tax rules, in order to ensure the smooth functioning of the single market. A form of fiscal cooperation is inevitable, with progress in fiscal harmonization and integration.

With regard to direct taxes, generally, a limited harmonization is justified in the current context, which aims at avoiding discrimination, double taxation or tax evasion. Equally, closer coordination is needed in this area, in order to counteract the distortions generated by the allocation of resources. The proposal for an EU regulation for the CCCTB is an ambitious and promising objective, which, in our opinion, will drive economic growth in the EU and boost research and innovation activities.

In Romania, the legal system benefits of the effervescent tax framework and continuous reform for alignment with EU harmonized rules in the field. Both the reform of the judiciary and fiscal integration are state priority. The new Romanian Fiscal Code respond to three present demands: it provides legislative support for the government's fiscal policy, it transfers into practice the rule of harmonized law at EU level and it equally pays respect to the still recognized sovereignty of Member States. Still, we far from possess an efficient and updated taxation system and the papers proposed some means to act in the nearest future.

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