



## RECONSIDERING THE EU TAX POLICY TO ENSURE THE ESTABLISHMENT AND FUNCTIONING OF THE INTERNAL MARKET AND TO AVOID IDENTIFICATION OF COMPETITION

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**Abstract:** Tax policy is the sovereign attribute of the Member States, the legal framework established by the Treaty on the Functioning of the EU (TFEU) in the content of Articles 110-113. Therefore, the EU's competence is limited, its intervention being allowed within a well-defined framework only exceptionally whenever there is an imminent risk of tax fraud that seriously affects the EU's commercial interests, or the constitutive elements of tax avoidance practices are outlined, or competition is concerned. On the other hand, customs duties are established by the EU's standard commercial policy and influence competitiveness in the single market and international trade terms. Although customs duties are indirect taxes, along with excise duties, value-added tax and other categories of taxes and surcharges, only customs duties are the exclusive attribute of the EU, influencing how different categories of taxes are established and calculated, which are, in fact,, the prerogative of the Member States. Even though legislative harmonisation also in matters of tax policy is enshrined in the text of the TFEU in the context of Articles 114-118, in practice, the Member States have not managed to approximate their national legislations with the risk of serious problems of distortion of competition and the establishment of the EU budget, according to the procedure adopted by Article 314 of the TFEU. This study analyses how the forms of enhanced cooperation established by Articles 326-334 of the TFEU could represent the key to unblocking negotiations between Member States and the mechanism through which tax policy could be rethought in terms of more efficient functioning of the internal market and to avoid distortion of competition.

**Keywords:** tax policy; common commercial policy; indirect taxes; enhanced cooperation; tax fraud; competitiveness

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## 1. Introduction

The global economic and financial crisis has highlighted challenges that have required the adoption of structural reforms at the EU level so that Member States do not act in isolation and do not abandon the European project. The single market is a key factor in overcoming the current evident social crisis, thus increasing competitiveness in the world market through the complementarity of actions that will ensure a climate of trust and stimulate growth. The required public decision is the basis for promoting internal and external policy and must be able to provide essential services for the economy and concrete benefits to European citizens (Alberola, 2024).

Periodic risk assessments require a solid framework for coordinating and supervising fiscal policies in the Member States (Arnold, 2022). With budgetary balance as its primary objective, the “Fiscal Compact”<sup>1</sup> proposed introducing constitutional rules for better governance and partnership within the single market to national parliaments<sup>2</sup>.

The inconsistencies in tax legislation, the lack of transparency and the harmonisation of national rules created unfair tax competition between Member States. However, the general common objective is to fight against unjust practices established by non-EU states. Even if they timidly accepted, by taking over into domestic law some European normative acts for approximation of tax legislation through extensive stability and convergence projects, the result was one with the expected end: “*There is no fully integrated tax system*”.

With the general objective of identifying solutions for better governance in the field of EU fiscal policy to establish the working hypotheses, this paper had as its starting point the study commissioned by the Committee on the Internal Market and Consumer Protection, published in 2020 by the Department for Economic, Scientific and Quality of Life Policies, entitled “Legal obstacles in Member States to Single

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<sup>1</sup> For details, see Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions - Single Market Act II - Delivering new growth, available at <https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52012DC0573>, accessed on 09.04.2024.

<sup>2</sup> See in this regard, the European Parliament Resolution of April 6<sup>th</sup>, 2011 on governance and partnership in the single market (2010/2289(INI)) and the European Parliament Resolution of February 25<sup>th</sup>, 2014 on the governance of the single market in the 2014 European Semester (2013/2194(INI)), available at [https://www.europarl.europa.eu/doceo/document/TA-7-2011-0144\\_RO.html](https://www.europarl.europa.eu/doceo/document/TA-7-2011-0144_RO.html), [https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52014IP013\\_0](https://eur-lex.europa.eu/legal-content/RO/TXT/?uri=CELEX:52014IP013_0), accessed on 09.04.2024;

Market rules”<sup>1</sup>. This study highlighted that the single market is achieved first through the customs union and then through fiscal harmonisation. However, it is a key factor for increasing economic prosperity; there are still legislative barriers in the Member States, established according to the principle of subsidiarity, which prevent the full exploitation of the full potential of the single market.

Being a multidisciplinary study, it addressed a theme and a bibliography from several reference areas. The relatively recent articles and specialized studies consulted involved the comparative scientific research method, a systematic procedure for accounting for a reflection of several global phenomena that led to the definition of problems.

## **2. Common Commercial Policy and Customs Duties**

It is well known that trade agreements and conventions represent the legal framework necessary for developing international economic relations. The EU's common commercial policy includes customs, mainly referring to the entry and exit of goods and goods from the EU customs territory. The specific tariff negotiation mechanism involves either reducing or exempting import duties for goods coming from and originating in third countries or granting facilities for imports into those third countries for products originating in the EU. All these measures aim to protect the EU's economic interests and domestic producers against the entry into the single market of identical or similar products from non-EU countries that enter direct competition with their products.

The policy of trade alliances involves, in addition to pursuing one's economic interests, granting trade preferences to dialogue partners, which obliges the parties to refrain from using specific defense instruments of trade policy. Restrictions, in the form of quotas -value or quantity- of anti-dumping, countervailing or safeguard duties, represent the exception in international economic relations. In such conditions, the negotiation of customs tariffs within trade agreements, which usually involves the reduction or elimination of customs duties, requires the strategic adoption of a common commercial policy correlated with an efficient fiscal policy that encourages or protects the single market and less certain specific industries in certain Member States. The general interest is apparent, and the behavior of the European institutions and bodies, which defend the general interest

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<sup>1</sup> The study is available [https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658189/IPOL\\_STU\(2020\)\\_658189\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2020/658189/IPOL_STU(2020)_658189_EN.pdf), accessed on: 09.04.2024

of European citizens, must be prudent but firm, they being obliged to intervene through specific mechanisms by the TEU and the TFEU through a series of primary normative acts, to ensure coherence in the act of governance, predictability and economic growth at a global level, for all Member States.

Therefore, those responsible for the welfare of the EU must focus not only on trade defense measures about the introduction into the civil circuit of goods entering the EU originating from states with which we do not maintain international economic relations or on supervising the correct application of trade agreements with external partners, more critical being, in the described context, the relations between the Member States about national fiscal policy that creates a real unfair internal competition between Community traders.

#### **4. Subsidiarity vs Competitiveness and Unfair Competition**

Economic cohesion is a primary objective of the EU and represents the central investment policy for creating prosperous communities, economic growth and competitiveness. Over time, various solidarity mechanisms have been developed, with treaties gradually introducing new dimensions of cohesion, social and territorial. Investments through funds and the entire legislative package support the reduction of economic disparities and redress the main imbalances between regions that have recently been integrated into the European family or belong to areas strongly affected by the industrial transition.

The current EU fiscal architecture highlights that Member States are in an intense competition (Blanchard, 2021) that creates the premises for the migration of capital to areas with a lower tax levy, true tax havens within the single market. Income or profit tax, excise duties, value-added tax and other categories of taxes are different from one Member State to another. Tax procedures, the degree of collection, supervision and financial-fiscal control are opposed. Digitalisation and digitisation are essential components of public finances, but they do not work despite objectives generally assumed only declaratively, heavily financed, and lacking in efficiency. The lack of loyal cooperation and transparent dialogue on substantive changes in tax policy in some Member States, against the backdrop of non-existent predictability, forces honest traders to open subsidiaries of their parent company outside the EU or to set up new offshore companies to be competitive, not only in international trade relations, but also within the single market by introducing goods and goods into the EU, most of the time, without respecting the principles resulting

from the application of Article VII of the General Agreement on Tariffs and Trade (GATT-WTO), the transaction price being influenced by affiliation ties, but not declared as such to the customs authority in the customs value declaration. Decreasing or increasing the value of customs seriously affected the financial interests of the EU through fraud and tax evasion, aggravating factors that discouraged the business environment from financing development initiatives.

In the *“New Europe. Identity and European Model”* book (Bărbulescu, 2015), Professor Jordan Bărbulescu considers that *“...the treaties have an important evolutionary dimension, of continuous modification, transformation, adaptation to the internal and external reality of the Union”*. Admit that against unfair competition within the EU, where Member States have their tax strategies, the capacity for evolving international economic relations lacks efficiency. To maintain indefinitely the exclusive competence of the EU only for the common commercial policy and customs policy, without a clear strategy of the Parliament and the Council to take normative decisions for the harmonization of legislation and within the framework of tax policy to achieve the set medium and long-term development objectives agreed by the Commission, is nonsense.

## 5. Conclusions

Extending EU competencies and establishing unique competencies through the enhanced cooperation mechanism<sup>1</sup> could represent a temporary solution until the reform of the founding treaties, without necessarily having to deal with what some specialists call *“fiscal federalism”* (Hinarejos & Schütze, 2023) and without affecting in any way the *“constitutional boundaries of the European legal order”* (Gordon, 2022). When the urgency requires it, as in the case of the establishment of the European Public Prosecutor's Office, granting increased competencies to the Commission would allow decisions to be taken to approximate tax legislation, especially in the field of VAT, where fraud has reached alarming levels, the Union budget being seriously affected, and financial interests being harmed.

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<sup>1</sup> “Enhanced cooperation (Article 20 of the Treaty on European Union and Title III of the Treaty on the Functioning of the EU) is a procedure whereby at least nine EU Member States have the right to establish advanced integration or cooperation in an area within the EU structures when it becomes clear that the EU as a whole cannot achieve the objectives of such cooperation within a reasonable period”, <https://eur-lex.europa.eu/RO/legal-content/glossary/enhanced-cooperation.html>, accessed on: 09.04.2024

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