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Free Competition and Fiscal Policy in European Union

Maria do Rosário Anjos

Associated Professor in Law – Lusófona University of Porto Polytechnique Institute of Maia Portucalense Institute for Legal Research, Portugal

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ABSTRACT

Fiscal policy and the harmonization of tax laws are extremely important in order to prevent distortions of free competition in UE. The process of European Union construction is based on integration and liberalization of markets in order a loyal and free competition. This issue is really important in order to crisis superaction. In this context the fiscal policy has a very significant impact on countries economics in EU and on company's management, especially for those most exposed to globalization. The impact of taxes on free competition, economic growth and employment is quite evident since the EU foundation. So, it would be expected a more significant progress towards fiscal harmonization among EU countries. However, until now the question of tax harmonization had no results. It remains a sensitive question in EU. Almost two decades after the entry of the Euro, after a deep economic crisis that endangered the European project, face to BREXIT, we raised some questions as base to this work: what are the political and institutional limitations to tax harmonization in EU? Why there are no further progress was made in the field of tax harmonization, at least, in company's income? How does this affect social cohesion? What are the effects on economic and social cohesion?

This study intends to reflect on the political and institutional constraints of the tax harmonization, quite necessary to the effective process of economic and social integration within the EU. As methodology, we will use a comparative study about income taxes in several EU countries and the relation to GDP, as well the deductive method to analyze the results we find and some reference studies on the subject.

In conclusion, we will present the analyze the results and try to answer to these questions. With this study we pretend give a contribution in order to find an answer to the investigation questions.

1. Introduction

The process of building the European Union (EU), extended to an increasing number of member states and the process of globalization, are based on a logic of integration and liberalization of markets in an environment of free competition. Therefore, in EU, a strict free competition defense was guaranteed from the first hour, eliminating all distorting factors from the free movement of goods and services between member States. In short, all abusive or restrictive practices of free competition within the EU are forbidden.

In this context, the internal fiscal policy of each member state has taken on enormous importance, being an instrument available for governments to control the internal public finances, but also to create more attractive conditions for investors, for large international capital and even for the most qualified human capital. In a word, the internal tax policy of each Member State may distort free competition, having an effect equivalent to some of the abusive or restrictive practices of competition forbidden by the Treaty. In a word, we faced a unfair fiscal competition between the UE member States, what is a way to promote a disloyal competition, a real distortion of free competition, against the spirit of the EU Treaty.

Is well known the very significant impact of tax policy on businesses, especially for the most exposed to globalization, particularly with regard to the location and development of their activities and the development of their activities. (Oliveira & Santos, 2005, p.416).

The impact of taxation on economic growth and employment is indisputable. It is normal and legal for companies to seek better taxation for their activities in EU or all over the world, i.e. lower tax rates, ensuring their best level of income. Workers also seek the best pay for their work, i.e. better salary or lower tax or, sometimes, both.

On the other hand, economies with the biggest budgetary balance problems, with low levels of economic growth and employment, are the most penalized or sacrificed because they have to taxed the average incomes with high taxes, in order to ensure the stability of their public finances. It means a vicious cycle that lead to the impoverishment of the middle class, the exit of companies and human resources to other member states, which slows the growth of the economy and endangers economic and social cohesion in the EU, the fundamental pillar for the success of the European project.

If we take a look for the EU countries, we can say that those whose governance is less rigorous on budgetary balance, with higher public expenditure, are the same that usually use the tax policy to get some advantages over the other member States. Usually to get foreign investment, they offer significant tax benefits to companies and people, por instance, to retired people from other countries of EU that change their residence for the host country.

Is amazing how can this happens between countries members of the EU and almost nothing was done. The European institutions are keeping this situation since a long time ago, in spite of the solution is known: EU needs more tax harmonization.

Almost two decades after the entry of the Euro, after a deep economic crisis that endangered the European project, face to face with BREXIT and with "the sound" of other claims for independence in other European countries, we can say that it would be expected a more significant progress in tax harmonization between EU countries . However, so far, this remains a sensitive issue in the EU.

1.1 The Investigation Objective

Considering the framework described in the introduction, we raised some questions as a proposal for investigation as a base to this work:

a) what are the political and institutional limitations to tax harmonization in EU?
b) Why there are no further progress was made in the field of tax harmonization, at least, in company's income?
c) How does the current situation affect social cohesion?
d) What are the effects on economic and social cohesion in the next years?

This study, developed in a Seminar about free competition, for the Master in Law Degree, in ULP, intends to reflect on the political and institutional constraints of the tax harmonization, quite necessary to the effective process of economic and social cohesion within the EU.

1.2 Methodology

As methodology, we begin with a summary of literature review, collecting the main doctrinal references on the subject. The present work is a result of the first part of a research project aimed at Haan & Sturm analysis, published in the 1994 about this issue: "Political and institutional constraints for fiscal harmonization in the EU" and revisited in 2018 by the same authors. So many years after the beginning of European integration process it seems that nothing was done about tax harmonization and equality promotion between the EU members States. Even face to the greatest economic and financial crisis of ever and the evidence of the risk of EU disintegration.

So, our proposal is to investigate if the conclusions of that analysis were confirmed, or not, within the following 15 years. Therefore, the literature review goes back to the 1990's and, after that, we conclude with a contemporary literature review and the analysis of the assumptions then defined by those authors, in order to find the answers to the questions put in discussion about how to combat the unfair tax competition between member states and move towards greater and effective fiscal harmonization.

The second phase of this investigation will be completed with the relevant data collected in some EU countries. Because the group is very extended, we selected for comparison the following countries: Greece, Portugal; Netherlands; Ireland and Luxembourg, between 2015 -2018. This second part will not be included in this work, as its extension would not allow it, in view of the defined publication rules. But it will certainly be presented in a future work paper, after the collection of all data, which is still ongoing.

We use a comparative study about income taxes in these EU countries and the relation to GDP, as well the deductive method to analyze the results for conclusion.

The findings of the research carried out are just a summarized exposition of the theme. The investigation questions are very complex and can be analyzed from various perspectives. In this work we focus on the analysis of the political and institutional limitations that have contributed to the non-implementation of tax harmonization in the EU until now.

The second part of this research will be finished soon, with the systematization of data collected on the evolution of budget deficit levels, public debt and the level of income taxation in a wide range of EU countries. The aim of this analyse is to find the relation between the effects of tax competition within the EU over the past 15 years and the impact on economic growth and GDP developments. As final objective, it is intended to assess whether there is a relationship between countries with higher public debt and higher rates and greater progressivity of income tax.

2. Literature Review

The bibliography review shows that this issue is not new. On the contrary, the idea of tax harmonization in the EU as a precondition for fair and loyal competition between Member States has been debated since, at least, the 1980s.

The starting point is the study of Haan & Sturm analysis, published in the 1994 about this issue: "Political and institutional constraints for fiscal harmonization in the EU". Two decades later we can say that your conclusions were right? Tax harmonization in EU not moving forward because political or economic reasons?

This question are being study all over two decades or even more. The point of In 1999 BARRY BRACEWELL-MILNES and BANSTEAD did realize a study about "Tax Competition: Harmful or Beneficial?" and did conclude that the reason for the stop of tax harmonization in EU are the political limitations and constraints between Member States (MILNES & BANSTEAD, 1999).

The same conclusion is take by EASSON in a similar work about "Taxation in European Comunity" (EASSON, 1999). FREITAS PEREIRA, in a study about "Harmful Tax Competition - The European Union Code of Conduct" advocates the need to introduce discipline and ethics into

European tax systems to combat fiscal fraud and anti-competitive practices (PEREIRA, 1998).

In this sense, many other reference authors have been pronounced over the last fifty years of European construction, among whom highlight: G. CLOSE, in "Harmonisation of Laws: use or abuse of the powers under de EEC Treaty?" presents a more restrictive view about the powers enshrined in the Treaty on harmonization of law (CLOSE, 1998). COLLINS and HUTCHINS in a work about "Articles 101 and 102 of the EEC Treaty: completing the internal market" defend that free competition requires a loyal fiscal competition, and so, some tax harmonization (COLLINS & HUTCHINS, 1988).

Another Author, BRESSAND, in a remarkable work about "Vers une Économie Mondiale à trois vitesses?" in which it draws the attention of European leaders to the worsening inequalities between Europe's weakest economies and the strongest, which endangers the economic and social cohesion, necessary for ensuring the effective union between Member States (BRESSAND, 1985). In the same direction point PAUL MASON and MARK TAYLOR, in a work about "Fiscal Policy Within Common Currency Areas" and GABRIEL MONTAGNIER (1993) in a work specifically about "Harmonisation Fiscale Communautaire" have any doubht about tax harmonization as a requirement to the economic and social cohesion in EU (MASON & TAYLOR,1993; MONTAGNIER, 1993).

All these authors are greatly influenced in their works by VERHOEVEN, one of the first researchers of the subject of harmonization of legislation in the EU and its effects. In a work published in 1985, "Communauté Européennes et Rapprochement dês Legislations", Verhoeven defend that the future of common Europe depends on that harmonization, even considering that in tax field the question will take some time to be implemented (VERHOEVEN,1985). We find the same point of view in WAELBROECK, in the study about "L´Harmonisation dês Régles et Normes Techniques dans la CEE" (WAELBROEK, 1986). Both open the discussion on the need for harmonization of EU laws to go far beyond technical standards and measures of equivalent effect preventing free trade, pointing to the need to move forward in the field of fiscal harmonization, primarily in indirect taxation but also in the direct taxation of undertakings and individual persons. (VERHOEVEN, 1983).

The European Commission, after the implementation of VAT as a general (indirect) excise duty in all member countries has produced, in the last 40 years, numerous reports in defense of the importance of tax harmonization of direct taxation within the European Union. As an example, the Report presented by the European Commission, in 1992, about "Conclusions and Recomendations of the Comunitee of Independent Experts on Company Taxation" and also another joint publication by the European Commission and Eurostat in 2004 on " Structures of the Taxation Systems in the European Union 1995-2002". The issue gained new interest in the context of the economic crisis. MITCHELL and DANIEL J. in "The Economics of Tax Competition: Harmonization Vs. Liberalization", consider the importance of fiscal harmonization as fundamental issue for defending free competition in EU (MITCHEL & DANIEL, 2004).

Between 2005 and 2015, we have not register of studies about this issue. The global crisis put on table other concerns, specially the repair of the financial and bank systems.

More recently, VALDIS DOMBROVSKIS, as keynote in a conference about "Challenges and impacts of implementing Basel III", did consider fundamental give some steps in fiscal harmonization (DOMBROVSKIS, 2019).

On 15 November 2017, the European Fiscal Board (EFB) published its first annual report and reviews the way the EU fiscal framework has been implemented, highlighting imperfections and scope for improvement. Looking ahead, the challenge will be to adapt the fiscal framework to the return of normal and good economic times, while building the buffers necessary to withstand future crises.

An important report published in 2019, by LAMLA, MICHAEL J. & LEIN, SARAH M. & STURM, JAN-EGBERT, about "Media Reporting and Business Cycles: Empirical Evidence based on News Data," point to a relation between lack of tax harmonization and public finance default, with a negative effect over the weaker economies in EU (LAMLA & LEIN, 2019).

This problem is even more serious if we consider the impact of globalization and the free competition allowed worldwide between countries with such different realities. SAVINA GYGLI & FLORIAN HAELG & NIKLAS POTRAFKE & JAN-EGBERT STURM, in a study about "The KOF Globalisation Index - Revisited" some interesting but worrying results (GYGLI, HAELG, POTRAFKE & STURM, 2018).

We ended up as we started, that is, with Jakob de Haan & Jan-Egbert Sturm, and his study published in 2016, "Finance and income inequality: A review and new evidence", in which they conclude that two decades later there is still no political will to do the right thing and change what is wrong in EU. The EU members behave in fiscal matters as rivals and not as members of an economic and monetary union. Are they right?

3. Political and Institutional Constraints of Tax Harmonization in the European Union

Tax policy is a widely used instrument by some Members States of the EU to attract big corporations' and investment, which reinforces the importance of achieving tax harmonization in income direct taxation. In a context of free competition and respect for the rules of Community law on competition law, any tax discrimination between Member States has a strongly perverse effect.

After the worst economic crisis of ever, we found that EU concern focused on the financial system, ignoring the growing fiscal competitiveness among Member States.

As VALDIS DOMBROVSKY said in a recent speech as keynote in European Commission "ten years ago, the financial and economic crisis brought widespread disruption to global markets. The contagion spread easily into Europe's banking sector. It showed us why we need an integrated and stable financial system, why we should work together to reduce risks, and why we depend on a strong banking sector to fund jobs and growth. The European banking sector is now in a much better position than ten years ago" (DOMBROVSKIS, 2019).

In the same period the tax competition grew between Member States, on a way of fight against the economic crisis and the EU failed, once again, to stop this problem. It missed a good opportunity to move forward with effective tax harmonization measures needed to introduce some ethics into fiscal competition between Member States economies.

3.1 What are the Political and Institutional Limitations to Tax Harmonization in Eu?

The first evidence is: tax harmonization needs political will. The question is not economic but strictly political. The conscience of the problem exists since the first hour of the European project construction.

The concept of tax competition implies the existence of several jurisdictions with the power to determine (independently) the taxes charged and presupposes the existence of mobility of persons, goods or capital. That means, each Member State choose their tax policies in view of their objectives of people, capital and corporations' mobility. International tax competition is a consequence of the need for states to adapt taxes to social welfare, investment and scientific development seeking to attract investment, or at least prevent the movement of the existing one. Trying to keep some social wellfare and equity. Subsequently, there is fiscal competition when the tax system of a jurisdiction affects the tax system of a second jurisdiction, for example by reducing the tax revenues of the latter entity. In other words, tax competition exists when taxpayers can reduce the tax burden by shifting capital and the work of jurisdictions with high levels of taxation to jurisdictions with reduced rates (ANDRADE, 2016; MITCHELL, 2004).

Several Members States look at fiscal harmonization as a threat, a way to lost sovereignty and internal decision-making power. However, the truth is that in recent EU history, that is, in the last 15 years, many member states have lost their sovereignty by indebtedness and inability to meet the Maastricht criteria. The public finances default of several countries in EU proves that something have failed and that we must change to save the EU.

Since then, the entire focus of the European institutions has focused on the analysis and surveillance of monetary and financial markets, neglecting the social part, the concrete life of Europeans. Much has been written since then on economic and social cohesion but very little has been made in the field of fiscal harmonization, something essential for achieving effective cohesion among Europeans, combating inequalities between the different member states, cause of disunity in times of economic difficulties (HAAN & STURM, 2016).

The truth is that the EU has been in economic crisis since 2003, aggravated in 2006, boiling since 2008, in total implosion since 2011 and, despite some recovery (probably without sustainability), the result is an EU in risk of political disintegration, the crisis of the rule of law, democracy and the Welfare State. The European dream is increasingly in danger and it is worth fighting for it, for the union of peoples, for solidarity between member states, economic and social development, in a word, for peace among all Europeans.

In this context, fiscal harmonization are, again, in the center of discussion between EU Member States. Not because of the social concerns but because states feel they are losing tax revenue. The tax competition is, indeed, a way of disloyal competition between European Member States. That means, in defense of tax revenue, so important to the states, we believe that the issue will necessarily move forward. We don't know when or how, but we know it has to happen to save the EU.

So, the first conclusion is that the greatest limitation to fiscal harmonisation in the EU is the lack of policy will generated in rivalry between member states. Between solidarity and the biggest gains for its economies, the second remains the option. The EU is not really, yet, a true union but only a set of countries where the historical rivalries of the past persist.

But will there be other limitations? Of course, yes, and Hann & Sturm's analysis is a good reference for understanding them.

3.2 Hann & Sturm Analysis

It is particularly interesting to refer the thought of Jakob de Haan and Jan-Egbert Sturm (HAAN & STURM, 1994; 2016). In the point of view of these Authors: "game theory suggests that cooperation is harder when the number of players is large...", with the purpose of highlighting the disadvantages of governance of great number of players and, also, in internal plan the disadvantages of governance by alliance or coalition governments.

They believe that the success of the objective of harmonization of direct taxation between member states depends only in part on macroeconomic determinants, considering that the main condition for advancing tax policy in the European Union depends on the verification of "certain political and institutional constraints". According to their line of thought, "the most important constraints are those that result from the political system itself and the political faction in power."

Its analysis is based on idea that the governments of the member states guide their fiscal policy according to their economic reality, with a certain political volatility of the ruling parties determined for reasons that require them to take policies that deviate somewhat from the traditional dichotomy between left and right-wing policies, without a line of direction defined according to the macroeconomic objectives to be achieved, but previously determined by the political and electoral cycles that they impose solutions to satisfy electoral customers in the short term. In this analysis, the economic and legal determinants equally important in the evolution of tax policy in the European

Union are clearly relevant in view of the constraints resulting from the political system itself.

The main ideas advanced by these authors, in 1994, was as follows:

a) member states of Community Europe have been endeavored to converge their tax policies;
b) despite the progress already made in this regard, they are not as satisfactory as it would be desirable, from the outset because the level of public debt in different countries is quite different;
c) two distinct groups of countries are highlighted in this regard, a first group consisting of countries whose public debt is lower or very close to the Community Europe average (countries from center and north Europe) and another group whose public debt is higher (countries from south Europe);
d) there are also marked differences in the level of public expenditure supported by the different governments;
e) political and institutional changes that may occur and affect the formation of national political programmes are invoked as an explanation of the setbacks of different countries with respect to the continuation of tax policies.

In the end, we conclude that political constraints aggravate the economic situation of the weaker countries, so political and economic variables are combined, generating a total absence of political will to move forward with fiscal harmonization. Neither group of countries seems to have an interest in tax harmonization because the loss of one group (the southern countries) results in the gain of the other (countries in central and northern Europe).

So, can we still expect some progress in tax harmonization in the EU?

Can the EU overcome the fiscal competition environment and move towards progressive tax harmonization?

4. The Current Situation

According HAAN & STURM study, reviewed in 2016, the conclusion is that there still are some important constraints in determining advances and setbacks in achieving fiscal harmonization in the European Union. Almost everything is in the same status as in 90's. But what is most important is, in fact, the conclusion that the first and main condition for progress is the political system itself, which significantly affects the process of harmonization and tax unification. For European politicians, tax harmonization is not interesting. Giving up some fiscal sovereignty would be to see weakening your own power of influence and decision, and that in politics, is something against nature.

Once again, HAAN & STURM present us a very clear idea about our current situation in EU.

In fact, nowadays, in 2019, the current situation in EU shows:

a. a large the number and frequency of government changes;

b. the sharing of powers between democratic social parties and other left-wing parties;

c. new political parties, some of them, eurosceptics;

d. the dispersion of political power and some inability to decide (ex. BREXIT);

e. the variable of budgetary procedures and requirements seems unacceptable for new generations;

f. risk of disintegration within the EU;

g. growth of extremist political forces.

So, we conclude that the way for tax harmonization is, now, so far than in 90's.

However, we have no doubt, that public debt is positively determined by internal institutional instability, and the effects of political instability and minority or coaligation governments are negative for public finances.

Political crises sometimes encourage the change of exhausted and ineffective systems, which is positive. But, usually economic and financial crises impose deeper changes. We hope that EU could benefit with that That is why we believe that perhaps economic and financial constraints will force them to move towards a path of greater union between member states. This way, EU can do an effective step forward in intensifying the process of tax harmonisation in the EU.

5. Globalisation and Tax Competition

The last few years have been marked by the worsening public deficits in EU countries, which will certainly have greatly contributed to the negative developments in the social situation, especially high unemployment rates. More and more pressing commitment has become to reduce financial imbalances. That is why the effort made in the countries of the European Union, in particular, for fiscal consolidation is fundamental.

But the last ten years have also been marked by the deterioration of the budgetary situation in almost all member countries, which was largely due to the conflicts that have erupted around the terrorist threat.

On social level, the EU has been faced with serious social problems, and emigration to Europe, the humanitarian crisis of people in scape from war and poverty, did not facilitate progress towards strengthening the spirit of the European Union.

However, economic and social reasons evidence of the need for further progress towards combating tax evasion and avoidance caused by unfair tax competition within the member states themselves. This will be, probably, the opportunity to adoption towards greater tax harmonization in the EU in next years.

6. Conclusion

Considering the initial questions, as proposal for the investigation, and all the theoretical work developed was possible to find some answers.

- **What are the political and institutional limitations to tax harmonization in EU?**

First of all EU needs political will to move towards fiscal harmonization.

The different level of public debt between the EU countries is a difficult condition.

The existence of two distinct groups of countries are highlighted in this regard, a first group consisting of countries whose public debt is lower or very close to the Community Europe average (countries from center and north Europe) and another group whose public debt is higher (countries from south Europe);

There are also marked differences in the level of public expenditure supported by the different governments;

The political and institutional changes all over the European countries.

- Why there are no further progress was made in the field of tax harmonization, at least, in company's and personal income?

EU needs a greater convergence of economic interests between Member States. Actually, the political constraints aggravate the economic situation of the weaker countries. It seems that no Member State have an interest in tax harmonization because the loss of one group (the southern countries) results in the gain of the other (countries in central and northern Europe). For European politicians the tax harmonization is not interesting. Giving up some fiscal sovereignty would be to see weakening your own power of influence and decision, and that in politics, is something against nature.

- How does the current situation affect social cohesion?

Almost everything is in the same status as in 90's. In 2019, the current situation in EU shows a very difficult situation. A large the number and frequency of government changes; the sharing of powers between democratic social parties and other left-wing parties; new political parties, some of them, Eurosceptics; the dispersion of political power and some inability to decide; the variable of budgetary procedures and requirements seems unacceptable for new generations; the risk of disintegration within the EU; growth of extremist political forces.

So, we conclude that the way for tax harmonization is, now, so far than in 90's. The only way to reverse this situation can be the fight against evasion and tax avoidance.

- What are the effects on economic and social cohesion in the next years?

If nothing is done economic and social cohesion will definitely be hampered by unfair tax competition between the member states themselves.

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