

Tax Coordination and the European Court of Justice*

H.-Dieter Wenzel[†]

Juergen M. Jilke[‡]

University of Bamberg

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Abstract

Although the European Single Market is regarded as fully realized since 1992 and Member States are required to act coordinated, one can still find national acts running counter to an efficient functioning. Especially, all national measures which yield an unequal treatment of domestic actors compared to foreign actors, transgress the European Single Market. This is unacceptable with regard to the newly established *Treaty on the Function of the European Union TFEU*. There is, however, one major problem: While the sphere of indirect taxation, according to Article 113 TFEU, is subject to a harmonization without detour, the sovereignty of direct taxation is still located on member states level. Since it has become more and more acknowledged that the sphere of direct taxation plays a major role for the realization of the European Single Market, an inefficient legislation seems to be the result when member states competencies are deployed in order to achieve supranational goals.

Within the scope of this presentation the nature of the inefficient legislation as well as the reasons of its maintenance during decades will be discussed. In order to achieve this aim, the eminent importance of corporate income taxation will be expounded, first in quantitative and second in qualitative respect. The characterization of the quantitative and qualitative importance for the EU as well as for the member states will disclose immediately, how the current legislation came about. In this context the European Court of Justice plays a major role, which surpasses mere power of jurisdiction. Following up on that, the logic behind the European Commission’s proposals can be examined.

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*The presentation is given by Juergen M. Jilke in Tirana Albania.

[†]For any questions and comments please contact the author: heinz-dieter.wenzel@uni-bamberg.de

[‡]Questions can also be addressed to juergen.jilke@uni-bamberg.de