
INTRODUCTION

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The impact of the case-law of the Court of Justice of the European Union (CJEU) on the application of tax regulations is unquestionable, both in judiciary practice and in legal scholarly writings. Member State courts routinely take into account CJEU judgments and orders in the process of issuing tax decisions. It is a standard procedure, based on the legal norms resulting from the provisions of national Constitutions and the Treaty on the Functioning of the European Union. The incorporation of CJEU case-law into the legal systems of the EU Member States has been discussed in many legal studies and analyses.

However, the impact of CJEU jurisprudence on the process of passing tax laws is far less commonly addressed in the scholarly discourse. This somewhat limited interest probably results from the fact that, as a rule, CJEU judgments do not directly interfere with matters governed by national laws. Indeed, the CJEU is not empowered to invalidate national legal acts even if they have been passed in violation of EU law.

While theorists rarely take an interest in the CJEU's influence on law-making, the phenomenon is nevertheless of significant importance for tax regulations, both in theory and in practice. Indeed, it encompasses a number of issues which – if clarified – may contribute to further development of tax law studies and indeed improve the quality of taxation-related legislative processes in EU Member States.

This monograph sets out to demonstrate that some changes in tax legislation in selected EU Member States were inspired by the CJEU. Given the large number of rulings issued by the CJEU in tax-related cases, the studies presented here are limited to those involving excise duty taxation. This particular tax usually attracts less attention than value added tax, which is regularly explored in studies on taxation laws. Nonetheless, excise duty accounts for a significant share of national budget revenues. In addition, at a harmonised level, excise taxes are imposed on only a few types of goods. As a result, CJEU decisions may have a significant impact on excise taxation efficiency, which only adds to their importance.

The studies presented here are based on the assumption that the consequences of CJEU decisions may have an impact (albeit indirect) on legislative processes,

despite the fact that in the current legal situation defined in the Treaty the CJEU does not directly interfere in lawmaking, and thus its rulings should be primarily applied at the stage of the application of law.

As a result, three groups of CJEU rulings need to be analysed.

Firstly, rulings issued in cases initiated by action brought by the European Commission, where the Court found that national regulations do not conform to the provisions of Community law.

Secondly, rulings in cases initiated by a reference for a preliminary ruling by national courts, in which the Court found that EU regulations are contrary to the provisions of national laws.

Thirdly, in the absence of adequate rulings relating to the legal system of a given country, it is necessary to examine whether there are other CJEU decisions that have had an impact on lawmaking in the area of taxation.

With respect to the above groups of CJEU rulings, consideration should be given to whether the non-conformity of national tax regulations with EU law has resulted or should result in legislative amendments to the extent challenged by the CJEU.

The studies will provide answers to the following questions: (1) whether the CJEU's case-law has had an impact on excise duty regulations in EU Member States; (2) to what extent it has contributed to changes in this regard; (3) to what extent the amendments made by the legislator have taken into account CJEU rulings; and finally (4) whether CJEU rulings have contributed to the improvement of excise duty legislation in the Member States.

Given the theoretical importance of the analysed issues, studies on tax legislation are accompanied by papers addressing the relationship between the judiciary (represented by national courts) on the one hand, and law-making processes on the other, as seen from Constitutional, historical and academic perspectives. As a matter of principle, the courts are classified bodies that apply the law, but are not involved in lawmaking processes. Putting aside the importance of legal precedent in countries whose legal systems are dominated by common law, the influence of the judiciary on lawmaking in systems mainly based on written law cannot be completely disregarded. Such influence may result from legal regulations granting courts the power to interfere with the content of the written law, in particular by eliminating provisions inconsistent with the generally accepted axiology, which may be derived in particular from Constitutional or treaty provisions. The impact of courts on lawmaking may also result from the authority vested in the judiciary. A negative view on an existing regulation, expressed taking into account that regulation's conformity with higher-tier legislation, or the result of an interpretation arrived at by a court, may constitute grounds for the national legislature to eliminate or amend the provision in question. This is how courts may and do contribute to an improvement of the law by highlighting defective regulations the application of which gives rise to reasonable doubt.