Introduction to European Studies: A New Approach to Uniting Europe

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Adam A. Ambroziak

New Challenges for the Free Movement of Goods within the Internal Market of the European Union

Introduction

It is generally accepted, after Béla Balassa, that the common market is the third stage of economic integration, preceded by the free trade area and the customs union. However, from the practical point of view, it should be stressed that these stages do not necessarily have to occur in order and that not all of them have to precede the common market. Nevertheless, all the barriers in exchange between the states constituting an economic organism that are eliminated as a consequence of the establishment of a free trade area and a customs union should also not exist under the common market, which leads to ensuring a free movement of goods, as well as the other freedoms connected with the provision of services, transfer of capital, as well as employment.

In order to ensure free movement of goods under the EU internal market (and not only the lack of traditional barriers to trade, as it is the case with a free trade area or a customs union), physical, technical and fiscal barriers have been additionally eliminated. The first group is related to the customs control at the border, which caused entrepreneurs and the EC Member States to incur significant costs. Exporters had to produce additional freight papers connected with the customs clearance, which de facto involved no customs duties as a result of the customs union established in 1968 between the EC Member States. The second group of barriers which were eliminated in relation to the establishment of the internal market concerned various technical requirements used by the Member States. As a result, an entrepreneur selling goods in different EC States was compelled to comply with technical requirements of various Member States and, sometimes, to obtain national safety certificates. This was both costly at the production stage and time-consuming at the sale stage. The third type of barriers concerned the different ways of calculating taxes, different tax bases and different tax rates in EC Member States, which caused problems for entrepreneurs conducting business activity in more than one country.
Halting of integration processes in the 1970s

The first stage of economic integration, which was to be completed by the end of 1969, was the customs union. Gradual reduction of customs duties and other traditional barriers in the trade between the Member States of the European Economic Community (EEC) of that time quickly started bringing positive results. In consequence, ongoing liberalisation was sped up twice, resulting in the creation of the customs union (with common customs duties) on 1 July 1968. Apart from the economic reasons, the political context of these decisions was important as well. It is worth noting that within the framework of the European Free Trade Association, established under the Stockholm Convention, there were plans of creating a free trade area by the end of the 1960s, but the works were expedited and the goal was achieved already on 1 January 1967.

Article 8 of the initial version of the Treaty establishing the European Economic Community (1958) provides for the creation of a common market in a transitory period within 12 years from the establishment of the EEC. It should be stressed, however, that even though the stages of making decisions by Community institutions regarding the creation of the common market were clearly specified in the initial version of the Treaty, it failed to provide an equally precise definition of, for instance, the scope of substantive law, which should be adopted in order to ensure the existence of the four freedoms.

Furthermore, the early 1970s saw two important events take place, which led to significant slowing of the pace of integration within the EEC. One of these was the collapse of the Bretton Woods System. In the 1960s, there were two growing phenomena in international monetary relations: the emergence of the so-called economic liquidity problem and, due to the intervention in the London gold market, gradual depletion of American gold reserves. On 15 August 1971, the exchangeability of the USD for gold was suspended and most countries introduced more flexible or even completely fluid exchange rates for their currencies, resigning from the central exchange rate to the USD. In many cases this meant significant worsening of the commercial situation and the exporters’ competitiveness, also within the EEC. The early 1970s is also when the so-called oil crisis took place. It caused production to become more expensive and lowered the competitiveness of European commodities in international markets. As a result of the said phenomena, the individual Member States strived to increase their influence in the functioning of the market economies through granting public aid and supporting of individual entrepreneurs and certain branches.

The weakening of the rate of economic growth due to slowing down of the dynamics of exports as well as the stagnation of investments in Europe contributed to the widening of the technological gap and lowering of the international competition ability of the EEC in comparison to the USA and Japan. It is then that the set of phenomena which appeared in the 1970s and lasted until the mid-1980s gained the nickname ‘Eurosclerosis’. These phenomena included:
- weakening of investments in the sectors generating the biggest demand,
- falling growth rate of jobs and supply of highly qualified human capital,
- widening of the technological gap and a decrease in competitiveness of the EC in the international arena.

It is also worth noting that the abovementioned time is also the period of gradual enlargement of the European Communities by new Member States – mainly countries with a lower degree of economic development – with simultaneous halting of integration within the organisation. This created many additional socio-regional problems, manifested by high unemployment.

Another essential impediment to the creation of the common market was the requirement of unanimity in making most decisions by the Council of Ministers of that time. This involved the need to obtain acceptance of all Member States for the new legal instruments which were to become the foundation of the common market.

Since the early 1980s, we have observed gradually growing political support for the next stage of economic integration. During the meeting of the heads of states and governments in Copenhagen in December 1982, the European Council placed the Council of Ministers under an obligation to adopt priority legal acts regulating the internal market by March 1983. During the subsequent meetings, the European Council (June 1984) pointed out the necessity to identify all police and customs-related barriers in the movement of persons between the Member States and to implement (December 1984) European standards. The essence of these political recommendations was the European Council’s decision of March 1985, when it pointed out the need to take actions by 1992 in order to create more friendly conditions for stimulating the development of enterprises, competition and trade under the single market. In accordance with this decision, the European Council recommended the Commission to present a detailed programme containing the schedule of legislative works before the next meeting of the European Council, that is by June 1985.

It is also worth stressing that it is already in the 1980s that, in order to confirm its integrity, the term ‘internal market’ became commonly used, while the Treaty establishing the EEC and the documents of Community institutions were still referring to the ‘common market’.

**Legal bases of the creation of the EU Internal Market**

In response to the European Council’s motion, in 1985 the European Commission presented the White Paper on Completing the Internal Market.\(^1\) It included suggestions and proposals for further legislative work, so that within 7 years the said internal market could be created. At the same time, three funda-
mental barriers hindering the functioning of entrepreneurs within the framework of free movement of goods, services, persons and capital were identified: physical, technical and fiscal barriers.

On the basis of the proposals included in the said document, the Single European Act (SEA) was adopted and entered into force on 1 July 1987. It belongs to the so-called primary legislation, on the basis of which the provisions of the three treaties establishing each of the European Communities were amended. The political consensus it contains was to prevent further fragmentation of the Community’s markets and, as a result, lead to the achievement of the goals contained in, among others, the Treaty establishing the EEC. Article 13 of the SEA added the Article 8a to the Treaty establishing the EEC, which stipulated that the Community would take actions aimed at gradual introduction of the internal market by 31 December 1992. This means that primary legislation provided for certain actions, the effect of which was to be immediate, and not declarative decisions with unspecified date of implementation. Furthermore, it was specified that the internal market was an area without internal borders in which free movement of goods, persons, services and capital was ensured (Article 26 Section 2 TFEU).

In order to achieve this goal, the SEA provided for changes in the decision-making process of Community institutions. The 1958 version of the Treaty establishing the European Economic Community stipulated that, after a transitional period, qualified majority of votes shall be applied in issues such as: the common agricultural policy and the transport policy. It meant that the members of the Council were assigned votes of different weight. On the basis of further institutional reforms of the EC, the range of issues in which decisions were made by a qualified majority of votes was expanded. In consequence of the entry into force of the Single European Act, this system was also applied to most decisions concerning the newly established internal market, excluding the fiscal policy, movement of employees and the social policy (where the need for unanimity in the Council was ensured).²

The recent changes in the treaties, introduced by the Treaty of Lisbon, stipulate (Article 26 of the Treaty on the Functioning of the European Union – TFEU) that the Union adopts measures in order to establish or ensure the functioning of the internal market and the Council, at the Commission’s proposal, sets the guidelines and conditions necessary for ensuring sustainable progress in all the relevant sectors. It is also worth stressing that in the subsequent Article 27 TFEU it has been indicated that when drawing up proposals aimed at achieving the aforementioned objectives, the Commission shall ‘take into account the extent of the effort

that certain economies showing differences in development will have to sustain for the establishment of the internal market’.

Elimination of tariff-related barriers in the movement of goods between the Members of the EEC

The process of creating a free trade area and/or a customs union involves the elimination of the traditional barriers to trade: that is customs duties, quantitative restrictions, measures equivalent in effect to customs duties and those equivalent to quantitative restrictions. While the two former categories of barriers are relatively well defined, for the two latter it is difficult to provide an unambiguous and clear interpretation, since they include all the activities of the local and regional authorities of the Member States and of interest groups (entrepreneurs), resulting in hampering the trade exchange between states. This hampering can be felt when a commodity is crossing the border, but also, with the ongoing process of integration, it is more and more often encountered as, for instance, a ban on advertising or an order to conduct sales in specified places.

In the Treaty establishing the EEC, the Member States undertook, in relation to mutual trade, to observe the standstill principle, i.e. to raising the existing barriers to trade (including customs duties) and to abstain from introducing new ones, as well as to introduce liberalisation through eliminating export duties and charges having equivalent effect (Article 30 TFEU), quantitative restrictions on imports and all measures having equivalent effect (Article 35 TFEU). In fact, customs and export duties were reduced to zero and all export restrictions (with a few exceptions for agricultural products) were removed by 31 December 1961. Import duties were to be eliminated by the end of 1969, but the positive effects of trade exchange and the speeding up of liberalisation in another European integration group (the European Free Trade Association – EFTA) resulted in two decisions which quickened this process in the EEC. In the end, the customs union in the EEC started functioning on 1 July 1968 – one and a half year earlier than stipulated in the Treaty. This means that all restrictions in trade between the Member States were eliminated and common customs duties were introduced.

However, there are still some instances when the Member States may employ restrictions in trade justified by issues related to public morality, public order, public safety, protection of health and life of people and animals or plant protection, protection of national cultural heritage with artistic, historical or archaeological value, or protection of industrial and commercial property. These bans and restrictions should not constitute an instrument of arbitrary discrimination or hidden limitations in the trade between the Member States. However, it is worth stressing that the Member States are often using this clause to actually protect their entrepreneurs and the domestic market through discrimination in the form of additional requirements or limitations imposed on goods imported from other parts of the EU.
Elimination of physical barriers in the EU Internal Market

As previously mentioned, physical barriers consisted in the existence, at the borders between the Member States, of controls, such as: veterinary control, fitosanitary control, control of toxicity of waste, safety of transported goods, control of transport licences. They were causing an increase in the costs incurred by experts and, in the end, by the consumers. Higher costs resulted from hold-ups at the borders and the resulting delayed introduction of the goods to the market, as well as from the need to fill in additional documents required for the crossing of the border. Significant costs were also incurred by the administrations of the Member States, which still had to maintain customs services, even though under the customs union they were not collecting duties any more. It is also worth noting that with border controls in place, every exporter had to produce the appropriate documents in exports to different Member States.

On the other hand, we should also consider the costs incurred by state authorities and resulting from maintaining the border. Both the customs services and the border guards performing controls at the borders were a financial encumbrance for the budgets of the EC states. Ultimately the taxpayers had to cover the costs in their taxes paid to the state budget.

In the second half of the 1980s, the costs of physical barriers incurred by the entrepreneurs were estimated at ECU 7.9–8.3 billion and the costs incurred by the Member States at ECU 0.5–1.0 billion. This meant that goods imported within the EEC were always less competitive in terms of price as compared to national products, as exports always resulted in increased costs and, consequently, increased price.

The elimination of physical formalities began with the introduction of the Single Administrative Document on 1 January 1988. It constituted a facilitation, as its format, scope and means of providing data were made fully uniform.

The existence of border controls was not suppressing the illegal movement of goods or persons, but rather constituted a hindrance in the movement of legal commodities. The consumers and taxpayers incurred costs resulting from the maintenance of the border, which constituted a barrier to the development of trade. Border controls were particularly burdensome for small and medium entrepreneurs, who would often have to participate in them personally. As a result, the queues at the borders caused by customs clearance were discouraging SMEs from conducting foreign trade in the EEC.

Bearing in mind the above, on 1 January 1993, burdensome border control was abandoned. However, this does not imply that there is no border control at all or that it cannot be conducted in justified cases. The goal was to eliminate the long

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queues at borders, which was in fact fully accomplished. Sometimes, however, especially in respect to the existing limits in the transport of goods subject to excise duty (alcohol, cigarettes), random customs controls are held several kilometres from the border.

It should be stressed that the elimination of customs clearances rendered customs documents obsolete and that, since then, the information of turnover has been conveyed in tax declarations presented by tradesmen selling goods to the end recipient (within the so called Intrastat).

Elimination of technical barriers in the EU Internal Market

Technical barriers in the trade between the EEC Member States consisted in the existence of many different technical requirements, under which domestic and imported goods were admitted to sale in the given country. As a result, every EEC or non-EEC producer or distributor was required to observe the technical requirements of the state in which they were selling their goods to the final recipients. The process of obtaining the relevant certificates confirming the compliance with the requirements of the target country was often very long, which, combined with the additional costs of the examinations, clearly constituted a barrier to trade. The goods were introduced to the given market with a significant delay and with a higher price, compensating for the costs of additional examinations and certificates. In consequence, producers manufactured their goods in many variants adapted to the technical requirements of the various Member States, which generated additional costs and, ultimately, hampered the free movement of goods.

In order to reduce these costs, the EEC decided to unify the technical requirements (including standards) to be met by products introduced to the markets of all the EEC States (a practice which is nowadays called the ‘old’ approach to technical harmonisation). In the 1960s and 1970s, the Communities started to develop directives containing uniform technical standards, valid in all the Member States. As at that time unanimity was required in adopting most EEC laws, technical standards also required the consent of all the members of the Council. As a result, the process of creating final versions of technical standards was delayed due to conflicting interests and positions of the various states. During the decision-making process in Community institutions, their representatives were trying to introduce national solutions – often completely contradictory to each other – to the laws unifying the technical requirements in each field.

The uniform technical standards which were finally adopted, were in force in the whole EEC. They contained detailed information on the design, pattern, method of conformity assessment. Consequently, the producers’ activities came down to comparative verification of the parameters of a given product with the specification contained in the directives. Thanks to the directives, Community producers and suppliers from outside the EEC were certain that the products they offered, compliant with the unified standards, could be introduced to the markets...
in all the Member States. However, it should also be noted that the unification of standards constituted a limitation to innovative entrepreneurs. The long process of adopting them and the lack of flexibility in accepting new technical solutions, not taken into account in the said standards, resulted in the fact that new solutions were appearing in the European market with a significant delay. As a result, this period saw the formation of a widening gap in the levels of innovativeness and, consequently, often also competitiveness, between Europe and the United States and Japan.

It is often pointed out that the rules referring to the introduction of goods to the market can be based on the judgement in the case *Casis de Dijon*,4 in which the Court has ruled that goods admitted to trade in one Member State should be admitted in every other Member State as well. Without prejudice to the judgement of 1979, it is worth pointing out the practical aspect of this rule. Entrepreneurs offering their goods in various markets of the EEC Member States had to obtain certificates of compliance with national requirements anyway, as wholesalers and retailers did not want to offer goods without the appropriate documents considered obligatory by their national law. Naturally, the suppliers of goods could always quote the aforementioned judgement, but in relations with the local offices functioning under national law they would be fighting a lost battle. Of course, there was also the possibility of going to court, but, firstly, the entrepreneurs’ main task is to conduct business activity and not drag cases through courts, and secondly, a salesman is not required to accept every good offered by producers.

In the mid-1980s, due to the necessity to make the system more flexible, a decision was made to introduce the ‘New Approach’ to technical harmonisation.5 It was made clear that the main, most important type of legislation is the New Approach Directive, the aim of which is harmonisation, i.e. the elimination of significant divergences, hindering the introduction of goods to the market, and not the introduction of uniform requirements. The new technique and strategy of regulation introduced a rule according to which harmonisation was limited to the basic requirements to be met by products introduced to the EU market if it was to benefit from free movement of goods.6

The New Approach Directives concern either specific groups of products or types of risk and phenomena occurring in relation to using certain products. This

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4 *Case 120/78, Rewe-Zentral AG v Bundesmonopolverwaltung für Branntwein* [1979] ECR.
5 Council Decision of 22 July 1993 concerning the modules for the various phases of the conformity assessment procedures and the rules for the affixing and use of the CE conformity marking, which are intended to be used in the technical harmonization directives, OJ L 220, 30.08.1993, p. 23. At present, this system is subject to change under the Decision No 768/2008/EC of the European Parliament and of the Council of 9 July 2008 on a common framework for the marketing of products, and repealing Council Decision 93/465/EEC, OJ L 218, 13.08.2008, p. 82.
means that a product can be subject to several directives and, in consequence, has to comply with the requirements in all of them. The directives regulate the introduction of goods to the market after their production through its transfer or offered transfer with the intention of distributing or using it in the EU market.

It is the producers’ responsibility to ensure that the products they produce comply with the basic requirements contained in the relevant New Approach Directives. The said requirements concern threats that products could pose during their normal use and, consequently, indicate what should be achieved during the production of the wares. They do not contain any detailed technical specifications, which allows producers to freely choose the components, the process of production and the final shape or functional properties of the wares.

On the other hand, technical specifications of products meeting the basic requirements contained in the relevant directives are specified in harmonised standards. These standards are authored by three standardisation bodies: the CEN (European Committee for Standardisation), the CENELEC (European Committee for Electrotechnical Standardization), the ETSI (European Telecommunications Standards Institute). These standards constitute the basis for producing and introducing goods to the market. They contain detailed and particular technical solutions or parameters to be met by the wares or the components used in their production. One standard does not necessarily regulate all the aspects of a given ware: for instance, it can specify only the requirements concerning its flammability, which means that a second standard has to be applied regarding its mechanical resistance. The application of harmonised standards is voluntary. This allows the producers to use other technical specifications, which results in the elimination of the barrier in introducing innovative processes of production and technologically new products. Goods produced in compliance with the harmonised standards enjoy the presumption of conformity with the basic requirements specified in the relevant directives.

Furthermore, each New Approach Directive defines the procedure to be followed by the producers (modules) regarding conformity assessment of their products with the basic requirements included in the said directives. These modules (eight basic and eight additional) concern the stage of designing and/or producing the goods. They specify the tasks of the producers and, where applicable, of the organ issuing the certifications in the process of designing, producing and introducing goods into the market. The aforementioned evaluation of conformity concerns new products manufactured in the EU, as well as new and used products from outside the EU.

Depending on the risk level, complexity and the degree of standardization of the products, the producers may conduct the evaluation of conformity of their products with the basic requirements in several ways, including:

- on their own, under internal design and production control;
- with the assistance of notified bodies, issuing relevant confirmations after conducting a type examination combined with internal production control or
a type or project examination combined with the approval by the aforementioned bodies of the product or system of ensuring quality production;

- basing it on the verification of the project and production by a notified body.

Every Member State has formed and appointed an accreditation authority, which grants accreditations to notified bodies for examining products in terms of conformity with specified New Approach Directives, as it is the Member States who bear the ultimate responsibility towards other members of the EU and the EU institutions regarding the competences of the notified bodies. The said bodies are required to meet the following requirements:

- independence from the public administration,
- independence from the interest group,
- impartiality,
- high professional qualifications,
- high level of technical expertise,
- civil liability insurance.

After the conclusion of the examination procedure, the producer or importer performs the labelling, thus taking responsibility for the goods introduced. The next step is, usually, the drawing up of the so called ‘declaration of conformity’ of the goods with the relevant New Approach Directive. This document should contain information concerning the product, producer, the certifying organ (if it participated in the evaluation of conformity), as well as on the directive and, possibly, on the harmonised standards applied.

Together with the declaration of conformity (if it is required by the relevant directive), the producer (or their authorized representative in the EU) labels their product with the CE marking, which means that they declare the given good to be produced in compliance with the basic requirements contained in the New Approach Directive. This marking may be affixed directly to the product, or placed on a plaque or tag, and in special cases on the packaging containing the given product. This marking may not be affixed to products which are not subject to the New Approach Directives. It does also not specify the origin or quality of the offered products.

In order to eliminate malpractice and to monitor the goods introduced, a system of market surveillance and control of conformity of products with the basic requirements under the New Approach Directives has been created. Market surveillance protects not only the consumers and users of goods, but also the entrepreneurs, by providing them with identical conditions for introducing goods to the market. The control can concern both the product and the correctness of marking or technical documentation of the product introduced to the market (which should be kept for at least 10 years from the date of producing the last product). Should

any irregularities be revealed, the relevant organ may order the producer to elim-
inate them, inform the consumers or users of the product of the irregularities, and
even order the product to be withdrawn from the market, repurchased from the
users and destroyed.

The introduction of the new approach to technical harmonisation resulted in
a loosening of the legislative strait jacket, restricting innovativeness of, mainly,
European entrepreneurs. In a period of rapid technological changes, the introd-
uction of binding legislation and obligatory technical specifications would cause
delays in the implementation of modern solutions in the offered goods. Due to the
flexibility of the legislation presently in force there is no need to amend it frequently
in view of newly identified technical solutions, but instead only when new threats
to consumers are discovered. The present system ensures easier access to the EU
market to non-EU entrepreneurs, provided that their goods meet the basic require-
ments specified in the directives. For non-EU entrepreneurs, this means lower costs,
as they do not need to adjust and examine their goods regarding conformity with
28 different legal regimes, but only with one harmonised legal system of the EU.
However, in the long term, this results in the fact that with relatively low tariffs on
industrial goods in exports to the EU market, increased external competition forces
quicker changes and the introduction of innovative solutions by EU entrepreneurs.

Elimination of fiscal barriers in the EU Internal Market

Fiscal barriers consisted in the existence of different rates and systems of col-
lecting indirect taxes: the value added tax and excise duty. The Treaty on the
Functioning of the EU stipulates that:

\begin{itemize}
  \item imported products may not be taxed higher than products produced in the
given country, as this would constitute discrimination (Article 110 TFEU),
  \item when a product is exported, any repayment of internal taxation may not be
higher than the internal taxation imposed on it, as this would mean subsidis-
ing of that product, which is prohibited in the case of industrial goods (Arti-
cle 111 TFEU).
\end{itemize}

Value Added Tax

In the late 1960s and early 1970s, all the EEC Member States introduced the
VAT, which replaced the multiphase sales tax existing in some countries. The
sales tax was applied in all phases of production, which discouraged entrepreneurs
from specialisation within intra-branch trade and encouraged them to engage in
inter-branch trade with finished products. As part of the elimination of fiscal bar-
riers, VAT was harmonised. The foundation of the harmonised fiscal policy is the
principle that VAT taxation of goods takes place in the target country. This means
that goods delivered to VAT-payers are taxed with 0 per cent VAT in the country
of origin and the due tax is settled by the purchase of the products in the country
to which they are delivered.

A.A. Ambroziak, New Challenges for the Free Movement of Goods...
Regarding delivery performed by VAT-payers to final consumers (non VAT-payers), taxation takes place (consumers pay the VAT) in the country of the good’s origin. One exception from this rule is the delivery of new means of transportation which are subject to taxation in the country where the vehicle is registered, as well as so called direct mail sales (VAT paid in the shipment origin country). It should be noted that special rules of taxation of intra-Community transactions are also applied to goods subject to taxation under harmonised excise duty (mineral oils, alcohol, alcoholic beverages and manufactured tobacco).

What was of crucial significance for the harmonisation of the VAT was the so called Sixth VAT Directive of 1977,8 regulating the essential elements of this tax, that is the subject of taxation, the tax base, the establishment of tax obligation, the mechanism of deductions from the tax paid in the earlier phases of marketing. With the elimination of physical barriers, control was eliminated at the EU internal borders, which resulted in the replacement of the terms ‘imports’ and ‘exports’ in relation to trade in commodities within the EU with the new expressions: ‘intra-Community acquisition’ and ‘intra-Community supply’.

Despite numerous attempts, tax rates have not been unified so far, due to the high sensitivity of this issue to the Member States and their national budgets. Only harmonisation was achieved, that is bringing the tax rates closer.9 To this end, two VAT rates have been introduced in the EU: standard and reduced (although with the latter, the Member States may use one or two reduced rates). The standard rate may not be less than 15 per cent, while the minimum rate may not be less than 5 per cent. As a rule, all goods and services should be taxed under the standard rate, but there are many exceptions from this rule (see Table 1).

Firstly, several states apply super reduced rates (below 5 per cent) to selected goods, which should be subject to the reduced VAT rate. Furthermore, several states use the reduced (parking) rate instead of the standard rate. In both cases, this results from a consensus in the introduction of amendments to the VAT Directive, the passing of which requires unanimity, which in turn makes it easier, to a certain degree, to obtain consent for many exclusions from the remaining states. Thirdly, EU law provides for the possibility (but not obligation) of the Member States applying the reduced rate to groups of selected goods and services: including foodstuffs, water supply, pharmaceutical products, medical equipment, transport of persons, printing of books, entry to shows and performances (e.g. theatres, circuses), receiving of radio and television broadcasting services, provision of services by writers and composers, supply (sales in the primary market), construction and renovation of housing under social policy, supply of goods and services for agricultural production, accommodation in hotels, restaurant and catering services, entry

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to sports events, usage of sports facilities, supply of goods and services to social organisations, funeral and cremation services, healthcare, street cleaning. In 2009, after several years of trial application of the reduced rates, the list was enlarged by labour-intensive services (i.e., among others, small repair services of bicycles, shoes, clothing, home aid services and hairdressing).

Despite the harmonisation, entrepreneurs still consider the varying rates and methods of calculating the Value Added Tax as barriers to conducting business activity in the EU internal market. During the consultations conducted by the Commission on the revival of the internal market, entrepreneurs mentioned problems with the VAT on the sixth place among the greatest barriers to effective

<table>
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Source: European Commission, Taxation and Customs Union, VAT Rates Applied In the Member States of the European Union, taxud.c.1(2011)759291 – EN.
conducting of business activity in the EU.\textsuperscript{10} The Commission has found out that one of the chief barriers in this regard are the enterprises’ reporting obligations and the manner of collecting VAT, which favours fraud, leading to the loss for state budgets amounting to approx. 12 per cent of the revenue from VAT.\textsuperscript{11}

Within the framework of the programme of reviving the internal market, the European Commission presented the strategy “Single Market Act”,\textsuperscript{12} in which it signalled the need to take further harmonisation actions, especially in relation to cross-border transactions. However, in the end the European Commission has not presented detailed proposals in this regard, believing that in a period of crisis the Member States should have greater freedom in making autonomous decisions adapted to the needs of particular markets. In this context, it would seem reasonable to follow M. Monti’s suggestion concerning the raising of standard VAT rates, or, what would be an even better solution, to limit the application of reduced VAT rates.\textsuperscript{13} The crisis has forced some states to take quick actions to protect public finance in the form of raising VAT rates. This short-term solution has slightly improved the budget situation of some states, while not impairing the position of companies – which would have happened, if direct taxes had been changed.

**Excise duty**

Regarding excise duty, it is charged on the purchase of certain goods in order to develop the desired model of consumption, healthcare, as well as due to fiscal reasons. As in the case of the VAT, excise duty is collected when a good is sold to the final consumer. Due to significant differences in the structure and values of rates, only the rates on alcohol, manufactured tobacco and energy products have been harmonised to a certain extent.\textsuperscript{14} Taxation of all the other non-harmonised excise goods is the sole competence of the EU Member States (e.g. the excise duty on cars).


In trade between the Member States, the following procedures are employed:

- paid excise duty (in the case of tax already paid);
- suspension of the collection of excise duty, in the case of, among others, goods produced, processed and stored in a tax warehouse or transferred between tax warehouses in EU territory (under the condition of attaching an accompanying administrative document and making a deposit for excise duty in the relevant customs office).

EU regulations concerning the excise duty system require the Member States to use at least the minimal level of excise duty rates regarding the structure and value of excise duty rates on goods subject to fiscal harmonisation. Due to the exclusive competence of the Member States in this regard, they may set the levels of rates freely, which results in significant differences between them.

Regarding alcoholic products, harmonised excise rates concern, among others, beer, wine and ethyl alcohol. In the case of beer, it is calculated per hectolitre in relation to the Plato degree (min. EUR 0.748) or the degree of alcohol (EUR 1.87) in the final product. In consequence, the Member States applied rates from EUR 1.87 to EUR 23.6 per degree of alcohol in 2011. There is also great diversity in the excise duties on wines, where the minimum rate for still and sparkling wines is EUR 0, while there were still wine rates in the EU ranging from EUR 0 to 283 per hectolitre and sparkling wine rates ranging from 0 to 524.5 per cent in 2011. A similar situation exists with the excise duty on ethyl alcohol, where the minimum rate amounts to EUR 550 per hectolitre of pure spirit, while some states were applying an excise duty of more than EUR 3 and 5 thousand in 2011. It is worth noting that the states using the highest rates of excise duty on alcohol include Sweden, Finland, the United Kingdom, and Ireland (see Chart 1).

The harmonised excise duty rates on manufactured tobacco concern mainly cigarettes, cigars, cigarillos, but also cut tobacco. Regarding cigarettes, EU regulations require that they are subject to proportional excise duty calculated according to the maximum retail selling price, including customs duties, as well as subject to a specific excise duty calculated per piece of the product. The share of the specific component of the excise duty in the total amount of tax due on cigarettes is set in relation to the weighted average of the retail selling price, that is the retail selling price of cigarettes including all taxes, divided by the total number of cigarettes admitted to consumption. Until 31 December 2013, the specific

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16 See also: Study analysing possible changes in the minimum rates and structures of excise duties on alcoholic beverages. Final Report to EC DG Taxation and Customs Union, London School of Economics, May 2010.

Chart 1. Minimum excise duty on wine, sparkling wine and ethyl alcohol in the EU Member States (1 July 2011)

Chart 2. Minimum excise duty on cigarettes in the EU Member States (min. in the EU = EUR 64 per 1000 cigarettes and 57 per cent of the weighted average of the retail selling price) (1 July 2011)

component of the excise duty may be no less than 5 per cent and no more than 76.5 per cent of the total tax due (the sum of the specific excise duty and VAT), and as of 1 January 2014, it should be between 7.5 and 76.5 per cent.

The total excise duty (specific tax and proportional tax excluding VAT) on cigarettes amounts now to at least 57 per cent of the weighted average of the retail selling price of cigarettes admitted to consumption and, at the same time, no less than EUR 64 per 1000 cigarettes. As of 1 January 2014, the total excise duty on cigarettes has to be increased to at least 60 per cent of the weighted average of the retail selling price of cigarettes and, at the same time, has to be no less than EUR 90 per 1000 cigarettes (see Chart 2). Just as it was in consequence of the accession negotiations, some Member States, i.e. Bulgaria, Estonia, Greece, Latvia, Lithuania, Hungary, Poland, and Romania, have now obtained a transition period for the adjustment to EU regulations until 31 December 2017. Separate derogations for preferential regions were granted to Portugal and Spain.

The significant differences between excise duty rates on alcohols and manufactured tobacco throughout the EU results in essential differences in the price of identical products and, in consequence, in trade tourism between the Member States. It is especially easy in regions bordering on other countries with significantly different excise duty rates (cf. Charts 2 and 3). In consequence, the state which maintains relatively higher excise duty rates often looses a part of income from indirect tax, as manufactured tobacco and alcohol purchased by the residents of this country in another country are not only subject to excise duty, but also to VAT. Such practices exist on a large scale not only between Poland and Germany, but also between Germany and Denmark, Germany and the Netherlands or Belgium, or the United Kingdom and Belgium.

The excise duty on resources and energy products is also subject to harmonisation on EU level. This concerns mainly petrol, diesel, liquid gas, coal and coke, natural gas, burning oil, as well as electricity. The current regulations, which entered into force right before the 2004 enlargement, provide for minimum tax rates for energy products, the value of which refers to the level of use of energy products, but does not reflect the energy content or CO₂ emissions18 (cf. Chart 3). This solution constitutes an incentive of sorts both for using coal (despite the high CO₂ emission ratio) as fuel for heating and for domination of diesel over petrol in the group of fuels for vehicles. Even more striking are the disproportions in relation to renewable energy sources, in the case of which, for instance, the E85 petrol is taxed much higher than petrol, which means that its lower energy value and better results with regard to CO₂ emissions are not taken into consideration.

The excise duty rates on energy products have been harmonised on the minimum level, which means that the Member States have significant freedom in

Chart 3. Minimum excise duty rates on selected energy carriers
(1 July 2011)
Introduction to European Studies

**LPG**

(min. rate = 120 EUR/1000 kg, from 2018 = 500 EUR/1000 kg)

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**Natural gas used for non-business heating**

(min. rate = 0.15 EUR/1 GJ, from 2013 = 1.27 EUR/1 GJ)
Reservation: Due to the fact that only the minimum excise rate is in force on the EU level, some Member States employ several excise rates on selected energy carriers, making their level dependent on the energy value and/or the usage and, therefore, the above charts should be considered as approximations, since they not necessarily represent the precise rates used in each EU Member State.


setting the tax. In consequence, the lack of co-ordination between the directive on energy taxation and the EU ETS system can lead to double burden or – on the contrary – could allow for avoiding responsibility for emissions. Due to the functioning of the EU internal market, the Member States who would like to stimulate the reduction of greenhouse gas emissions through the application of an excise duty with rates dependent on the amount of CO₂ emissions, would be lowering the competitiveness of their entrepreneurs, while the consumers, selecting cheaper energy products, would be purchasing them in the states applying the relatively lower tax rates. Despite all this, the European Commission noticed that the climate commitments adopted by the European Council are gradually implemented by the Member States through drafts of new systems of various ecological taxes.
Conclusions

Presently, the EU is facing many global challenges, including the issue of climate change, the need to ensure energy security, increase energy saving and energy efficiency, while preserving competitiveness of EU economy. One of the answers to these challenges is the new taxation strategy of the European Commission, the aim of which is to further adjust energy taxation to EU goals concerning the energy and climate changes. According to the Commission, in fact energy use causes the most emissions of greenhouse gases and is responsible for 79 per cent of total gas emissions. Furthermore, from the ecological point of view, sectors not subject to the EU ETS, such as transportation, small industrial installations, agriculture and households, are responsible for of half the CO₂ emissions.¹⁹

This is why the European Commission has presented a draft directive with the main goal of harmonising the excise tax on energy products, the rate of which would depend on the effectiveness of the fuel and the CO₂ emission.²⁰ The proposed amendment of Directive 2003/96/EC includes:

- changing the taxes applied to various fuels, including renewable energy, on the basis of energy content and CO₂ emissions, as well as;
- providing a framework for taxation connected with CO₂ emissions in the internal market and, consequently, setting the prices of CO₂ emissions not subject to the EU system of greenhouse gas emission allowance trading.

The Commission’s proposal contains a differentiation between two types of minimum tax rates on energy resources on the basis of:

- CO₂ emissions caused by the given energy product, established at the level of EUR 20 per tonne of CO₂ excluding biofuels, in the case of which the zero level has been set. Such taxation would ensure an advantage, regardless of the used technologies, of all low-emissions energy sources;
- energy content measured in GJ, regardless of the energy product, and consequently constituting an incentive for saving energy. In this case, the tax would reflect the energy actually generated by the product and energy saving would be automatically rewarded.

The drafted proposals, discussed by the Economic and Financial Affairs Council on 22 June 2012, should be considered negative from the point of view of the economies with dominant traditional industry. It is without doubt that raising the excise tax on traditional energy products lowers the competitiveness of

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goods from, for instance, the Central and Eastern European countries, limits the development of modern energy plants using the so-called clean coal and, consequently, constitutes a significant burden for the society.\textsuperscript{21}

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\textsuperscript{21} It is a very important and a very sensitive issue for many Member States. Based on Article 113 of the Treaty on the Functioning of the European Union, the directive requires unanimity in the Council in order to be adopted, following consultation of the European Parliament (special legislative procedure) See more: 3178th Council meeting Economic and Financial Affairs Luxembourg, 22 June 2012, PRES/12/281.


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