18. The politics of taxation in the European Union

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1. INTRODUCTION: WHY THE EUROPEAN UNION MATTERS FOR TAXATION

Taxation belongs to the core functions of the state. A government that provides public services has the right to set and execute tax laws as well as collect tax revenues within its territory. These powers are commonly accompanied by a degree of democratic accountability towards the citizens with regard to the collection and spending of such taxes (see Kemmerling & Truchlewski, this volume; Haffert, this volume). Simultaneously, in a globalized world with increasing cross-border movements of people, goods, services and capital, there has been a growing awareness that coordination in matters of taxation is necessary (see Eccleston & Johnson, this volume; Hearson & Rixen, this volume). This is especially the case in the European Union (EU) where tax coordination has already been identified as an essential requirement for the establishment of a common European market in the late 1950s. Since then, the removal of distortions created by different tax rules, discriminatory taxes, double taxation and to a certain extent tax competition has been the main rationale behind tax integration in the EU. As the European Commission put it, 'taxation has become such an important instrument in shaping business and living conditions that some measures of alignment of the six member countries' tax policies is unavoidable if they are to achieve the economic union described in the Rome Treaty' (European Commission, 1968, p. 3).

The treaties that form the constitutional basis of the EU include a number of articles that allow the European institutions to formulate common tax law (Articles 110–116 of the Treaty on the Functioning of the European Union (TFEU)). The stipulations have remained the same since the Treaty of Rome in 1957, when the focus of the original six Member States of the European Economic Community (EEC) was mostly on removing fiscal barriers for the cross-border trade of goods. Accordingly, there is an explicit legal basis set out in Article 113 (TFEU) for the harmonization of indirect taxes, such as turnover taxes and excise duties. The treaty does not include, however, an explicit reference to direct taxation on personal and corporate income. Direct taxation is covered by Article 115 (TFEU), which refers to 'the approximation of such laws, regulations or administrative provisions of the Member States as directly affect the establishment or functioning of the internal market'. Unlike many other policy areas, the Council of the EU gathering the ministers from each Member State is the sole legislative body. The Council can only adopt tax directives on the basis of unanimity (and not qualified majority voting), which means that all Member States have to agree and even the veto of one Member State prevents a new law to be adopted or existing law amended. This is called a special legislative procedure and differs from the ordinary legislative procedure where both the Council and directly elected European Parliament share legislative powers. In the case of taxation, the Parliament is merely consulted. As the so-called legislative initiator, the Commission develops new legislative proposals, and has therefore an important role in the legislative procedure.

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Because of the redistributive nature of tax issues, the unanimity principle in the Council and conflicting national interests, there is consensus among certain political scientists that tax competences are either non-existent or unlikely to develop at the European level. Many would claim that the EU has 'little capacity to govern through taxation' (Stone Sweet, 2004, p. 239), 'no general taxing and spending powers similar to those held by national governments' (Majone, 1998, p. 10) and is characterized by 'the near-total absence of the power to tax and coerce' (Moravcsik, 2001, p. 164). These statements are, however, empirically easily refuted. The first Directive on a common value-added tax (VAT) was adopted in 1967 to replace the existing national turnover taxes with a common VAT system (Haffert & Schulz, 2019). Indirect taxation played an essential role in the establishment of the single market, and significant steps have been taken towards harmonization since the first VAT Directive. The 1990s witnessed the introduction of several EU direct taxation measures; legislation has only increased since then. The jurisprudence of the European Court of Justice (ECJ) in both indirect and direct taxation is ever growing. All in all, it appears that the EU 'exerts considerable regulatory power over taxation' (Genschel & Jachtenfuchs, 2011, p. 294) and there is 'much more harmonization in tax matters than is often claimed' (Uhl, 2006, p. 567). However, direct (personal and corporate income) taxes have not, so far, experienced the same degree of harmonization as indirect taxes.

This chapter starts with an historical overview of tax coordination and harmonization – in terms of ambitions as well as (lack of) achievements – since the establishment of the EEC in 1957. It emphasizes the different sets of speed and degrees of harmonization between indirect and direct taxation, with a respective focus on VAT and corporate taxation. Although there have been interesting developments regarding excise duties, personal taxation, environmental taxes or the taxation of the financial sector, a stylized comparison of VAT and corporate taxation allows us to illustrate the politics of taxation in the EU in a more detailed way. The main part of the chapter is then dedicated to explaining those developments. Based on a critical review of the existing literature at the crossroads between EU studies and political economy, it raises a number of central questions to explain the specific political dynamics of taxation in the EU: Why is tax coordination possible at times, and often not? Why has indirect tax harmonization been more far-reaching than direct tax? Which actors, structures and mechanisms are at play in the EU context, and why? What scope conditions need to be in place for policy and decision making in the field of taxation to succeed? The chapter ends with a brief discussion of current developments in the context of the COVID-19 crisis and possible areas for future research.

2. HISTORICAL CONTEXT: TAX HARMONIZATION THROUGHOUT EUROPEAN INTEGRATION

Historical developments can be broadly divided in three phases: an initial stage with ambitious ideas for tax harmonization but only progress in indirect taxation, the period between the mid-1980s and the financial crisis characterized by a stalemate in the VAT area but important decisions regarding corporate taxation and the post-crisis years dedicated to the fight against tax evasion and tax avoidance.

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2.1 Early Steps towards Value-Added Tax Harmonization

Since the start of the EEC in the late 1950s, cooperation in the area of taxation has been part of achieving a common market. In 1960, the Commission set up a committee of experts led by German economist Professor Fritz Neumark, which was tasked with investigating which taxation aspects stood in the way of achieving a common market. The resulting report in 1962 advised to harmonize a number of taxes in a three-staged approach. The first phase included the introduction of a VAT as the way forward to the harmonization of turnover taxes. The Commission, following this advice, presented a VAT proposal in 1962. At that time, France was the only country out of the six EEC Member States that already had such a VAT in place. After years of negotiation, the Council adopted the First and Second VAT Directive in 1967, mostly because of support from the German government (Haffert & Schulz, 2019). The EEC and its Member States never went beyond the first phase of the suggested timeline of tax harmonization measures as set out by the Neumark report. The remaining phases – entailing measures regarding the harmonization of taxes on company income, capital gains, personal income and wealth – were, at that point, not a priority for the EEC Member States.

Subsequent reports that were tasked with identifying tax obstacles to the establishment and functioning of a common market brought forward different scenarios and proposals for tax harmonization. A group of experts led by Professor Segré of the Commission itself looked into the elements hampering the development of an EU capital market. In terms of corporate taxation, the committee concluded that at that point, in 1966, too many tax obstacles stood in the way of tax neutrality. Because of the limited scope of its report, the Segré committee did not propose comprehensive harmonization of corporate tax base and/or rates, but did hint at it. Several recommendations from both the Neumark and the Segré reports were followed by the Commission as articulated in its 1967 'Tax Harmonization Programme'. Here, the Commission emphasized urgent action needed for the liberalization of capital movements (amongst others the elimination of withholding taxes in the EU), the removal of obstacles to mergers and acquisitions and the harmonizing of rules that compute the corporate income tax base (Easson, 1992). In a resolution in 1971, the Council also explicitly linked the harmonization of direct taxes to the establishment of an Economic and Monetary Union. The aims of this resolution, as well as the Commission's own 1967 harmonization programme, were reflected in a proposal presented in 1975. The proposal included, most importantly, a bandwidth for corporate income tax rates (between 45 and 55 per cent) and a common system for withholding taxes on dividends amongst Member States. It was eventually withdrawn, which is characteristic for the lack of developments in the area of direct taxes in the 1970s and long into the 1980s. In the meantime, the harmonization of indirect taxes progressed with the adoption of the Sixth VAT Directive in 1977. Although not achieving full harmonization, this Directive went beyond its predecessors in the sense that it created a common tax base and thus 'established a common tax trim for the entire European Community and constituted a veritable legislative instrument at community level' (Pîrvu, 2012, p. 27).

2.2 Market Integration and the Removal of Tax Obstacles

Throughout the 1980s, the harmonization of indirect taxes remained a central concern for the Commission, as underlined in its 1985 white paper on steps 'to complete the internal market'. In terms of VAT, the Commission suggested that further work on the common tax

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base and the definition of the tax rate was needed and issued two legislative proposals in 1987. Widely regarded to be very ambitious, the proposals stranded in Council negotiations and a transitional system was adopted instead. A work programme presented by the Commission to move towards a definitive VAT system in 1996 also made very little progress. Doomed to fail, 'it soon became clear that the degree of harmonization necessary for the introduction of a definitive VAT system' would not be achieved (de la Feria, 2015, p. 157). The transitional system, combined with a lack of political agreement on a definite system that left the direction of common VAT law up to ECJ rulings, made the VAT system incompatible with the internal market as there remained impediments to the free movement of goods and services (de la Feria, 2009; Keen & Smith, 1996).

With regard to direct taxation, the Commission's 1985 paper did 'urge the Council to complete on-going work on a group of proposals which aim at removing obstacles to cooperation between European firms (on tax treatment of parents and subsidiaries, on taxation of mergers and on avoidance of double taxation)' (European Commission, 1985, p. 38). Two of these aims materialized not long after with the adoption of the Merger Directive and Parent-Subsidiary Directive in 1990. Combined with the introduction of an Arbitration Convention for transfer-pricing conflicts, and two other proposals on interest and royalty payments and on intra-group losses, the year 1990 marked 'an important turning point in the evolution of the community's direct tax policy' (Easson, 1992, p. 610). At the same time, the Commission also explicitly acknowledged that the initial ambitions regarding tax harmonization might not be feasible or necessary 'particularly in view of the principle of subsidiarity', and therefore 'reached the conclusion that community action should concentrate on the measures essential for completing the internal market' (European Commission, 1990, p. 2). Another expert committee was set up to carry out this task, led by former Dutch minister of finance Onno Ruding. Published in 1992, the committee's report recommended further steps towards corporate tax harmonization in the form of common rules for a minimum tax base and minimum rate. It did so 'as to limit excessive tax competition between Member States intended to attract mobile investment or taxable profits of multinational firms, either of which tend to erode the tax base in the Community as a whole' (European Commission, 1992, p. 13). Again, the Commission did not entirely follow the conclusions of the Ruding report, as it believed that the more far-reaching proposals for harmonization of corporate tax bases and rates were not in line with the subsidiarity principle. This response 'evinced the Commission's clear move away from harmonization proposals and its endorsement of piecemeal and ad hoc solutions' (Panayi, 2013, p. 20).

With the Single European Act, the internal market was officially introduced in 1992 and its completion became a main objective of subsequent tax negotiations. This stems from the Commission's white paper on 'Growth, Competitiveness, Employment' from 1993, whose priorities included 'removing tax barriers and harmonizing certain taxes' (European Commission, 1993, p. 82). In this wider context of market integration, the Commission set up a Taxation Policy Group in 1996 under Commissioner Monti. The process resulted in a package to tackle harmful competition, whose distortionary effects were indeed identified as one of the main challenges to the completion of the internal market (Hinnekens, 1991). This tax package was a turning point in EU corporate tax policy for a number of reasons, primarily because of the establishment of the Code of Conduct for Business Taxation, a soft-law instrument to assess tax measures causing 'harmful tax competition'. The Code of Conduct Group assembles all Member States to oversee implementation and roll back 'harmful measures'

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while refraining from introducing new ones. The code, however, is not legally binding and can therefore be understood as the result of the EU failure to mitigate tax competition with formal rules (Genschel et al., 2008). The Monti report also consolidated the approach of the Commission to achieve partial measures to solve specific tax obstacles to market integration. This was further underlined by the Company Tax Study that the Commission presented in 2001 that decoupled 'the necessity of targeted measures that could be implemented swiftly and on ad hoc basis' from 'the necessity of comprehensive proposals, which were more politically controversial and required a longer gestation period' (Panayi, 2013, p. 25). The Interest and Royalty Directive was adopted in 2003 in line with this approach of targeted measures.

Meanwhile, progress in the area of VAT continued to be limited. The Sixth Directive of 1977 remained the basis for any subsequent amendment in the next decades (Pîrvu, 2012). Proposed strategies by the Commission in 1996, 2000 and 2003 resulted in very few improvements of a system characterized by several problems in terms of administrative burdens, possibilities for evasion and fraud and national differences in exemptions and rates (Aujean, 2012). The Sixth Directive was finally replaced by a Directive on the common system of VAT (the VAT Directive) in 2006, as the main legal basis for the European VAT system. Although long overdue, the VAT Directive only entailed a few changes compared to the existing legislation, because it merely intended to present VAT provisions in a clear and logical form after the many substantial changes since 1977 (Pîrvu, 2012).

2.3 Combating Tax Evasion and Tax Avoidance

As other chapters have explained extensively, the past crisis-ridden decade has changed the scene of global tax governance in dramatic ways, and the EU is no exception. With respect to indirect taxation, the Commission has changed its approach in convincing Member States to move towards a single VAT system. It let go of a European perspective and appealed instead to national concerns over the mobilization of tax revenues in the wake of the financial and sovereign debt crisis, as reflected in the Commission's Green Paper on the Future of VAT in 2010 (de la Feria, 2015). As a main objective of the green paper, a consultation process was launched with stakeholders on 'the functioning of the current VAT system and how it should be reframed in the future' (European Commission, 2010, p. 4). The ambition of a common VAT system is not entirely let go of, however, as demonstrated by the Commission's latest Action Plan in 2016 setting out 'the pathway to the creation of a single EU VAT', which remains 'a core element of Europe's single market' (European Commission, 2016, p. 3). Since then, the Commission has launched several legislative proposals, and the Council agreed on a few targeted measures with regard to administrative cooperation and e-commerce.

Developments in direct taxation point to a substantial shift in EU corporate tax policy since the financial and Eurozone crises. As explained above, EU corporate tax provisions traditionally aimed at eliminating tax obstacles and double taxation to ensure the functioning of the single market. This changed in 2012, with the Commission's 'Action Plan for a more effective EU response to tax evasion and avoidance' (European Commission, 2012). Addressing these issues, the EU's approach to corporate taxation increasingly included market-correcting measures aimed at transparency and tax fairness (Panayi, 2019; Roland, 2020; Roland & Römgens, 2021). In terms of tax transparency, the introduction of public Country-by-Country Reporting (CBCR) for financial institutions (Fourth Capital Requirements Directive) and for firms in the extractive and forestry industry (Accounting and Transparency Directives) was a major step.

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The Commission also proposed to introduce public CBCR for all multinational corporations in 2016. After years of negotiation, this proposal was finally supported by a majority of Member States in the Council in February 2021, which is considered a major breakthrough in the fight against tax avoidance. Another innovation consisted in the introduction and expansion of automatic exchange of information between tax authorities since December 2014. After four amendments, the Directive on Administrative Cooperation now provides for the automatic exchange of financial account information, tax rulings and advanced pricing agreements, CBCR, beneficial ownership information and cross-border arrangements.

The commitment to fair and efficient taxation materialized with the addition of anti-abuse rules to the Parent-Subsidiary Directive in January 2015 and the adoption of the Anti-Tax Avoidance Directives (ATAD I and II) in October 2016 and May 2017. ATAD I was derived from the Organisation for Economic Co-operation and Development (OECD) Base Erosion and Profit Shifting (BEPS) project and introduced six legally binding measures targeting common forms of aggressive tax planning. The Commission also proposed more comprehensive measures, such as the introduction of a Common Consolidated Corporate Tax Base (CCCTB), proposals regarding the taxation of the digital economy and a move towards qualified majority voting in tax matters. Those measures are facing strong resistance from several Member States and have therefore still not been agreed upon in the Council. However, in the context of the COVID-19 pandemic and revitalized international tax discussions, the CCCTB and digital taxation proposals are back on the EU's agenda (see also Christensen & Lips, this volume). Beyond those legislative provisions, the Commission employed so-called state aid investigations to assess whether tax treatments granted to specific companies in certain Member States constitute a breach of EU competition rules. While those investigations traditionally aim at improving the functioning of the single market, the recent selection of very emblematic cases, such as Apple, Amazon or Starbucks, can be understood as a strategic decision by the Commission to address the issue of corporate tax avoidance in a pragmatic way (Roland & Römgens, 2021).

This overview of developments regarding both indirect and direct taxation at the EU level shows a number of differences and similarities. The harmonization of indirect taxation has been an ambition since six European countries joined forces in the 1950s and its legal basis is explicitly enshrined in the Treaty of Rome in 1957. This was, and still is, not the case for direct taxation. However, initiatives for the coordination and harmonization of indirect and direct taxes have been proposed with similar aims: the establishment and functioning of the internal market. The historical overview further shows that the Commission was rarely able to follow ambitious expert recommendations. In both areas of indirect and direct taxation, compromises were sought in transitional regimes and targeted measures, instead of a comprehensive European tax system that would harmonize national tax systems. At the same time, such comprehensive approaches are not off the negotiating table yet, as illustrated by the review of recent initiatives. While the policy aim of improving the functioning of the internal market is still high on the EU's tax agenda, it should also be noted that other issues, such as the extent of VAT fraud, harmful tax competition and, more recently, tax evasion and avoidance by the wealthy and multinationals have been added to this policy agenda. This historical overview shows that the role of the EU with regard to taxation is more complex than suggested by the no-taxation thesis, which brings us to the main question of this chapter: What determines the politics of taxation in the EU?

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3. EXPLAINING THE POLITICS OF TAXATION IN THE EUROPEAN UNION

This section reviews contributions that offer diverging answers to this puzzle. Because analyses of developments in indirect policy are scarce, it will mainly focus on direct (corporate) taxation. Political scientists started to analyse the politics of EU taxation in the middle of the 1990s and the resulting literature built upon the concept of the joint-decision trap to explain both the difficulty to reach agreements on issues of taxation and the substantive content of EU tax policies. Originally a concept developed by Fritz Scharpf, the joint-decision trap describes a situation where 'central government decisions are directly dependent upon the agreement of constituent governments' and 'the agreement of constituent governments must be unanimous or nearly unanimous' (1988, p. 254). In the EU context, this means that 'once a binding rule is agreed upon, individual action is no longer permitted, and the veto of one or few governments will prevent others from correcting or abolishing the rule in response to changed circumstances or preferences' (Scharpf, 2006, p. 848). Such a situation is likely to result either in a stalemate or inadequate policy outcomes. As scholars started to make similar observations in the taxation area, a range of contributions focused on analysing the mechanisms leading to and reinforcing the joint-decision trap, while others attempted to identify the conditions under which the trap could be overcome.

3.1 The Joint-Decision Trap in Direct Taxation

The joint-decision trap in direct taxation emerges from the institutional framework enshrined in the various treaties since the end of the 1950s. As we have seen above, the tax provisions of the treaties are limited to indirect taxation without any explicit mention of direct taxes. The general consensus was that EU competences would not include direct taxes, 'while in fact it only implied that they would be dealt with under the general provisions of the EC-Treaty, including, most importantly, the provisions on non-discrimination, the four freedoms, competition policy, and general policy harmonization' (Genschel, 2011, pp. 55–56). Moreover, decisions on taxation are subject to the unanimity requirement as originally foreseen in the treaties and the implementation of decisions depends on Member States' national authorities. As such, the problem-solving gap in direct taxation is a prime example of the joint-decision trap. A substantial change away from initial decisions shaped by the primacy of market integration and the acquis communautaire is hindered by the unanimity rule and heterogeneity of the Member States' preferences.

The joint-decision trap has been reinforced and further institutionalized, mostly through two mechanisms: market integration and judicialization (Genschel et al., 2011; Genschel & Jachtenfuchs, 2011; Kemmerling & Seils, 2009). The integration effect refers to the growth of secondary tax legislation ensuring the functioning of the single market, which has been covered extensively in the overview of the historical developments. It showed that market integration has been particularly pronounced in the area of corporate taxation because of the adoption of several directives that aimed specifically at removing tax barriers and abolishing double taxation: the Merger Directive, the Parent-Subsidiary Directive and the Interest and Royalty Directive. Both the Merger and Parent-Subsidiary Directives were adopted in 1990. The former ensured the creation of a common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies; the latter set up

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a common system of taxation applicable in the case of parent companies and subsidiaries of different Member States (Panayi, 2019). The Interest and Royalty Directive followed in 2003 with the aim of avoiding withholding taxes on interest and royalty payments made within a group of companies.

The institutionalization of the joint-decision trap in direct taxation has also been strengthened by the judicialization effect, a dynamic that resulted from the increase of ECJ jurisprudence regarding the compatibility of national tax provisions with the treaties, the acquis communautaire and the four freedoms (Genschel et al., 2011). Although the ECJ acknowledges that direct taxation falls within the responsibility of the Member States, it also requires that they respect the fundamental treaty principles of free movement and non-discrimination. Accordingly, the ECJ was highly critical towards protective national measures and 'began snipping them down in the name of the market freedoms' in the 1980s (Genschel & Jachtenfuchs, 2011, p. 302). The number of direct tax cases decided upon by the ECJ increased from 20 between 1988 and 1997 to 101 between 1998 and 2007. Between 1986 and 2003 the Member States lost more than 80 per cent of the cases related to corporate taxation. The behaviour of the ECJ goes back to the constitutionalization of the treaty, which 'distorts the balance between state and market' and favours market-making principles and negative integration over market-correcting provisions and positive integration (Schmidt, 2018, p. 7).

Through reinforcing the joint-decision trap in direct taxation, the combination of ECJ tax jurisprudence and EU tax legislation accelerated tax competition and the race to the bottom to a point that it became stronger within the EU than in the rest of the world (Davies & Voget, 2008; Genschel et al., 2011; Redoano, 2014). On the one hand, the various tax directives adopted since the 1990s fostered tax competition between the Member States as they facilitate cross-border movements of firms, capital owners and wealthy individuals (Kemmerling, 2010). On the other hand, Member States can no longer take unilateral measures to sufficiently protect their tax base from harmful competition since 'the ECJ tends to accord higher priority to the protection of taxpayers' Treaty-based rights of mobility than to Member States' public policy requirements' (Genschel et al., 2011, p. 600). Tax competition in the EU also has important redistributive consequences by limiting the progressivity of national tax systems, which raises critical questions regarding the democratic deficit commonly attributed to the EU (Ganghof & Genschel, 2008).

In sum, there is a joint-decision trap in the area of direct taxation. Market-correcting initiatives would be needed to counter any harmful effects from market integration. However, as Scharpf points out 'market-correcting positive integration depended on political legislation … where very high consensus requirements and the heterogeneity of Member State interests and preferences would make agreement difficult or impossible' (2006, p. 854). A range of contributions has been concerned with explaining precisely why it is so difficult for the EU Member States to reach agreements on matters of taxation. Liberal intergovernmentalist scholars, who focus more on relations between states than on institutional constraints, argue that the main obstacle to cooperation lies with the conflicting preferences of the Member States bargaining in the Council. They do so by offering case studies of specific policies that have been proposed by the European Commission, but either rejected in the Council or only adopted after an extremely long and tedious process.

Dehejia and Genschel (1998) looked for instance at the unsuccessful attempts of the European Community to develop a common approach to (capital) income taxation in the 1990s. The negotiations took nearly 10 years, but the Commission's proposal was never

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agreed upon. Dehejia and Genschel explained this outcome by looking into the interplay of two distributional conflicts. The first consists in a within-group distributive conflict between winners and losers of tax competition: small European states such as Ireland or Luxembourg resist tax cooperation because they benefit from tax competition. The second conflict is related to outside-world constraints, according to which even big states like Germany resist tax cooperation because they anticipate that cooperation within the European Community would be exploited by states from outside the Community.

Building upon those findings, Holzinger (2005) analysed the lengthy process that resulted in the adoption of the Savings Tax Directive in 2003. The Directive aimed at coordinating (capital) income taxation in the EU through a system of automatic exchange of information between Member States on cross-border savings income payments made to EU resident individuals. Holzinger reconstructed the long and bumpy road to the 2003 agreement by analysing in detail the preference heterogeneity of the Member States in an asymmetric coordination dilemma. In addition to the size of the country in terms of tax revenues, she shows that the size of its financial market sector also plays a role: small countries with significant financial sectors are much more likely to oppose cooperation than big countries without significant financial sectors. She also identifies the outside-world conditionality as a major obstacle and traces it back to the nature of tax cooperation as a 'weakest-link good, that is cooperation of all potential tax havens is needed' (2005, p. 506). According to Holzinger, an agreement was only possible because the United States, Switzerland and other tax havens committed to the rules on information exchange upon request proposed by the OECD in 2002. Hakelberg (2014) confirmed those findings by showing that Luxembourg and Austria agreed to a later revision of the Savings Tax Directive only because of pressure exerted by the United States.

These findings are in line with Wasserfallen's research (2014) into the repeated failure to introduce qualified majority voting for tax decisions during all intergovernmental conferences since Maastricht. Because low-tax countries benefit from tax competition dynamics, they have 'no material interest in supporting tax harmonization' and are 'therefore, more likely to oppose the pooling of tax authority' (2014, p. 427). His findings further show that the idea of tax harmonization in the EU is becoming less and less popular since the accession of the Central and Eastern European countries: in the Maastricht and Nice conferences, half of the Member States were in favour of the introduction of qualified majority voting. In 2004, it was only a third of the Member States. Paradoxically, by resisting tax harmonization in order to protect their tax sovereignty, Member States are effectively giving it away: without any form of tax harmonization, Member States are trapped by EU legislation and jurisprudence that promote market integration, foster tax competition and prevent them from correcting it with protective measures.

The literature reviewed so far identified the mechanisms leading to and reinforcing the joint-decision trap characteristic for the lack of harmonization or progress in direct taxation (in contrast to indirect taxation). From a rationalist perspective, policy or institutional changes needed to break this deadlock are hampered by the heterogeneity of the Member States' preferences and their reluctance to transfer competences to EU-level institutions. This results in inefficient or suboptimal outcomes, such as acute tax competition, decreasing tax revenues and progressivity or a problematic democratic deficit.

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3.2 Overcoming the Joint-Decision Trap

As the overview of the historical developments made clear, there have been important moments of change in the 1990s and especially since the financial crisis. Aside from the necessity of an outside threat, a strict institutionalist or intergovernmentalist lens does not tell us much about the specific dynamics of the EU policy-making process, and why some EU tax policies were successfully adopted while others were not. Important aspects tend to be overlooked, such as the role of the Commission beyond being a legislative initiator, the importance of ideas and discourse, the meaning of soft-law instruments or the influence of non-state actors both at the national and EU level. We therefore turn to the few contributions that went beyond the institutional limitations or the material preferences of the Member States and carried out a detailed analysis of the conditions under which the joint-decision trap has been overcome.

The central role of the Commission has been acknowledged by Genschel (2011), who identified the various strategies used by the EU institutions to exit the joint-decision trap. On a theoretical level, he argued that both the Commission and the ECJ can bypass the Council 'by exercising their supranational decision-making power' or by 'manipulating the world-views, preferences, and opportunity structures of the Council members so as to increase their incentives for agreements', a mechanism referred to as nudging (2011, p. 59). While the supranational bypass is primarily a prerogative of the ECJ, the Commission can also either directly bypass the Council because of its state aid powers, or indirectly by formulating soft-law guidelines for the interpretation of ECJ case law. In the past, the efficiency of this approach appears to have been rather limited. By comparison, the nudging strategy derived from the Commission's agenda-setting powers and its ability 'to establish a shared cognitive and normative understanding of the tax requirements of the single market' has been much more successful (2011, p. 64).

Those aspects have been at the centre of Radaelli's work on the politics of corporate taxation in the EU (1995, 1997). To explain the 30 years' long policy process that started in the 1960s and ended in the adoption of the Merger and Parent-Subsidiary Directives in 1990, Radaelli built upon three interrelated dynamics: a changing policy environment, the redefinition of policy problems and the new role of an emerging epistemic community. In a context characterized by far-reaching economic and monetary integration, discussions about taxation were connected to the overarching goal of market integration and the 'commitment to remove barriers to the free movement of individuals, goods and capital' (Radaelli, 1995, p. 165). Accordingly, the Commission changed its way to communicate about taxation and the redefinition of problems materialized through a shift from a focus on tax harmonization to a tax discourse emphasizing subsidiarity, neutrality and efficiency. In addition to this reframing of problems, a small epistemic community consisting of a few research institutes and policy fora has played a key role in transmitting knowledge into the policy process. Together with the Commission and business actors, this epistemic community built a supranational advocacy coalition that successfully 'promoted the transmission of new shared beliefs and public policy paradigms into the European tax policy process' (1995, p. 174). Eventually, the policy change occurred because the new framing of tax issues by the Commission aligned with the arguments and ideas supported by the epistemic community.

While the Commission traditionally followed a technocratic approach that reduced 'the political salience of tax coordination' and increased 'the role of technical arguments' (Radaelli, 1999a, p. 97), this changed towards a broader and more political definition of tax

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issues with the nomination of Mario Monti as new Commissioner in 1995. The Commission's focus shifted from neutrality as a way of preserving the single market to the narrative of harmful tax competition. The new narrative was very effective because it 'plays out a vivid dramatic scene of villains (avid capitalists who deprive their countries of revenue by investing in morally suspect tax havens), potential victims (the ordinary people who need the welfare state) and heroes (the European governments who decide to take action and protect the welfare state)' (Radaelli, 1999b, p. 671). The narrative not only made the economic and political gains of tax cooperation in the EU explicit, it also helped to transform 'a series of deadlocks in individual tax dossiers into a larger positive-sum game with compensations across policy issues' (Radaelli, 1999b, p. 673).

This process was reversed in the early 2000s, when the focus shifted back to corporate tax reforms and market integration. After progress was made with the Code of Conduct and the agreement on the Savings Tax Directive, the Commission felt that it needed to address the concerns of the business community with initiatives on a CCCTB, home state taxation or transfer pricing (Radaelli & Kraemer, 2008). The Commission gave up its political approach and insisted instead on the technical nature of its work, whose guiding principles consisted, again, in the elimination of tax obstacles and competitiveness in the single market. Eventually, those policy developments can be understood as the result of a deliberate strategy of the Commission to orchestrate 'the creation of different governance arenas to balance the power relations between Brussels, the Member States and the business community' (2008, p. 316).

This strand of research explored policy developments that occurred 20 years ago and is in need of an empirical update. Additionally, an in-depth analysis of the origins of ideas and narratives is still lacking. While pointing out that specific frames such as 'harmful tax competition' gain so much traction that they acquire constitutive value, there is insufficient attention for the underlying mechanisms that could explain the emergence of such ideas. Recently, a range of contributions has built and expanded upon those findings to explain why the policy landscape has changed dramatically since the financial and sovereign debt crisis. They confirm that a multitude of actors is involved: supranational organizations, such as the Commission and the Parliament, as well as non-state actors, including non-governmental organizations (NGOs) and tax activists, play an increasingly important role. They also point to the importance of the global context and the need to take into consideration the interactions with international organizations, such as the OECD. Finally, they provide important insights into the ideational and discursive processes at stake, and why some tax ideas win over others.

In his analysis of the processes leading to the adoption of CBCR by both the OECD and the EU, Christensen (2018) focuses on the role of NGOs and civil society activists, such as the Tax Justice Network. CBCR requires corporations to report their financial data (such as revenue, income, tax paid, etc.) for each jurisdiction in which they conduct operations, instead of consolidated accounts. As a measure supposed to improve corporate tax transparency, CBCR has been a request from civil society and tax activists for many years. Christensen explains that, since the global financial crisis, this increasingly influential network of NGOs started to address the EU institutions because of a lack of progress at the OECD. At the same time, the Commission and the Parliament were more open to the demands from NGOs and took advantage of their support to 'strengthen the profile of popular new ideas' and 'counterbalance Member state authority' (2018, p. 9). An interesting point raised by Christensen involves the Commission's attempt to change the formal legal basis of the corresponding directive by proposing it as an accounting measure subject to qualified majority voting, instead of a tax

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measure that would require unanimity in the Council. This is a clear example of how the Commission is actively trying to overcome the joint-decision trap with a 'Treaty base game' (Genschel, 2011, p. 63).

The entrepreneurship of the Commission also takes centre stage in Lips' (2019) analysis of the current developments regarding the taxation of the digital economy. Because the international discussions coordinated by the OECD were not moving forward, the Commission reacted with two legislative proposals in March 2018. The first directive proposed a long-term and far-reaching reform of corporate tax rules to ensure that profits of corporations are taxed on the basis of their significant digital presence. The second directive consisted in an interim solution in the form of a digital service tax of 3 per cent on the revenue of certain digital transactions. Although both proposals stranded in the Council's negotiations and were put on hold, Lips shows that the Commission had other purposes in mind: 'avoid fragmentation on interim digital tax measures for single market reasons … and provide an impulse to the OECD negotiations' (2019, p. 9). This is another example of the Commission's strategic role, not only regarding EU-specific tax issues, but also on the international stage.

While those contributions give important insights into the increasing influence of the EU as a global player in international tax negotiations, other authors focused instead on the specificities of the tax policy-making process within the EU. With their comparison of EU corporate tax policy before and after the financial crisis, Roland and Römgens (2021) provide an in-depth analysis of the policy change from a narrow focus on market-making measures to the inclusion of market-correcting provisions targeting tax evasion and tax avoidance since 2012. They explain that those developments did not happen in a vacuum, but were embedded in a very specific context of politicization. The financial crisis and the period thereafter provided fertile ground for tax reforms. Because of the bailout programmes, states were in acute need of tax revenues and sentiments of injustice started to emerge amongst regular citizens and taxpayers. Corporate taxation evolved from a depoliticized to a politicized issue. The salience of the issue has been further reinforced by a series of tax scandals carefully orchestrated by a global network of investigative journalists, such as LuxLeaks, the Panama Papers and Paradise Papers. In this era of politicization, new political opportunities arose and the range of actors involved in EU tax policy-making expanded and now includes NGOs and tax activists, such as the Tax Justice Network, Oxfam, Transparency International and Eurodad. At the same time, the engagement of these actors increased the polarization of views about corporate taxation. Their discourse emphasizing justice and tax fairness started to enjoy greater visibility and legitimacy, at the expense of the business community.

Forces within the European Commission and Parliament then took advantage of this opportunity and addressed the newly politicized issues of tax avoidance and evasion to expand their influence. Regarding the Commission, the definition of problems to solve and goals to achieve shifted from a focus on 'competitiveness and flexibility toward market-regulating narratives promoting transparency and fairness' (Roland, 2020, p. 89). With this reframing strategy, the Commission responded to the demands from the civil society and presented its tax agenda as the solution to issues of tax evasion and tax avoidance. Another strategy consisted in using the politicization dynamics to pressure the Member States through naming and shaming. In that respect, the state aid powers of the Commission have been crucial. The state aid investigations conducted by DG Competition under Margrethe Vestager targeted well-known multinationals (Apple, Starbucks, Amazon, Ikea and Nike) as well as European tax havens (the Netherlands, Luxembourg, Ireland and Belgium). The selection of the cases was the result of a deliberate

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political decision to reveal 'to the general public the complicity of national governments and tax authorities in large-scale tax avoidance schemes' and 'put severe pressure on the Member States to change policies' (Roland & Römgens, 2021, p. 20).The Parliament has been instrumental, too. Although it has only a consultative function in the legislative process, it played an important role mostly because of its increasing technical expertise and intensive committee work. Both supported the development of a different tax agenda and increased the pressure on the Member States in the Council. Here we can see that the Commission and recently the Parliament can take advantage of a politicized context and, at least partially, overcome the joint-decision trap by interacting with NGOs and civil society, adopting their tax ideas and using discursive strategies of framing and naming and shaming.

4. CONCLUSION

While taxation remains a core competency of the state, changing political-economic circumstances increasingly required national governments to coordinate tax policies. In the EU, this need has been exacerbated by the push for an internal market without fiscal obstacles. Indirect taxation has been identified as an integral part of the single market since the early days of European integration, and the harmonization of indirect taxes has been faster and deeper than in the area of direct taxation. There, progress has been hampered by a problem-solving gap, commonly referred to as the joint-decision trap. The institutional setting – constituted by the treaties, ECJ case law and adopted legislation – constrains the Member States' autonomy to set national tax policies. Simultaneously, the decision-making procedure requiring unanimity in the Council represents an institutional limitation to tax harmonization or any other form of coordination. Depending on the size of their economy or importance of certain sectors, the conflicting preferences of the Member States further reinforce the joint-decision trap. Those institutionalist and intergovernmentalist approaches are helpful to understand why decision making is a difficult process. However, while the unanimity requirement and diverging national interests are obstacles, there have been occasions where the joint-decision trap has been overcome. A different set of explanatory factors is needed to fully understand the politics of taxation in the EU. The context should not be overlooked, as international developments or processes of politicization had a substantial impact on policy and decision making in the EU. The literature also points to a variety of actors beyond the Member States: supranational institutions, experts building epistemic communities and non-governmental actors, either from the media, business community or civil society. Perhaps most importantly, rational preference formation is not the only mechanism influencing policy-making. Knowledge, ideas and discourse are equally important.

As valuable as the political science literature on taxation in the EU is, it is also confronted with a number of gaps. Whereas the research on the politics of corporate taxation is expanding, this is not the case for indirect taxation. Subject to discussion among legal scholars, VAT and other indirect taxes have not been picked up on by political scientists or political economists to the same extent (an exception seems to be comparative political economy, see for instance Lierse & Seelkopf, 2016). Analyses of the politics of taxation in the EU would also benefit from a greater theoretical variety. There are only a few researchers who moved beyond the formal institutional constraints and dynamics of interstate bargaining, which results in a certain institutionalist or state-centric and rationalist bias. By ignoring to a large extent the influence

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of non-state actors, underlying power relations that transcend state boundaries and the role of ideational elements, certain changes can be easily overlooked or not sufficiently explained. More constructivist and critical integration approaches to the politics of EU taxation would therefore be a welcome contribution to this growing academic field. Moreover, the argument that the recent politicization of corporate taxation is key to explaining post-crisis changes shows that the global context should not be underestimated either. In light of the current international tax negotiations and the new impetus given by the Biden administration, research on the relation between the EU, the United States and the OECD would be particularly relevant. The role of the ECJ deserves additional analysis as well. Its latest state aid rulings are rather ambivalent. While the ECJ confirmed the Commission's decision in the Fiat and Engie cases, it ruled against it in the Starbucks case and overturned the Apple and Amazon decisions, which has been largely considered a 'big blow' for the Commission (Van Dorpe & Oliver, 2020). A closer look at the recent rulings and the political dynamics behind them would improve our understanding of the ECJ behaviour in the field of taxation. Finally, the unprecedented economic recession and massive public debts that follow from the COVID-19 pandemic gave new impetus to fiscal integration in the EU. This is likely to have far-reaching implications for tax issues. Both the Commission and Parliament have highlighted the need to increase the EU's own resources, for instance with a digital levy or a financial transaction tax. In May 2021, the Commission announced the relaunch of proposals to harmonize corporate taxes for the third time since 2011, as well as other anti-tax avoidance measures – reinforcing the political salience of corporate taxation in the EU. Indeed, questions of social justice and fair taxation are becoming more relevant than ever as experts and NGOs have repeatedly warned against the socio-economic consequences of the current health, economic and public debt crisis. In this context, political scientists are unlikely to lose interest in the politics of taxation in the EU any time soon.

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