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THE EUROPEAN EXCISES SYSTEM

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Abstract

The European Union is the product of a unification process which is most highly advanced in the taxation area. The excise duties area represents a highly important element for the European taxation system because much of the competences are transferred at a European level. Moreover, the excise duties play an important role in the completion process of the single market, objective which was set by the White Paper of 1985. The aim of the present article is to prepare an assessment related to the functioning of the excise duties at the European level and to present the relationship between the European Union with the member states, including the possibility to complete the unification process of the single market. The foundation of the topic will be based on the European Union Court of Justice case law, as well as on the case law of the Romanian tax disputes courts of justice.

Keywords: excise duties, common market, unification, White Paper, ECJ

INTRODUCTION. TAXATION AREA AT THE EUROPEAN LEVEL

The European Union represented a reaction to the consequences suffered by the continent at the end of the Second World War (Dinan, 2001, pp. 11-12). In the beginning, the idea was to realize a military union, but this idea was turned down because by fear that the German militarism will be revived (Guillen, 1996, pp. 71-72). After prolonged debates, the foreign ministers of the 6 founding states, decided that the best solution for the European project would be to start from the economic issued, such as taxation (McAllister, 1997, p. 15).

The entry into force of the Rome Treaty in 1957, was the first step in the direction set by the member states and was also the engine the improved the economic ties between the 6 founding member states because of the complete abolition of customs duties (Vanke, 2007, pp. 456-460). The 1970's are remembered by European Union attempts to realize the harmonization of direct

taxation (profit tax and income tax), but this goal is not even today achieved because of lack of political support.

In 1985, the under the leadership of Jacques Delors, the White Paper was presented that set 31 December 1992 as deadline to realize the completion of the internal market in the area of indirect taxation ((Lodge, 1986, pp. 209-210). In this area also were difficulties because of lack of political support with the consequence that even today the process it is not fully closed.

Excise duties, along with value on added tax (VAT), are the main representatives of the indirect taxes at the European level (de la Feria, 2009, pp. 1-5). The first European regulation in the field of excise duties was represented by Directive 92/12/CEE. According to this directive, the excise duties apply only upon alcohol beverages, tobacco, and energy. Directive 92/12/CEE was replaced by Directive 2008/118/CE (in force) representing the general spectrum of excise duties at the European level.

From the point of view of international taxation, it is important to say that excise duties were born from a religious ideology that asked for the sanctioning of persons that used to consume sin products (alcohol beverages, tobacco products). The second aim was to collect addition money for the budget (Terra, Kajus, 2012, p. 415). In present times, the role of excise duties is to tax a specific category of products because they produce a high profit (Gil Soriano, 2013, p. 4).

In conclusion, the European Union pays attention to a proper development of the excise duties system, especially that is an area were competences are shared with member states. In this case, we consider necessary to make a presentation of the excise duties with a special focus on alcohol and alcoholic beverages together with an analysis of how the European regulations reflected into the European Union Court of Justice case law as well as in the case law of the Romanian courts.

I. EUROPEAN UNION'S REGULATIONS IN THE AREA OF ALCOHOLIC BEVERAGES. EFFECTS.

The European Union represents a one the biggest consumers of alcoholic beverages at the international level. The negative effects of this aspect are highly visible requiring for action on behalf of the European institutions. In consequence, taxation represents a tradition tool for the EU to control alcohol consumption phenomena. In addition, EU regulations in the area of excise duties play the role to impose a correct competition inside the internal market.

EU regulations for alcohol and alcohol beverages are represented by Directive 92/83CEE and Directive 92/84/CEE. The analyses of the two directives provides a highly legal system. For example, member states are required to introduce a minimum standard of excise duties level. Member states are not allowed to go down under this minimum threshold.

This issue is exemplified in the case Commission vs. Hungary (ECJ, C-115/13). Hungary lowered the minimum level for excise duties provided by alcohol directives with the aim of protecting the national heritage represented by the local

producers of Hungarian palinka. The Commission said that the Hungarian legislation in case is a direct attack against fair competition inside the internal market. ECJ admitted the lawsuit brought by the Commission and declared the Hungarian legislation incompatible with the EU alcohol directives. Our opinion is that this example confirms the fact that excise duties regulation on alcohol play a key role in protecting the proper functioning of the internal market.

II. PRESENT PROBLEMS OF THE EUROPEAN EXCISE DUTIES SYSTEM REFLECTED IN THE CASE LAW OF THE EUROPEAN COURT OF JUSTICE AND ROMANIAN COURTS CASE LAW

A first case law problem reflected by the EU and national regulations on excise duties is generated by the possibility of member states to apply excise duties not only upon alcohol beverages, but also upon ethylic alcohol of 96 degrees. Our opinion is that this possibly extends unacceptably the taxable amount and generates addition reimbursement requests in the case where the ethylic alcohol it is not used for obtaining alcohol beverages (whisky, brandy, vodka, rum etc.), but it is used for obtaining other types of alcoholic products (sanitary alcohol, vinegar or wash fluid).

One example from Romania`s case law (High Court of Cassation and Justice, civil decision nr. 11/2020) exposes practical difficulties. Inspired by the European regulations, the Romanian legislation asks for alcohol produces to pay a guarantee to obtain the functioning license. Logically, such a guarantee should be asked only in the case of production of alcoholic beverages because this are the only products for which excise duties must be paid.

But in the case of calculating the taxable amount for the guarantee, the Romanian tax authorities include the whole value of the ethylic alcohol of 96 degree, irrespective of the fact that the final products are beverages or not. One of the biggest alcohol producers of Romania was in this situation and decide before the courts of law the lawfulness of the tax authorities. In the end, Romania`s supreme court accepted the point of view of the taxpayer underling the fact that in the case where the ethylic alcohol it is used to produce exempted alcohol products (sanitary alcohol, vinegar, wash fluid), the value of that alcohol cannot be included in the taxable amount of the guarantee.

As we said earlier this example from Romania`s tax law system reveals that fact the deficiencies of the European excise duty system which permits member states to have an action margin too wide. Another example it is provided by the Lithuanian origin case *Bene Factum* (ECJ, C-597/17). A company registered in Lithuania (*Bene Factum*) bought mouth wash products from Poland. The products were made of alcohol and were exempted from paying the excises.

The investigations conducted by the Lithuanian tax authorities revealed the fact that those products were used as alcoholic beverages and not for the personal hygiene. The reason was that mouth wash products were cheaper because the alcohol was exempted from paying excise duties. In consequence, the tax authorities asked the sellers to pay excise duties. The problem was brought before the European Union Court of Justice which was asked to interpret Directive 92/83/CEE.

In his reply, the ECJ remembered the fact the provision of the directive should be applied uniformly across the European Union. Accordingly, if the regulations provides that denatured alcohol is excise duties exempted, no excise duties can be asked if the alcohol remains denatured, even in the case where abusive practices can be noticed.

Another example that presents the deficiencies of the European excise duty system is represented by the civil decision no. 263/2016, delivered by Oradea Court of Appeal (Romania). The legal problem was is related to the conditions imposed by the Romanian legislation for sanitary alcohol production. As we presented above, the sanitary alcohol is exempted from excise duties. Furthermore, the production of sanitary alcohol is allowed only in tax warehouses where 96-degree ethylic alcohol production is allowed.

Oradea Court of Appeal accepted the arguments of the taxpayer and said that it is illegal to impose excise duties in the case of 96-degree ethylic alcohol transfer between tax warehouses which are under the common control to produce sanitary alcohol. The court underlined the fact that this conclusion because the production of sanitary alcohol is permitted only inside tax warehouses and the sanitary alcohol is excise duties exempted.

The solution of Oradea Court of Appeal was upheld by the Supreme Court which dismissed the judicial appeal brought by the Romanian government. The consequence of this litigation is that Romania was forced to change its legislation related to the production of sanitary alcohol. According to the new legislation, the 96-degree ethylic alcohol which comes from an external source, and it is used to produce sanitary alcohol by production tax warehouses is exempted from paying excises.

It is important to say that the lack of European regulations related to exempted alcoholic products was a critical point during the pandemics when a Romanian government ordinance authorized producers of alcoholic beverages to produce sanitary alcohol and the tax warehouses who bought 96-degree ethylic alcohol from external sources to increase their production of sanitary alcohol were fined by the tax authorities because it was considered that they did not comply with the pandemic regulation.

In the end, we think that is time to mention a positive aspect of the European excise duty system also. According to art. 1 par. 2 of the Directive 2008/118/EC, member states may impose upon alcoholic beverages and tobacco products VAT, excise duties and other domestic taxes if those taxes have a specific purpose and do not become another turnover tax.

This European regulation was interpreted by some case in the ECJ case law, such as *Jordi Besora* (ECJ, C-82/12) and *Staatoil Fuel* (ECJ, C-553/13). The ECJ decision say that taxes imposed according to art. 1 par. 2 of the Directive 2008/118/CE should be applied to a specific purpose (there should be approve of direct link between the tax and the set objective). Also, the ECJ underlines the fact that the tax at stake must not transform into a general revenue for the budget of the member state.

Analyzing the situations in Spain and Estonia, the Court declared that the taxes imposed in these countries on energy products are contrary to art. 1 par. 2 of the Directive 2008/118/EC because their only purpose was to produce additional revenues for the public budget. Similar taxes existed in Romania, imposed by art. 342 par. (5) and par. (6) of the Tax Code, but they were repelled and the beginning of 2019 to avoid an infringement procedure that the European Commission was prepared to bring against Romania EU Pilot 7502/15/TAXU).

Last, but not least we consider important to present Scandic Distilleries (ECJ, C-663/11) case, that was the first Romania's case in the excise duties area. This preliminary ruling case objective was to check if European directives were correctly transposed into the national legislation. Scandic Distilleries delivered alcoholic beverages from Romania to Czech Republic. When the company asked to the reimbursement of the excise duties already paid, the request was turned down by the Romanian tax authorities, for procedural motives (some declarations were present before the expedition of the goods started).

The company argued that because excise duties were paid in Romania and Czech Republic as well, all risks of tax fraud or loss of revenue were fully eliminated. In this case, Romanian tax authorities proved to be highly formalist, and, in the case, it is a breach of the principle of substance prevailing over form. Responding to the preliminary ruling, the European court declared that Romania's domestic transposition legislation failed to notice the directive makes a distinction between the situations when the excise duties are paid in both countries and excise duties are paid only in the destination country of the goods.

According to the European judges, the required documents are necessary only in the second case. Because the Romanian legislation imposed the requirement in both cases, the Romanian legislation had affected the validity of the European legislation and the financial interests of the taxpayers whose reimbursement request were turned down unlawful.

CONCLUSIONS

In conclusion, we can see that the European Unions has regulations for the area of alcohol and alcoholic beverages, but for the completion of the internal market are necessary much stronger and decisive actions to be able to deter any unfair actions of the member states. As we know, the completion of the internal market from the point of view of indirect taxes should have happened at last on 31 December 1992, but we can notice that this objective was not reached yet.

The above presented case law represents the reflection of art. 267 TFEU (Pătrăuș, 2021, p. 381) which provides that there still are difficulties in the uniform application of the European excise duties legislation, as is the case of the products which are exempted to pay excise duties. Another negative effect is the fact that this chaotic application of the European legislation affects both the legal order and the economic stability of the European Union.

To diminish the negative effects, the intervention of the European Court of Justice and national court is highly demanded, but these interventions may alter the prestige of the European Union, especially at a time when the power of the European justice system is strongly challenged. In the end, we can notice that the proper functioning of the European excise system is extremely important for the future of the internal market. In consequence, we consider that the problems presented in the present paper should represent a reason for the speeding up the process of completion of the internal market.

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