

The Concept of the Common Market: Advantages and Disadvantages in the Spectre of Harmonization the Tax System and the Benefits for Kosovo

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Abstract: This paper analyses the concept of the single market within the EU. In focus will be a historical overview of creating a single market, advantages and disadvantages of integration in this market. The EU's main goal is to create an area without internal barriers where free movement of goods, persons, services and capital. However, since the establishment of the EU so far, the roadmap of single market functioning has faced various challenges in spectrum to eliminate the legal barriers, harmonization of the laws in the respective countries with the *acquis communautaire*. States, as Kosovo aspiring membership EU in order to increase the free market economy and ensure a higher welfare and stable for the citizens, this can be achieved if should make the harmonization of domestic legislation with the *acquis communautaire*. It is important that Kosovo as a new state (in 2008 declared independence) to become competitive in a single market, by modernizing the tax system with EU directives (direct and indirect taxes). During the process of European integration, the harmonization of the tax system of Kosovo, is considered as *conditio sine qua non* to achieve the free movement of goods, persons, services and capital.

Keywords: *acquis communautaire*; single market; EU; European Standards

JEL Classification: H26

1. Introduction

The aim of the European Union is providing economic integration and social common between EU member states and third countries which aspire membership in EU. The process of European integration requires the elimination of legal barriers that may exist in the country concerned, in the context of harmonization of policies on the fiscal area of the customs union, monetary policies, policies on trade and the establishment of the rules of competition in view of the created common market and the correlation between economic freedom and corruption (Qerimi & Sergi, 2012).

EU member states and third countries differ among themselves for economic development and tax system. The design of the tax system from the respective countries made depend on income sources and other needs that characterize that state.

Therefore, abstinence from exercising financial sovereignty within the state for the purpose of harmonization with the *acquis communautaire*, fiscal policies can result in resistance, from the states itself. So, in a two-country framework, if the foreign country has an initial level of distortion higher than the home country (Lucas, 2001).

The harmonization of tax systems should be in function of the four basic EU principles, such as: Free movement of goods, persons, services and capital.

To achieve a common market fully integrated into the EU, it is necessary to apply the principle of non – discrimination and non restriction (Vanistendael, 2004). The concept of the principle of non discrimination is relative because” wich cannot exist in a vacuum but always requires a tertium

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comparationis as point of reference” (Vanistendael, 2004, p. 12). While the concept of the principle non restriction: “is an absolute concept that operates autonomously, which means that it is independent from the treatment of other situations” (Vanistendael, 2004, p. 26).

The EU Commission has given the proposal for the establishment and functioning of the common market, there are allowances for the differences in the economic development of member states. With the creation of the customs union, which means common rules for stopping the application of customs duties by the member states for the marketing of goods (import - export), and all charges have equivalent effect and the application of the Common Customs Tariff for third countries, like Kosovo (article 28, C. 202).

2. Historical Overview

The legal basis for the creation of a common market in the EU space, derived from the Treaty of Paris of 1951, where the signatory of this treaty, states (France, Italy, Germany and the Benelux countries) organising free movement of coal and steel and free access to sources of production. The Treaty of Paris established the European Coal and Steel Community, represented the first significant step towards harmonization of turnover taxes (De la Feria, 2009, p. 45). Treaty is envisaged the creation of an authority supervisor Common Market, which was created in March 1953 with the aim of supervising the rules of competition, transparency of prices and creating a tax system in common, as for the coal and steel in order to avoid the possibility of double taxation.

In the framework of supervisory authority, it created a group of experts which presented a report, known as the *Tinbergen Report*.

The recommendation of this report was: - This common turnover tax system would be based on the principle of taxation in the country of destination (De la Feria, 2009, p. 46). The purpose of the Treaty has been the creation of a common market for coal and steel, to economic growth, reduction of unemployment and increase of welfare - standard of living (Treaty of Paris, Article 2).

After Tinbergen's report, high authority within the framework of The European Community for Coal and Steel, in Luxembourg 1956, presented us another report - *Spaak Report*, named: *The general common market*. In the first chapter of the report provided for: *The fusion of Markets* was considered and the scope of the review to this report, this in section one: The progressive elimination of customs duties among the member countries will regulate the timing of all the measures which must lead to the final realization of a common market (Spaak Report, section I). In the second chapter of the report, the nomination *Correction of Distortions and Harmonization of National Legislation*, which provides a scheme of procedures to be followed by the governments of countries signatories of the Treaty of Paris, to prepare them to be integrated as economic sector in common market. In the section II of the Spaak Report: Harmonization of the Legislation, foresees the elimination of all barriers as for the legislation of the respective states and then European Commission will propose new legislative package and will be voted by the member states. The aim of the European Economic Community (EEC) was to provide four fundamental freedoms of the Community via the customs union between the EEC signatory states. Then when the economic development within the common market, began to stagnate, was necessary to reorganize the common market.

So, Delors Commission (Jacques Delors, the eighth President of the European Commission) took the initiative and publish White Paper in 1985, where it led to the adoption of the Single European Act, a treaty reformed which the decision-making mechanisms of the EEC and set a deadline of 31 December 1992 for the Completion of a single market.

European integration reforms of the common market continued, in 1992 with The Maastricht Treaty (formally, the Treaty on European Union or TEU) which foresaw the creation of an economic and monetary union. Then in 1997 the Amsterdam Treaty abolished physical barriers across the internal market by incorporating the Schengen Area within the competences of the EU in order to create the possibility of free movement of people while with the Lisbon Treaty, came into force in 2009, however, some areas pertaining parts of the four freedoms (especially in the field of services) had not yet been completely opened.

3. The Common Market vs. Internal Market

Common market which guarantees free movement of goods, services, people and capital, in the space of the European Union is known as common market. But not always in theory and in practice can make the difference in terminology used, when we refer to the common market vs. internal market, it is difficult to conclude what we have in common and distinctive elements.

However, two terms are used to the EU treaties.

But as the restrictive concept of the market, is considered internal market. While, extensive concept of Common market, includes not only free movement of goods, services, people and capital, but also the various policy areas such as agriculture; competition; state aid.

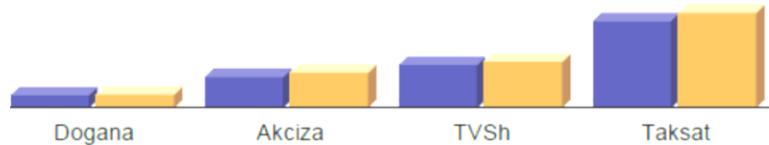
The creation of the Schengen area, within the EU create the possibility of free movement; the common market works better using the unite monetary (since January 1999 suppressed using Euro), access consumer, telecommunications; energy, e-commerce; financial services; in food safety; consumer protection; erasmus student exchanges; employment, etc.

Internal market it is defined in paragraph two of Article 14 of the EC treaty a: “an area without internal frontiers in wich the free movement of goods, persons, services and capital is ensured in accordance with the provisions of this Treay”. If we analyze the part “*an area without internal frontiers*”, the question arises whether it is conducted free movement of goods, services and capital within the EU space!? As for the harmonization of tax systems communitaire acquis in the field of indirect taxes is harmonized by determining the minimum and maximum tax rate, but as for the direct taxes there are still major divergences between the tax systems of the EU Member States.

The comparison of Corporate Income Tax (CIT) norms of Serbia, Montenegro, Macedonia, Albania, Kosovo and Bosnia & Herzegovina, with average norms of EU CIT, we might say that Balkan countries have lower norms and that low norms of CIT can be qualified as tax incentive (Peci, 2016). Three former socialist countries: Croatia, Slovenia and Bosnia and Herzegovina (Federation of Bosnia and Herzegovina), it covers all of the main taxes as well as attitudes about tax policies and their effects (Blažić, Štambuk, Šimović, Lazovic-Pita & Klun, 2017).

Table as follows:

Table 1. Revenues from customs liabilities (Customs, Excise and VAT) during all the year 2015 have had progress



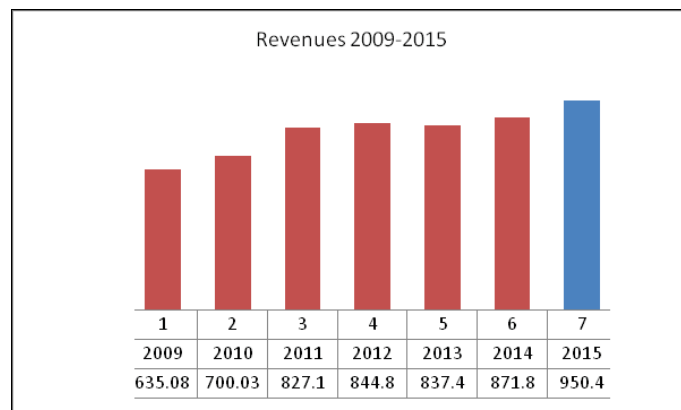
Source: (Annual Report 2015 Kosovo Customs)

But as for the common market competencies are limited by the principle of subsidiarity. The principle is established in Article 5 of the EC Treaty, paragraph 2: “In areas which do not fall within its exclusive competence, the Community shall take action, in accordance with the principle of subsidiarity, only if and insofar as the objectives of the proposed action cannot be sufficiently achieved by the Member States and can therefore by reason of the scale or effects of the proposed action, be better achieved by the Community”. The new framework adopted by the European Commission to guide its member states’ country-by-country reporting directives. It also outlines the anti-tax avoidance rules in six major fields, half of which have been specifically developed for the EU, while the rest have been adopted from the Organisation for Economic Co-operation and Development’s (OECD) because the tax evasion results in the loss of €50 - 70 billion each year in the EU (Thomson Reuters, Report, 2016).

4. Advantages and Disadvantages in the Spectre of Harmonization the Tax System and the Benefits for Kosovo

Kosovo as a new state (2008) with its constitution provides: “A market economy with free competition is the basis of economy of the Republic of Kosovo” (Article 10 of the Constitution of the Republic of Kosovo) and currency use the Euro. As every independent state has sovereignty in setting fiscal policy, Kosovo has the right to define the structure of the tax system.

Table 2. Kosovo Customs is the collection of revenues for national budget



Source: (Annual Report 2015 Kosovo Customs)

Despite the importance of national taxes at the national level, taxes have their own determining importance in European Community Policies (Peci & Morina, 2017, p. 85). EU member state also have their tax regime that is in harmony with the EU tax system. Free movement of goods, services, people

and capital provided by the treaties of the EU, do have an impact and reach even in third countries under European Economic Area Treaty (eg Norway) or under bilateral Agreements (e.g. Kosovo) influenced the domestic (tax) law of such third countries! (Vanistendael, 2004, p. 221).

To answer the question posed, required to reflect Kosovo's journey (as third country) towards signing the SAA, as the first contractual agreement between the EU and Kosovo. As regard to the states of Western Balkan, EU in 1999, proposed the establishment of the Stabilisation and Association Process (SAP) based on the criteria of Copenhagen and strategy, that the European perspective, for these countries will be in accordance of their progress which will be analyzed based on the stable democracy, the rule of law, free market economy and regional cooperation.

Kosovo is part of SAP's framework since the Thessaloniki Summit.

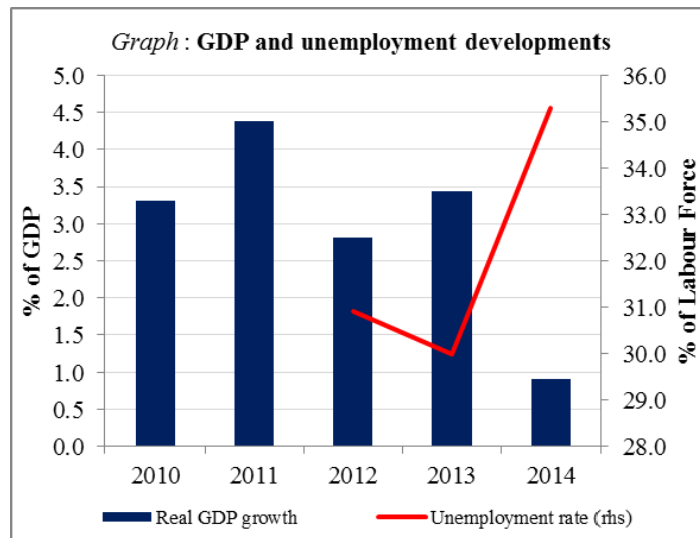
More specifically, in April 2005 the European Commission (EC) public Communication European Future for Kosovo, and in 2006 the Council adopted the first European Partnership for Kosovo (NPISAA, 2016). In Progress Report (2011), the European Commission recommended the initiation of a feasibility study for the SAA. After meeting the short-term criteria that included: the rule of law, trade, public administration, protection of minorities.

The European Commission (2013) publish a monitoring report to confirm that Kosovo had fulfilled all criteria for beginning the negotiations to SAA.

Negotiations began in October of 2013 and ended in May 2014, was finalized after review and approval by the governments of EU member states, on 27 October 2015 was signed SAA. Based on the structure of the Copenhagen criteria, all measures and priorities are divided into three blocks: Political Criteria, Economic Criteria and European Standards - Harmonization of Kosovo Legislation with the acquis in the EU (NPISAA, 2016).

Kosovo is considered a small market for the EU, as yet, its economy relies on remittances, and informal economy is at a high level, which is reflected, in the number of unemployed people, by Report EC Kosovo of 2015 is 35.3%, while for the young people, level of unemployed is 61%.

Table 3. GDP and unemployment developments in Kosovo



Source: (Commission Staff working document Kosovo, 2015 report)

Kosovo as new born state does not have a functioning market economy but at the same time Kosovo's integration into the EU common market, will bring in numerous benefits to the:

- Economic growth;
- Reduction of trade deficit in Kosovo;
- Increasing the number of foreign investments;
- Export of goods and services in the EU market, etc.

The level of trade exchange of Kosovo by the EC Report 2015 still remains low 98.08 million euros in export and import 1:08 billion euros in 2014, reflecting the low competitiveness of the market and its products.

As it belongs to the legislative harmonization of Kosovo with European standards, is in an early stage despite the 1064 initiative and the adoption of European standards and some administrative regulations and guidelines. As for the field of taxation by the EC Report (2015), Kosovo has shown progress by making the implementation of the strategy and action plan 2014-2018 to prevent and combat the informal economy, money laundering and terrorist financing.

Approximation of Kosovo's legislation with the *acquis* the EU is foreseen in Article 74 of SAA, which is required for Kosovo to make changes in the priority areas of the *acquis* to be transposed into national legislation in the field of the internal market, the area of freedom, security and justice, as well as trade - related areas, to make the full alignment of the legal framework.

Harmonization of legislation in the field of taxation with the *acquis*, as for the indirect taxes (VAT and excise ie for) largely harmonized with the EU directives related to this kind of taxation.

Within the Stabilization and Association Agreement, a special place occupied areas of taxation, which is stated in Article 39, provides the prohibition of fiscal discrimination, Article 40 provides fiscal fees, Article 105 provides measures to be taken in reforming the tax system and fiscal policy generally, in view of tax increasing competition, reducing the informal economy and fiscal evasion. As regards direct taxes such as income personal tax and corporate tax, should be undertaken reforms which will eliminate barriers that have companies to exercise economic activity on cross-borders.

5. Concluding Remarks

Based on the requirements of the EU for the harmonization of Kosovo's legislation with the *acquis* in the field of taxation, can we reach the conclusion that the requirements in terms of fulfillment that framework or legal infrastructure, are achieved by adopting laws: The Law on Tax Administration and Procedures; The Law on Value Added Tax; The Law on Personal Income Tax; The Law on Corporate Income Tax, which are harmonized with the Code of Conduct of taxes in business as well as a package with other by laws that help implement these. Laws which are in line with the *acquis* and based on the principles of the OECD. Kosovo after signing the SAA should take concrete steps to promote its economy in the European common market, in the field of food industries and agriculture.

We should encourage thus foreign investors to invest their capital in Kosovo, where the workforce is at a high level.

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