

DISTRIBUTIVE JUSTICE THROUGH TAXATION: EUROPEAN PERSPECTIVE¹

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A b s t r a c t

This article elaborates on the possibility of having distributive justice through taxes at European level. That possibility will be based on the verification of a set of conditions such as *fiscal sovereignty, political community, welfare model, and personal taxes*, which, according to the author, must be present at the level of the European Union in order to achieve that normative principle (distributive justice).

Throughout the discussion, upon acknowledgement that those requirements are still not in place, it will be suggested the possibility of moving to a Fiscal federalism, highlighting at the same time its advantages in the context of globalization.

1. Distributive Justice

The principle of *distributive justice*, understood in the light of 'social justice' has a quite broader scope involving several fields of knowledge, such as political philosophy. However, throughout this analysis, the topic *distributive justice* will be addressed strictly in relation to taxes. Therefore the concept at stake (*distributive justice*) will correspond to the meaning it normally has in tax law literature. In that sense, *distributive justice* will be understood as a normative principle which determines how wealth, taken in a broader sense (in order to encompass income), will be distributed amongst taxpayers according to the principle of equality. The latter principle will not be taken solely in a formal manner, as was the case during liberalism, but in a material sense, given that the actual conditions of taxpayers are taken into account.

The concept of *distributive justice* we are adopting will correspond, though, to the distribution of wealth amongst taxpayers according to the principle of equality understood in a dynamic way (i.e., based on the ability to pay, and having taxation as its main instrument).

2. Mapping out the topic

The topic addressed is intertwined with the notion of a welfare State and, therefore, it can only be considered in that context. Although, the formula «distribution through taxes» appeared in connection with the Welfare State, the elements it is made up of date back further.

¹ This paper was prepared as the basis for a lecture on European Taxation held at Mykolas Romeris University in September 2003.

For a better understanding of the connection between taxes and *distributive justice*, it is advisable to go back in time in order to shed light on the first moments of the relationship between the two.

2.1. Taxes

Although the concept of tax goes back to ancient times, the present notion of tax as a «*financial, unilateral, definitive contribution, imposed by law, collected by public entities for the purpose of achieving public goals*», appeared very recently. Before then, one could not talk about taxes in the way they are understood nowadays. Until then we could only speak, at the most, of the pre-history of taxes.

In Ancient Greece and Rome there was no clear distinction between the public and the private sphere which is crucial for the present notion of tax.

During the Middle-ages, there was neither a public authority with a structure enabling it to impose taxes, nor a truly political community. Taxes consisted more of an arbitrary confiscation by sovereigns.

With the liberal revolutions, taxes started to have a meaning similar to the one they have today,¹ except for the fact that they were not unilateral. They were the main economic resource for the State, but considering that the role of the State was merely residual (watchdog State) taxes were more of a price proxy. Taxes were, therefore, bilateral, given that public goods provided by the State functioned as consideration.

2.2. Distributive Justice and Taxation

During the liberal period the principle of equality, taken in a strictly formal sense, was prevailing in the field of taxes, and the justice ensured by that principle was merely a commutative justice. Only with the welfare State did a change take place. This model of State became dominant mainly after the Second World War and is currently in place in most of Western Europe. This model represents a breakaway from the liberal State, given that besides the increasing multitude of new tasks, the State has also the duty of implementing a *distributive justice* through taxes² (redistribution of income within the political community).

The concept of putting into place *distributive justice* through taxes is a recent development in the history of political institutions, and derives to a great extent from principles underlying the welfare State. The fact that redistributive justice had become a goal of the welfare State³ implied that taxes stopped being merely *ad rem* taxes and progressed towards being personal taxes (i.e., taxes which take into account the actual personal situation of taxpayers such as source of income, marital status, etc.).

3. Necessary requirements to attain distributive justice through taxes

Having briefly elaborated on the elements that constitute the formula we are reviewing, that of *distributive justice*, we should now single out the necessary requirements a system has to fulfil in order to support a system of *distributive justice* through taxes.

First of all, the power to support a tax system has to be in place, i.e., there must be fiscal sovereignty (power to levy taxes, rule them out, narrow or enlarge their scope). However, fiscal sovereignty is just a feature of State sovereignty, which implies, consequently, that the former is dependent on the latter. Thus, for the time being, only States may exercise fiscal sovereignty.

Secondly, there must be a political community. This fact is crucial in terms of supporting taxes, since they represent an expense inherent to the existence of a given community. In fact, if there is no political community, the solidarity required to justify the individuals' will to pay for public needs will be lacking. Without this solidarity which keeps the political community together, there won't be a

¹ Cfr. Menéndez A. J. «Justifying Taxes: Some Elements for a General Theory of Tax Law». – Dordrecht: Kluwer, 2001. P. 94.

² The tax system should discharge three basic functions, namely the procurement of revenue in order to finance basic public goods, the redistribution of income within the political community and the management and steering of the economy.

³ Cfr. Menéndez A. J. «Three Paradigms of Taxation: Towards a Procedural Reconstruction of Tax Law», Themis, year II. 2000. N.º 3. P. 184–185.

duty to pay taxes either. Moreover, the political community is also fundamental to support *distributive justice*, since it is necessary, for the redistribution of resources, that those resources are seen as collective assets, which is only possible if individuals see themselves as part of a community owning those assets. In this context it is also paramount that solidarity bonds are strong enough to convince individuals to share burdens for the benefit of a more just distribution of wealth.

Thirdly, it is necessary that the community corresponds to the welfare State model. It would not be possible to have *distributive justice* through taxes in a jurisdiction where a libertarian political philosophy was prevalent (according to which the State would have a residual role), with roots in the thought of scholars such as Hayek, or Nozick, who are against *distributive justice* and consider personal taxes (fundamental for *distributive justice*), a form of theft¹.

Finally, following up what was set out in the previous point, there must be personal taxes in order to take into consideration the actual personal circumstances of taxpayers.

To sum up, the conditions necessary for *distributive justice* through taxes to be possible are: (a) fiscal sovereignty; (b) political community; (c) welfare model; (d) personal taxes.

4. European Union

It is now time to apply the test to the EU in order to check out if the requirements necessary to attain *distributive justice* through taxes are met.

4.1. Fiscal sovereignty

To determine whether there is fiscal sovereignty at European level we have to look at: a) the nature of the European Union's own resources; b) measures regarding tax harmonisation and c) ECJ action regarding tax matters.

a) Nature of European own resources

EU resources are mainly: (1) agricultural levies and duties; (2) common customs tariffs; (3) a percentage of the Value Added Tax, calculated on the basis of the common harmonised basis and (4) transfers from Member States calculated on the basis of Gross National Income.

From the resources listed above, only the first and the second are considered European taxes. Although they are taxes, they do not express a genuine power to tax, to the extent that they envisage an interventionist role, rather than a financial one. Therefore, they only reveal a limited power to tax, exclusively in connection with a specific policy.

As regards VAT, although States allocate to the Union part of its revenue according to criteria set by the Union, that does not convert this tax into a European tax. Thus, VAT is nothing but a harmonised national tax².

Finally, the transfers from Member States do not raise any doubts, considering that it is clear-cut that they are not taxes.

b) Measures regarding tax harmonisation

Tax harmonisation provides grounds to discuss 'a kind of' fiscal sovereignty. However, despite the attempts to maximise harmonisation³, these efforts have been limited to indirect taxes⁴, and they have been somewhat feeble. The main reason for the current situation is the fact that the Treaty provides for law-making by unanimity in the Council when a tax matter is at stake⁵. In addition, the harmonisation carried out so far has had a merely ancillary role in relation to the attainment of the European Union's economic goals such as a) completion of a single market; b) Member State economic integration; c) Union budget financing through Member State transfers of part of the revenue of previously harmonised taxes.

From what was stated above one has to conclude that the European Union does not possess a power to impose tax measures *ab initio* (from the start), which is fundamental to sustain a full fiscal sovereignty.

¹ In Nozick R. «Anarchy, State and Utopia». – Oxford: Blackwell, 1974 apud Menéndez, op. cit. P. 156.

² Berlin, Dominique, «Droit fiscal communautaire». – Paris: PUF, 1988. P.17. Note 36.

³ See article 93 (EC Treaty).

⁴ Article 94 (EC Treaty) provides the legal basis for harmonisation of direct taxation.

⁵ See Article 95, 2 (EC Treaty).

c) ECJ action regarding tax matters

Action by the ECJ is no different from tax harmonisation through the back door. Consequently the arguments put forward above to dismiss a full fiscal sovereignty, may also be deployed here. In fact, through ECJ action a plain tax harmonisation is achieved, dodging the unanimity requirement (among member states' ministers of finance – ECOFIN) when tax matters are on the table. Hence, ECJ action consubstantiates an alternative way of carrying out initiatives regarding tax matters.

Although the ECJ has already ruled on several issues, including direct taxes¹ pertaining to Member States, it has done that in line with what was stated in the previous point - for the sake of achievement of the Union's economic goals (e.g. removal of hurdles to free movement of workers) - and not as an expression of a full power to tax.

d) Overview

After having looked into the ways fiscal sovereignty may reveal itself at European level we realise that there is no full fiscal sovereignty. The fact that, according to some commentators, the fulfilment of that requirement is one of the few features² the Union is lacking to become a Federation³, explains why Member States haven't vested the Union in that full sovereignty yet. So far, there is no strong political commitment to give the Union a full fiscal sovereignty.

4.2. Political community

Tackling this concept is quite difficult, not only because it is fluid, but also because it has been changed by globalisation. Therefore we will stick to a very introductory and simple approach.

For some scholars, the European Union is already a political community. As a matter of fact in the beginning of its history, the European Community was circumscribed to a limited set of economic issues. However, with the Treaties of Maastricht, Amsterdam and Nice, the European Union has been transforming itself into a political community within a defined territory and with its own citizens, who are granted some fundamental rights by European Treaties and by the jurisdiction of the European Court of Justice. Moreover, European citizens are bound directly by European Law⁴.

Other scholars, aggregated under the purview of 'The No Demos Thesis'⁵, deny vehemently that the European Union is a Political Community. This is the understanding of the German Constitutional Court and the constitutionalists on whom it relies⁶. According to that orientation, there will only be a political community if some subjective elements (such as social cohesion, shared destiny and collective self-identity which, in turn, result in loyalty) as well as objective elements (such as homogeneity of ethno-cultural criteria: common language, common history, common cultural habits and sensibilities) are put into place. It presupposes, at the end of the day, the existence of a Nation-State⁷.

The orientations put forward can be subsumed into two models of political community. The one presented in the first place corresponds to a 'community of association', in which the political community is based upon implicit or explicit shared values, economic and social intercourse among members, and shared ends and projects. Thus, that community derives from the individual voluntary

¹ ECJ: 28.1.1986 (Avoir Fiscal); 27.9.1988 (Daily Mail); 8.5.1990 (Biehl); 28.1.1992 (Bachmann); 26.1.1993 (Werner); 13.7.1993; 13.7.1993 (Commerzbank); 14.2.1995 (Schumacker); 11.8.1995 (Wielockx); 27.6.1996 (Asscher); 15.5.1997 (Futura-Singer); 12.5.1998 (Gilly); 16.7.1998 (ICI); 9.3.1999 (Centros); 29.4.1999 (Royal Bank of Scotland); 14.9.1999 (Gschwind); 21.9.1999 (Compagnie de Saint-Gobain); 26.10.1999 (Eurowings); 26.9.2002 (Lankhorst-Hohorst GmbH). See Laule, Gerhard & Weber, Robert, «Harmonisation of the Tax Systems in Europe: Judgements of the European Court of Justice», Frankfurt/Main, http://www.whitecase.com/tax_harmony_english.pdf, p. 7.

² The EU lacks two significant features of a federation. First, the Member States remain the 'masters' of the treaties, i.e., they have the exclusive power to amend or change the constitutive treaties of the EU. Secondly, the EU lacks a real 'tax and spend' capacity, in other words, there is no fiscal federalism.

³ Giving the European Union real legislative and executive powers remains for the most part futile without providing it with necessary financial resources to exercise these powers effectively. See Börzel, Tanja, Risse, Thomas, «Who is Afraid of a European Federation? How to Constitutionalise a Multi-Level Governance System», Jean Monnet Working Paper, N.º 7/00, Symposium: Responses to Joschka Fischer, Harvard Law School, Cambridge, 2000. <http://www.jeanmonnetprogram.org/papers/00/00f0101.html> p. 10

⁴ Cfr. Börzel, Risse «Who is afraid...». P. 9; Menendez, «Towards...». P. 23.

⁵ See Weiler J. H. H. «The State 'über alles' Demos, Telos and the German Maastricht Decision», 1995, <http://www.jeanmonnetprogram.org/papers/95/9506ind.html>

⁶ Cfr. Weiler. «The State...», op.cit. P. 14.

⁷ 'Nation'- Individuals whose common identity creates a psychological bond and a political community; 'Nation-State' – State with a single predominant national identity.

choice of its members to live together under the same laws and institutions (social contract theory)¹. The second model mentioned, corresponds to a 'community of identity'² which is based on a common identity sustained by shared pre-political bonds such as language, culture, race, religion ethnicity³, corresponding, accordingly, to the concept of State whilst a sociological basis for the Nation.

According to what has been put forward would the European Union be a political community?

If we look at the problem in the light of the 'community of identity' model we will hardly give an affirmative answer⁴. Conversely, if we adopt the 'community of association' model, we might consider the European Union as a political community⁵ since it rests not only on common values and ends, but also on economic and social relations among its members, duly specified in a fundamental text of political nature⁶.

In a 'globalised' world, political community is less and less a synonym of the concept of 'State', and is becoming only one among various shapes that this concept (political community) may display. Thus, we find the model 'community of association' more realistic. According to this perspective there is already at European Union level a political community. Actually, this assertion seems to be buttressed by the solidarity expressed by the European Union's distributive policy (which, although representing a great share of the Union expenditure, is still frail) between economic sectors, carried out through a common agrarian policy, and a redistribution between regions through the use of economic development funds.

4.3. Personal taxes

The fact that there is not a full fiscal sovereignty at European level seems to imply, as a consequence, that there are no personal taxes. However, one cannot assert categorically that there are no personal taxes, given that the European Union imposes personal taxes on its own personnel. Nevertheless, the revenue obtained through that tax is very modest, considering the tiny number of civil servants. Although this tax does not account greatly for the EU budget, it has a great symbolic value. On one hand it is linked to the benefits stemming from the Union (EU civil servants benefit directly from the Union); on the other hand it has progressive rates, given that taxation is heavier for those who are better off. The features put forward – the benefit principle and the principle of progressiveness- imply that the unit of *distributive justice* is the individual and no longer the Member State, which might constitute the embryo for direct taxation on a broader basis at European level.

4.4. Social Europe

The requirement listed in the last place, necessary for *distributive justice* through taxes, was the need for a political community sharing welfare State ground rules. The fulfilment of this requirement, in the context of the European Union, implies the existence of a Social Europe.

The concept of 'social', in this particular context, corresponds to the implicit willingness a given political community has of taking over its members' economic, social and cultural aspects. One of the most suggestive manifestations of that idea is the attempt by public entities to fight against citizens' social inequalities, with the purpose of ensuring a material equality amongst them, in both economic and cultural aspects.

Although all European States have 'social' models and the EC provisions⁷ corroborate that trend, so far, the steps towards the affirmation of a social Europe have been too feeble.

¹ Cfr. Habermas J. «Why Europe Needs a Constitution» // *New Left Review*. Vol. 11. 2001. P. 15–16.

² Typical of nationalistic conceptions of political community.

³ Cfr. Howse R. «Association, Identity and Federal Community» in *Multi-level Constitutionalism - Transatlantic Perspectives Comparative Federalism*, Workshop, Faculdade de Direito da Universidade Nova de Lisboa. – Lisbon, 2001.

⁴ Cfr. Piris J.-C. «Does the European Union have a Constitution? Does it need one?» // *European Law Review*. Vol. 24. 1999. P. 567.

⁵ See Habermas J. «The Postnational Constellation», Polity Press, 2001. P. 100: «*The prognosis that there cannot be any such thing as a European people remains plausible only if 'the people', as source of solidarity, actually depends on some corresponding community as a pre-political basis of trust, which fellow countrymen and women inherit as the shared fate of their socialization*». See also Weiler, op. cit.; Van Ham P. «European Integration and the Postmodern Condition: Governance, democracy, identity». – London: Routledge, 2001. P. 58; Linklater A. «The Transformation of Political Community». – Cambridge: Polity Press, 1998. P. 2.

⁶ Cfr. Lieberman E. «National Political Community and the Politics of Income Taxation in Brazil and South Africa in the Twentieth Century» // *Politics & Society*. 2000. Vol. 29. N.º 4. P. 517.

⁷ E. g. articles 135 and 158 (EC Treaty).

«The weakness of social Europe is the result of a lack of sufficient and direct concern with social standards at European level, but it is also the result of a lack of positive programs that try to redress inequalities and social problems at a European level. The lack of willingness to transfer national competencies on social policy and the insufficiency of revenue collected through taxes at European level are to blame».

Agustín José Menéndez¹

Recent developments in the social field are more related to matters directly connected to European goals, namely employment and freedom of establishment. Directives regarding equal treatment and opportunities, as well as some ECJ rulings envisaging the same end, have established a few rights for European citizens. The developments in other areas of the vast 'social' scope such as the redistribution of economic resources have been less significant, although promising. There has been an extensive dialogue amongst Member States on social matters and an attempt to strengthen non State actors such as the Commission, the European Parliament and the ECJ, paving the way for the establishment of a network of supranational social policy creation. It was indeed, due to the efforts of the Commission and the European Parliament that the process of co-ordinating social policies began.

That process started in 1992 with two recommendations on 'convergence' of social protection objectives. It continued with the establishment of a periodic system of reporting (the Social Protection in Europe reports) and the launching of a 'framework initiative' on the future of social protection and its 'modernisation'. It finally culminated in the recent proposal by the Commission of a 'concerted strategy for modernising social protection'².

All these developments were reinforced at the Lisbon summit³, which is meaningful.

The construction of 'Social Europe' may have produced a less splendid edifice than many of its proponents had aspired, in particular in the area which regards the topic under discussion (*distributive justice* through taxes). Nonetheless, the achievements of the last few decades have helped to reinforce significantly the basic underpinnings of the European social model – i.e., extensive basic social security cover for all citizens; a high degree of interest organisation and co-ordinated bargaining; and a more equal wage and income structure than in most non-European countries. Their legacy now provides the basis for a new phase of development based on a much more complex architecture of policy making, and with potentially greater social policy ambitions, than in the past⁴.

5. Enabling distributive justice at the European Union level

The application of the test involving the requirements we have been dealing with makes clear that, for the achievement of *distributive justice* through taxes at European level, the only element missing is the political willingness to give the Union fiscal sovereignty (on which depends the full affirmation of the other requirements needed to achieve *distributive justice* through taxes). This advance towards a fiscal sovereignty represents quite a step, to the extent that according to some commentators it would imply a loss of fiscal competences by Member States' parliaments. That is why Members States are not willing to relinquish their sovereignty. Although arguments against allocating fiscal sovereignty to the Union may be sound, moving into Federalism seems the only way of attaining *distributive justice* through taxes at European level.

6. The need for fiscal federalism

A high degree of political integration is essential, which, as said previously, may only be implemented if Europe moves towards fiscal federalism. However, fiscal federalism cannot be

¹ Menéndez A. J. «Towards...». P. 24.

² Cfr. Ferrera M., Hemerijck A. e Rhodes M. «The Future of social Europe: Recasting Work and Welfare in the New Economy».

<http://www.iue.it/SPS/People/Faculty/CurrentProfessors/PDFFiles/RhodesPDFfiles/report.pdf>

³ Lisbon Summit (23 and 24 March 2000).

⁴ Cfr. «Final report of Working Group XI on Social Europe», Brussels, January 30 of 2003, <http://ue.eu.int/pressdata/EN/conveur/74345.PDF>, partially reproduced above.

dissociated from the federalism considered in a broad sense. Hence, only in the framework of a full federalism would fiscal federalism be able to be implemented.

Two federal models can be distinguished: a 'co-operative or intra-state federalism' and a 'dual or intra-state federalism'.

The first, of which Germany is almost a prototype, is based on a functional division of labour between the different levels of government. While the federation makes the laws, the States are responsible for implementing them. The vast majority of competences are concurrent and shared. In terms of taxations this model corresponds to a system where the fiscal competence is mainly Federal¹ and where tax revenue is shared in a joint tax system², usually complemented by financial equalisation³. The Federation and the States share the most important taxes. The allocation of joint tax revenue also allows for a redistribution of financial resources between States with stronger and weaker spending power. The functional and fiscal interdependence of the two levels of government not only gives rise to a co-operative federalism, interlocking politics and joint decision-making, but also favours the emergence of a policy-making system in which policies are formulated and implemented by the administrations at both levels of government.

The second type of federalism ('dual or inter-state federalism') to which the US most closely corresponds⁴, emphasises the institutional autonomy of the different levels of government, aiming at a clear vertical separation of powers (checks and balances). For each sector, one of the two levels of government has both legislative and executive powers. As a consequence, the entire machinery of government tends to be duplicated because each level should manage its own affairs autonomously. The institutional autonomy of each level of government, in the final analysis, presupposes a fiscal system which grants the States sufficient resources to exercise their competences without the financial intervention of the central State. This should be ensured by a comprehensive fiscal autonomy of the States which allows them to levy their own taxes in order to have an independent source of revenue. Thus, in this system, fiscal sovereignty is shared between the Federal Government and the several States⁵.

Which of the two models appears more appropriate for a European federation? Answers would be of a different nature. Our aim is simply to raise the question and not to elaborate on it.

Just to sum up, and as an illustration of how the hurdles which are hampering the progression to Federalism are of a fiscal nature, we quote:

«While a further transfer of policy competences to the European level does not seem completely unrealistic, the real issue is the weakness of the 'taxation and spending' power of the European Union. Its redistributive capacity is currently limited to 1.27% of the GDP generated by all Member States, whereas the redistributive capacity of the individual Member States amounts to approximately 50% of their GDP. In Germany, the federation receives about 40% of the overall tax revenue. Thus, a comparable spending power for the European federation would correspond to a share of about 20% of the European GDP. An almost twentyfold increase in the EU's spending power might strengthen the legitimacy and effectiveness of European governance, but it is inconceivable that Member States would agree to such an enormous decline in their revenues».

Tanja Börzel and Thomas Risse⁶

7. Advantages of distributive justice through taxation

The possibility of ensuring *distributive justice* through taxes at European level would bring a multitude of advantages both for the Union and for the Member States.

a) Advantages for the European Union

If there was a system of *distributive justice* at European level as an institutionalised policy, it

¹ Federation sets out a general framework for policy making for all States, while the latter implements and administer such policies within this general setting.

² See Guy I. «Les Ressources Financières de la Communauté Européenne». – Paris: Economica, 1986. P. 395, 410.

³ See Guy I. op. cit. P. 387–389.

⁴ Also in Canada, to a smaller extent.

⁵ See Börzel T., Risse T. «Who is afraid of a European Federation?...». P. 10. Their argumentation is here partially reproduced.

⁶ In Börzel T., Risse T. «Who is afraid of a European Federation?...». P. 14.

would foster a better integration of different European political communities increasing the legitimacy of European institutions.

«Federalise their wallets and their hearts and minds will follow»

*James Madison*¹

So far, States and regions have been the units of *distributive justice*. However, if there were direct taxes, the individual would be the unit of redistribution (*distributive justice*). This situation would have a great impact, given that citizens, feeling the direct effect of taxes and consequently, of *distributive justice*, would be more willing to participate, which, in turn, would increase legitimacy and the quality of the democratic process at European level².

Out of respect for the principle «no taxation without representation», new mechanisms for the purpose of ensuring a greater involvement of the European Parliament ought to be created, which would also strengthen the democratic legitimacy of the Union. Making tax matters fall under the co-decision procedure set out in article 251 of EC Treaty would be a possible solution. This mechanism would minimise the imbalance of power that presently exists in the budgetary decision process to the detriment of the European Parliament.

Another important advantage would be the possibility, although in an indirect way, to solve some of the most serious problems regarding the EU budget – growing number of EU new tasks and inherent expenses (agrarian common policy, new policies, enlargement) and falling revenue (common customs tariffs produce less and less revenue due to trade liberalisation and the percentage of VAT transferred to the EU budget is following a decreasing trend³). *Distributive justice*, as has been said, requires direct personal taxes, which would have the advantage of increasing the resources of the EU budget.

b) Advantages for Member States

Increased capital mobility makes the State's access to profits and monetary wealth more difficult. Besides that, heightened competition between tax systems, implying often «a race to the bottom», reduce the capacity to collect taxes, making States lose revenue. This loss of revenue has serious consequences. On one hand, due to the shortage of revenue, it compromises the social model, including one of its most significant hallmarks – redistribution of wealth. On the other, it invites a situation which bluntly opposes the purview of *distributive justice* – it burdens income raised by regular wage earners, which is far too high in various Member States according to international standards.

The European Union has more potential to collect taxes than Member States acting in isolation. A central taxation would have the advantage of obviating revenue loss at European level. In addition, it would stop competition amongst Member States. It would also allow some revenue transfer to the States, which could be achieved drawing inspiration from the German model.

Finally, a direct taxation of personal income, at European level, would also have advantages in terms of carrying out *distributive justice* in an effective and proper way. It would allow greater justice at the level of European citizens' contributions to the EU budget. According to the present system, the burden borne by each individual is dependent on his or her nationality, and not on principles of *distributive justice*. Therefore, a poor German person contributes more, through his taxes, to the EU budget than a rich Portuguese person⁴.

Conclusion:

The analysis made shows that the requirements needed for *distributive justice* through taxes haven't been fully accomplished yet. The solution rests on a future genuine power to tax. That power would maximise the other requirements set out above. In fact, the communication on the future of the European Union⁵ hints at the need of a genuine European power to tax. Also, several members of the

¹ Börzel T., Risse T. «Who is afraid of a European Federation?...». Note 5.

² Börzel T., Risse T. «Who is afraid of a European Federation?...». P. 15.

³ In Menéndez A. J. «Towards...». P. 9: «The rate to be applied to harmonised common base of VAT is to be reduced from the actual 1% to 0.50% in 2004, with a transitory rate of 0.75% for 2002 and 2003».

⁴ Cfr. Menéndez A. J. «Towards...». P.12.

⁵ See <http://europa.eu.int/futurum/documents/offtext/doc151201en.htm>.

Working Group on Economic Governance have reiterated the need for a European power to tax. This position has been endorsed by one of the, at the time, most influential Commissioners - Pascal Lamy¹.

Certain scholars² are so keen on the possibility of having *distributive justice* at European level that they even consider it a good starting point to implement that same *distributive justice* on a global level. First, because the European Union is an intermediate layer between national and global politics³, which denotes already some progress. Secondly, because they consider that European redistribution means, in a way, a matter of solidarity among strangers; to the extent that there is no common identity (there is a mere 'community of association'), which brings some hopes that the same could happen on the global level. In short, they see the European experience as an apt model to conceive how redistribution should operate on a global level⁴.

Indeed, if the idea of *distributive justice* on the global level were to succeed and be implemented, it would bring various benefits for human kind, namely the possibility of putting in practice the 'Tobin Tax'⁵ which has not been implemented due to the fact that a power to tax hasn't been created at international level yet.



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¹ 'Convention: l'urgence', Le Monde, 12 September 2002.

² Habermas J. «The Postnational Constellation». P. 108: «I see no structural obstacles to expanding national civic solidarity and welfare-state policies to the scale of a postnational federation».

³ Cfr. Menéndez A. J. «Towards...». P. 2.

⁴ Cfr. Menéndez A. J. «Towards...». P. 30.

⁵ See <http://www.tobintax.org>

Mokestiniai socialinio teisingumo (distributive justice) aspektai: europietiškoji perspektyva

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Pagrindinės sąvokos: socialinis teisingumas, mokesčiai, fiskalinė nepriklausomybė, gerovės valstybė, teisinė valstybė.

SANTRAUKA

Galime teigti, kad socialinio teisingumo (distributive justice) principas mokesčių sistemoje vis dėlto nebuvo ir nėra iki galo įgyvendintas. Problemos sprendimas galimas tik ateityje, susiformavus valdžiai ar institucijai, galinčiai įdiegti mokesčių sistemą, atitinkančią šį principą.

Straipsnyje pateikti argumentai leidžia teigti, kad gilėjant europiniams integraciniams procesams, būtina viena valdžia ar institucija mokesčių, kurie atspindėtų socialinį teisingumą, klausimams spręsti. Tokiai idėjai pritaria daugelis ne tik socialinių mokslų doktrinos atstovų, bet ir žymūs administracijos atstovai, tokie kaip Pascalis Lamy (Europos Sąjungos Prekybos komisaras).

Dalis mokslininkų žavisi šia socialinio teisingumo (distributive justice) idėja, manydami, kad ji turėtų būti įgyvendinta ne tik Europos žemyne, bet tapti ir globalių procesų neatsiejama dalimi. Socialinio teisingumo (distributive justice) įtvirtinimas Europoje suprantamas tik kaip tarpinis etapas pasaulinių procesų kontekste. Doktrinoje pabrėžiama, kad jau dabartinė europietiška perpaskirstymo sistema pagrįsta solidarumo principu. Šio principo esmė – identiškumo neakcentavime, tik taip pagrindžiant solidarumą. Straipsnyje konstatuojama, kad toks socialinio teisingumo (distributive justice) patyrimas Europoje gali tapti prielaida pasauliniams procesams šioje srityje.

Todėl galime teigti, kad socialinis teisingumas (distributive justice) galėtų būti reikšmingas žmonijai, o būtent tuomet būtų galima praktiškai įgyvendinti „Tobino mokesčių“ koncepciją, kuri neįgyvendinama, nes nėra pasaulinių institucijų, galinčių tai padaryti.

