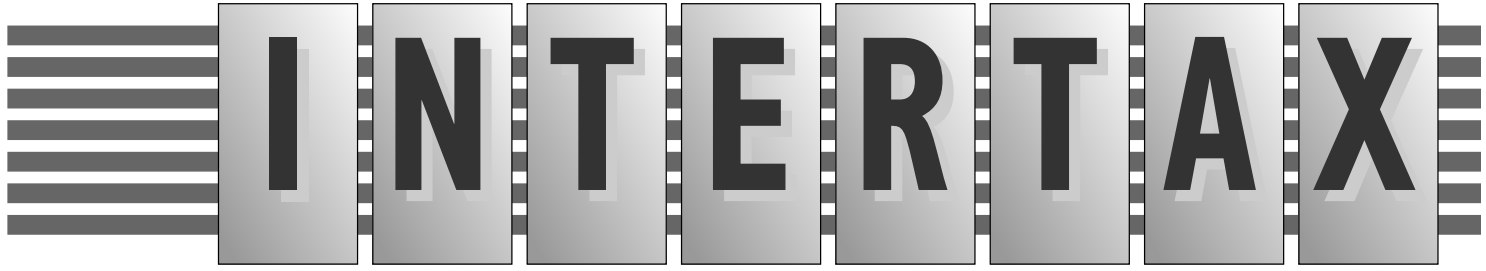


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## Harmonization in Community Law and Enforcement of Rights in Tax Law

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The easy enforcement and effective protection of rights in the arena of Community law cannot be isolated from the question of how much chances are for the European integration to be juridified. Disparities in national law may constitute obstacles to the smooth operation of the internal market. The question of the development of Community law cannot still be confined to that of simple statutory harmonization. This has been obvious since two decades at least when the state-centred, categorical, comprehensive and detailed statutory harmonization has been replaced by the more relaxed forms of the coordination of Member States in Community legislation.<sup>1</sup> There has been even more emphasis placed on the self-regulation of professions, acknowledged subsequently by Community bodies (in terms of decisions, communications, white papers, etc.). This way, bottom up initiatives, arising from the negotiating of legitimate interests and the enforcement of individual rights, have contributed to the development of an additional source of Community law harmonization. This paper seeks to explore the interplay between the enforcement of taxpayer rights and Community law harmonization.

The improvement of the protection of individual rights and the smooth operation of Community institutions can be hoped, provided that better understanding and deeper agreement of the Member States can be achieved of the meta-principles of Community law (subsidiarity and proportionality, democracy, openness and transparency in Community law, non-restriction and non-discrimination, effectiveness of Community law, principle of legitimate expectations, etc.). Any way, the question of the easy enforcement of rights has come to the forefront, and good answers can hardly be expected to arise from the traditional forms of statutory and positive harmonization. Tax law can be an appropriate subject for making of an assessment of how much progress in the enforcement of individual rights has been made in the area of Community law so far.

### 1. Community Law Issues in General

#### **A. Need of Regulatory Competition and Its Limits**

Due to the numerous failure of the Member States to arrive at consensus necessary in adopting harmonized Community law, on the one hand, and, on the other one, thanks to the initiatives of citizens and businesses in developing Community law by testing national legislation in the light of the freedoms enshrined in the EC Treaty, the evolutionary development of Community law has been manifest in recent years. Evolutionism implies not only bottom up initiatives, but it also means the involvement of Member States in taking part in regulatory competition. While citizens try to benefit from harmonized Community law in individual legal cases, Member States pay particular attention to the development of their legal infrastructure to improve the competitiveness of the country. In this process, they may choose to take part in regulatory and tax competition. Growing competition may erode the sovereignty of the nation state, however, which is otherwise jealously protected, while Community law may receive new impulses for its spontaneous development.

Both the economics of scale and scope may suggest harmonization. For example, the operation of a European company statute can be very useful in the instance that the legislator can go beyond the small units of legislation and avoid dispersion in national legislation. The logic of the economics of scope seems to be less relevant to the harmonization of Community law. The inherent interconnectedness of legal institutions may entail difficult cases where regulatory competition is less useful. For example, substantive tax law depends on procedural tax law, and procedural tax law depends in turn on the procedural law of public administration.

Evolution is constrained to the extent that legal institutions cannot be transformed without difficulties

#### Notes

<sup>1</sup> The first pattern of the so-called new approach to harmonization is the Council Directive 83/189/EEC on national technical standards (re-codified by Directive 98/34/EC of the European Parliament and the Council). It is not the Directive itself which is to approximate national laws on technical standards. The Directive is to acknowledge only what has been introduced by the Member State itself, following a review procedure, coordinated at Community level. These standards can thus be developed in the place where the regulatory authority is at the closest possible to market players.