

Harmonization and Deharmonization of Excise Duty in the European Union as Contemporary Challenges of the EU Tax Law

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Abstract: - In order to ensure the effective functioning of the EU internal market, in particular the exercise of its freedoms, it is necessary to harmonize indirect taxes at the level of European Union law. This harmonization also covers excise duty. At the same time, when analyzing the harmonization of excise duty in the EU Member States, certain gradually emerging differences can be noticed at the level of national legislation. As a consequence, it should be considered whether they are the beginning of deharmonization processes and strengthening the tax sovereignty of EU Member States, which may become a major challenge for the tax law of the European Union overtime. The article discusses the idea of indirect tax harmonization at the European Union level, indicates the specificity of the harmonization of excise duty, presents contemporary deharmonization tendencies of excise duty in European Union law, as well as presents contemporary challenges related to the issue of excise duty in European Union law. The analysis of this issue was based on the following research methods characteristic for legal sciences: theoretical-legal, formal-dogmatic, literature criticism and comparative-legal method. Using these methods, it was concluded that there are contemporary deharmonization tendencies in the field of excise tax which are connected with legal, political, economic, financial, social, cultural and ecological conditions. Moreover, it has been noted that although the de-harmonization tendency is not yet universal, it is slowly affecting the functioning of the common internal market in the European Union. The problem of excise duty de-harmonization noticed by the authors of this article is a challenge for common economic and legal turnover in the European Union.

The aim of the article is to analyze the harmonization and deharmonization trends in excise duty from the perspective of the European Union law, as well as to identify challenges for the EU legislation in this area.

Key-Words: - challenges of EU tax law, deharmonization, European Union tax law, excise duty, harmonization

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1 Introduction

In the European Union law relating to the field of tax law in the context of indirect taxes, such as excise duty, there is a harmonization approach that results from the need to ensure the effectiveness of the common internal market. The harmonization tool used in the EU legislation are directives, which should subsequently be implemented by all Member States of the European Union. When analyzing the solutions for the harmonization of the excise duty adopted in EU directives, it can be seen that they are of a basic and general nature, leaving detailed issues to be regulated at the level of the legislation of individual Member States of the European Union.

This is due to the differences of a socio-economic nature in individual Member States. The gradual deepening of differences in the political, legal, social, economic, environmental and cultural dimensions between individual Member States contributes to the emergence of an increasing number of distinctions in the field of excise duty in the legislation of individual countries, which, in comparison to other indirect taxes harmonized in the EU law, can be defined as a deharmonization trend. Thus, it can be noted that the deharmonization of excise duty may become a major challenge in the field of the EU tax law.

When analyzing the literature on the subject, it is possible to notice gaps in the scope of taking up

excise duty issues, taking into account the regulations of the European Union law. Moreover, the literature on excise duty at the EU level points to the issues of harmonization of indirect taxes, including excise duty, across the European Union. At the same time it can be noticed that the legislative activity of particular member states, resulting from political, social, economic and environmental conditions, leads nowadays to deharmonization tendencies, which has not been analyzed in the literature on this subject so far. The differences in excise duty regulations in individual EU member states may become so significant that it becomes impossible to claim its harmonization. Thus, the main contribution of the article is, first, to draw attention to and analyze the deharmonization tendencies of excise tax in the European Union and, second, to identify and discuss the trends of excise tax changes at the EU level. The results of the conducted research will fill the gaps in the literature on the subject and may also find practical application for the legislators of the European Union and the European Union member states, especially in the context of works on new regulations and amendments to the current legislation in the area of indirect taxes, keeping in mind the basic goal of harmonization and avoidance of deharmonization tendencies. Moreover, the de-harmonization tendencies negatively affect the economic turnover in the European Union and, consequently, the activity of public and legal economic entities.

The aim of the article is to analyze the harmonization and deharmonization trends in excise duty from the perspective of the European Union law, as well as to identify challenges for the EU legislation in this area.

2 Research Methodology

In conducting the analysis in the field of harmonization and deharmonization of excise duty in the European Union, research methods characteristic of legal sciences were used, aimed at theoretical, axiological. As a result, the following methods were applied: theoretical-legal, formal-dogmatic, critical writing and comparative-legal.

In the article the theoretical-legal method was applied to analyze legal institutions in the field of tax law and European Union law with reference to the literature on the subject and legal acts, which made it possible to analyze the bases of excise duty operation at the EU level. The theoretical-legal method also allowed for the analysis of basic concepts, as well as considerations based on legal logic through the identification of designations of

given concepts, analysis of scope relations of particular concepts, as well as semantic and definitional analysis and relations between particular concepts, taking into account the features and functions of given concepts.

The formal-dogmatic method was applied to the analysis of legal acts and auxiliary legal doctrine. The formal-dogmatic method made it possible to analyze the normative material, as well as to reconstruct legal norms from various provisions of law, especially the EU law. In this context, it was also important to carry out an analysis from the perspective of the hierarchy of law sources, the interdependence between particular legal acts, the applied conflict of law rules and the processes of law interpretation.

As regards the selection of primary literature on the subject, the development of a database of publications, as well as the search and analysis of the literature on the subject, the method of literature criticism was applied. This method also made it possible to develop a report, which is the basis for theoretical considerations and the formulation of conclusions.

The comparative-legal method was applied in order to examine the comparative material between the legal orders of the European Union Member States, as well as in the context of the EU legislation, especially in relation to the differences in excise duty, indicating the deharmonization processes.

3 The Idea of Harmonizing Indirect Taxes in the European Union

Traditionally, the issue of determining and collecting taxes is a matter for the state, constituting its fiscal sovereignty according to the principle: „the power to tax is the power to govern” [1, p. 91] follow [2, p. 111]. At the same time, the level of European integration within the European Union is gradually deepening, which leads to the formation of two currents - on the one hand, the concept of federalism of the European Union (ultimately the creation of the United States of Europe), and, on the other hand, confederal concepts assuming the existence of the so-called „Europe of homelands” [3, p. 23]. Regardless of these considerations, the enforcement of the Treaty of Lisbon [4] led to the final transformation of the European Union, or earlier the European Communities, into an international organization [3, p. 24] of an interstate (intergovernmental) type [3, p. 27], which is uniform in nature and is also sometimes referred to

as an international organization of a supranational type [3, p. 29-31]. Therefore, it should be clearly stated that the present European Union is not a state, but, at the same time, it is possible to notice a certain interference of the European Union in issues related to indirect taxes in the legislation of the Member States. It takes the form of the harmonization of indirect taxes and results from the establishment of the common internal market of the European Union, as provided for in Art. 3 sec. 3 of the Treaty on the European Union [5, hereinafter: TEU]. In order to ensure the efficient functioning of the common market, it is necessary to establish a common taxation [1, p. 91] to a certain extent. By the same token, harmonization, and thus approximation of the legislation with regard to taxes, and not regulating all issues relating to a given tax at the level of the secondary EU law, does not lead to the total deprivation of tax sovereignty [6] from the Member States in the field of indirect taxes, but only harmonizes [7] certain key elements that are important for the effective functioning of the EU internal market.

The basis for harmonizing indirect taxes, including excise duty, in the European Union law, apart from Art. 3 sec. 3 TEU is also Art. 113 of the Treaty on the Functioning of the European Union, which provides that: „The Council shall, acting unanimously in accordance with a special legislative procedure and after consulting the European Parliament and the Economic and Social Committee, adopt provisions for the harmonization of the legislation concerning turnover taxes, excise duties and other forms of indirect taxation to the extent that such harmonization is necessary to ensure the establishment and functioning of the internal market and to avoid distortion of competition” [8, hereinafter: TFEU]. The harmonization of indirect taxes also results from the necessity to implement the freedoms of the EU internal market, i.e. the free movement of goods (Articles 28-37 TFEU), services (Articles 56-62 TFEU), capital (Articles 63-66 TFEU), and persons, which consists of the freedom of establishment [9] (Articles 49-55 TFEU) and the movement of employees (Articles 45-48 TFEU) [3, p. 62]. Another prerequisite for the harmonization of indirect taxes should be the issue of competition [1, p. 95; 10, p. 1661; 3, p. 66-67] in the EU internal market, which should be undistorted [1, p. 95; 11, p. 563], which is particularly related to the need to ensure equality in competition, and to avoid all forms of discrimination [1, p. 95; 12, p. 298]. Another premise indicated in the literature on the subject is a common border with third countries in

international trade [1, p. 95], which is realized in the need to maintain a common commercial policy towards countries outside the European Union and to create a uniform border of the entire European Union based on a single internal market [1, p. 95; 13, p. 42], also in economic matters. In addition, the common policies in the field of transport, fisheries and agriculture in the European Union (Art. 13 TFEU) as well as the common commercial policy [3, p. 64] should be indicated. The harmonization of indirect taxes is also necessary from the perspective of the existence of the Economic and Monetary Union [3, p. 68-69] and, moreover, a Member State may not use tax law as an economic policy instrument [1, p. 95] in a manner contrary to the Treaties [14, p. 345]. Other premises for harmonization in the literature include, inter alia, issues of preventing double taxation as well as combating tax crime more effectively [1, p. 96; 15, p. 424].

In this context, it is also worth pointing out that the harmonization of indirect taxes in the EU law is carried out by issuing directives, which are then implemented into the legal orders of the Member States. It should also be indicated that the limitations for the harmonization of indirect taxes, in addition to the tax sovereignty of the Member States, as well as the competences of the European Union, as defined in the Treaty of Lisbon, will also include fundamental freedoms, the principle of subsidiarity, the principle of necessity, the internal market [1, p. 103-105], and primary and secondary law of the European Union. Currently, the literature on the subject points to the concept of the process of the „Europeanization of indirect taxes” [1, p. 92; 16, p. 15]. On the one hand, therefore, the question arises about the limits of the harmonization, but, on the other hand, from the perspective of the legislation of individual Member States, as well as the general legal, political and economic situation in the European Union, the question is also posed whether, at least gradually in some Member States, a reverse trend towards deharmonization is starting indirect taxation and return to the tax sovereignty of the Member States.

4 The Specificity of the Harmonization of Excise Duty in the European Union

The common system for excise duty began to apply de facto since the establishment of the internal market, i.e. from 1993, but in fact the excise duty was in force in individual countries much earlier.

The excise tax is one of the indirect taxes whose origins in Poland date back to the 15th century. There is no legal definition of this term, although one can refer to the Polish language dictionary, which defines excise duty as: „tax levied by the state on certain goods” [17] or as „a kind of indirect tax levied by the state on certain food products, consumer goods and services, included in their price” [18]. For centuries, various products were taxed with excise duties, including beer, honey, mineral oils, matches, yeast, sugar or paper tissue. There is no doubt, however, that it was membership in the European Union that contributed to the harmonization of procedures and, in part, the subject of taxation of individual products with excise duty. It should be said that, unlike tax on goods and services, excise duty is a selective tax. This means that only individual goods, strictly defined by law, are taxed with it. Excise duty is also a single-phase tax, i.e. products subject to it are taxed only once. This results in a situation in which the excise duty is passed on to other entities participating in the consumption chain, and, consequently, the burden of the above tax is borne by the consumer.

Guided by the idea of the implementation of economic freedoms, the European Union contributed to the development of the concept of harmonization, i.e. approximation of the legal orders of different countries. However, bearing in mind the sovereignty and independence of each Member State, the European Union was obliged to create such legal and tax solutions that, on the one hand, would be similar in each state, and, on the other hand, would leave some legislative freedom in this regard.

Harmonization was to ensure an equal burden on taxpayers in the European Union purchasing certain products, regardless of their country of origin. However, it was necessary to introduce specific legal institutions that would contribute to the harmonization of the tax. This was mainly related to the abolition of border controls between the Member States and the introduction of similar principles and constructional elements of the tax, i.e. the subject of taxation, the tax base, tax rates, or the moment of the tax liability. Facilitating trade between countries, however, had to ensure a balance in development while maintaining the basic principles of competitiveness. The aim was to create a common European market which was to be the final result of harmonization.

Directives are the tool for implementing the harmonization legislation. They *de facto* represent external pressure on the Member States to introduce certain tax regulations in each state. Therefore,

although the EU authorities cannot directly influence the tax system of the countries, they can certainly do it indirectly by issuing directives that must be implemented by each of the Member States. In the context of the approximation of legal orders from the perspective of excise duty, Directive 92/12/EEC [19, hereinafter: Directive 92/12/EEC] was of the utmost importance, as it primarily determined which products would be subject to excise duty. These products, in accordance with Art. 3 of the above Directive 92/12/EEC are: mineral oils, alcohol and alcoholic beverages, and tobacco products. They were the so-called harmonized products, which meant that in every Member State of the European Union these products should be taxed. However, a certain margin of discretion was left to the countries as regards the possibility of taxing goods other than those specified in the directive. The condition for the above was not to increase the formalities related to the border crossing in trade.

The abovementioned directive specified general conditions for excise duty, while the structure, such as the tax rate, was included in the directives separately for each of the products. These directives first of all specify the subject of taxation, mainly using the structure of the Combined Nomenclature [20], and define the minimum tax rates. Economic development and the growth of the European Union membership contributed to the commencement of work on a new regulation defining the general conditions for taxation with excise duty. Directive 92/12/EEC was replaced by the new Directive 2008/118/EC [21, hereinafter Directive 2008/118/EC], which first of all redefined the subject of taxation of the harmonized excise goods as: energy products and electricity, alcohol and alcoholic beverages, and tobacco products. Both the repealed Directive 92/12/EEC and Directive 2008/118/EC are the so-called horizontal directives, which means that they have the greatest impact on the legislation of the Member States.

The harmonization of indirect taxation was the way to achieve the objectives set out in the preamble to the TFEU, that is, inter alia, to the establishment of a common economic market. The goal was not only to facilitate the economic turnover, but also to prevent double taxation or effectively combat all tax-related crimes. Thanks to harmonization some common solutions were introduced e.g. to reimburse overpaid tax or some regulations were introduced that allowed for actual payment of tax in one Member State only. Currently, achieving the objectives of harmonization is simplified thanks to digitalization. In the area of

excise duty, a system such as the Excise Movement and Control System (EMCS) is intended not only to make it easier for individuals to carry out certain activities with excise goods, but it is also an effective method for tax authorities to control transactions. Furthermore, the creation of a common system makes it possible to exchange information between European Union member states, which in turn results in easier detection of tax fraud. In particular, transactions involving goods that are exempt from indirect taxation should be borne in mind, as fraud in this area can be widespread. The harmonization of indirect taxes is thus intended to provide a certain stability and sustainability while eliminating differences in trade by introducing common rules for the taxation of selected taxes.

European authorities, however, when creating regulations in the field of indirect taxes, must be based on the principles of subsidiarity and necessity. „It is in the interest of the Union to maintain the harmonization that has been carried out so far” [1, p. 105]. It is not possible to introduce uniform rules throughout the Community, because the European Union is not an international organization that takes away the sovereignty of its countries. These countries continue to be independent. The desire to replace harmonization with the unification of the law in the European Union would have to entail a change in its legal character, which the Member States have not agreed to so far. It can therefore be concluded that the sovereignty of the states, especially in such an important aspect as financial policy, is a kind of border for the EU legislation.

The harmonization provisions must be acceptable to all Member States, which differ in socio-economic terms, and should therefore be very general. The solutions adopted by the European Union, i.e. the harmonization of only a certain group of products defined by the Combined Nomenclature and the determination of tax rates at the minimum level, confirms the fact that it is not possible to create a Community law that would be unified at the level of all Member States.

Products indicated in Directive 2018/118/EC that are subject to excise duty, i.e. energy products and electricity, alcohol and alcoholic beverages, and tobacco products, can be classified as strategic products that are of particular importance for the European Union. Taxation of the abovementioned products is not only about ensuring significant revenues to the budget (in Poland, excise duty is the leading one among the most profitable taxes to the state budget), but above all is aimed at natural environment damage prevention and protecting human health. Art. 1 sec. 3 of Directive

2018/118/EC, however, gives the possibility of taxing also other products provided that this does not increase the formalities when crossing borders during trade.

5 Contemporary Tendencies in the Deharmonization of Excise Duty in the European Union Law

The literature on the subject points to the issue of the harmonization of excise duty in the European Union. At the same time, for some time now it has been possible to notice the creation of further exceptions at the level of the legislation of the Member States, which will be presented below. On the one hand, it can be said that harmonization is not in fact absolute, and the states exercise their fiscal sovereignty in accordance with the EU law. However, on the other hand, it can be pointed out that the creation of newer and newer exceptions may lead to the disturbance of the single internal market, as well as economic freedoms under the Treaties and undistorted competition. Moreover, it should be noted that some states have emerging tendencies to strongly emphasize sovereignty and independence within the European Union, and that they also conduct their own tax policy towards third countries. This makes it necessary to consider the question of not as much harmonization as, quite on the contrary, deharmonization, the origins of which can be seen now and whose development may take place in the future. The proposed consideration of the concept of the deharmonization of excise duty in the European Union law as a perceivable challenge would be associated with the tendency to gradually create newer and newer exceptions and new excise regulations at the level of the legislation of the Member States, which over time may turn into a desire to create one's own excise duty law by individual Member States. The consequence of these actions will be the inability for an effective single internal market to function, and thus a significant regression in the processes of European integration in the European Union.

In order to ensure a full European integration, in particular the free movement of goods, services and people, it was necessary to create one of the most important economic and financial factors, i.e. a common tax system. However, it was not possible to build a unified tax system as there exist many different legal orders in the international arena. This is due to, inter alia, historical, cultural and socio-economic differences. Each country regulated the

tax system in a manner appropriate to its financial needs.

Currently, one can observe the differentiation of excise regulations. The Member States exercise their freedom to tax other products with excise duties. For example, it can be indicated that in the Republic of Poland, the subject of taxation with excise duty are passenger cars, in Poland and Italy, lubricating oils [22], in Germany, coffee, also contained in other products, while in France or Hungary, products with a high sugar content became subject to excise duty. Considering Polish regulations on excise taxation of lubricating oils (CN 2710 and 3403), it should be noted that currently, entities carry out many transactions related to these products. Intra-Community acquisition of lubricating oils within the territory of the Republic of Poland is associated with numerous excise obligations, including keeping excise records and, above all, payment of excise tax. However, entities originating from European Union member states other than Poland and Italy, when making transactions with such products, may be guided by the conviction that excise duty has been harmonized and, consequently, each European Union state has similar legal regulations in this respect. This may in fact result in the failure to comply with excise duty obligations and the non-payment of tax. It is worth noting that lubricating oils constitute a significant part of energy products and are not merely a marginal excise product. Despite the fact that Poland enjoys the freedom to tax other products, there is no doubt that such action gives rise to a new, opposite trend in indirect taxation, i.e. deharmonisation. The European Union's goal was to eliminate differences in trade and create a common economic market. The excise duty is a tax on goods and services that is not subject to excise duty, but is a tax on goods and services that is not subject to excise duty. Also, the sugar tax applicable in Poland in 2021 is nothing else than a tax that, from the perspective of the features and tasks to be fulfilled, may be included in the excise duty, although the subject of taxation and its structures are not specified in the Excise Duty Act [23].

Excise duty should meet the challenges that will arise in the modern market. The subject of taxation made in the EU directives cannot be determined once and for all. From the perspective of excise duty, an excellent example is the taxation of the described indirect tax on innovative products or liquids for electronic cigarettes. The legislation of the EU and individual Member States should take into account the ongoing economic progress, which

will translate into an increase of the items in the catalog of products subject to excise duty.

It is worth considering whether the current method of harmonization will fulfill its tasks and purpose. The countries increasingly emphasize their independence and put their own needs first, which promotes slow changes in the taxation of the harmonized excise goods. The catalog of products subject to excise duty in individual countries is gradually expanding. In particular, the states that take into account the health of citizens or environmental issues might create a situation in which excise duty is imposed on new goods in the future. It is true that the purpose of the indirect tax will be achieved, but it will not be conducive to its harmonization. In fact, a new tendency can be observed, which is the de-harmonization of excise duty. Given such circumstances, the bodies of the European Union face a completely new challenge concerning re-examination of the adopted harmonization solutions.

6 Excise Tax – Contemporary Challenges

From the perspective of the issue of excise duty, both at the level of the EU law and of individual Member States, various challenges can be identified.

6.1 Limits of Freedom of the Member States and the Legislation of the European Union

The pace of the economic development acts in favor of the statement that harmonization should not be based on a closed catalog of excise goods. As already mentioned, the Member States have a certain freedom in taxing excise duties also on other products. However, as the case law of the CJEU shows, such a regulation also causes interpretation problems. These should not constitute a limitation themselves nor a reason to limit the Member States in legislating and adapting the tax system to economic needs.

The question how each of the Member States can influence the content of the EU law arises again. The main role in the field of the EU legislation is played by bodies such as the European Commission or the European Council, and the states themselves may only have a minimal impact in this regard.

The EU legislation is guided by the idea of creating a common market. The goal of the approximation of the legal orders is to contribute to the integration of European countries described by M. Gilbert [24] and C. Shore [25]. This action is intended to eliminate the transgression and violation

of fundamental rights, limit the introduction of unfavorable tax law legislation, or stop tax discrimination. The approximation of national tax systems is to facilitate the proper functioning of the common market. Directives that aim to harmonize regulations are binding on the Member States, but within the scope of the result to be achieved. The procedures and measures to achieve this are left to the discretion of individual Member States. The reason why the European Union acts in the field of harmonization and not unification, i.e. creating uniform regulations for all countries, is precisely the sovereignty of individual states. Art. 113 of the TFEU states that the activity of the EU authorities in the field of the harmonization of regulations relating to indirect taxation is their indispensability for the functioning of the common market. The Treaty, as the primary law of the European Union, was a model for other legal acts, therefore the EU directives should meet certain standards, and in particular they should ensure the countries' integrity and independence. These rules cannot be circumvented, and efforts to create a common market should be achieved by methods that primarily take into account the sovereignty of the Member States.

The envisaged freedom of taxation with excise duty also on other items is used nowadays on a larger scale. The dynamically developing economy of the EU Member States creates new challenges for the legislators that must be met. This situation creates a state of deharmonization, which is a complete opposite of harmonization. In recent times, a process in which the excise duty is no longer equated with the common market can be observed. The structures of this indirect tax are used by the Member States in their national legal orders, which is allowed by the freedom granted by Directive 2008/118/EC.

6.2 Deharmonization of Excise duty

In perspective, the challenge for the EU legislator may be not so much the harmonization of excise duty, but the danger associated with a deharmonizing approach, especially on the part of the Member States. Already now, there are tendencies among some of the countries to express willingness of returning to the idea of tax sovereignty and not to be bound by the EU law in this respect. It can be gradually seen in the trend of differentiating individual regulations in the EU countries within the freedom granted to the Member States to tax other products with excise duty. A possible departure from harmonization in the future may lead to significant difficulties in the effective

functioning of the single internal market in the EU, especially since originally the European Communities were economic cooperation organizations. It should also be noted that deharmonization may be either formal, through changes in the EU law regulations, or informal, through political actions of individual EU countries. The European Union is also one of the key elements of European integration within the EU, and therefore a possible deharmonization tendency may lead to the reversal of the integration process or its significant inhibition, or the actual creation of two blocks of states within the EU - those that want further, deeper integration and those who prefer a return to the significant sovereignty of the Member States also in the area of tax, which may over time contribute to the fragmentation of the EU's unity.

6.3 Remaining Challenges in the Field of Excise Duty

Other factors that may pose a great challenge in the field of excise duty, especially in the perspective of its possible deharmonization, include political, social, economic and environmental issues.

Nowadays, the differences in the processes of European integration between the governments of individual EU Member States are clearly discernable. Some support the concept of creating a federal state in the shape of the United States of America, i.e. the United States of Europe, and demand deepened integration and harmonization of legal systems, including tax systems, while others are moving towards the concept of the „Europe of homelands” [3, p. 23], demanding that the deepened integration and harmonization processes be stopped. It is also connected with the tendencies which are, on the one hand, Euro-enthusiastic and, on the other hand, Euro-skeptical, noticeable at the political level. Until recently, Eurocepticism was a niche view in the EU, but the recent elections to the European Parliament have shown that the Eurosceptics are becoming a real force in the EU. In the long term, therefore, this may translate into the division of the EU, as well as placing more emphasis by Eurosceptics on the need to return to fiscal sovereignty of the countries, also in the field of excise duty, and thus to its deharmonization.

As in the case of political issues, there is a strong distinction in the EU society between Eurosceptics and Euro-enthusiasts, which is also associated with the tendency to increase or reduce the role of the EU in financial and therefore also tax matters. The public mood, especially in crisis situations, can have a large impact on the decisions

of the Member States' governments, and thus on the functioning of the EU.

From a tax perspective, economic issues are of key importance and are related to the political and social issues presented above, especially since the harmonization of excise duty is based on a single internal market and the existence of its freedoms. The economy may be affected by economic, political and social crises, which in turn may lead to changes in the area of the economic integration. This is because during any recessions caused by various factors, there may be a situation where the legislators of individual EU states will introduce regulations with deharmonizing tendencies. During crises, member states seek to introduce solutions that will be best for that particular state at that particular time. The actions taken by them are based on individual economic interest without cooperation. In such a situation, the aim of the legislators of individual Member States will not be the pursuit of a common commercial policy, based on co-determination of provisions aimed at harmonizing certain areas, in this context a certain part of the tax law. In fact, crises always cause a tendency to return to state economies and reduce the amount of the EU regulations. As a consequence, the economic situation of the EU and its individual Member States may bring about the emergence of not only harmonization tendencies, but also deharmonization trends, also in the field of excise duty.

In addition, environmental issues should also be identified as a challenge to excise duty in the EU law. The choice of products subject to excise duty made by the EU authorities was influenced by the will to support sustainable development, which is understood as caring for the natural environment. In particular, energy products and electric energy have a significant impact on the ecosystem, especially when misused. The European Union thus aims to reduce harmful emissions so that the use of energy products is kept to a minimum. In literature, excise duty is also called the ecological tax. „According to the Eurostat classification, an environmental tax is a cash benefit based on a natural entity (or its equivalent) of a certain phenomenon, activity or substance that has a proven and particularly negative impact on the natural environment.” [26, p. 9] follow [27]. The European Green Deal is another example that shows that the condition of the environment matters to the European Union. The action plan announced in the abovementioned agreement is to contribute to the reduction of pollution level through, inter alia, the use of alternative energy sources. The excise tax

regulations for the production of energy from such sources provide for certain exemptions from excise duty, thus encouraging entities to act in this area. The fulfillment of the cited objective, which is the protection of the ecosystem, is possible, for example, by forming the prices of excise goods. The presence of higher-priced products on the market will cause consumers to limit the purchase of certain goods and thus maintain balance in the nature.

7 Conclusions

In summary, the above analysis of the problem of the harmonization of excise duty in the European Union law has shown that today a noticeable tendency to deharmonize excise duty can be observed. It is not universal yet, but the exceptions at the level of national legislation may, in the long run, indicate a deharmonizing tendency. It can therefore be noted that the solutions adopted at the level of the EU law in the field of the harmonization of excise duty in the perspective of socio-economic development may turn out to be insufficient. The Member States are gradually and increasingly utilizing the discretion left by the EU legislator to tax other excise goods than those provided for in the directives. It is influenced by various conditions of a political, legal, social, economic, environmental and cultural nature, and may also be related to the efforts of some countries to return to tax sovereignty. Excise duty covers strategic products and is of great importance for the effective and proper functioning of the EU internal market. For this reason, the noticeable deharmonization trends may become a major challenge for the EU tax law in the future, especially in the context of the functioning of the single internal market.

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