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End of previous Forum article

Åsa Gunnarsson and Ulrike Spangenberg*

Gender Equality and Taxation Policies in the EU

The European Union was initially founded as the European Economic Community, intended to facilitate a harmonious development of economic activities, based on the establishment of a common market and the progressive approximation of economic policies between Member States.¹ Social aspects, such as gender equality, played a minor role. Although the social dimension is still far less advanced, the Treaties of Maastricht, Amsterdam and Lisbon introduced new social values, objectives and specific obligations in general and gender equality in particular.² Today, gender equality is one of the fundamental values and objectives of the European Union. Due to the commitment to implement the 2030 Sustainable Development Goals, the European Commission also guarantees

gender equality as one of the core issues for future sustainable-oriented policies.³ In the past, the implementation of gender equality was largely restricted to particular policy areas, such as employment and occupation. However, the relevance of gender aspects in other macroeconomic policies, specifically taxation, has been gaining more attention. The European Commission started to address the second earner gap, the result of an insufficient consideration of child care costs and joint tax measures that hinder the equal participation of women in the labour market.⁴ The Horizon2020 call for research proposals explicitly addressed questions of gender equality in taxation.⁵ In 2017, the European Parliament's Committee on Women's Rights and Gender Equality (FEMM Committee) commissioned a study on gender equality and taxation in the EU;⁶ moreover, the European Parliament only recently adopted a resolution on gender equality and taxation policies in the EU.⁷ Based on the findings in the study for the FEMM Committee and research conducted in the FairTax project, the exemplary article explains the relevance of gender equality in taxation and the interdependencies with socioeconomic gender differences. It also provides an overview of the legal framework concerning the role

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1 European Union: Treaty Establishing the European Community, Rome Treaty, Article 2, 1957, p. 43.

2 U. Spangenberg, A. Mumford, S. Daly: Moving Beyond the Narrow Lens of Taxation: The Sustainable Development Goals as an Opportunity for Fair and Sustainable Taxation, in: Columbia Journal of European Law, 2019, forthcoming.

3 European Commission: Next steps for a sustainable European future, COM (2016) 739, 2016.

4 European Commission: Tax policies in Member States. 2018 Survey, European Union, 2018, p. 49.

5 H2020-EURO-SOCIETY-2014 Subcall EURO-1-2014 work programme topic 'Resilient and sustainable economic and monetary union in Europe'.

6 Å. Gunnarsson, M. Schratzenstaller, U. Spangenberg: Gender equality and taxation in the European Union, Study for the FEMM Committee, European Union, 2017, available at [http://www.europarl.europa.eu/RegData/etudes/STUD/2017/583138/IPOL_STU\(2017\)583138_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2017/583138/IPOL_STU(2017)583138_EN.pdf).

7 European Parliament: Resolution on gender equality and taxation policies in the EU, 2018/2095 (INI), 2018.

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of the EU in promoting gender sensible tax policies and concludes with essential recommendations for reform and research.

Relevance: Gender equality aspects of taxation

Policymakers do not usually consider gender inequalities when designing tax laws, even though many aspects of taxation have a substantial effect on gender-related socioeconomic inequalities. Although most tax laws apply equally to men and women, tax systems and fiscal policy decisions affect men and women differently. The persisting gender differences in employment rates and patterns and gender gaps in unpaid care work, employment rates, income, old age security, poverty and wealth are all closely linked to the allocative and distributional outcome of tax regulations.

The secondary earner trap

At first glance, gender aspects of taxation are most apparent in personal income taxation. The basic design of income tax schedules and social security contributions affects the disposable after-tax income and incentives to work. Furthermore, in most Member States the tax wedge and inactivity trap for low income and in particular secondary earners remains one of the main disincentives to women's sufficient labour market participation.⁸ The main reasons are insufficient recognition of child care costs and joint tax provisions in a family or household-based income tax system.⁹ A large number of economic studies based on micro-simulation models prove that work incentives for women are impaired by joint taxation.¹⁰ The joint tax unit, in which the family or the spouses traditionally constitute the tax unit, has had a strong justification in the equity principle of ability-to-pay and has supported the breadwinner family model by joint filing. This allows income splitting of the household income and the transferability of own income allowances, basic deductions and loss reliefs between the spouses. However, when certain transfer payments or tax reliefs are contingent on the intra-household distribution of paid work or household income, so that tax rates for secondary earners entering into or extending employment are higher than for single individuals, tax and benefit provisions create a secondary

earner bias leading to risks of getting caught in inactivity and low wage traps.¹¹ In EU Member States, the majority of working women in couples are usually secondary earners, earning on average about one-third of a couple's joint income.¹² This type of joint provision was initially only applied to married couples but has been extended to include other forms of partnership. Replacing the income splitting system by individual taxation would markedly increase female employment.¹³

Taxation trends

Gender differentiated outcomes of tax policies also result from fundamental tax policy rationales and objectives. Over the last few decades, tax policies in EU Member States have been influenced e.g. by an interpretation of what constitutes optimal taxation for economic growth. It postulates that tax neutrality should be a guiding principle for the ultimate goal of taxing for growth. By concentrating only on avoiding excess tax law burdens on the economy, other tax objectives and principles, such as fairness linked to redistributive aspects of taxation, have been neglected. The long-term trends of tax structures in the EU show a path of specific development in line with 'taxing for growth' and optimal taxation policies promoted by the EU. Figure 1 describes the individual shares of the various tax bases in relation to overall tax revenue for the average of the EU15 and the EU28 Member States, respectively, for the years 2002 and 2014.

The graph documents different features or tax trends across Member States. First, labour taxes, which include both personal income tax and social contributions on labour income, amount to almost half of the overall tax revenues. At the same time, the overall progressivity of labour income tax has decreased, due to the drop of top marginal income tax rates for high-income earners and an increase in (regressive) social security contributions. Furthermore, seven of the 28 Member States – the so-called new Member States representative of eastern transformative economies – have replaced progressive income tax systems with flat income rate schedules. Secondly, although the share of wealth-based taxes has increased since 2002, the overall-contribution to public revenues remains limited. Third, the share of taxes on capital has been decreasing since 2012, primarily due to the intro-

8 For the most recent data, see European Commission: Tax policies in ..., op. cit., p. 49.

9 Å. Gunnarsson et al., op. cit., pp. 26-32.

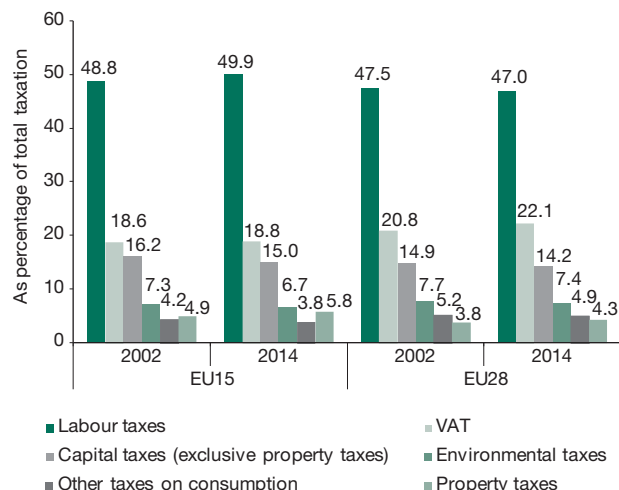
10 E.g., M. Fink, J. Janová, D. Nerudová, J. Pavel, M. Schratzenstaller, F. Sinderman, M. Spielauer: Policy Recommendations on the Gender Effects of Changes in Tax Bases, Rates and Units. Results of Microsimulation Analyses for Six Selected EU Member States, FairTax Working Paper No. 24, 2019. See also M. Fink et al.: (Gender-differentiated) Effects of Changes in Personal Income Taxation, in: Intereconomics, Vol. 54, No. 3, 2019, pp. 146-154.

11 F. Bettio, A. Verashchagina: Current Tax-Benefit Systems in Europe: Are They Fair to Working Women?, in: F. Bettio, J. Plantenga, M. Smith (eds.): Gender and the European Labour Market, Abingdon/Oxon 2013, pp. 168-198.

12 O. Rastrigina, A. Verashchagina: Secondary earners and fiscal policies in Europe, European Commission, 2015, available at <https://publications.europa.eu/en/publication-detail/-/publication/a48e-a2ce-7eef-4106-afe2-692a9de13d5e>.

13 Å. Gunnarsson et al., op. cit., p. 28; M. Fink et al., op. cit.

Figure 1
Taxation structure in the EU, 2002 and 2014



Source: European Commission: Next steps for a sustainable European future, COM (2016) 739, 2016; M. Schratzenstaller, A. Krenek, D. Nerudová, M. Dobranschi: EU Taxes as genuine own resource to finance the EU budget: Pros, cons and sustainability-oriented criteria to evaluate potential tax candidates, FairTax Working Paper No. 3, 2016.

duction of dual income tax schemes on capital and labour incomes. As a result, interest, dividends and capital gains are taxed with moderate and proportional tax rates that privilege capital income compared to income from labour. Fourth, the tax rates for the regressive value-added tax (VAT) have increased significantly as part of fiscal consolidation measures.¹⁴

Overall, the over-taxation of labour in relation to the under-taxation of corporate profits, top capital incomes and top wealth owners, as well as the trending shift to VAT, gives a distributive profile that is undermining social justice and solidarity principles. Moreover, based on the socio-economic realities of gender equality, these structural changes imply a shift of the tax burden away from men towards women. The long-term trends in national tax policy tend to disadvantage women due to the unequal distribution of wealth between men and women, the relatively small share of females among top income earners, women's above-average consumption ratios, the comparatively high share of labour income and the small share of capital income in women's total income. The high and increasing tax burden on labour incomes (especially in the low- and middle-income groups) and on consumption, together with the decreasing taxation of capital in-

come (high incomes in general) and wealth have shifted the tax burden towards women.¹⁵

Tax expenditures

Another factor is tax expenditures in personal or corporate taxation. The term tax expenditure refers to tax measures in the form of deductions, exemptions, credits and lower tax rates that deviate from standard objectives and tax principles. Tax expenditures are usually intended to create incentives for specific, often economic purposes by reducing the tax base or tax liability and thus increasing the after-tax income. Tax expenditure policies have been debated and studied from the perspectives of tax base erosion and fiscal consolidation concerns, but tax consequences for women and men are widely ignored. The effect of tax expenditures crucially depends on socioeconomic realities, such as the level and type of income, employment or business patterns or the share of unpaid work. While there is a lack of sufficient research, the existing studies indicate that women and men claim tax expenditures differently and women frequently benefit less due to the purpose and design of tax expenditures.¹⁶

Legal obligations to ensure gender equality

The resolution adopted by the European Parliament in January 2019 (2018/2095 (INI)) is a non-legislative report on gender equality and taxation in the EU. However, it draws attention to the extensive legal framework on gender equality and specifies legal obligations for the design and impact of European and national tax policies. Articles 2 and 3 of the Treaty of the European Union (TEU), for instance, list non-discrimination based on sex and equality between women and men as core values and objectives of the Union. These values and objectives serve as a normative framework for the interpretation of objectives and competencies as well as a measure for the accession to the EU. Art. 3 (3) TEU in particular links the realisation of the internal market, which is highly relevant for the taxation competences of the EU, to the concept of sustainable development.¹⁷

15 M. Schratzenstaller, A. Krenek, D. Nerudová, M. Dobranschi: EU Taxes as genuine own resource to finance the EU budget: Pros, cons and sustainability-oriented criteria to evaluate potential tax candidates, FairTax Working Paper No. 3, 2016.

16 E.g., M. Eder: A Difference between Men and Women – the Income. An analysis of the gender-related effects of the Austrian income tax system, BMF Austrian Ministry of Finance, Vienna 2016, available at https://www.bmf.gv.at/ministerium/BMF-WP-1_2016_A_Difference_between_Men_and_Women_the_Incom.pdf?67runw; K.A. Lahey: Uncovering Women in Taxation: The Gender Impact of Detaxation, Tax Expenditures, and Joint Tax/Benefit Units, in: Osgoode Hall Law Journal, Vol. 52, No. 2, 2015, pp. 427-459.

17 U. Spangenberg et al., op. cit.

14 Å. Gunnarsson et al., op. cit., pp. 21-23; see also: European Commission: Taxation Trends in the European Union. Data for the EU Member States, Iceland, and Norway, Brussels 2018.

Other European provisions add substance to the concept of sustainable development that is based on a balanced and interlinked understanding of economic, social and environmental goals, including gender equality. The provisions on promoting equal treatment for men and women in employment stipulated in Arts. 153 and 157 of the Treaty of the Functioning of the European Union (TFEU), for instance, are part of the legal framework, as national tax provisions could undermine these rights and objectives.¹⁸ Arts. 8 and 10 TFEU contain horizontal policy clauses that require the Union to consider gender equality and non-discrimination in the design and implementation of all European activities and policies, including hard and soft law measures concerning taxation. Furthermore, Art. 21 of the Charter of Fundamental Rights (CHFR) prohibits (direct and indirect) discrimination based on sex, and Art 23 obliges the Union to ensure substantive equality between women and men in all areas, including taxation.¹⁹ It is, however, often difficult to reduce these broad obligations to specific measures and outcomes. Still, Art. 23 CHFR, in particular, not only requires the Union to integrate a gender perspective in institutional procedures and policy formulation (gender mainstreaming) but also stresses the relevance of changing socioeconomic outcomes. ‘Ensuring equality’ thus requires the identification and definition of gender equality goals and adequate monitoring based on targeted indicators to measure improvements or deteriorations.²⁰ Similar obligations and requirements can be deduced from human rights conventions, in particular, the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). The Convention was not ratified by the EU itself but it provides a legally binding framework for all Member States.²¹ The EU also committed itself to integrate the Sustainable Development Goals (SDGs) in the European policy framework and the Commission’s priorities. Goal five refers specifically to gender equality, that also applies to taxation as the primary source of state revenue and the design and impact of tax.²²

Consequently, as far as the European Union is involved in the field of taxation, it is not only bound to take gender equality aspects into account but prohibit discrimina-

tion on the grounds of sex and ensure substantive gender equality.

Legislative competences in taxation

It is important to note, however, that the EU has only limited legislative competences in the field of taxation. On a national level, taxes are collected to generate revenue as a means to finance public expenditures. In EU law, taxes do not have such a role. The Union, lacking any fiscal sovereignty, relies mostly on contributions from Member States, based on the ‘own resource decision’, stipulated in Art. 311 TFEU.²³

The Union’s tax competences, on the other hand, have been designed as instruments to prevent distortion of competition and to facilitate the implementation of the internal market. Thus, the provisions on taxation in primary law only refer to the harmonisation of national taxation, necessary for the functioning of the internal market (Art. 113, 115 TFEU). The provisions on treaty freedoms and state aid that provide the legal basis for the so-called negative harmonisation through the European Court of Justice similarly ensure the functioning of the internal market and prevent distortions of competition between the Member States. Ultimately, EU tax law, whether in respect to positive or negative integration, has primarily had an economic impact and focus, with little regard for a balanced, sustainable development perspective in general and in gender equality in particular.²⁴

An exception to the economic focus is taxing for environmental and energy purposes (Art. 192 (2), 194 (3) TFEU), although not as a means to fund the EU budget and only by following the principles of subsidiarity and proportionality (Art. 5 (3) TEU).²⁵ Research on environmental tax measures and gender equality is limited, but the legal obligations to pursue gender equality require at least an assessment of the impact of environmental tax measures on gender equality. Provisions that indirectly disadvantage women, for instance, due to the regressive effect of consumption taxes²⁶ must integrate either compensation measures or social hardship regulations.²⁷

The legislative procedure further restricts the implementation of effective EU level tax measures. Legislative pro-

¹⁸ U. Spangenberg et al., op. cit.

¹⁹ Ibid.

²⁰ D. Schiek, Art. 23, in: S. Peers et al. (eds.): *The EU Charter of Fundamental Rights: A Commentary*, Munich et al. 2014, pp. 633-660, para 32-3.

²¹ D. Elson: *Budgeting for Women’s Rights. Monitoring Government Budgets for Compliance with CEDAW, UNIFEM 2007*; K. Lahey: *Feminist Judging for Substantive Gender Equality in Tax Law*, in: B.J. Crawford, A.C. Infanti (eds.): *Feminist judgments. Rewritten Tax opinions*, Cambridge 2017, Cambridge University Press, pp. 22-52.

²² U. Spangenberg et al., op. cit.; European Commission, COM (2016) 739, p. 3.

²³ A. Krenek, M. Schrazenstaller: *Sustainability-oriented Future EU Funding: A European Net Wealth Tax*, FairTax Working Paper No. 5, 2017.

²⁴ Å. Gunnarsson et al., op. cit., pp. 14-16.

²⁵ U. Spangenberg et al., op. cit., p. 2.

²⁶ See, e.g. N. Chalifour: *A Feminist Perspective on Carbon Taxes*, in: *Canadian Journal of Women and the Law*, Vol. 171, No. 21, 2010.

²⁷ U. Spangenberg et al., op. cit.

posals concerning taxation are still subject to a particular legislative procedure. The European Commission, therefore, drafts proposals that require the unanimous approval of the 28 Member States represented in the Economic and Financial Affairs Council (ECOFIN). As a result, EU level taxation is not only challenging to adopt and leads to sub-optimal policies, but the actors that govern tax policies are used to focus on fiscal and economic aspects. The European Parliament, who could potentially act as a motor to promote gender equality, is merely consulted.²⁸

Coordination of national tax policies

The European Commission and ECOFIN also engage in the coordination of Member States' tax policies using soft law regulations such as guidelines, recommendations, reports or benchmarks. One of the most relevant procedures for the design and impact of national tax policies is the annual cycle of the European Semester that provides a framework for the economic policies across the EU.²⁹ It is closely linked to the European 2020 Strategy for smart, sustainable and inclusive growth that defines specific economic and social targets that should be achieved by 2020.³⁰ Article 5 TFEU provides the Union with the competence to coordinate national policies concerning taxation. It calls on the Member States to coordinate their economic and employment policies within the Union and provides the Council with the competence to adopt guidelines for the coordination of these policies and take initiatives to ensure the coordination of Member States' social policies. The most recent Annual Growth Survey for 2018 indicates a slight shift in priorities by pointing out the need to address social inequalities in the design of tax policies and develop more progressive national tax and benefit systems.³¹ The guidelines, priorities and recommendations within the framework of the European Semester address tax policies primarily in their function to ensure fiscally sustainable public finances as well as to facilitate economic growth. Gender equality considerations focus almost exclusively on the tax burden for second earners and disincentives to women's labour force participation toward enhancing economic growth.³² Other gender aspects are largely ignored, for instance, the long-standing shift of the tax burden away from companies and on to individuals or the shift of the tax burden towards

low-income groups – particularly women – evident for the last few decades across the Member States.³³

Suggestions for reform and research

A thorough understanding of gender aspects in tax policies, the implementation of legal and political requirements and the realisation of gender equality require many reforms and further research. The resolution of the European Parliament contains a list of important recommendations to the Member States and the European Commission. These recommendations not only address the underlying socioeconomic differences as one reason for gender differentiated outcomes of the tax system but explicitly call for changes in the tax system itself. Similar suggestions have been made in the report for the FEMM committee.

One of the most critical objectives in taxation remains to eliminate tax-related disincentives to female employment and the unequal distribution of paid and unpaid work. Thus, the European Parliament's demand of the Member States – to phase in full individual taxation, including the elimination of tax expenditures and benefits based on joint income – is an important step forward, despite the reservations concerning the preservation of all financial and other benefits linked to parenthood. The same goes for the elimination of tax incentives related to employment and self-employment that discriminate on the base of gender and the call for a tax system that actively promotes equal sharing of paid and unpaid work, income and pension rights.³⁴ If national tax systems continue to feed and stimulate tax traps for secondary earners, substantial gender equality will never be realised.³⁵

The European Parliament also calls on the Member States not to reduce the progressive nature of their income tax system and to pay attention to the role of taxes on corporations, wealth and capital that play a crucial role in reducing inequalities.³⁶ Against the background of the decreasing progressivity of the tax system in the past, however, the loss of redistributive power on a national level and the interrelated shift of the tax burden from men to women is also vital to strengthen the redistributive effect of taxation.³⁷ Changes include subjecting all types of income to progressive income tax schedules, eliminating exemp-

28 U. Spangenberg et al., op. cit.

29 For more detail, see U. Spangenberg et al., op. cit.

30 For an explanation of the European Semester, see European Commission: Europa 2020 strategy – A European strategy for smart, sustainable and inclusive growth, COM(2010) 2020, 2010.

31 European Commission: Annual Growth Survey 2018, COM (2017) 690 final, 2017.

32 European Commission: Tax policies in Member States. 2017 Survey, European Union 2017, p. 55; European Commission: Tax policies in ..., op. cit., p. 49.

33 Å. Gunnarsson et al., op. cit., pp. 14-19.

34 European Parliament, op. cit., No. 5, 6, 10.

35 For more detail: Å. Gunnarsson et al., op. cit., pp. 26-30, 45.

36 European Parliament, op. cit., No. 9, 14, 19.

37 See for an overview M. Eriksson, Å. Gunnarsson: Literature Review on Tax and Transfer Policies for a More Equal Distribution of Post-tax Incomes. Deliverable 2.1, August 2017; J. Stiglitz: Rewriting the Rules for the European Economy, FEPS, Brussels 2019.

tions in value-added taxes that are not related to basic need and shifting the tax burden from labour incomes towards more growth and employment-friendly taxes, such as property and inheritance. Further recommendations address the elimination of tax rates in consumption taxes that discriminate on the grounds of gender, the evaluation of breaks in corporate taxation and the amendment of legislation that allows for aggressive tax planning.³⁸

To adequately address gender aspects in taxation, it is also important to tackle the many research gaps. Further research is needed, for instance, on the gender-differentiated distributional effects of net wealth, property taxes, inheritance taxes, value-added taxes and excise taxes, corporate taxes, tax expenditures and gender-differentiated allocative effects of corrective taxes. Research should also address compliance of tax measures with legal gender equality obligations. Although data on the taxation of labour incomes is readily available, most tax data is collected on a household level only. There is also a lack of gender-disaggregated data related to the taxation of wealth, capital incomes, business and consumption, on tax compliance and tax fraud issues.³⁹

38 European Parliament, *op. cit.*, No. 12, 13, 20.

39 Å. Gunnarsson et al., *op. cit.*, pp. 46–47.

To date, neither the European Institutions nor Member States comply with the legal obligations or political commitments outlined above. The European Institutions and the Member States must – within their respective areas of tax competences – take legal obligations to prohibit discrimination and ensure gender equality seriously. Compliance with these obligations needs – at the least – regular impact assessments for all fiscal policies from a gender equality perspective,⁴⁰ including proposals for tax legislation and soft law procedures, such as the European Semester. The European Parliament rightly highlights that gender equality is not only a fundamental human right in itself, but would contribute to more inclusive and sustainable growth overall.⁴¹

The influence of the EU on gender equality in taxation also depends on changes in the current legislative procedure, in particular, the condition of unanimity. The European Commission has already opened the debate on how to reform decision-making in EU taxation policy.⁴² However, changes should also promote the inclusion of the European Parliament as an element of democracy and as an actor that has been proven to support gender equality.

40 European Parliament, *op. cit.*, No. 27.

41 *Ibid.*, No. 34.

42 European Commission: Towards a more efficient and democratic decision making in EU tax policy, COM (2019) 8 final, 2019.