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Commission consulting on move to qualified majority voting (QMV) on taxation

Radomir Tylecote, Senior Research Analyst, Institute of Economic Affairs

On 20th December, the European Commission launched a (relatively brief) consultation on moving from unanimity to qualified majority voting (QMV) in the Council on certain tax issues. The public consultation closes on the 17th January, with "indicative planning" to be carried out this quarter.

This development is seen as being likely to lead to further tax harmonisation within the EU, and would make it easier to increase taxes and reduce tax competition. To understand the impact this would have on taxation among EU countries, it is important to understand what this means in terms of how decisions are made in the EU, including the role of the Council and the replacement of the national veto there with QMV.

From unanimity to qualified majority voting in the Council

While only the European Commission may propose legislation, it was intended that the Council of Ministers would allow member countries to protect their national interests, hence its previous use of the veto. However, since the introduction of QMV over the last fifteen years in place of national vetoes, any single Member State's ability to block legislative change has become limited. The UK, for instance, has a share of the vote of 8%[1] (meanwhile analysis of voting behaviour suggests that even with QMV, the Council prefers to reach a consensus than voting formally).[2] Thus moving towards QMV on taxation appears to erode national sovereignty further. In the Council, QMV now sees Germany (with a pattern of voting allies in the Eurozone) winning more votes than any other Member State.

Taxation meanwhile is the last policy area to allow unanimity, and due to its sensitivity has been subject to the Special Legislative Procedure (unanimity in Council after consultation of the European Parliament). This proposal has also arrived with the UK about to leave the EU: the UK is one of the states which has most consistently opposed tax harmonisation.

The proposals

The initiative, entitled *More efficient law-making in the field of taxation: identification of areas for a move to qualified majority voting*, is described in the Commission roadmap for the consultation as follows: "This proposal will explore how EU decision-making on certain tax issues could be streamlined by removing the need for unanimous agreement by all countries", adding: "These matters would instead be decided by a weighted system ("qualified majority voting") where measures can be carried if supported by a minimum number of EU countries, representing a minimum share of the EU population. This is one of a series of major new initiatives to give renewed momentum to the EU."

This proposal was announced by the Commission in a "letter of intent" to the European Parliament and the Council of September 2018. Here, the Commission proposed "more efficient" law-making for taxation, identifying areas where QMV could be used. Next, the *Commission Work Programme* for 2019 included the area as a "non-legislative initiative" (one the Commission simply "adopts", without the need for a legislative process involving the other EU institutions[3]). This is also as "a contribution" to President Juncker's *Agenda for Jobs, Growth, Fairness and Democratic Change*, to "advance… fairer and more effective taxation in the EU". As a "contribution to the Summit in Sibiu on 9 May 2019", the Commission has stated that an "analogous initiative in social policy" will also be presented.

The Commission justifies the move by stating: "With today's degree of economic and financial integration, national tax policies can have important effects on other Member States and Union policies… Member States are increasingly constrained in their capacity to raise revenues to finance expenditures programmes in line with their national preferences… [there] is no effective Single Market in taxation." The Commission also finds that Article 48 (7) TEU allows the change (meaning Treaty change is not required, thus neither does it require approval by all Member State governments[4]). The Commission also claims that the change: "would respond

[1]Miller, V. and Lunn, J. - House of Commons Library. *The European Union: a democratic institution?* Research Paper 14/25 (26th April 2014).
[2]In the period mid-2009 to mid-2012, 65% of Council decisions were taken by consensus, whilst other analysts have found that in around 80% of cases since 1993 decisions that could have been taken by QMV were taken without formal opposition (*Votewatch*, 2014). However, as opposition is not formally recorded it is difficult to know how decisions were ultimately agreed, with consensus being reached behind closed doors.

[3]"Commission adopts: The Council or Parliament can authorise the Commission to adopt two types of non-legislative acts: implementing acts, which introduce measures to ensure laws are implemented in the same way throughout the EU countries; delegated acts, which amend or supplement existing laws, notably in order to add new non-essential rules". From https://ec.europa.eu/info/law/law-making-process/adopting-eu-law_en
[4]https://ec.europa.eu/info/law/law-making-process/adopting-eu-law_en

to the expectations of Union citizens, who have cited fair taxation as one of the priority areas for EU action”.[5] The change will not receive an impact assessment: “it would not have significant effects that would require [it]”.

The Commission also argues that moving towards QMV is needed because Member States have “abused” their veto,[6] due to lost revenue,[7] and because larger states believe lower taxes in smaller states mean “fiscal dumping” (though their supporters call this tax competition).[8] Finally, “external pressures… require Member States to act together”,[9] in particular after US tax reform, which may otherwise put pressure on Member States to reduce taxes.

Responses and the case against tax harmonisation using QMV

There are various arguments against this harmonisation *per se*, and the use of QMV to achieve it, many of which have been raised by organisations in different Member States through the Commission feedback process. This includes national sovereignty itself, and the importance of tax competition for smaller countries especially: there has recently been growing scholarly interest in the role of tax competition in boosting consumption and investment in central and eastern Europe, for instance (see Chirculescu, 2018),[10] while the IEA has argued against harmonised financial regulation generally.[11]

A number of these organisations have outlined the fundamental dangers in these proposals. The Lithuanian Tax Payers’ Association (Lietuvos mokesčių mokėtojų asociacija) has raised the “loss of national sovereignty” and likelihood of negative impacts to “the business competitiveness of small countries in the Single Market”. Indeed, recent research by the Tax Foundation found that large industrialised nations tend to have higher statutory corporate income tax rates than developing countries. Moving to QMV meanwhile risks “a few large countries… pushing for tax issues in their favour”. IME Bulgaria also has “[increasing concern] about some initiatives that aim to shift the union away from its founding principles”.

Ibec (of Ireland[12]) has raised the question of procedure: “the speed with which the legislative process takes place”, and the end point of “proportionate, fair and balanced legislation”, with further use of QMV would represent a threat to the principle of subsidiarity. First, the lack of substantive evidence for the need for greater use of QMV or the improvement which could be expected; meanwhile Member States have not been stopped from increasing tax revenues as a proportion of their economy, their tax to GDP ratio reaching 40.2% in 2017, the joint highest on record. Next, unanimity has already allowed significant changes, including the Anti Tax-Avoidance (ATAD) Directive and changes to VAT treatment. Spain’s Instituto de Estudios Bursátiles (IEB) has proposed that fiscal policy is “the final instrument that can be used by each Member State to deal with asymmetric shocks”; Spain's Unión de Contribuyentes (Taxpayers Union) also states that tax harmonisation will mean higher taxes.

Thus far, among Member States, the Hungarian and Irish governments have opposed the proposal to harmonise taxes specifically, saying this damages competition in the single market. Hungary is heavily dependent on foreign investment, with the EU’s lowest corporate tax rate at 9 percent; Ireland’s is 12.5 percent. Germany and France support the proposal. Regarding the move to QMV itself, France, Spain, Italy, Portugal and Belgium support the proposal, while Poland, Sweden, the Netherlands, Malta, Cyprus and Luxembourg oppose it.

Conclusion

Moving to QMV on taxation issues and restricting tax competition between Member States will harm the overall competitiveness of European economies, further deepening the divisions between large and smaller Member States. The Commission should therefore avoid this proposed move.

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[5]This claim is based on the following: “In a 2016 Eurobarometer survey, ¾ of respondents saw the fight against tax fraud as one of the top areas for EU action”, rather than a call for tax harmonisation.
[6]https://www.politico.eu/article/brussels-bid-to-kill-tax-veto-faces-uphill-battle/
[7]https://ec.europa.eu/taxation_customs/sites/taxation/files/15_01_2019_communication_towards_a_more_efficient_democratic_decision_making_eu_tax_policy_en.pdf
[8]https://www.nytimes.com/1997/02/27/news/some-eu-countries-fear-effects-of-fiscal-dumping-europe-struggles-with.html
[9]https://ec.europa.eu/taxation_customs/sites/taxation/files/15_01_2019_communication_towards_a_more_efficient_democratic_decision_making_eu_tax_policy_en.pdf
[10]http://www.utgjiu.ro/revista/ec/pdf/2018-01/24_Chirculescu2.pdf
[11]https://iea.org.uk/media/eu-harmonisation-of-financial-services-regulation-unnecessary-undesirable
[12]The Irish Business and Employers’ Confederation

Additional references

Commission communication on the initiative:

https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6590013_en

Additional information:

http://ec.europa.eu/taxation/

Feedback received on the initiative:

https://ec.europa.eu/info/law/better-regulation/initiatives/ares-2018-6590013/feedback_en?p_id=345056