



Invitation to the Conference

on the topic

“EU-Taxes”

Rust (Vienna), Austria, July 5-7, 2007

Questionnaire

Each national reporter should answer all questions in a way that reflects, as far as possible, the discussion in academic literature as well as case-law and administrative practice in his or her country. Furthermore, we would highly appreciate to be presented with the reporter's personal opinion on each issue. National reporters are kindly requested to follow the structure of this questionnaire (including headlines of chapters and sub-chapters).

The answers to the questionnaire should form a report that is readable and understandable without having recourse to the questionnaire. National reporters are asked to answer all of the questions below; in addition, the reporters are free to elaborate on issues that are of special interest from the perspective of their countries.

Moreover, national reporters may discuss issues that are not raised in the following questions if they consider them relevant to the general topic.

The length of the national report should be about 15-20 pages (**7000 – 10000 words**). The report should be written in English.

The national reports should be received by Ms Necha Demirova (necha.demirova@wu-wien.ac.at) by **15 May 2007 at the latest**.

The reports will then be put on the conference's home page to which all participants will have access. Home page address is as follows:

<http://www.wu-wien.ac.at/taxlaw/EUTaxes2007.html>

At the conference the national reporters are supposed to make a short presentation (5-10 min.) on certain aspects of their report. This should serve as kind of “input statement” for the following discussion.

After the conference a book containing all national reports will be published. For this purpose the final reports will be reviewed by a language expert. All changes proposed are subject to confirmation by the national reporters who will also receive a printer’s proof of their national report for final authorization before printing.

Every author will receive a complimentary copy of the book once the book is published.

The national reporters will be provided with more detailed information once they have been selected.

Questions:

A. General Part

I. Taxing competences within the legal framework of the European Community

- (i) The Commission concludes in its report “Financing the European Union” (COM 2004, 505 final):

“The introduction of a new tax-based own resource replacing the current statistical VAT-based resource and financing a significant part of the EU budget would make it possible to overcome the main drawbacks of the current system, i.e. the absence of a direct link to EU citizens, overwhelming dependence on transfers from national treasuries and unjustified complexity. It could also contribute to a better allocation of economic resources in the EU (...) The Commission proposes three main candidates as possible future fiscal own resources: a resource based on 1. energy consumption; 2. national VAT bases; and 3. corporate income(...).”

Has academic literature in your country discussed this report of the European Commission? If answered in the affirmative, what are the positions held in your country? What is your opinion on the report? What is your country’s policy in respect of the proposed EU-Tax?

(ii) The Notion of “Tax” in Community Law

1. The EC Treaty devotes one chapter to tax provisions (Title VI Chapter 2 of the EC Treaty, Arts. 90 et seq. EC). According to the literature in your country, is there a common understanding of the notion “tax” in the mentioned Articles? In your answer, also focus on the jurisdiction of the European Court of Justice (ECJ). For the interpretation of former Art. 95 EC (now Art. 90 EC), see for example ECJ 22 October 1974, 27/74 *Demag AG* [1974] ECR 1037; ECJ 16 February 1977, 20/76 *Schöttle* [1977] ECR 247; ECJ 9 May 1985, 112/84 *Humbolt* [1985] ECR 1367; ECJ 3 March 1988, 252/86 *Bergandi* [1988] ECR 1343.
2. However, apart from Arts. 90 et seq., the EC Treaty refers to the notions “tax”, “duties”, “taxes” or “taxation” in a number of Articles; see for example Arts. 58 para. 1 lit. a, 132 para. 2, 190 para. 5 and 293 EC. According to academic discussion in your country, is there a common understanding of these notions in the mentioned Articles or are they to be interpreted differently? Compare the interpretation of those Articles with the perception of tax in Arts. 90 et seq.! If there are different conceptions underlying the different Articles, describe briefly the different approaches.
3. The Protocol on the Privileges and Immunities of the European Communities also refers to “taxes”. While focusing on academic literature in your country, analyze the interpretation of the notion of “tax” in Art. 3 of the mentioned protocol, taking into account the jurisdiction of the ECJ; see for example ECJ 28 March 1996, C-191/94 *AGF Belgium* [1996] ECR I-1859.

(iii) EU-Tax based on Art. 269 EC Treaty?

1. What is the scope of Art. 269 EC Treaty? Take into consideration that Art. 269 EC Treaty has to be interpreted in accordance with Art. 5 EC Treaty. Has there been an academic discussion in your country on the interpretation of Art. 269 EC Treaty as regards the introduction of an EU-Tax? Using the “implied powers-doctrine”, might Art. 269 EC Treaty be interpreted so as to grant taxing powers? If answered in the affirmative, what are the criteria to be met by a tax so that it might be

based on Art. 269 EC Treaty? Might Art. 269 EC Treaty function as a basis to the taxes mentioned under point *B. Special Part*? If answered in the affirmative, what kinds of taxes might be covered? What is the prevailing opinion among academics in your country, and what position do you take on the questions above?

2. In some Member States (e.g. Austria, Germany), it is discussed whether Art. 269 EC-Treaty solely grants the power to generate the revenues of an EU-Tax, whereas the power to introduce an EU-Tax is granted by a specific provision (e.g. Art. 175 EC-Treaty in the context of an energy tax). Are similar or different approaches to Art. 269 EC Treaty discussed in academic literature of your country? What is your position on this issue?
3. Might proceedings under Art. 269 EC-Treaty, consisting in a unanimous resolution of the Council as well as constitutional ratification of the Member States, provide a solid democratic basis for the introduction of an EU-Tax or the assignment of taxing powers to the EC? What is the prevailing opinion in your country, and what are your views on democratic legitimation of an EU-Tax? Describe the constitutional requirements of your country in this context.
4. If you come to the conclusion that Art. 269 EC-Treaty is a valid legal basis for the introduction of an EU-Tax, please explain whether you see Art. 269 EC Treaty to provide shared or exclusive competence!

(iv) EU-Tax based on Art. 308 EC Treaty?

1. What is the scope of Art. 308 EC Treaty, considering that Art. 308 EC-Treaty has to be interpreted in accordance with Art. 5 EC Treaty? Has academic literature in your country discussed the interpretation of Art. 308 EC Treaty in context with the introduction of an EU-Tax? Using the “implied powers-doctrine”, might Art. 308 EC Treaty be interpreted so as to grant taxing powers? If answered in the affirmative, what are the criteria to be met by a tax so that it might be based on Art. 308 EC Treaty? Might Art. 269 EC Treaty function as a basis to the taxes mentioned under point *B. Special Part*? If answered in the affirmative, what kinds of taxes might be covered? What is the prevailing opinion in your country, and what is your own position on the above-mentioned questions?

2. Is financing of the EC through an own tax to be seen as an objective under Art. 308 EC Treaty?
3. If you come to the conclusion that Art. 269 EC-Treaty is a valid legal basis for the introduction of an EU-Tax, describe whether you see Art. 269 EC Treaty to provide shared or exclusive competence!

(v) EU-Tax based on the last sentence of Art. 37 para. 2 EC Treaty?

1. What is the scope of Art. 37 EC Treaty, considering that Art. 37 EC Treaty has to be interpreted in accordance with Art. 5 EC-Treaty? Has there been an academic discussion in your country on the interpretation of Art. 37 EC Treaty as regards the introduction of an EU-Tax? Using the “implied powers-doctrine”, might Art. 37 EC Treaty be interpreted so as to grant taxing powers? If so, what are the criteria to be met by a tax so that it might be based on Art. 37 EC Treaty?. Might Art. 37 EC Treaty function as a basis to the taxes mentioned under point *B. Special Part*? If answered in the affirmative, what kinds of taxes might be covered? What is the prevailing opinion in your country, and what is your own position on the above-mentioned questions?
2. What is the relation between agricultural levies based on Art. 37 EC and those based on Art. 269 EC? What is the interplay of these two Articles?
3. If you come to the conclusion that Art. 37 EC-Treaty is a valid legal basis for the introduction of an EU-Tax, describe whether Art. 37 EC-Treaty provides shared or exclusive competence.

(vi) EU-Tax based on Art. 175 para. 2 lit a EC Treaty?

1. How is the term “provisions primarily of a fiscal nature“ to be interpreted? Should it be interpreted in accordance with chapter two of Title VI of the EC Treaty? What are the differences as well as the similarities in interpretation?
2. What is the scope of Art. 175 EC Treaty, taking into consideration that Art. 175 EC-Treaty has to be interpreted in accordance with Art. 5 EC Treaty? Has there been an academic discussion in your country on the interpretation of Art. 175 EC Treaty as regards the introduction of an

EU-Tax? Using the “implied powers-doctrine”, might Art. 175 EC Treaty be interpreted so as to grant taxing powers? If so, what are the criteria to be met by a tax so that it might be based on Art. 175 EC Treaty? Might Art. 175 EC Treaty function as a basis to the taxes mentioned under point *B*. *Special Part?* If answered in the affirmative, what kinds of taxes might be covered? What is the prevailing opinion in your country, and what is your own position on the above-mentioned questions?

3. What is the relation between a tax based on Art. 175 EC Treaty and Art. 269 EC Treaty? What is the interplay of these two Articles?
4. If you come to the conclusion that Art. 175 EC-Treaty is a valid legal basis for the introduction of an EU-Tax, outline your view on whether Art. 175 EC Treaty provides shared or exclusive competence.

(vii) EU-Tax based on other Articles of the EC?

1. Can you think of a legal basis for an EU-Tax that has not been mentioned above? If so, please describe the scope and requirements of this legal basis. What kind of taxes might be based on this Article? Might this Article function as a basis to the taxes mentioned under point *B*. *Special Part?* If answered in the affirmative, what kinds of taxes might be covered? What is the prevailing opinion in your country, and what is your own position on the above-mentioned questions?

(viii) „No taxation without representation!“

1. Authors have argued that the Community in its current institutional setting does not have legitimation to levy a tax, as the legislative procedure mainly depends on institutions (namely the Council and the Commission) whose members are not elected by the people and therefore lack democratic justification. What are the positions taken on this issue in your country? What position do you take?
2. Art. 6 para. 1 EC Treaty postulates the principle of democracy in the European Union. Would the introduction of an EU-Tax infringe upon this principle if the EU failed to modify its institutional framework

towards more democracy? What are the positions taken on this issue in your country? What position do you take?

II. Interdependencies among the financial systems of the Member States

(i) The national fiscal system

1. What is the notion “tax” in your country` s legal system? In comparison to the notion of “tax” in Community law, is the concept of “tax” in your national legal system to be interpreted differently? If so, has your country ever been subject to ECJ jurisdiction as regards the national conception of tax? What is your opinion on the line of argumentation in these cases? Can you think of problems that might arise concerning an EU-Tax if the ECJ were to interpret the notion of tax differently than your national legal system? Has academic literature in your country focused on the questions mentioned above? What position do you take?
2. The Austrian Constitutional Court has held tax provisions of state law to be unconstitutional. These provisions put considerable levies on untenanted apartments and thus forced the owners to letting so as to avoid housing shortage. The object of the untenanted apartment tax did not consist in collecting money, but in reducing housing shortage in Vienna. The argumentation of the Austrian Constitutional Court was that housing affairs are part of federal legislation and cannot be regulated by tax provisions of Land law. As a consequence the Austrian Constitutional Court regarded these tax provisions as contrary to the constitutional competence system and rescinded them. In view of this Austrian case, have courts in your countries dealt with similar problems? If so, please give a short description of your national jurisdiction and the positions discussed in academic literature.
3. Give a short outline of your national tax system. Is it organized centralistically or federalistically? What are the constitutional specifics? From your point of view does it work satisfactorily?
4. The Austrian tax system differentiates between the power to legally introduce a tax, the power of administrative handling of a tax and the power to collect the revenues of a tax. Does your country follow a system similar to the Austrian system? If so, how are the above-mentioned powers apportioned? From your national point of view, can

you think of cases where a territorial entity carrying out the administration of a tax lacks the power to collect the revenues from this tax? If answered in the affirmative, does this fact cause problems concerning the efficacy of administrative handling of the tax?

5. If possible, draw conclusions for the conception of a future EU-Tax from your present national tax system.

(ii) Requirements of an EU-Tax and its impact on National Tax Law

1. From your national point of view, are there any constitutional problems regarding the introduction of an EU-Tax? If answered in the affirmative, describe the positions discussed in academic literature. If the ECJ were to interpret the EC Treaty (in its current version) as compatible with an EU-Tax, would this fact lead to jurisdictional consequences in your country that are comparable to the German “Maastricht”-judgment (BVerfGE 89, 155)? Should the principle “The Member States are the watchdogs of the Treaty” be reconsidered/ abolished? What is the prevailing academic position on this issue in your country? What is your position?
2. According to some authors (e.g. Craig/De Burca, EU Law³ p 130.), the competences of the EC are divided into shared and exclusive ones. Is this distinction of relevance against the background of your national tax law (double taxation problems?) if an EU-Tax is based on shared or exclusive competences? What kind of competence would be the best basis?

B. Special Part

In working paper No 1/2004 of the Commission, “Tax-based EU own resources: an assessment”, the following 9 levies are discussed as possible EU-Taxes. Please answer the questions below in respect of each levy. For more details, please see the working paper of the Commission.

- III. Modulated VAT**
- IV. EU Corporate income tax**
- V. Energy tax**
- VI. Excise duties on tobacco and alcohol**
- VII. Communication tax**
- VIII. Personal income tax**
- IX. Tax on financial transactions**
- X. Climate charge on aviation**
- XI. Transfer of seigniorage revenue**

Identical questions for Chapters III – XI:

- (i) Existing similar national taxes?
 1. Compared to the above-mentioned potential EU-Taxes, does your national tax system provide similar taxes? If this is the case, please describe their legal aspects such as tax base, tax subject, tax scale, taxpayer, the liability to be withheld, tax exemptions, etc.!
 2. Which authority is responsible for the administrative handling of the tax, and which territorial entity collects the revenues thus obtained?
 3. To what percentage of the total national tax revenue does the revenue amount?
 4. Are there any constitutional problems with this tax in your country? If so, give a short description of the positions discussed in academic literature concerning these constitutional problems. Do courts in your country often deal with constitutional problems in respect of taxes? Are there any interesting cases pending?
 5. Do you see critical issues concerning the compatibility of the tax with EC law? Might the tax infringe upon the Community`s Fundamental

Freedoms? Has your country ever been subject to ECJ jurisdiction in respect of this tax? If so, what was the line of argumentation in these cases? Has academic literature in your country discussed the conformity of the tax with EC law? If this is the case, give an overview of the positions that are discussed. What improvements concerning the conformity of this tax with EC law would you suggest?

(ii) The EU-Tax against the background of national law

1. What could a prospective EU-Tax, in particular as regards tax base, tax subject, tax scale, taxpayer, the liability to be withheld, tax exemptions, etc. look like? What are the ideas that have been presented by legal scholars and economists in your country? What are your ideas?
2. If a tax of this kind exists on the national level, is there any danger that the introduction of a homogeneous EU-Tax will be unconstitutional? If a comparable tax already exists in your Member country, and if there are constitutional doubts regarding this tax, will these doubts also arise with regard to the EU-Tax? If no comparable tax exists in your Member country, do you think there might be constitutional doubts as regards a prospective EU-Tax? Might the EU-Tax offend the equality set or infringe on fundamental rights? Is there any academic literature in your Member country dealing with this problem? What is your view on this issue?

(iii) The EU-Tax against the background of EC law

1. If a comparable tax exists in your Member country, and if there are doubts as to its compatibility with EC law, will these doubts also exist in regard to a similar EU-Tax? If no comparable tax exists in your Member country, under which circumstances will a future EU-Tax be compatible with EC law? Might there be doubts as to its compatibility with EC law? Has academic literature in your country dealt with this problem? What is your position?

2. Under which circumstances would a prospective EU-Tax infringe on the fundamental freedoms? Is there any academic literature in your Member country dealing with this problem? What is your view?
3. Is a prospective EU-Tax precarious regarding state aid prohibition? Does academic literature in your country deal with this problem? What position do you take?

(iv) The administration of a future EU-Tax

4. What are the possible advantages and disadvantages of administration of a prospective EU-Tax through the Member States applying their respective national procedural law? Might different arrangements in national procedural systems (e.g. provisions that plan a waiver or refunding of tax for the sake of saving costs) lead to unequal treatment concerning the administration of an EU-Tax? What precautions should be taken in order to ensure uniform collection? Concerning procedural law in your country, are there provisions or forms of administrative acting that could be an obstacle to uniform collection of an EU-Tax? To what extent would national procedural law have to be harmonized on the EU level so as to ensure uniform collection of a prospective EU-Tax? Does the legal framework of the EC provide sufficient legal basis for such harmonization measures? Have these questions been a focus of academic discussion in your country? What is your view?
5. Within the joint customs union, the Member States administer levies of the customs duties, which flow to the Community-budget. Procedural law concerning the collection of customs duties has in part been standardized by Council Regulation No 2913/92 for the definition of the Community Customs Code. For the addition of the partially incomplete Customs Code must be consulted however often national procedural law. What are the experiences in your country with the present system of the joint collection of customs duties? What are the difficulties that arose? Might conclusions be drawn from these experiences as to the arrangement of a future management system for the collection of an EU-Tax? Have judicial decisions resulted from the close interrelation of national and EC law in the collection of customs duties? Is there any academic literature on this problem in your country? What is your position?

6. What are the pros and cons of an administration of the prospective EU-Tax by the Member States according to a uniform European legal procedure system? Is there a legal basis (e.g. Art. 37, 175, 269 or 308 EC) for the introduction of a set of uniform procedural provisions on the EC level? Is there any academic literature on this issue in your country? What is your position on the issue?
7. In Austria, some taxes are administered by federal authorities, while the revenue goes to the municipalities. Interestingly, the federal authorities impose more lenient standards on the collection of those taxes that do not flow to the federal budget itself. The effectiveness of the imposition of these taxes could be called into question. Are there comparable studies in your country? In addition, does literature exist in your country that focuses on this problem? Would such a scenario be also conceivable if the EU-Tax, which flows to the Community-budget, were administered by the Member States? What is your opinion regarding this problem?
8. What are the pros and cons of a uniform procedural system with special tax authorities on the EC level? Is there a legal basis (e.g. Art. 37, 175, 269 or 308 EC) for the administration of a prospective EU-Tax and for the creation of EC tax authorities? What could the legal protection system of a special administration procedure regarding the EC-Tax – carried out by EC authorities – look like? What role should the ECJ play in this procedure? Is there any academic literature concerning this issue in your country? What is your opinion?

(v) Economic and competitiveness effects of similar national taxes

In the Commission staff working paper “New Sources of Financing for Development: A Review of Options” (SEC 2005, 467) and the already above mentioned working paper No 1/2004 “Tax-based EU own resources: An assessment” the Commission analyzes the economic and competitiveness effects that may result from the introduction of the above mentioned taxes on EU-level.

1. Has literature in your country discussed the economic and competitiveness effects of existing national taxes that are similar to the above mentioned candidates for an EU-Tax? When answering this

question, please refer to the assessment criteria that are used in the above mentioned Commission papers.

2. May the introduction of an EU-Tax (e.g. aviation tax, energy tax) have negative economic effects on your country? If answered in the affirmative, how could one avoid these negative economic effects?