FORAL TAX AUTONOMY ON CORPORATE INCOME TAX AND EUROPEAN HARMONIZATION

ARE THEY COMPATIBLE?

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ABSTRACT

Although Spain is not a federal country, it is a heavily and asymmetrically decentralized EU member state. In fact, five different CIT coexist, contradicting the basics of the tax competition theory, but backed by empirics. The trend within the EU towards an increased fiscal integration, in order to complete the EMU and cope with multinational´s tax avoidance, requires as next step new efforts to harmonize taxation. This is what the CCCTB pursues. However, this phenomenon should consider its implications on regions, particularly when they hold competencies on taxation, in order to respect their historical sovereignty and ensure the legitimacy of the new policies. Tax harmonization on the field of corporate taxation is required, and CCCTB could be a good step, but without strong democratic participation of regions on the EU decision making processes new focuses of institutional instability will arise. This paper will look for a solution in order to make compatible foral tax autonomy on CIT with EU tax harmonization proposals by creating an improved regime for their participation in EU fora.

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1. Introduction

At the moment, Europe struggles between regionalization and integration. These two streams converge in a historical moment for the European Union. On the one hand, the increased role of cities and regions on the political arena and the great divergence between North and South or urban and rural areas is pushing towards a better and formal recognition of diversity within countries, which should be translated in an increased decentralization of policy-making. On the other hand, the Europeanization of politics and the increasing role of EU institutions on new fields of competence, as a solution to problems derived from globalization, such as climate change or tax evasion and avoidance, that cannot be solved individually by countries. Both paths, lead towards a common meeting point: the weakening of the nation-state and the spread of the decision-making spheres. Thus, it is possible to predict that the axis of power will not remain centralized in national governments anymore.

The subjects affected by these trends are various, but taxation is probably the most relevant. The power to legislate Tax Policy is the key tool for institutions to attain actual self-government. This relationship arises clearly when comparing the degree of autonomy of Spanish Autonomous Regions (Comunidades Autónomas) ruled by the "common regime", still heavily dependent of transfers from the central government, and those, such as Basque Country and Navarre, which are ruled by their traditional "foral regimes", and enjoy an status closer to a confederal entities than to a regional one, since their financial and fiscal relationship with the Central Government is regulated by bilateral agreements. This rationale is also visible in the EU level. The European common institutions are mainly funded by transfers from the member states, as regions without fiscal tools, so they remain under the power of countries, represented by the powerful European Council, who still determines the political direction of the institutions of the Community.

Perhaps due to its key relevance, taxation is the subject that has awakened more reluctances among member states. However, some advances have been achieved for Value Added Tax (VAT)[1] and, recently we have also observed some movements pushing towards a Common Consolidated Tax Base for Corporate Taxation (CCCTB) in the EU[2], which has been named after the initials CCCTB. The fact of these two taxes being the first affected by harmonization is not just a coincidence. Goods, services, and capital have been the factors whose movement have been liberalized by the creation of the common market. Capital is also the factor considered as movable by the theory of tax competition[3], which can be used to back the CCCTB and to explain why the Spanish decentralized Corporate Income Tax (CIT) is a very exceptional case.

The reasons for this exceptionality and its convenience will be analyzed later in Chapter 2. But it is a fact that, the three Basque Historical Territories (Territorios Históricos) and the Foral Community of Navarre (Comunidad Foral) can legislate on CIT. As a result, if Spain, as a member country of the EU is affected by the CCCTB, which could limit the exclusive competencies of these territories on CIT regulation and management, regions should have a say in this. A new

[1] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax and the Action Plan on VAT by the European Commission, among other iniciatives, pursue a common VAT area to ease operations in the common market.

[2] In October 2016, the Commission proposed to re-launch the CCCTB and both France and Germany push towards its compulsory application for all firms. NIENABER, Michael (20/06/2018): "Germany, France agree on harmonization of corporate tax systems" on: https://www.reuters.com/article/us-germany-france-tax-harmonisation/germany-france-agree-on-harmonization-of-corporate-tax-systems-idUSKBN1JG1RB

[3] SINN, H. W. (2008). The new systems competition. John Wiley & Sons.

clear institutional framework to give voice to these regions at European instances is needed in order to ensure the compatibility of both trends, regionalization and integration of fiscal affairs. This is the first time in the history of the EU in which regions could lose sovereignty on their tax policy, since no region could legislate on VAT.

The main goal of this paper is to search for instruments for the participation of the Spanish territories with tax autonomy on the CIT. These tools are required to be ready before the CCCTB is in action, since a negligent treatment of this sensitive issue could end up increasing institutional tension, which has already been escalating for years as it is possible to observe with the situation Catalunya is facing nowadays. In order to fulfill this objective, I will first analyze the diverse current legal and economic framework of the CIT in Spain and its evolution in order to establish a starting point and evaluate if predictions of the theory of tax competition have come into effect. Next, the CCCTB proposal will be briefly assessed to continue with the role of the involved regions in its negotiation and design.

The third chapter will examine the context of the main decentralized and federal EU countries, a technique that will be useful to make a comparison and get inspiration for the proposal for Spain. In order to elaborate this specific chapter, not only previous literature but also a large number of interviews have been carried out to get the position of involved institutions and experts by first hand. I will continue exploring the compatibility between regional tax autonomy on the CIT and the proposal for its harmonization by the EU in terms of potential economic and political consequences, which have not been assessed by the report made by the European Commission, since it was just focused on the country-level impact. And I will also address the risks of the refusal to the implementation of an inclusive institutional framework for regions in the European decision-making process. Finally, policy recommendations, including tools for regions´ participation in the EU, and a legal framework proposal, will be offered before the conclusions are explained. Its political feasibility and possibilities to apply them to other countries will be taken into consideration.

2. CIT decentralization in Spain and European harmonization

2.1 Tax autonomy in the field of CIT

As explained before, two Spanish Autonomous Regions have special financial and fiscal relationship with the Central Government. The so-called “foral regimes” fund their own public expenditure and are based on the bilateral principle[4], which requires agreement for any change of the system. This is the best guarantee to protect the self-government of the Basque Country and Navarre since it ensures the third pillar of autonomy (legislation, management and tax autonomy). Although both cases have strong historical roots, they are not identical. However, both cases share the same philosophy and inspiration. In addition, the Basque “Concierto Económico”[5] and Navarre´s “Convenio Económico”[6] are recognized in the Spanish Constitution of 1978. Its first additional article remarks that the Constitution “protects and respects the historical rights of the foral territories. The general update of foral regime will be made in the

[4] Bilateral principle stands for mutual recognition of institutions as equal counterparties.
[5] Ley 12/2002, de 23 de mayo, por la que se aprueba el Concierto Económico con la Comunidad Autónoma del País Vasco.
[6] Ley 28/1990, de 26 de diciembre, por la que se aprueba el Convenio Económico entre el Estado y la Comunidad Foral de Navarra.

framework of the Constitution and Autonomy Statutes (Estatutos de Autonomía)", which are the main institutional laws for regions.

Although some authors[7] consider that asymmetry is not exceptional, but just one of the possible characteristics of federalism or decentralization or even an essential one, it is a fact that its , in this case, is a very particular regime. It is so particular, that the three Basque Historical Territories and Navarre are the only subnational entities in Europe with full legislative and management competencies on the CIT.

But why is it so particular? Although in some other European countries the CIT has decentralized elements, such as part of the statutory rate or a share of its revenue, as I will explore later, no country but Spain has granted subnational institutions with legislative power on CIT due to the risks warned by the theory of tax competition. According to authors, such as Sinn[8], the mobile factor should be taxed by the central administration in order to avoid a race to the bottom phenomenon between regions. However, it recognizes that lack of tax autonomy to design the CIT could not solve the problem but would just shift it towards infrastructure competition, since this would be the remaining policy area for subnational governments to attract investment. This would replicate the movement of EU countries after the loss of sovereignty on monetary policy with the creation of the EMU. Since they cannot devaluate their common currency in order to foster exports, the only way to achieve cheaper products to sell abroad is to devaluate workforce by reducing labor costs, a recipe that has been applied through the labor reforms.

Furthermore, there are authors, such as Köthenbürger[9], who have cast doubts on the traditional argument on the inconvenience of the decentralization of capital taxation applying Game Theory. He explains that ex-post federal policy could isolate tax policy from tax mobility. Also, empirical evidence from the Spanish case shows that race to the bottom process has not widely appeared. This will be discussed later in this chapter. So at least, we should consider that the relationship tax competition-decentralization is not as straightforward as we could expect. But first, it is important to analyze the legal framework, that develops the constitutional recognition of foral tax autonomy in order to establish the base for the later analysis.

2.1.a) Legal framework

There are three groups of legal frameworks that are worth to be explored in this section. The first one is the common Spanish framework, comparable with the regulation from the rest of the European countries in this field. The second group is constituted by the Basque regulation, which is composed of three frameworks very closely interrelated. And the last one is Navarre´s regulation, which is similar but not the same than the last.

The Spanish Corporate Income Tax

The CIT in force in the Spanish territories (with the exception of the Basque Country and Navarre) is comparable to the one regulated by the rest of EU countries. The Spanish Constitution grants the primary taxation power to the Spanish legislative chambers, since the creation and

[7] VILLADANGOS, E. S. (2000). Un nuevo estadio en el discurso federal: el federalismo asimétrico. Pensamiento Constitucional, 7(7), 343-386 & PALERMO, F., & WILSON, A. (2014). The multi-level dynamics of state decentralization in Italy. Comparative European Politics, 12(4-5), 510-530.

[8] SINN, H. W. (2008). The new systems competition. John Wiley & Sons.

[9] KÖTHENBÜRGER, M. (2004). Tax competition in a fiscal union with decentralized leadership. Journal of Urban Economics, 55(3), 498-513.

regulation of new taxes and their basic elements have to be done by law and it is a competence of Central institutions (art. 133.1 Spanish Constitution).

The second section of this article establishes that subnational institutions could only create taxes according to the law and the Constitution, which makes their tax power derivative and not original since it does not emanate from their Autonomy Statutes. This is one of the features that differentiates the unitary but decentralized Spanish system from a federal one. However, this consideration does not apply to the Basque Country and Navarre, whose historical foral rights are constitutionally protected.

The next step for the analysis is the General Tax Law[10], whose 4th article copies the constitutional precept presented before. This law defines the limits for taxation power, also of subnational institutions´, since it designs the organizational principles of the tax system. One of these principles is the prohibition of double taxation, which excludes any possibility of duplication of taxes on the same object as it is possible to observe in the USA or Canada, where both federal and state institutions charge their own CIT.

Finally, it is necessary to read the 2nd article of the CIT Law[11]. Here is where the geographical enforcement of the law is fixed. The CIT created by the Spanish Parliament by this law is in force on the whole Spanish territory. With an exception, the respect to the Economic Agreements with the Basque Country and Navarre (art. 2.2 CIT Law), which grants them with the power to create their own. In other words, this CIT is in force in Spain but in the Basque Country and Navarre. This is another sign that shows that the Spanish tax system does not allow for the overlap of taxes on Central and Subnational levels.

It is remarkable that Autonomous Regions ruled by the "common regime" do not even have competencies on the management of this tax. And, what is more, CIT revenue is not used to fund transfers from the Central State towards regions. In other words, regions do not receive a share of the revenue raised by the CIT, in contrast with what other federal or decentralized countries do. Moreover, this is an exception within the Spanish heavily decentralized expenditure scheme, since together with the PIT for no residents is the only major tax outside the System of Regional Funding[12], regulated by the LOFCA[13].

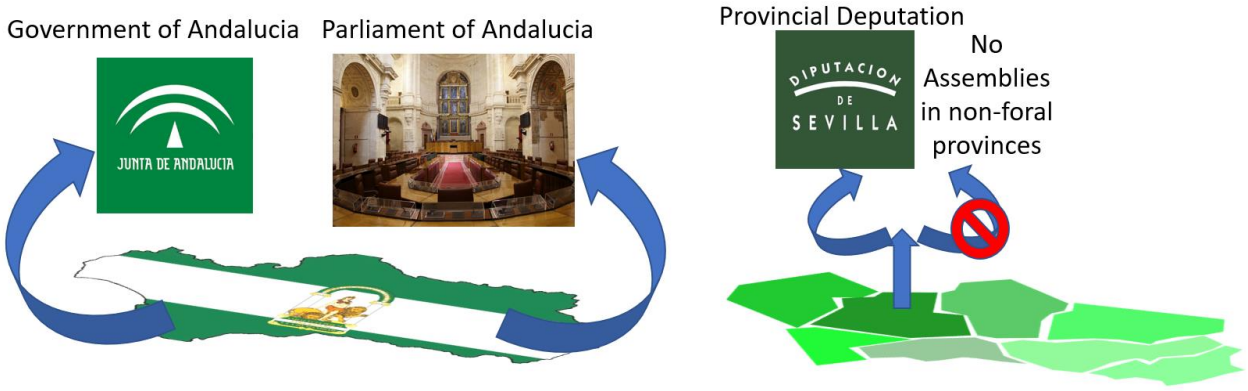
The Basque Corporate Income Taxes

On the contrary to what many people, even Basque citizens, believe, since there is a widespread lack of awareness on how the Economic Agreement works, there are three different tax jurisdictions within the Autonomous Region of the Basque Country. This comes from the historical political entities called Historical Territories, which nowadays coincides with the geographical borders of provinces. In contrast with what happens in Spanish provinces, which are governed by a Provincial Deputation (Diputación Provincial) appointed by the municipalities within the province, Basque citizens directly elect their Juntas Generales (Assemblies). There is one Assembly in each Historic Territory: Araba, Bizkaia and Gipuzkoa, and they are in charge of

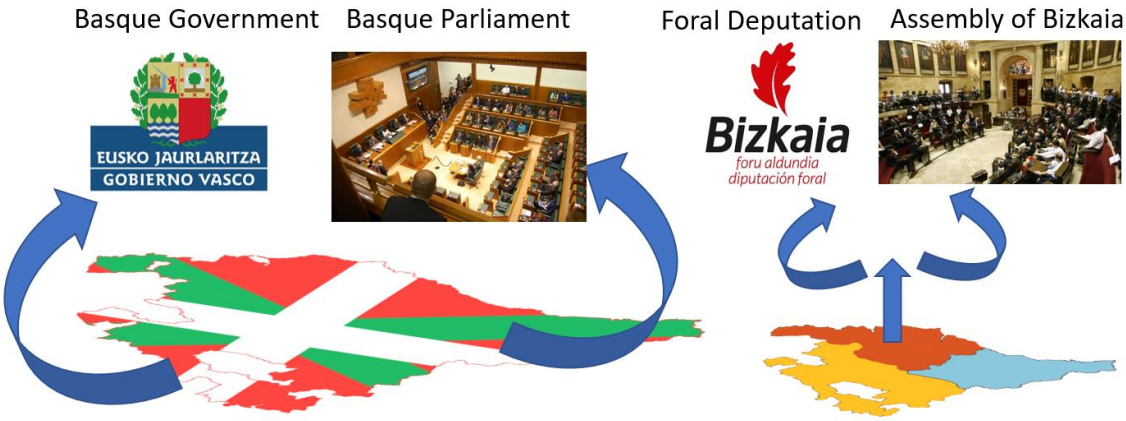
[10] Ley 58/2003, de 17 de diciembre, General Tributaria.
[11] Ley 27/2014, de 27 de noviembre, del Impuesto sobre Sociedades.
[12] EXPERT BODY FOR THE REFORM OF THE SYSTEM OF REGIONAL FUNDING (2017): "Experts´ assessment for the reform of the System of Regional Funding": http://www.minhafp.gob.es/Documentacion/Publico/CDI/Sist%20Financiacion%20y%20Deuda/Informaci%C3%B3nCCAA/Informe_final_Comisi%C3%B3n_Reforma_SFA.pdf
[13] Ley Orgánica 8/1980, de 22 de septiembre, de Financiación de las Comunidades Autónomas.

regulation of taxes according to the art. 1 of the Economic Agreement. For its part, Foral Deputations (Diputaciones Forales) have the managerial competencies.

Infograph 1. Institutional layers on common-regime autonomous regions (e.g. Andalucia)



Infograph 2. Institutional layers in the Basque Country



Infograph 3. Institutional layers in Navarre



The most curious fact about the foral tax system, which grants with a very high degree of tax autonomy to Basque institutions, is that since Assemblies are part of local entities, do not have legislative but regulatory power[14]. In Spain, only the National Parliament (Congress and Senate) and the Regional Parliaments hold legislative competencies, according to the Constitution and Autonomy Statues. As explained before, taxes can only be created and its main elements determined by a rule with the status of law. However, in case of the Basque taxes, they are regulated by Foral Rules (Norma Foral) without law statues. However, since 2010 Foral Rules regarding taxation can only be impugned at the Constitutional Court (5th Additional Disposition of the Law of the Constitutional Court), a mechanism reserved only for laws. So, we could consider that the nature of these rules is mixed. Some authors[15] consider this the origin of the "Foral Exceptionality" since Assemblies would be the only institutions with the power to pass two different types of rules. The intricate framework presented here is the outcome of a mix between tradition, history, a very particular institutional culture and political necessity by the Central Government.

With regards to the CIT, it is regulated by three different Foral Rules, one per each Historic Territory. However, their content is very similar, as can be checked when comparing them[16], since general principles of the Economic Agreement (art. 2) determines that coordination, fiscal harmonization and collaboration with the Spanish tax system and within the Basque territories must be the core of the system.

But harmonization does not only refers to the statutory rates, there is a broader concept behind. Usually, critics for unfair or disloyal tax competition within the EU target countries with lower statutory tax rates. However, there are other elements with a higher impact on the location decision of firms, not only in the regulation of the CIT but also about the efficiency of the tax administration. The four main elements of fiscal harmonization considered by the Economic Agreement are (art. 3):

- Respect for the General Tax Law in matters of terminology and concepts, respecting the particularities of the Basque system
- Maintain a similar global fiscal pressure than the rest of the country
- Respect and guarantee the freedom of movement of people, goods, capital and services in the country, without discrimination or risk for competence or for the allocation of resources
- Use the same system for classifying livestock, mining, industrial, commercial, service, professional and artistic activities as is used in the rest of the country

In addition, the Tax Harmonization Law by the Basque Parliament[17] allows this institution to eliminate differences, if distorting, among the Historic Territories. The bill also constituted the Tax Coordination Body of the Basque Country (Órgano de Coordinación Tributaria de Euskadi), which has been used to agree on the main elements of taxation[18]. This is one of the two main formal institutions to materialize coordination and harmonization principles. The second one is the Mixed Commission of the Economic Agreement (Comisión Mixta del Concierto Económico),

[14] The regulation is a legal text from a lower category than law.
[15] ARLUCEA RUIZ, Esteban. "Características del modelo competencial". Basque Autonomic Public Law. Universidad del País Vasco. November of 2016.
[16] Comparator tool of Foral Tax Rules http://www.euskadi.eus/web01-apzerga/es/contenidos/informacion/codigo_fiscal_foral/es_index/codigo_fiscal_foral_c.html
[17] Ley 3/1989, de 30 de Mayo, de Armonización, Coordinación y Colaboración Fiscal
[18] ZUBIRI, I. (2010). The economic agreement between the Basque Country and Spain. Ad Concordiam.

which is the main body for the bilateral financial and fiscal relationships between Basque and Spanish institutions. Both stakeholders are represented equally, and agreements can only be reached by unanimity.

Finally, the so-called "connexion points" are what determines which legal framework will the firm apply to pay taxes in the Basque Country and to which tax administration will direct the payment (art. 2 Foral Rule on the CIT Bizkaia)[19]. This will be especially relevant when talking about the CCCTB in order to assess the revenue allocation.

The first rule is that the Basque regulation on CIT is applied to fiscal resident entities. However, if the operation volume of the firm in the previous year exceeded 7 million €, the 25% of the operations have to be located on the Basque Country in order to apply this legal framework (but they will pay the share of CIT on proportion to the location of the activity).

If the firm located in any of the Basque territories does not exceed that volume of operation, it will pay all its CIT to the corresponding Basque Tax Administration. Also, firms with no Basque fiscal residency but an operation volume lower than the previously mentioned threshold, and with 100% of its sales in Basque territory, will apply the foral legislation and pay the CIT entirely to Basques Tax Administrations.

For firms exceeding the threshold, CIT payment will be requested proportional to the location of their sales for companies located in the Basque Country. But when the 25% of the operations are not made in the Basque Country, the common legislation (or Navarrese framework) will be applied.

The Navarrese Corporate Income Tax

The similarities between the Basque framework for the CIT and the Navarrese are extremely high. In fact, Basque Historical Territories and Navarre share not only institutional similarities, but also cultural and linguistic ties to the point that the Statute of Autonomy of the Basque Country (art. 2) and the Constitution (4th AD) considers the possibility of this Region to merge into the Autonomous Region of the Basque Country.

The basis of the Navarrese regime is the same constitutional provision, the recognition of historical foral rights. However, the main particularity of Navarre is provided by the fact of being a uniprovincial Autonomous Region. At the end of the 70´s and the 80´s, when the bases of the territorial structure of the decentralized Spain were established, two paths towards autonomy where applied. On the one hand, the fast track, regulated by the art. 151 of the Constitution, for the so-called nationalities (those historical entities who affirmatively voted on referendum their Autonomy Statutes during the Second Republic: Catalunya, Galicia and the Basque Country) and Andalucia (which entered this way after some political issues). On the other hand, the slow track, ruled by the art. 143 of the Constitution, for the rest.

However, there was a last exceptional case. Navarre did enter into autonomy by none of those ways, but by the reform of its Fuero[20]. As a consequence, Navarre is the only autonomous region without a Statute of Autonomy. Its art. 45 determines that Navarre will run its own tax system by the traditional system of Economic Agreement. This bilateral relationship is very similar to the one between Basque institutions and the Central Government. They share the same principles, the same rules for harmonization, even the same connexion points for the CIT (art.

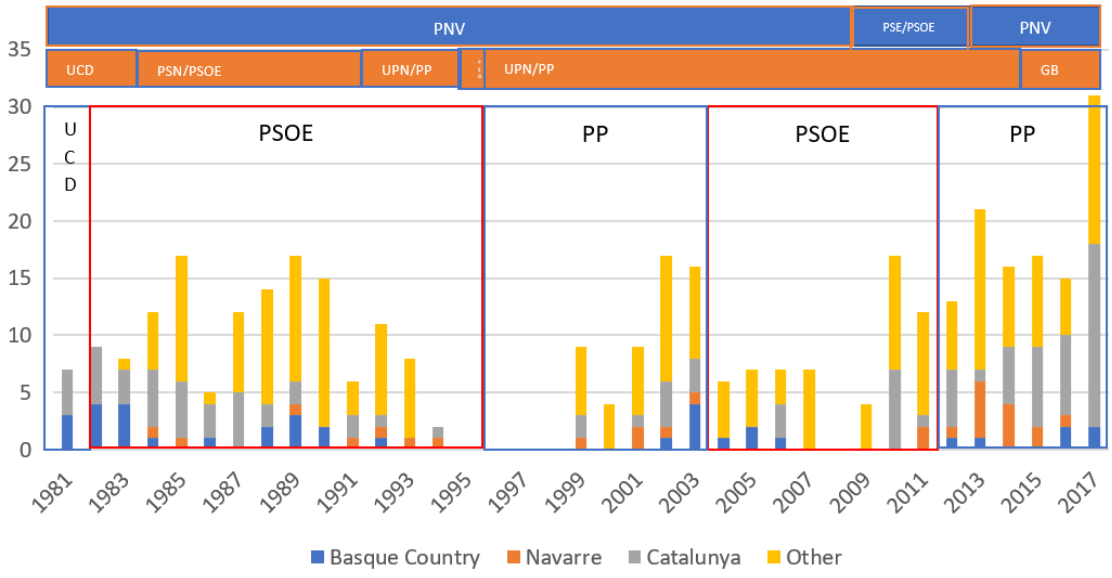
[19] Norma foral 11/2013, de 5 de diciembre, del Impuesto Sobre Sociedades

[20] Ley Orgánica 13/1982, de 10 de agosto, de reintegración y amejoramiento del régimen foral de Navarra

19). However, the Navarre system is by far less controversial. Here there are some of the reasons that could explain it:

1. **Size of the economy**: the Basque is the fifth largest economy in Spain equating €71.743M[21]. In contrast, with a very similar GDP per capita, Navarre accounts for an economy size of €19.827M, far less relevant for the Spanish economy. This difference is caused by the demographic variable, since the density of population of the smaller Basque territory is five times the Navarrese[22]. This difference in terms of size translates into relevance when taking decisions, so attention is usually focused on bigger regions, whose policies could cause a larger impact on the Spanish economy.
2. **Political bonds between governments**: from 1991 to 2015 the Navarrese government has been almost interruptedly governed by UPN (Union del Pueblo Navarro/Union of the Navarrese People) which is an allied force of the Popular Party, the politic groups that traditionally has been more hostile to the increase of the degree of self-government of subnational institutions. During 12 out of those 19 years, the Popular Party has been in the Central Government, which has made easier to reach agreements between both levels of government. It is curious to observe that since UPN became into a minority in the Navarrese Parliament and the Navarrese government changed its color in 2015, the number of laws appealed at the Constitutional Court has increased[23]. In contrast, the PNV (Partido Nacionalista Vasco/Basque Nationalist Party) has been running the Basque Government since the democracy was restored in 1978 (with the only exception of the legislature 2009-2012). Historically, the number of contestation of laws passed by the Basque institutions have been higher and there have been periods of high tension between both governments.

Chart 1. Number of autonomic laws appealed by central institutions at the Constitutional Court. Source: Own elaboration with data from Constitutional Court (no data 1995-1998)



[21] Figures for 2017. Source: datosmacro.com
[22] 2017, 62 hab/km2 vs. 300 hab/km2, datosmacro.com
[23] FERNÁNDEZ, Ibai (5/03/2018): "El Constitucional falla en contra de Navarra en el 80% de los casos" http://www.noticiasdenavarra.com/2018/03/05/politica/navarra/el-constitucional-falla-en-contra-de-navarra-en-el-80-de-los-casos

3. **Navarre is an uniprovincial Autonomous Region**: this helps to shape a simpler institutional framework. Since there are no Assemblies (Juntas Generales) or any other institution between the regional and municipal layers, the Foral Parliament is in charge of tax affairs. And as has been explained before, regional parliaments can legislate rules with status of law. This means that no exceptionality has been needed in order to protect them. Before 2010, Basque tax rules could be appealed by anyone with legit interest at the administrative jurisdiction courts. In contrast, Navarrese tax laws could from the start, only be appealed at the Constitutional Court, where active legitimation to present appeals against laws is by far stricter.

Perhaps the most remarkable factor in terms of harmonization remains in the fact of the Basque systems and the Navarrese not being interconnected by any formal mechanism. They share the responsibility to harmonize their systems with the Spanish but not with each other. This can be chocking after the similarities analyzed in the principles and content of the rules of both frameworks. However, this is a consequence of the informal mechanisms of coordination and collaboration between both, Basque institutions and Navarrese Foral Government, that have re-emerged since Geroa Bai, an allied political force for the PNV, reached the office in 2015. Considering that there are no formal tools, the only way to achieve an efficient design of their relationship is through political negotiation and agreement, inspired by the principles of institutional loyalty and the pursuit of common goals. In addition, both governments are interested in the best functioning foral tax systems since any trouble would spread uncertainty and criticism towards both foral frameworks.

2.1.b) Some facts and figures

Although the theory of tax competition by Sinn suggests that this diversity of legal frameworks within a common market for capital, whose freedom of movement is particularly intense within a country, would lead to a fierce race to the bottom phenomenon, there is enough empirical evidence as to reject it, at least in the present.

Conflicts between foral and common systems frameworks arose in the past, particularly in the CIT, due to the criticism of surrounding regions. They lack tax autonomy to enter the competition, which is probably the reason why this issue has never become a big issue or has never escalated. The peak of the tension was reached with the case “Basque Fiscal Holidays” which arrived at the EU Justice Court, who condemned Basque institutions for granting public aid to firms. However, the EU Justice Court was also the EU institution, whose ruling finally supposed the consolidation of the EU recognition of foral systems with the successful application of the “autonomy test” [24] created by the jurisprudence of the “Azores case”[25] to Basque institutions[26].

In terms of the statutory tax rate, in Graph 2 it is possible to check that in every of the considered cases, the figure has been declining during the last two decades. Perhaps the extremest case is represented by the EU average. This figure is built by the European Commission taking the simple (not weighted) average of the statutory rates of the CIT of member countries. It is possible to observe a sharp drop during the first half of the 00´s decade, which has been

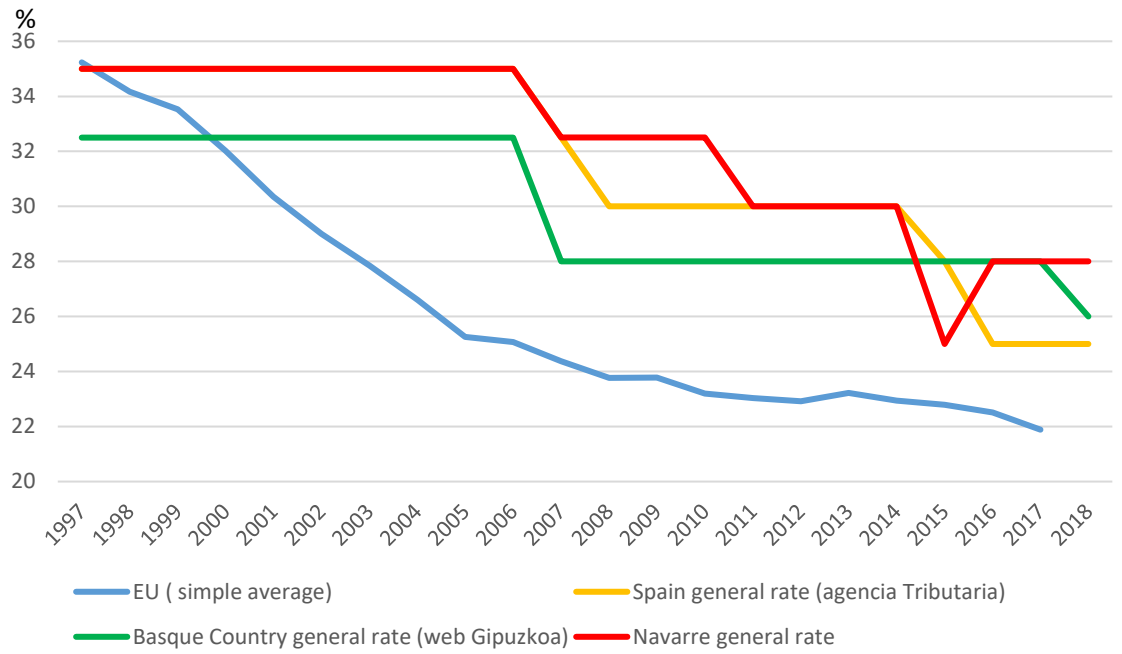
[24] Kokott General Attorney´s conclusions of 8th of May of 2008. On accumulated cases C-428/06 and 434/06 UGT-Rioja v Assemblies of Historic Territories.

[25] Geelhoed General Attorney´s conclusions of 20th of October of 2005. Portuguese Republic versus European Commission. Commission´s Decision 2003/442/CE-C-88/03.

[26] MARTÍNEZ BÁRBARA, Gemma (2014). Armonización Fiscal y Poder Tributario Foral en la Comunidad Autónoma del País Vasco.

moderated but continues falling at the present. Regarding Spanish, Basque and Navarrese rates, they are still higher than the European standards. This can be explained by the Western European pattern of the CIT, which differs from the Eastern since it regulates higher tax rates. Precisely, the low rates of the later skews the EU average downwards.

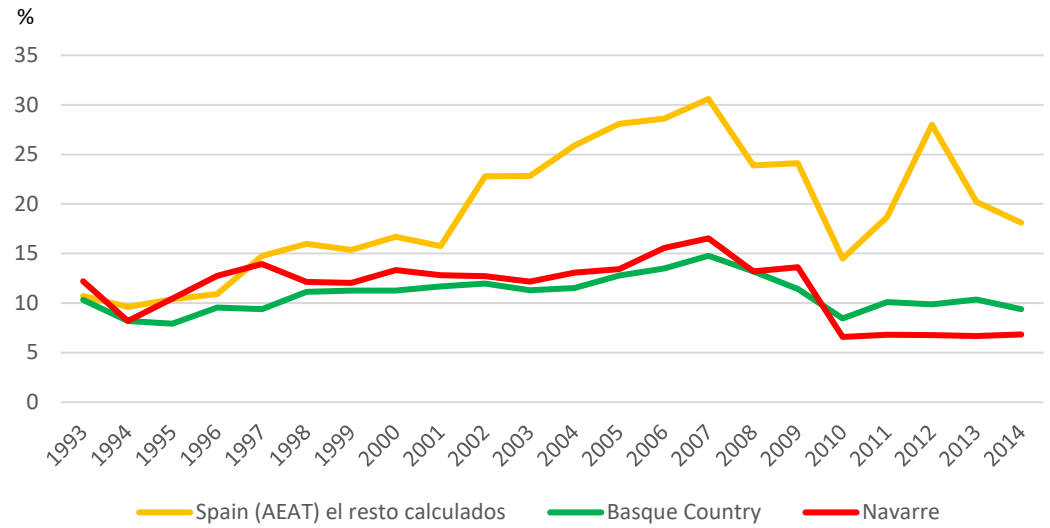
Chart 2. Evolution of the general statutory rate of CIT. Source: Own elaboration with data from European Commission and BOE



If the focus is placed on the interaction between the three Spanish frameworks, the Basque has been the most convenient (at least on paper) for companies, when the Navarrese has followed the same evolution as the Spanish. However, differences have not been large enough as to influence decisions of firms on their location, since the gap has oscillated around 4 percentage points. Nowadays, the Navarrese rate (28%) is the highest, and the Basque will become the lowest (24%) in 2019. However, the Basque decreased rate has been modified to get closer to the Spanish, so the role of the follower has been adopted by regions, in contrast with what could be expected. Taking this information into account it appears that decentralization of the legislative power on the CIT has not caused tax competition but that the race to the bottom phenomenon is driven by the international trend and has affected the EU as a whole. Thus, Spain would have decreased its statutory tax rate with or without the hypothetical competition of Foral systems.

However, it is true that the statutory tax rate does not show the complete picture of the issue since the elevated number of deductions offered by the legislator, which used to be a characteristic feature of the three Spanish CIT frameworks, can alter the conclusions of this first analysis. Due to the lack of data on the effective CIT tax rates for a representative period of the three frameworks, I will rely on figures for revenue raised by each tax administration.

Chart 3. CIT revenue as a percentage of total tax revenue. Source: Own elaboration with data from AEAT.

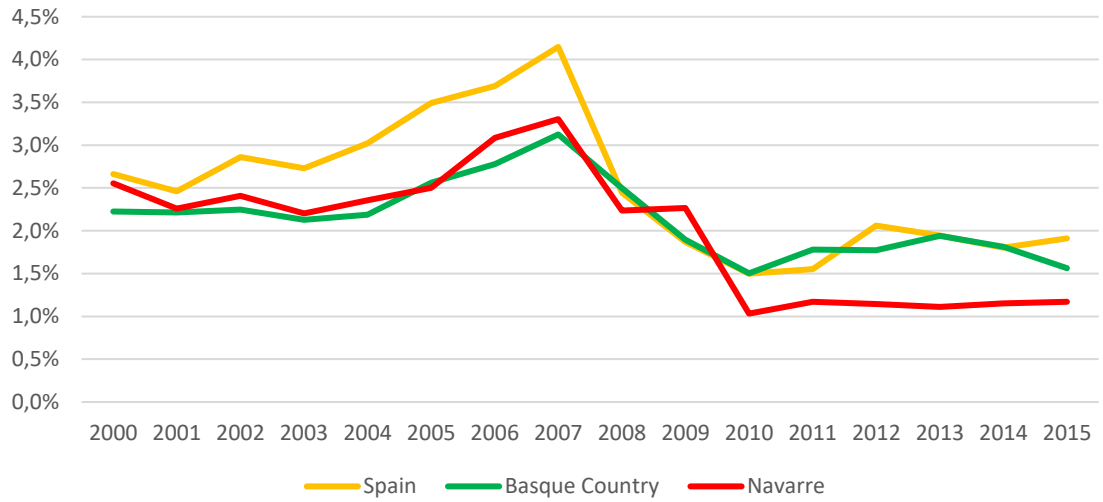


Graph 3 shows the comparative evolution of the three Spanish CIT revenue during the last twenty years, based on official data from the Tax Administration. We observe that the CIT has represented an stable 10% of the total tax revenue of the Basque and Navarrese systems, with an upward trend during the economic bubble of the first half of the 00´s decade and a downward on the Navarrese curve since the crisis due to the destruction of firms and the creation of smaller corporation (Chart 5), who pay a lower rate of CIT**.** This phenomenon also explains why Navarrese is the highest statutory tax rate. The government of the Foral Region wants to recover the CIT revenue in order to equilibrate the tax system and recover the share of revenue formerly represented by this tax.

Regarding Spain, the curve shows a higher dependency of the CIT revenue to the business cycle. This can be explained by the higher impact that the crisis had in terms of GDP and employment on the rest of the Spanish economy, where the robust industry sector has less relevance than in Basque and Navarrese economies. After the crisis, due to the increase in the VAT, which is also more resilient and the decrease of the statutory tax rate of the CIT, this tax figure has not recovered its relevance and the share of the revenue it represents continues getting closer to the 15%, closer to figures from before the growth period of the real state bubble.

With these pieces of evidence, there are not many elements pointing out the existence of a race to the bottom process within the country, since the dynamics appear to be explained mainly by the circumstances of the business cycle and international trends, rather than by the ad intra tax competition. This conclusion is backed by Graph 4. It shows a common evolution of the three curves, with some exceptions. First, during the first period, Spain raised a higher percentage of GDP of CIT. This can be explained by the sharper growth of the economy during those years, which translated into a larger decrease too when the crisis exploded, which offers a sign of higher volatility of the Spanish economy in comparison with the Navarrese and Basque. And second, after the crisis, Navarre is the only outlier. However, this appears to be caused by the new distribution of companies in Navarre, where the creation of new companies has not recovered since 2009 and neither dissolution of firms has slowed down. In addition, new Navarrese companies are very small in terms of capital, which causes that they pay a lower tax rate. Finally, the data does not include last years, in which the rate was increased again up to the 28%, which probably has recovered the revenue.

Chart 4. CIT revenue as a percentage of GDP. Source: own elaboration with data from AEAT and datosmacro.com



Another relevant issue relative to the regulation of the CIT, is the existence of lower tax rates for certain types of companies. For instance, the well-known and controversial Open-end investment companies (SICAV in Spanish), only pay a 1% of their net income. Thanks to their competencies on the regulation of taxes, first the Basque Assemblies and second the Navarrese parliament decide to put an end to this tool that used to be employed by the high-income earners and large patrimonies in order to lower their tax receipts. The result was easily predictable. SICAVs were reallocated, mainly in Madrid. Bilbao, which used to be the third city in the country with the highest amount of SICAV residents, lost them. However, the decision was taken for tax fairness concerns and the revenue lost was consciously assumed as a cost for it.

In this specific case, the tax competition could be considered in the opposite way than usual. If the Spanish CIT would eliminate the special rate for SICAVs, some could return to their original location and provide the regional tax agencies with a higher level of revenue. Although it is also true that they could definitively leave the country looking for new ways to decrease their contribution to the Treasury.

This example, although its importance, did not have a big echo in the media, in contrast with the difference on the statutory tax rates, which nowadays account only for a gap of a 1 percentage point between the Basque and Spanish CIT. The Presidents of the neighbor regions have permanently claimed against the foral tax autonomy in the field of corporate taxation based on the potential reallocation of firms that could leave their regions[27]. However, it appears to be just a political strategy, taking into account the lack of evidence found when analyzing the actual figures.

It has traditionally also been criticized the convenient patent box and intellectual property regimes in foral CIT rules in comparison with Spanish. However, after they started to get adapted to BEPS the differences consist mainly in a difference in rates of deductions around 10

[27] CALVO, Pedro (07/11/2015): "Así se pasa de 200 a 0 sicav: País Vasco muestra el camino a Navarra" https://www.elconfidencial.com/economia/2015-11-07/asi-se-pasa-de-200-a-0-sicav-pais-vasco-muestra-el-camino-a-navarra_1086448/

percentage points. Such was the case that recommendations by the Conduct Code Group in the ECOFIN have been forwarded to five Spanish CIT jurisdictions and not just to foral ones.[28]

According to the theory of fiscal federalism[29], there are advantages and disadvantages on decentralization of the power, specifically of fiscal affairs. Among the benefits, if collaboration and coordination mechanisms work, there are increased opportunities for innovation, for a better match between citizens´ preferences and policies and for a strength accountability. Also, efficiency gains could be obtained from the fiscal discipline imposed by the unilateral risk involved in the system, which means that foral institutions are the only responsible for the funding of their competencies and cannot ask for aid to the Central government, which vanished the moral hazard derived from the lack of fiscal corresponsiblity of the rest of regions, an issue that will be presumably faced in the next reform of the LOFCA[30].

With regards to the costs, we should consider the potential race to the bottom phenomenon, which is particularly characteristic on the Anglo-Saxon institutional culture and not very likely to appear on Continental Western Europe, considering the preferences of citizens for a higher level of public expenditure, and the increase of administrative costs.

As has been remarked before, the Economic Agreement has a confederal inspiration. Its bilateral nature is the framework to achieve the "living together", and its costs, if fully and transparently explained to the citizenship could be assumed or not. For the moment, the Spanish Parliament, and every political party represented on it, but Ciudadanos and the Valencian Compromís, have shown its commitment with it, since they vote for the reform of the Basque Economic Agreement in 2017. Any sign against the respect for foral systems of tax autonomy could be interpreted as an affront by Basque and Navarrese society, precisely in the worst moment possible, due to the instability driven by the situation in Catalunya.

Therefore, more than ever, any movement that could affect the diversity of tax frameworks and to the tax autonomy and fiscal sovereignty of Spanish foral territories should take into account their position in the decision-making process. This is the case of the CCCTB that is now in negotiations in the EU in order to improve the issue of tax avoidance among multinationals in Europe. This will be a specific case of tax harmonization within the EU that is going to be the subject of this research.

2.2. CCCTB proposal

The CCCTB proposal represents the most serious intent up to now by European institutions to advance on fiscal harmonization on the field of corporate taxation, which due to the intrinsic characteristic of capital as the movable production factor, is the one causing the most relevant issues with tax avoidance, which is boosted when considering freedom of mobility of capital within the common market. The first step in the tax harmonization process was the harmonization of the VAT, which due to its centralized character did not raised many concerns

[28] Conclusion report of the Conduct Code Group (ECOFIN) on 8th of June of 2017. MARTÍNEZ BÁRBARA, Gemma (2017). Roadmap to BEPS y los sistemas tributarios de los Territorios Históricos del País Vasco. Zergak: gaceta tributaria del País Vasco, (53), 107-136.

[29] OATES, W. E. (1972). Fiscal federalism. Books. & MUSGRAVE, R. A. (1969). Theories of fiscal federalism. Public Finance= Finances publiques, 24(4), 521-536.

[30] EXPERT BODY FOR THE REFORM OF THE SYSTEM OF REGIONAL FUNDING (2017): "Experts´ assessment for the reform of the System of Regional Funding": http://www.minhafp.gob.es/Documentacion/Publico/CDI/Sist%20Financiacion%20y%20Deuda/Informaci%C3%B3nCCAA/Informe_final_Comisi%C3%B3n_Reforma_SFA.pdf

about its compatibility with fiscal federalism formulas. In fact, no European region has legislative power on the VAT, in contrast with the already exhaustively detailed case for the CIT in Spanish foral territories.

According to the European Commission, who relaunched the formerly named CCTB proposal on 2016, the CCCTB aims to eliminate transfer pricing concerns, to remove double taxation caused by conflicting tax claims between member states and, to reduce the administrative burdens and tax compliance costs for firms[31]. In order to do this, three steps would be requested. First, the creation of a common accountancy regulation framework for CIT. Second, the consolidation of the tax bases of CIT in every EU country. And last, the application of the formula apportionment, that remains to be agreed, to allocate tax bases to countries in order to calculate a weighted tax rate, calculate the tax receipt and distribute revenue among tax administrations.

The formula apportionment, even though it has not been defined in the Policy Proposal released by the EC[32], considering the predictions and simulations made by the literature[33], will probably include objective variables such as the allocation of production factors of the company. This would mean that the tax rate to be paid by the firm would be a weighted average of the national CIT rate depending on where the real production of the companies takes places, measured on the number of employees and value of the material equipment located in each country.

This apportionment formula, although it would eliminate the incentives to establish fake formal residency in low taxation territories such as Ireland, it could boost the reallocation of the real activity in these countries in order to skew downwards the weighted average tax rate. Also, sales would be a good variable to take into account, since this is the main source of income of firms, which is the object charged by the CIT.

The CCCTB proposal does not include any measure to harmonize tax rates, which would represent a longer-term solution for the problem of tax competition, since even with the apportionment formula based on the real allocation of factors, the incentive to move production towards low taxation territories would remain or even increase. The tighter the rates range, the smaller the room for tax competition would be. However, this measure would have two main resistances to face. First, political feasibility. In fact, EU jurisdictions are reluctant to renounce to fiscal sovereignty even if desirable to complete the EMU. We have already verified that even Spanish institutions maintain divergences of criteria and that the protection of tax autonomy is sometimes prioritized over harmonization, so difficulties arise when considering different countries. And second, the necessity of granting a softer regime for Eastern European countries, which are still in transition towards capitalism, and need more room to grow and develop. For this group of countries, low taxation frameworks have been a very effective policy to attract investment that otherwise would have gone to Western Europe due to its better institutional quality (legal certainty and rule of law) and infrastructure.

[31] SPENGEL, C., ORTMANN-BABEL, M., ZINN, B., & MATENAER, S. (2012). A common corporate tax base for Europe: An impact assessment of the draft council directive on a CC (C) TB. ZEW discussion papers, 12.

[32] EUROPEAN COMMISSION (2016): "Proposals for Council Directives CCTB and CCCTB"

[33] SPENGEL, C., ORTMANN-BABEL, M., ZINN, B., & MATENAER, S. (2012). A common corporate tax base for Europe: An impact assessment of the draft council directive on a CC (C) TB. ZEW discussion papers, 12. & ALVAREZ-MARTINEZ, M. T., BARRIOS, S., D'ANDRIA, D., GESUALDO, M., PONTIKAKIS, D., & PYCROFT, J. (2016). Modelling corporate tax reforms in the EU: New simulations with the CORTAX model (No. 2016-08). Joint Research Centre (Seville site).

The basic design of the CCCTB has been extensively addressed by literature[34] and the working papers by the EC. Even the potential impact of the CIT harmonization policy proposal has been researched. However, little attention has been paid to the regional perspective. The EC itself recognizes this point in the Impact Assessment of the CCCTB proposal[35]. And this is not a minor issue, since subnational institutions of European decentralized countries will be affected to a different extent. Of course, Spanish foral territories, due to their legislative competencies on the CIT, will be the subnational jurisdictions to feel the reform the most.

Major decentralized elements of the CIT that will be impacted by the CCCTB will be revenue distribution and administrative management, although it will heavily depend on the configuration of the tax in each country. In order to assess it, the next chapter will pay attention to the specific case of four European decentralized countries to establish a comparison framework with the Spanish example. Relating to foral cases, due to their particular legal framework, also tax base determination rules will be concerned. However, since accountancy rules are national, they will not be part of the compatibility analysis.

2.3 Involvement of Spanish regions in the EU decision-making process. Institutional framework: from theory to practice

Here is where the key point of the compatibility judgment lies. It sounds reasonable that subnational entities with a legit interest on the policy subject, and even more if they are competent in the topic, are involved in the decision-making process. This chapter will explain the participation channels of Spanish regions in the EU context.

Since the Treaty of Maastricht in 1993, EU primary law recognizes the role of regions in the EU context and institutional framework. In fact, art. 203 of the European Treaty allows for regional Ministers to participate (direct representation) in the Council of the EU as representative of the whole country[36]. However, and in line with the usual position of the Community institutions, each country is responsible and has the freedom to self-organize how they materialize this principle. That year Belgium, Austria, and Germany signed a declaration for the extension of the subsidiarity principle to subnational entities. A declaration not joined by Spain, in line with the traditional reluctances of central authorities to recognize regions´ roles in the EU[37].

The main point is that the EU, with already twenty-eight minus one member state, does not want to add complexity to its organization[38]. Thus, the strategy adopted appears to focus on the externalization of regional affairs, sometimes controversial, to the national context, due to two main drivers. On the one hand, because of the principle of no intervention in national affairs. On

[34] Ídem.

[35] EUROPEAN COMMISSION (2016): "Working document. Impact assessment accompanying the document Proposals for a Council Directive on a CCTB and a CCCTB"

[36] DE BECKER, A. (2012). La representación de Bélgica en el Consejo de la UE y la participación directa de las regiones/Belgian representation in the Council of the EU and the direct participation of regions. Revista CIDOB d'afers internacionals, 39-54.

[37] ZARRAGOITIA, M. A. (2007). The participation of Basque Institutions in EU bodies dealing with tax regulation. An approach from the Basque Country. In Basque economic agreement and Europe: economic agreement, regional tax regulation and state aid= Concierto económico vasco y Europa: concierto económico, fiscalidad regional y ayudas de estado: proceeeding of the International Conference December 2006= Actas del Congreso Internacional Diciembre 2006 (pp. 227-247). Universidad de Deusto; Deustuko Unibertsitatea.

[38] VAN KOMMER, Victor. Personal communication, February 21, 2018.

the other hand, because the EU has to face their own challenges, such as the rise of populism and Euroscepticism.

The subsidiarity principle (art. 5 TEU) is the main guideline to regulate the relationship of EU institutions with subnational entities. An important step was made in 2007, when the Treaty of Lisbon extended the subsidiarity principle explicitly to the subnational institutions with legislative power[39]. In addition, the TFEU includes in its art. 4.2 the respect towards local and regional autonomy.

In the EU institutional framework, the main arena for regional representation is the Committee of Regions. Created in 1994 with the aim to close the gap between citizens and European institutions, is composed by representatives of cities, provinces, and regions, who elaborate nonbinding assessments in certain policy areas for the EC and the European Council. But tax policy is not among the topics of its competence[40].

In the Spanish national context, the CARUE (Conferencia para Asuntos Relacionados con la UE/Conference for EU related affairs) is the main mechanism to turn into reality the participation of regions in the EU policy-making. It was created in the 90´s in order to engage regions in the decision-making process of EU affairs, since until that moment it used to be limited to the implementation of European policies. This deliberative body was supposed to help to define the position that Spain will defend at the Council of the EU. However, it has not worked as expected due to the lack of resources of regions in order to manage to reach common regional positions within the deadlines determined by the rhythm of European politics. [41]

In addition, the conception of the status of regional institutions has probably also played a role as an obstacle for the success of the CARUE, as for other cooperation and coordination bodies between central and regional administrations. For instance, the central administration is the one summoning and presiding its meetings. This is a sign of the consideration of regions as second level institutions, and it does not match with the full recognition of them as equals and the idea of bilateral relationship. This situation is caused by the lack of federal values and tradition, which is one of the most characteristic differences between decentralized unitary countries such as Spain or Italy, and fully and formally federal Belgium, Austria or Germany. This phenomenon not only harms institutional trust and loyalty, but it also creates a breach between the legal framework and reality, damaging legal certainty and leading to potential conflicts driven by the frustration of not seeing legit expectations fulfilled.

However, the CARUE opened in 2005 two channels for regions to participate in the EU decision-making process, particularly for the institution in which most of the decisions are taken, the Council of the EU and its technical bodies: the working groups. Regions could[42]:

- Take part at certain workgroups through the counselors of the Office for Autonomic Affairs at the Spanish Reper to the EU

[39] EUROPEAN PARLIAMENT: "The principle of subsidiarity" http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_1.2.2.html

[40] EUROPEAN PARLIAMENT: "The CoR" http://www.europarl.europa.eu/atyourservice/en/displayFtu.html?ftuId=FTU_1.3.14.html

[41] GARCÍA, S. B. (2012). Una salida para la representación de las comunidades autónomas en el Consejo de la UE/An outlet for the representation of autonomous communities in the Council of the EU. Revista CIDOB d'afers internacionals, 133-156.

[42] Ídem.

- Be part of the Spanish delegation at specific workgroups of the Council of the EU

Again, as it happens at the Committee of Regions, tax affairs are not among the topics considered. In addition, the resolution that regulates these formulas includes an exception clause to remind that the "rules will be applied without affecting the specific regimes in topics only affecting to them, particularly to foral specifities"[43]. Precisely, as has been explained, the CIT remains outside the LOFCA, so it fits perfectly in the definition provided by this clause. Reached this point, attention should be paid to the specific participation framework of Basque and Navarrese institutions in the EU.

The Basque case[44]

Since an agreement reached between the Central Government and the PNV in order to pass the budgetary law for 2011, Basque institutions have been taking part in the Spanish delegation in the working groups at the ECOFIN. Particularly, they participate in the groups D4 Tax affairs, D5 Conduct Code and D8 Fight against fraud[45]. The Foral Deputation of Bizkaia and the Basque Government´s Delegation in Brussels are the institutions representing Basque foral institutions in this context, since they are the ones with more resources due to their larger size. The D4 working groups is the most relevant for our concern since it is the arena where the CCCTB is being negotiated.

The Basque representative, a civil servant of the tax administration of Bizkaia or the Basque Government, attends the meetings and takes part in the determination of the Spanish position. However, it is the Central Administration who leads the Spanish committee, expressing and taking the last decision on the common position that the country has to reach.

It was very difficult for Basque institutions to convince the Spanish authorities to allow their participation at the working groups of the ECOFIN. The argument in order to not allow for it, was based on legal reasons. The Economic Agreement, in its art. 4.2, explains that the principle of collaboration includes the participation of the Basque institution in the negotiation of international agreements affecting the Agreement. However, there is nothing written about the participation in EU institutions. This was the alibi in order to not allow it. This issue was very controversial and was the main reason why the negotiations to update the Economic Agreement could not be finished on time in 2001. However, it turned into a reality with the same legal framework in 2010, when the central government needed the votes of the Basque Nationalist Party at the Congress. This shows that it was not a legal problem but a political one.

[43] Art. III.3 Resolución de 28 de febrero de 2005, de la Secretaría de Estado de Cooperación Territorial, por la que se ordena la publicación de los Acuerdos de 9 de diciembre de 2004, de la Conferencia para Asuntos Relacionados con las Comunidades Europeas, sobre la Consejería para Asuntos Autonómicos en la Representación Permanente de España ante la Unión Europea y sobre la participación de las Comunidades Autónomas en los grupos de trabajo del Consejo de la Unión Europea; y sobre el sistema de representación autonómica en las formaciones del Consejo de la Unión Europea.

[44] MARTÍNEZ BÁRBARA, Gemma (2014). Armonización Fiscal y Poder Tributario Foral en la Comunidad Autónoma del País Vasco. MARTÍNEZ BÁRBARA, Gemma & RUBÍ CASSINELLO, José Gabriel. Personal communication, April 20, 2018

[45] MARTÍNEZ BÁRBARA, Gemma (2014). La participación de las Instituciones vascas en los grupos de trabajo del ECOFIN. In Concierto económico y derecho de la Unión Europea (pp. 208-232). Instituto Vasco de Administración Pública= Herri Arduralaritzaren Euskal Erakundea.

The next step for Basque institutions is to attain an explicit recognition in the law of the Economic Agreement of its participation at the ECOFIN in order to guarantee that it will maintain disregards of the political color on the office in the Central Government.

The Navarrese case

Again, on the occasion of the negotiation of the budgetary bill of 2013, the Navarrese party Unión del Pueblo Navarro (UPN), a brother party of the Popular Party, in charge of the Central government from 2011 to 2018, reached an agreement to ensure the participation of the Foral Community of Navarre in the working groups of the ECOFIN with regards to the topics related to the financial and fiscal singularities of Navarre, due to its foral character[46].

Consequently, since 2015, the Navarrese institutions can attend the meetings of the working groups D4, D5, and D8. Again, the participation is limited to be present at discussions, but without the right to speak or to vote and always as a member of the Spanish delegation. Although the Navarrese institutions could take part in those three working groups, they only participate in D5 due to its limited resources. The Navarrese member attending the meetings was the representative of the Navarrese Government in Brussels until 2016, when the Navarrese Treasury Department designed a responsible for attending the meetings. [47]

Both, Basque and Navarrese framework for participation have been driven by the same causes and ruled by the same guidelines. Similarities arise once more. However, there is a fundamental variable, less obvious, but important: the time. When Basque institutions faced the refusal from the Central Government, they were alone. Navarre only got involved when the representation at the ECOFIN was achieved by Basques. The situation is different now, since both foral institutions collaborate through informal channels. However, it should not depend on the party in the office of the regional governments since both share a common interest to defend.

The main conclusion from this analysis on the mechanisms for the participation of Spanish regions on the decision-making process of the EU is the large gap existing between the principles, rules, and mechanisms contained in the laws and the reality. As professor Van Kommer explains, a high-quality legal framework does not ensure effective results if the implementation of it is poor. And the competent power to put in practice agreements is not other than the Central State, which due to the lack of federal tradition and lack of convincement about the first level status of subnational institutions, is usually reluctant to grant them with the institutional room they have right to.

[46] 90th Additional Disposition of the Budgetary Law for 2013. Ley 17/2012, de 27 de diciembre, de Presupuestos Generales del Estado para 2013

[47] DELEGATION OF THE GOVERNMENT OF NAVARRE IN BRUSSELS. Personal communication. May 22, 2018.

3. International comparison

The Spanish case has already been analyzed, with its strengths and weaknesses. Now its time to verify the situation in other decentralized or federal countries in Europe in order to establish the differences and to try to extract ideas and experiences in order to suggest a new scheme for Spain in the last chapter.

3.1 Italy

The Italian unitary, asymmetric and decentralized model

The decentralized model of the unitary Italy, although often ignored in the studies of compared federalism, is the most similar to the Spanish so-called "State of the Autonomies". Both, Italy and Spain share cultural, national and linguistic diversity as a base for decentralization process. In contrast, German landers were a construction of Ally Powers after the World War II in order to avoid that any region became too powerful and to divide the power to lower the probability of a new imperial attempt[48].

These heterogeneities explain why Italian Constitution (art. 116) grants Sardinia, Sicily, Trentino-Alto Adige/Südtirol[49], Aosta Valley and Friuli-Venezia Giulia with a special autonomous status that has consequences for their funding system[50]. Here is where the second similarity with the Spanish system arises: the Italian system, as the Spanish, is asymmetric. However, the degree of political and fiscal autonomy granted by the special statutes of Italian regions is far from the foral systems.

Also, both countries have formally a unitary structure instead of a federal one. However, in Spain, the decentralization process has been deeper, although in both countries there is a broad gap between the formal and actual system, due to the lack of federal political and institutional tradition and culture. In fact, the 2001 constitutional reform in Italy had a federal inspiration that has not fully materialized, which has led some authors[51] to consider the Italian decentralization process a failure. This has been explained by the lack of real commitment from the political parties, since the federalist proposal by the Lega Norte was driven by a discourse against the solidarity with the less developed South, and lacked real federalist spirit. What is more, despite the regionalization process carried out during last three decades, local institutions remain stronger than regions in both, political and fiscal autonomy terms, at can be seen in Chart 5 and 6.

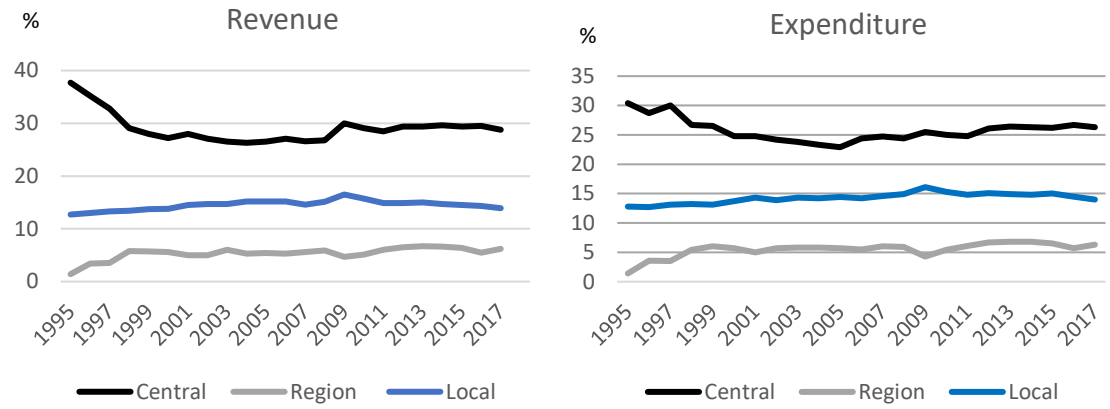
[48] SUSZYCKA-JASCH, M., & JASCH, H. C. (2009). The Participation of the German Lander in Formulating German EU-Policy. German LJ, 10, 1215.

[49] Trentino-Alto Adige/Südtirol constitutes a special case. The region is nearly powerless, and the powers granted by the region's statute are mostly exercised by the two autonomous provinces within the region, Trentino and South Tyrol. In this case, the regional institution plays a coordinating role.

[50] PALERMO, F., & WILSON, A. (2013). The dynamics of decentralization in Italy: Towards a federal solution. European Diversity and Autonomy Papers (Bolyano: EDAP).

[51] BALDINI, G., & BALDI, B. (2014). Decentralization in Italy and the Troubles of Federalization. Regional & Federal Studies, 24(1), 87-108.

Chart 5 and 6. Public revenue and expenditure as a percentage of GDP by institutional layer in Italy. Source: Own elaboration based on Eurostat[52]



For example, the art 75.1g) of the Special Statute for Trentino-Alto Adige[53] (Provinces of Trento and Bolzano), establishes that "the Provinces shall be assigned the following quotas of the yield from the tax revenues of the state indicated below, collected in their respective territories: g) 9/10 of all other state revenue direct or indirect, however designated, including local income taxes, excepting those belonging to the Region or other public bodies." This legal provision is inspired by the distribution of fiscal revenues of the German federal system, based on the location of revenue sources.

However, legislation on taxation is fully reserved to the central authorities, and regions have only the power to modify the tax rates of the regional taxes, which are not actually regional since subnational institutions have only management power on them. As a consequence, the main difference between regions ruled by the common system and the special statutes is how they are funded. On the one hand, transfers towards the regular status regions are funded by a share of the VAT, with the goal of equalization, consisting of the cost to fund public basic services. On the other hand, the sources of the transfers to regions with special status are broader and based on the share of revenue generated in the region[54].

The Italian CIT

In terms of fiscal autonomy, the art. 119 of the Italian Constitution grants autonomous expenditure and revenue capacities to municipalities, provinces, metropolitan cities, and regions. However, the CIT (IRES[55]) is fully national. Both, legislation and management of the tax is an exclusive competence of central institutions. In addition, the central legislative power created in 1997 the IRAP[56], which is a regional surcharge on firms´ income. Again, the legislation

[52] Figures for regional level has been calculated taking differences between total figures and local and central government´s data, since Italy does not report on regional basis neither to OECD or Eurostat. This is another signal pointing in the direction of the lack of importance given to regions in Italy.

[53] Modified text of the Constitution of the "Trentino - Alto Adige" Region and the Provinces of Trento and Bolzano: http://www.buergernetz.bz.it/en/downloads/autonomy_statute_eng.pdf

[54] OECD (2016): "Regional policy profile of Italy" : https://www.oecd.org/regional/regional-policy/profile-Italy.pdf

[55] D.P.R. 22 dicembre 1986, n. 917. Approvazione del testo unico delle imposte sui redditi.

[56] DECRETO LEGISLATIVO 15 dicembre 1997, n. 446 Istituzione dell'imposta regionale sulle attivita' produttive, revisione degli scaglioni, delle aliquote e delle detrazioni dell'Irpef e istituzione di una addizionale regionale a tale imposta, nonche' riordino della disciplina dei tributi locali.

is fully national, and management is carried out by the Regional/Provincial Delegation of the National Tax Agency. However, in this case, regions can modify within a limited range the statutory tax rate, which is around 2,5%. The IRAP is a regional own resource, so the revenue raised by the region is not shared.

Finally, it remains to be analysed the role of Italian regions in the EU. The Italian constitution at art 117s) defines both, harmonization of public accounts and co-ordination of public finance and taxation system and the EU relations of the Regions as concurring competence. In other words, Central and Regional institutions (which are benefactors of the residual clause[57]) can legislate on these subjects.

Italian regions in the EU[58]

The legal base for the participation of Italian regions in the EU fora decision-making process is the art. 117 of the Constitution. It states that the Regions and the autonomous provinces of Trent and Bolzano take part in preparatory decision-making process of EU legislative acts in the areas that fall within their responsibilities. The article could straightforwardly be interpreted as that the Constitution recognizes their active engagement in working groups of the Council of the EU about the topics of their competencies. However, the materialization has been, again, not very satisfactory.

Apart from their participation in the Committee of Regions, and since 1997 (Prodi´s 2001 reform strengthen its role) the theorical framework on regions´ participation on the EU decision-making process was materialized by the creation of the State-Regions-Autonomous Provinces Conference. This body of interadministrative coordination involves the regions in the policy-making at the national level and has specific session dealing with all those communitarian issues having a regional impact. They meet twice a year to inform the government on regions´ point of view on future EU legislation concerning their competencies and interests and to express opinions on the transposition of EU directives into Italian law. It also nominates regions´ representatives in Brussels, and they can express their opinion on the legislation necessary to harmonize Italian law with EU legislation.

However, taking into account the nature and dynamics of the EU policy-making, the frequency of the meetings is not sufficient. Without a continuous flow of information and communication among both institutional levels, it is very unlikely to achieve a real influence by regions on the position of Italy on EU affairs on subjects of their competence or interest.

The impact of the CCCTB on Italian regions

As consequence of the CCCTB, not only the IREP but also the regional IRAP would be affected. Nowadays regions only have power over the determination of the IRAP statutory rate within a limited range, but the income coming from it is fully retained by them. This means that the CCCTB would affect Italian regions as far as the tax figure of the IRAP is affected. The possible scenarios are:

- **The IRAP is eliminated to ensure to comply with the rules of the CCCTB**: it would have a large impact on regions budget since is their only revenue source together with the

[57] Every competence not attributed by the Constitution to the Central authorities is assumed to be in hands of regional institutions. Not practical value according to Palermo, F., & Wilson, A. (2013).
[58] FABBRINI, S., & BRUNAZZO, M. (2003). Federalizing Italy: The convergent effects of europeanization and domestic mobilization. Regional & Federal Studies, 13(1), 100-120.

share of the VAT and the extraordinary earmarked grants for Southern regions. Regions would need to find a new income source, perhaps a share of the CIT or by the decentralization of other taxes. It would be recommendable to allow regions to raise their own revenue instead of receiving a higher share of transfers to ensure fiscal corresponsibility and avoid undesired incentive schemes.

- **The revenue coming from the IRAP changes due to the new consolidated tax base**: this scenario could hit asymmetrically each region since it could shift more intensely income location from some regions towards other countries, and also towards other regions, depending on how the apportionment formula is finally determined. This could create a politically difficult context, since some regions would claim to attract new sources of income, when others would prefer to maintain the status quo.
- **The IRAP is excluded from the CCCTB**: at first glance, regions would not be affected by the harmonization policy. However, the establishment of the CCCTB, as has been explained before, could lead firms to physically move their business activity towards other locations, which would affect the revenue of the IRAP.

The conclusion from the three scenarios is that regions will always be affected by the CCCTB. This means that they should be engaged in the decision-making process of the proposal, particularly taking part in an effective way on the D5 working group within the Italian delegation. Considering the similarities with the Spanish situation, the proposal to be designed as the conclusion of this research could be applied to some extent to Italian regions with special statute.

3.2 Austria

The centralist Austrian federation

Austria is a federal country. According to the art. 2 of its Federal Constitution, the country is formed by their autonomous provinces (Länders), which is interpreted as a statement meaning that there is no Austria without its Länders[59]. Each Länder has a regional Parliament and its own government, institutions elected by popular vote. However, Austrian federation is a very particular case since it's considered by some authors[60] a federation without federalism.

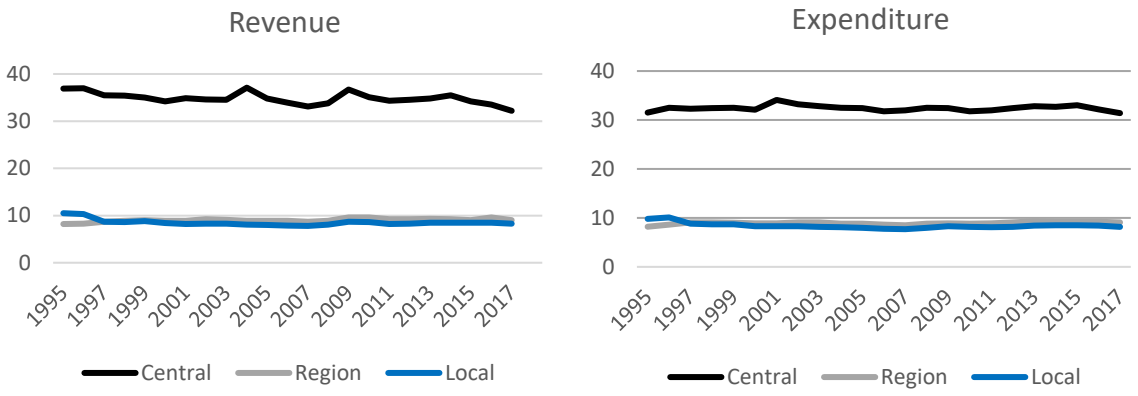
The reason is that there is no strong cultural, linguistic or national diversity among the small territory and population of Austria. This explains the lack of institutional tensions between the different levels of government despite the recentralization process that the country has lived during last decades[61].

The three institutional layers are granted the same status by the constitution. They are granted administrative and political autonomy and they also have a very broad degree of budgetary autonomy[62]. However, there is almost no tax autonomy in the Austrian federation. In fact, the art. 10.4 of the Austrian Constitution explains that federal finances, in particular taxes which are to be raised for the federation, are exclusive powers of legislation and execution of Federal authorities. Federal income, accounts by far for the largest share of public revenue, as it can be observed in Charts 7 and 8. It is true that the figures don't show the whole picture since the degree of autonomy not only depends on which institution raise revenue and spend it but the

[59] PROROK, Thomas. Personal communication, June 13, 2018
[60] ERK, J. (2004). Austria: A federation without federalism. Publius: The Journal of Federalism, 34(1), 1-20.
[61] Ídem.
[62] NITSCHE, Wolfgang. Personal communication, June 12, 2018.

implication of each layer on legislation and the decision power of them. For instance, on tax rates or on expenditure if it is earmarked[63].

Chart 6 and 7. Public revenue and expenditure as a percentage of GDP by institutional layer in Austria. Source: Own elaboration based on Eurostat



Austrian subnational institutions are funded not by own resources, but mainly by the so-called Austrian Revenue Sharing system[64]. It is a transfer system from the federal institutions, who legislate and manage practically every tax, towards Länders, who have mainly managing powers, and municipalities. Tax sharing´s main criterion to allocate transfers is population, under the assumption that provision of public services is more expensive in big cities than in the countryside. The main problem of this system, that is complemented by a small volume of earmarked transfers depending on the specific needs negotiated between the Länder and the Federal authorities, is the lack of fiscal corresponsibility. In fact, Länders do not have to face the electoral cost of collecting taxes, but they have a large autonomy to spend money raised by the federal tax agency. Also, the population criterion is not pacific, and it has been decades of debates without any concrete decision taken[65]. Experts[66] appear to agree in the fact that the Länders and municipalities should have more own taxes, however at this moment they appear reluctant to accept it, and they prefer to claim for larger shares from the tax sharing.

The Austrian CIT

In the field of the CIT, subnational entities do have nothing to say since it is classified by the Constitutional Law on Financial Matters[67] as a federal tax. However, Länders receive the 20% of the total revenue of the CIT and the PIT and municipalities the 12%. It is important to remark that the share for each Länder does not depend on how much is raised on its territory, but on its population. This percentages, included in the Fiscal Equalization Act[68] are the outcome of a negotiation that takes place every 4 to 6 years between three blocks of stakeholders: representatives of federal, regional and local layers.

[63] BRÖTHALER, J., & GETZNER, M. (2011). Fiscal autonomy and total government expenditure: an Austrian case-study. International Advances in Economic Research, 17(2), 134.
[64] Fiscal Equalization Act 2017/ Finanzausgleichsgesetz 2017, BGBL I Nr. 116/2016
[65] MATZINGER, Anton & BRÖTHALER, Johann. Personal communications, June 12 and 13, 2018.
[66] PROROK, Thomas & NITSCHE, Wolfgang. Personal communications, June 13 and 12, 2018
[67] Finanzverfassungsgesetz. BGBL Nr. 45/1948 idF BGBL I Nr. 194/1999
[68] Finanzausgleichsgesetz. BGBL I Nr. 116/2016

The cooperation between Länders to pursue common interests is very characteristic from the Austrian model, in contrast to the Spanish or Belgian model in which every region or community is represented individually when negotiating with the Central government. However, there are common points with other decentralized systems. For instance, there is a non-written rule that requires that the outcome of every negotiation does not equate to a decrease in the resources of any institutional layer. This means that the resources have to remain stable. Precisely, stability is the word used to describe the system by the experts.[69]

Representation of Austrian Länders at EU fora

The legal framework for the participation of Länders and municipalities in EU affairs is shaped by the Austrian Constitution, which devotes a whole section to this subject. Art 23.d) explains that the Federal layer has to inform Länders and municipalities regarding all European projects which could affect their "sphere of competence" or could be "of their interest", so they can offer their point of view. This disposition is developed in the Agreement according to Art. 15a B-VG concerning the rights of Federal States and municipalities to participate in EU-Affairs[70].

It obliges the Federation to take into account the opinion of Länders in formulating Austrian positions to be taken in negotiations in EU-fora if confined to matters where the Federal States have legislative competencies, which is not the case for CIT.

For other matters "which might be of interest to them" they have the right to be informed on the developments on the European level and they have the right to deliver opinions, but these are non-binding for the Federation. In addition, Länders have the right to dispatch representatives in the Permanent Representation of Austria to the EU. However, in practice, they have virtually no role in shaping the Austrian position with regard to taxation, and particularly not at the ECOFIN.

Although Austrian subnational institutions do not have almost any formal power on tax affairs, it is necessary to remark that for any amendment in the Austrian tax system with consequences for the revenues of subnational institutions, the Federation is obliged to enter in negotiations with them. These negotiations, as the ones to reach agreements on Austrian Tax Sharing System, take part at the Coordination Body between the three layers of government, which is in practice by far more effective than the Bundesrat, which should be the main arena for regional affairs. Therefore, Federal States devote there their negotiating power rather than into trying to influence the Austrian position at the EU.[71]

In addition, even if Länders lack tax autonomy and could appear as mere management bodies, they have strong political power. For instance, the Presidents of the Länders are very influential characters within the ruling parties in Austria, which allow them to set the political agenda in the national context, regaining part of the autonomy lost by the materialization of the already described centralized federalism[72].

The impact of the CCCTB on Austrian Länders

[69] BRÖTHALER, Johann. Personal communication, June 13, 2018.
[70] Vereinbarung zwischen dem Bund und den Ländern gemäß Art.15a B-VG über die Mitwirkungsrechte der Länder und Gemeinden in Angelegenheiten der Europäischen Integration. LGBL Nr. 93/1992
[71] MATZINGER, Anton. Personal communications, June 12, 2018
[72] BRÖTHALER, Johann. Personal communication, June 13, 2018.

Reached this point, the consequences that the CCCTB could have on the Austrian fiscal decentralization remains to be assessed. Although the Ministry of Finance predicts a very limited impact, other researchers[73] consider that the change on the revenues of the Federal Tax Administration would have consequences on the negotiation of the Tax Sharing System, mainly in order to maintain the same level of transfers to every institution.

If we trust the estimations made by Álvarez-Martinez et. al[74], CIT revenue of Austria would decrease the 0,14% of the GDP and the increase of the PIT would only compensate a 0,05%. In sum, the new scenario would require an increase in the share of revenues that subnational institutions receive in order to compensate the decrease in the total volume of the CIT. However, the most recommendable option would be to let them create new taxes, to delegate the creation of surcharges on existing national taxes or to establish an interval of the tax rate that could be determined by subnational institutions.

Increasing tax autonomy by any of those paths, the system would introduce a first element of tax competition that could help to decrease the tax burden and also to allow for innovation and yardstick comparison tool for citizens. However, considering the cooperating and symmetric tradition of the Austrian federation, this is unlikely to happen. So there would not be many arguments in order to foster subnational institutions´ role in the EU in order to make it compatible with tax harmonization, since they do not appear to be very interested in it, not at least in the field of taxation.

3.3 Germany

The cooperative federal model of Germany

Germany was configured as a Federal Republic in 1990 (art. 20 Basic Law for the Federal Republic of Germany), after the country as reunified with the fall of the wall of Berlin. Since then, it is formed by Länders, political entities with own legal personality and a high degree of autonomy. Although the German regions maintain the same denomination as the Austrian, they have little in common.

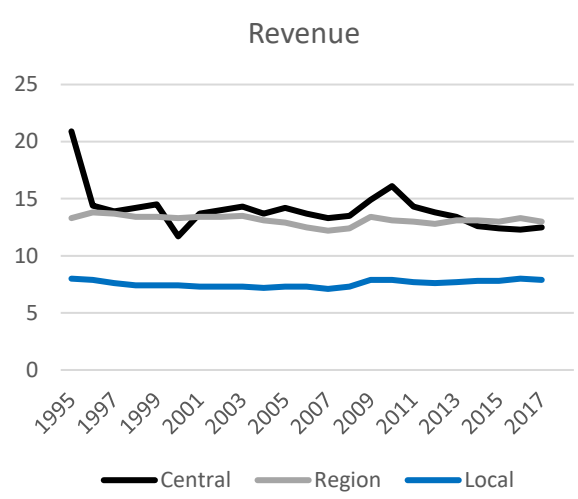
German institutional model is known as a cooperative federalism because, although it is a highly decentralized country, in management, political and fiscal aspects, it is fully symmetrical since the Länders reach common positions at the Bundesrat. This means that every Länder applies the same policies, decided by consensus with the rest of the regions. Some experts[75] have described this model as the worst possible among the possible federal configurations since theoretically higher management costs are faced without benefits on efficiency such as the targeted policies depending on heterogenous preferences of citizens of different regions or the yardstick competition that would drive regions to innovate in order to come off well from the comparison with other policy-makers.

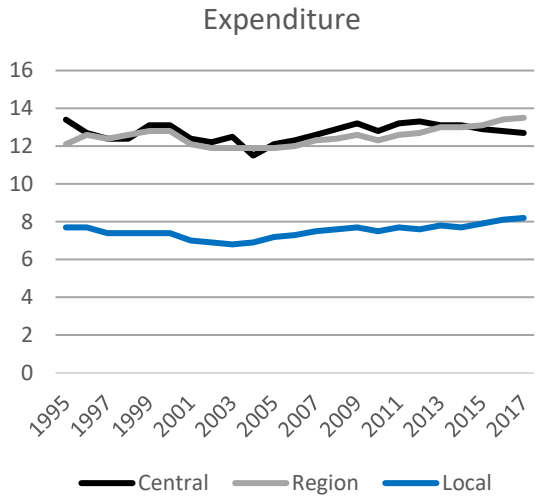
[73] Ídem.

[74] ALVAREZ-MARTINEZ, M. T., BARRIOS, S., D'ANDRIA, D., GESUALDO, M., PONTIKAKIS, D., & PYCROFT, J. (2016). Modelling corporate tax reforms in the EU: New simulations with the CORTAX model (No. 2016-08). Joint Research Centre (Seville site).

[75] RODDEN, J. (2003). Soft budget constraints and German federalism. Fiscal decentralization and the challenge of hard budget constraints, 161-186.

Chart 8 and 9. Public revenue and expenditure as a percentage of GDP by institutional layer in Germany. Source: Own elaboration based on Eurostat





The degree of fiscal decentralization can be analyzed by observing the Graphs 8 and 9. In contrast with the Austrian case, the German case is very equilibrated between the Länders and the Central layer. However, as in Austria, the main taxes are legislated by the Federation and Länders receive a share, larger, of them. In this case, Länders also manage the tax system, which means that they are in charge of the tax gathering. Afterwards, the revenues of the main taxes are split in order to offer enough funds to the public services of their competence (art. 106 German Basic Law), but this time the criterion is not population, but a certain share of the revenue raised in each territory.

The German CIT[76]

Firms in Germany have to pay two different taxes on their income: the regular CIT (Körperschaftsteuer) that includes a solidarity surcharge and the trade tax (Gewerbesteuer). Both taxes are legislated by the Federal Government and managed by Länders in the former case and municipalities in the latter case. The trade tax rate is calculated by adding the municipal rate, depending on the location of the firm, to the base rate of 3.5%. Municipalities have certain decision capacity on the tax rate of the trade tax. However, most of them charge the maximum rate due to the necessity of resources. So, the tax autonomy is not real since only large cities have room to decrease the maximum rate.

As in Austria, the revenue sharing mechanism works in two steps. The first one is called vertical split since funds are distributed among the three institutional layers. The second is horizontal and divides the share of each layer among the different Länders and municipalities. In case of the CIT, the revenue is equally distributed between federal and regional governments and afterwards divided depending on the location of the tax bases. Municipalities own the revenue from the surcharge they put on the trade tax.

[76] BUNDESMINISTERIUM DER FINANZEN: "The Federal Financial Equalisation System in Germany" https://www.bundesfinanzministerium.de/Content/DE/Standardartikel/Themen/Oeffentliche_Finanzen/Foederale_Finanzbeziehungen/Laenderfinanzausgleich/Eng-Der-Bundesstaatliche-FAG.pdf?__blob=publicationFile&v=1

Due to the gap on the economic development between regions, there are partial equalization mechanisms that close the gap on fiscal capacity per inhabitant (mainly funded by the VAT) and supplementary federal grants to foster economic activity in poorer areas. However, as in Spain, equalization mechanisms are politically very controversial and confront low-income regions with more developed ones.

German Länders representation in the EU[77]

The legal framework for the participation of Länders in EU-fora is based on the art 23 of the Basic German Law. It extends the principle of subsidiarity to the regional entities and it creates a very clear procedure for them to take part in the European policy-making discussions. In fact, Länders can participate in matters concerning the EU through the Bundesrat, in line with the cooperative spirit of German federalism. In addition, it establishes the obligation for the Federal government to inform both legislative chambers.

What is more, the Länders will play a different role depending on the subject on the focus of the EU. This regime is developed in the Act on cooperation between the Federation and the Länder in matters of the European Union [78]. It predicts two cases:

- General interest of Länders: optional consultation (art 3 and 4)
- Particular interest of Länders:
    - In topics of their interest: Federal Government consider Länder´s opinion
    - In topics of their priority interest: Landers´ opinions are taken into account as determinant
    - In topics of their exclusive legislative competence: compulsory participation in the position decision of Germany in front of the EU (art 5 and 6), the representation will be held by a representative of a Lander designed by the Bundersrat (direct participation), the Landers are the ones who have to request to be present in the negotiations.

In addition, since 1958, German delegation on the EU has a “Lander observer” in front of the EU, through which the Landers take part in the preparation meetings of the Permanent Representation and even on Council´s decisions. They carry out a very important job on lobbying.

This framework shows a very deep commitment of Germany with the institutional role of the Länders in the EU. Not only does it create clear and transparent tools for it, but it also has ensured its materialization. This is a very relevant contrast with the previously analyzed cases. Austrian framework, even if federal was not ambitious enough due to the lack of interest of subnational institutions. And Italian and Spanish frameworks were not put into practice due to the lack of federal tradition and political commitment.

However, since the CIT is not among the legislative area of the Länders they won´t take part in the CCCTB working groups. But it is also true that the Länders would be affected by tax

[77] SUSZYCKA-JASCH, M., & JASCH, H. C. (2009). The Participation of the German Lander in Formulating German EU-Policy. German LJ, 10, 1215. & PANARA, C. (2012). La participación de los länder alemanes en el proceso de toma de decisiones de la UE/The participation of the German Länder in the EU decision-making process. Revista CIDOB d'afers internacionals, 25-38.

[78] Gesetz über die Zusammenarbeit von Bund und Ländern in Angelegenheiten der Europäischen Union vom 12. März 1993 (BGBl. I S. 313), das zuletzt durch Artikel 1 des Gesetzes vom 22. September 2009 (BGBl. I S. 3031) geändert worden ist

harmonization in the EU. So since as far as it could be considered of their particular interest, their opinion would be taken into account even if no direct representation of Länders would take part on the negotiations or creation of the German delegation´s position.

Consequences of the CCCTB on German Länders

As has already been remarked, Länders do not legislate on the CIT, but they manage tax collection and they retain the 50% of the income raised by corporate tax bases. The estimated consequences of the CCCTB by Martinez et al. shows a decrease in the CIT revenue for Germany of 0,24% of the GDP, which would not be compensated by the increase on the revenue or other taxes. The general revenue loss would be of a 0,12% of the GDP. And taking into account that the share for Länders of the PIT does not reach the 50%, the loss would not be compensated without an increase in the share of shared revenue.

In addition, since German regional tax agencies are responsible for the collection of the CIT, they would have to adapt themselves to the new administrative processes imposed by the CCCTB, in particular, the common window, which would require a large effort.

So, it is clear that German regional institutions would be affected by the CCCTB. In addition, Germany, as has been shown, has a good system for representation of regions at EU fora. If taken into consideration their position on the proposal, their sovereignty would be respected and afterwards they could renegotiate the revenue sharing configuration in order to re-equilibrate their budgets. Again, a further tax autonomy, with an increased decision power on the main tax figures or the creation of new regional own taxes would be recommended in order to reinforce fiscal corresponsibility and take advantage of the efficiency gains offered by the federal structure of the country. This way the costs of the decentralization of tax administration would be better justified.

3.4 Belgium

The purely federal Belgian model

Finally, Belgium has been left for last because it is the most extreme case in Europe with regards to an intense process of decentralization. Since the release of the report by the Club van Leuven, showing a higher available income in Wallonia after redistribution by the public sector, in comparison with Flanders, although the later accounts for lower unemployment level, higher salaries and a more dynamic economy, more and more Flemish citizens gather around the nationalistic party calling for lower levels of equalization and a federalization of the formerly centralist Belgium.

The process has been fuelled by the extinction of national parties, since the target voters of each of them are located exclusively in their linguistic community. This has not only get to extremest the political positions between communities and regions, but it has also deepener the breach between symbols, identities, and policies formerly shared between Flemish and Walloons. Nationalists consider that the constitutional solidarity principle should be mainly applied between the citizens of each community and region (the idea of a plurinational country) giving less priority to income redistribution across them[79]. This is the same interpretation adopted by

[79] BÉLAND, Daniel & LECOURS, André (2005): "Nationalism, Public Policy and Institutional Development: Social Security in Belgium" The Journal of Public Policy, nº 25, pp- 265-285.

the Spanish Constitutional Court in order to allow for differences in terms of quality of public services between regions[80].

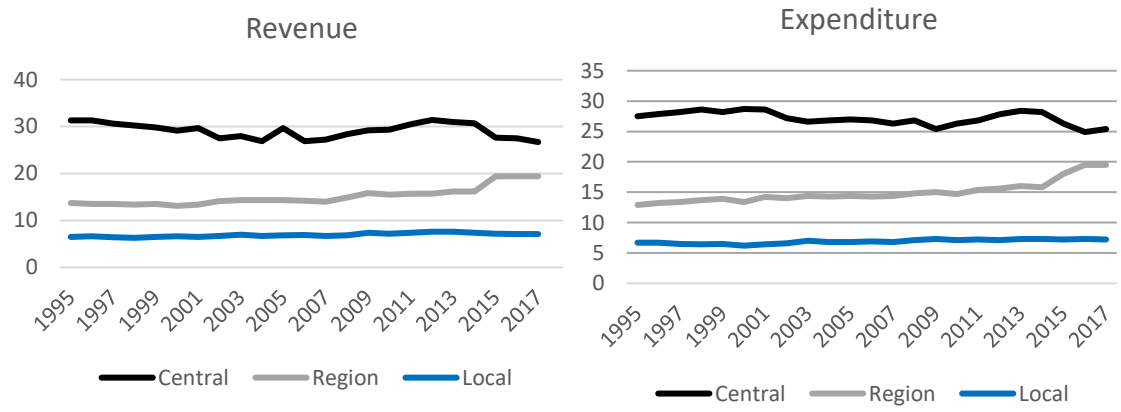
The territorial institutional configuration of Belgium is very particular since it overlaps two layers on a similar territorial spectrum. On the one hand, it is administratively divided in three linguistic communities (Flemish, French speaking, and German speaking parts) with competencies on education or health assistance. On the other hand, Belgium is composed of three regions (Wallonia, Flanders, and Brussels) with territory related competencies such as economic development or transportation.

The Belgian CIT

Since the last constitutional reform come into force in 2014, regions are also competent on tax matters and tax autonomy of subnational institutions have increased. In contrast with the previous regime, in which regions used to receive a share of federal taxes raised in the territory, as we see for Germany, now they are allowed to impose surcharges on the PIT, without any limit, and to create deductions[81]. The case of the communities is just the opposite, since their new competencies, such as family benefits or eldercare, will continue being financed by transfers from the federal authority instead of by own resources.[82]

However, even if the last constitutional reform has decreased the level of regional redistribution and has increased their tax autonomy in order to create a more efficient scheme of incentives, the funding of regions still heavily relies on federal transfers. The regime about the funding of regions and communities is ruled by the Special Financing Act. According to it, regions can also establish their own taxes. In fact, there are around 12 regional taxes.

Chart 10 and 11. Public revenue and expenditure as a percentage of GDP by institutional layer in Belgium. Source: Own elaboration based on Eurostat



Charts 10 and 11 give a first picture on the degree of decentralization of Belgium, both in terms of public revenue and expenditure. There are two key temporary points in which the trend changes clearly. The first one is the outcome of the 2001 constitutional reform ("fifth reform") which developed fiscal federalism. It is possible to see a downward trend on the relevance of

[80] STC 31/2010, de 28 de junio

[81] OECD (2016): "Regional policy profile of Belgium" https://www.oecd.org/regional/regional-policy/profile-Belgium.pdf

[82] NEMEN, Célia; KYNDT, Carl; GOOSSENS, Jurgen & CANNOOT Pieter (8/12/2014): "Reform of Special Finance Act and Reigonal Fiscal Autonomy": https://belconlawblog.com/2014/12/08/special-finance-act/

central layer in benefit of the regional. The second moment is more recent, 2014, when the sixth reform entered into force. The reform, which was agreed in 2011 in order to overcome the institutional paralysis that led the country without a government for 541 days, went deeper into decentralization, making out of Belgium the least concentrated country in Europe, very close to the Canadian model. In the charts, we verify that the last reform had a larger impact on fiscal terms since the substitution of the federal budget by regions is dramatic.

In particular, the CIT is a fully federal tax.[83] Central legislator sets the tax rate, base and reliefs and the Federal Public Service Finance is the tax collector. In contrast with the PIT and the VAT (only for communities), which revenue raised in each territory is used to fund subnational institution. The CIT is not part of the system of funding, so it does not affect them directly. This is the same case for the funding scheme of Spanish regions ruled by the common system (LOFCA).

Belgian regions and communities in the EU[84]

In line with its ambitious federalist model, Belgium has established a legal and institutional framework that respects regions and communities´ sovereignty and competencies and ensures their effective participation in EU fora affairs in matters of their interest. In fact, the art 203 of the EC Treaty allowing for regional and community ministers to participate in the Council of the EU was achieved by lobby work by Belgian regions after the failure of German Länders[85].

The legal framework to organize the participation of Belgian regions and communities in EU fora is based on the art 167 of Belgian Constitution, which gives them competencies in international affairs when related to their competencies. The constitutional regulation was developed in 1994 by the Cooperation Agreement between regions and Federal Government[86], which established three main principles:

1. **Only minister**: Only one minister, not necessarily Federal, will represent voting rights and sits of Belgians. He or she can be assessed by a Ministry who can assess and inform the position and who could even make use of the turn of speak if authorized. Representatives of Flanders and Wallonia can be directly presented at Council meetings.
2. **Division of representation power according to the competencies of each institutional layer.**
3. **A rotative turn system that divides the assessor and representative positions among regions and communities.**

These principles are materialized depending on four categories of competencies:

a. **Exclusive competence of the Federal Government**: no regional representation on General Affairs, ECOFIN, Justice, Telecommunications, consumers, development and civil protection.

[83] Income Tax Code 1992, articles 179-219bis. Programme law of 24.12.2002 (BOJ 31.12.2002) with reform of corporate income tax

[84] DE BECKER, A. (2012). La representación de Bélgica en el Consejo de la UE y la participación directa de las regiones/Belgian representation in the Council of the EU and the direct participation of regions. Revista CIDOB d'afers internacionals, 39-54.

[85] SUSZYCKA-JASCH, M., & JASCH, H. C. (2009). The Participation of the German Lander in Formulating German EU-Policy. German LJ, 10, 1215.

[86] Accord de cooperation entre l´Etat fédéral, les Communautés et les Régions, relatif à la représentation du Royaunme de Belgique au sein du Conseil de Ministres de l´Union européenne. 8 Mars 1944.

b. **Competencies in which the Federal Government is the representative in the Council of the EU but is accompanied by regional assessors**: agriculture, internal market, health, energy, environment, transportation and social affairs.
c. **Council meetings in which regions are the representatives and the assessor is from the Federal government**: industry and research
d. **Competencies in which regions are the only ones authorized to represent Belgium**: culture, education, tourism, youth affairs, housing, territorial organization

In addition, since 1998, Belgian regions and communities have placed attachés at the Reper to the EU. As we can see, Belgian regional representation system in the EU is the most ambitious and respectful with regions among the member states since their opinion is determinant and the Federal Government cannot impose its position. But at the same time, particularly since each institution is governed by a different political party, with its own agenda and interests (from different electoral target since there are no national parties anymore), it makes to reach agreements more complex.

However, as far as the CCCTB proposal for CIT harmonization is concerned, and as has been previously analysed, there is a link with an exclusive federal competence, included in the first group ruled by the Cooperation Agreement, thus no regional or communal representatives take part in working groups or any other decision-making for at the ECOFIN.

Consequences of the CCCTB on Belgian regions and communities

The compatibility of the EU tax harmonization proposal on CIT with the Belgian regional tax autonomy is completely ensured for two main reasons. First, subnational entities do not have competencies on CIT and neither is their funding affected by its revenue. According to the impact assessment, CCCTB would lead to a decrease of 0,08% of the GDP on CIT revenue that would be compensated by an increase of 0,09% on labor taxation and 0,06% on consumption taxation revenue. This would equate to higher revenues of regions and communities in Belgium since they share PIT and VAT revenue with the federal government, as has already been explained. And second, because Belgium has established a very ambitious regime for subnational representation at EU fora, which ensures that the future potential decentralization of some elements of the Belgian CIT would have as a consequence the modification of the four categories included in the Cooperation agreement in order to ensure that competent institutions take part in the EU decision-making process.

In conclusion, it should be remarked that if there is a European country where regional-level institutions´ decisions and legislative powers are respected, that is in Belgium. Moreover, this should be used as an example for Spain and Italy, taking into consideration their specificities, such as asymmetries or non-federal institutional culture.

4. Compatibility of the CCCTB with foral tax autonomy

The international comparison has evidenced that the Spanish case is an exception in the field of the CIT in Europe, but also, in a lower extent, in tax jurisdictions in general. Tax autonomy granted by the Constitution to the Spanish foral territories is special due to the fiscal legislative power of regional institutions. This means that the common treatment of regions with regards to their position in the negotiation of the CCCTB cannot be applied to the foral case, but a particular analysis is needed in order to consider the impact that not other subnational jurisdictions but the foral ones will suffer.

4.1 The implications of the CCCTB for foral systems of CIT

It is the turn now to disentangle the consequences of the CCCTB on foral CITs and not the other way around because the EU has already shown that it does not enter into what it considers national/internal matters and the self-organization of each member country. Therefore, three different variables of the CIT will be definitely affected, one of each related to one of the three elements that compose actual self-government.

Political autonomy

Legislation capacity of foral institutions, particularly on the tax base (political autonomy) will be affected. The CCCTB proposal, if finally passed, would require for common accountancy rules and common formulas to calculate tax bases of the CIT. Nowadays, accountancy rules are already a competence of the Central institutional layer[87], however tax bases even if already internally harmonized due to the principles ruling the Economic Agreements between foral and Central institutions, Foral Assemblies of Basque Historic Territories and the Foral Parliament of Navarre are the only competent to regulate the whole legal framework of the CIT in the respective geographical jurisdiction. Tax harmonization ruled by the CCCTB would put boundaries on the legislative sovereignty of foral institutions on taxation, which is the key part of their political autonomy, being legislation its materialization.

Management autonomy

The administrative organization of foral tax agencies (management autonomy) will also be affected. In order to adapt themselves to the new modus operandi introduced by the CCCTB, particularly the common window or one-stop-shop[88], subnational tax agencies would have to invest big efforts in reorganizing structures, training their employees and strengthening the connections with the rest of EU tax agencies. For instance, they have already expressed their concerns about how to introduce the new management system taking into account that both their economic and personal resources are very limited if compared to the available for the national tax agency[89].

Fiscal autonomy

Revenue (fiscal autonomy): perhaps this is the most sensitive element since the fiscal and financial system of foral territories is what makes them special. The Economic Agreements are basically bilateral confederal-style arrangements that ensure a large level of self-government to these territories and is, together with the extensive legislative power on taxation, the characteristic that differentiates them from the regions ruled by the common regime. Foral revenues of the CIT would for sure be affected by the CCCTB, but there are two possible scenarios:

- **Two-step distribution**: In this first scenario, the points of connection applied by the Economic Agreement would be maintained and they would be applied in a second step, or ad intra distribution step. The first step, or ad extra distribution, would divide the revenues between every country in the same way, and afterwards Spain would apply the connexion points in order to allocate the portion of revenues that would correspond

[87] Accountancy rules are development rules of Business Law, which is an exclusive competence of Central institutions according to the art. 149.1.6ª of the Spanish Constitution.

[88] Explanatory Memorandum of the European Commission Proposal on CCCTB

[89] MARTÍNEZ BÁRBARA, Gemma & RUBÍ CASSINELLO, José Gabriel. Personal communication, April 20, 2018

to Navarre and each of the Basque territories (as a direct transfer). In the case of the Basque Country, the transfer could also be made in a lump sum (instead of one per historic territory) as part of the "cupo", so the Basque institution´s share on the CIT would be deducted from the payment that they have to do in a yearly basis for the so-called non-transferred competencies, those provided by the Central institutions.

For the EU this option would be the preferred one since it would be in line with its strategy of having the fewer problems the better and let member states self-organize. However, it is very unlikely that Basque and Navarrese institutions would accept this since it would totally go against the spirit of the Agreements. This would vanish guarantee of tax autonomy in the field of the CIT since no only the room for different legislation but also revenue´s physical possession would be inverted, even if legal ownership maintained. Foral regimes are particular because the main stream of money transfers goes from subnational institutions to the central one, in contrast with the common system. This would change completely the picture, and in case of disagreement on the calculus of the "cupo", which has been a frequent event during last decade, would decrease the bargaining power of foral institutions, reinforcing the power of the Central State.

In addition, the control on tax collection, together with the lack of majority´s popular support, have been the main reasons why Catalan independentist riot has not succeed, since the Central Government could intervene its finances. Basque and Navarrese institutions have never shown any sign of institutional disloyalty in these terms, however with prospects of future (long-term) wish for independence, they would not let give away this tool.

Finally, this movement could be seen as an ease in decentralization. In fact, it would be the first re-centralization event in 40 years of democracy, establishing a very dangerous precedent, which foral institutions would try to avoid fiercely.

- **One-step distribution**: the alternative would be to include to the Basque Country (or each of the three historic territories) and Navarre as two or four separated entities in the first revenue allocation step. This could be controversial since there would be political parties complaining about these territories to be treated as countries. However, this would make total sense taking into account that they are separate jurisdictions in terms of CIT as Ireland or Poland are, even with the similarities with the Spanish common framework. Including foral territories in the EU pooling would not equate by any means to recognize them as independent countries but just as what they are, different tax jurisdictions.

  This position, that would also be the most coherent with the spirit of the Economic Agreements, would be very controversial for the EU, always reluctant to consider regions. But, based on previous experiences, I strongly believe that if Spain, one of the main countries of the EU, would agree, community institutions would not oppose it. In this scenario, the connexion points would disappear and would be substituted by the apportionment formula to be agreed in the Council of Ministries of the EU. Of course, the economic outcome would be different than the one from the two-step procedure explained before. It would be interesting to try to predict the change in revenues by CIT on foral region, even if, as always, the final outcome would probably be more dependent on political issues rather than strictly technical.

  However, I consider that even if the first system would be found to be more convenient for foral institutions´ budget, considering the appraisal that they have on their so

difficult to attain particular fiscal and financial systems, they would still prefer this second alternative, assuming and facing its economic cost.

When it comes to the legal possibilities and its compatibility with EU treaties there should not be any problem and even if argued as an excuse from the Spanish Government as to reject this possibility it would be actually a political issue. As we have seen, the representation regime of foral entities was refused to be materialized for alleged incompatibilities with the previous legal framework, but it finally was established without any legal reform, but just by reinterpreting the previously existing principles.

It would be very interesting to see, in the hypothetical scenario that at the end the CCCTB is approved and put into practice, which of both alternatives finally would succeed, since taking into account the political power of Basque votes on the Spanish Congress (they are the key to appoint or make the government fall and to pass the budgetary law even if they have just 5 representatives out of 350) they have a lot of influence at the moment so they could manage to place an exception in the CCCTB directive in order to stay in tune with the Basque Nationalist Party.

4.2 Consequences of not including foral territories in the decision-making process

As has already been explained, in Spanish institutional culture, federalism is not fully assumed. The lack of political willingness derived from it and driving the gap between law in the books and law in practice is an obstacle that makes less likely that proper representation channels for foral regions in the decision-making process are achieved. In addition, the outcome of the negotiations at EU fora, particularly on the CCCTB, in which this research focuses, would be determinately dependent on whether and how foral institutional take part in it.

The main argument to defend this position is no other than one of the most basic principles of democracy: sovereignty and competence principle. We should start questioning why if the central government cannot make decisions in the national context on subjects of regions´ competence, why could it do it on the EU context?

In the Spanish case, the competence system is not based in the hierarchy but in the territory. This means that the Central institutions cannot impose their policies and rules over any other institutional level, but they just have to respect each other on their subjects and geographical areas of competence. For instance, Galician Parliament cannot decide on the education policies applied in Madrid, but neither can the Central government overstep into their basic legislation, coordination and inspection competencies on education in order to impose its view on Galician educative system.

The same argument applies this time. It is a matter of coherency and respect for laws and institutions that regions take part on decisions on topics of their competence, as tax affairs are for foral territories of Araba, Bizkaia, Gipuzkoa and Navarre, also at the EU and other international institutions such as the OECD, which remains still pending. Moreover, this is not just a normative debate, on the philosophy or ideologic position of defendants of foral regimes, but it is also a positive debate, since the necessity of these mechanisms of participation is included in the Spanish most important legal framework, what we call “block of constitutionality”[90] which should be respected and diligently applied.

[90] Composed by the Constitution, the Statutes of Autonomies of regions and the Economic Agreements.

The potential consequences of not following this piece of advice are diverse and unlikely to be positive:

- **Democratic quality and rule of law**: they would be harmed since it is difficult for a government to maintain legitimacy when calling for the rule of law when it is the first actor that does not comply with a legal framework designed by itself. Because it is important to remark that every law shaping the so-called "block of constitutionality" is passed by the Spanish Parliament.
- **Institutional peace, loyalty, and trust**: institutional loyalty and trust are general principles included in the art. 3.1 of the Law of the Public Sector Regime[91] that has to rule the relationship between institutions. These principles, linked with common goals, are particularly important in a decentralized country like Spain. Traditionally, they have not been carefully put in practice by either of the institutional layers, since regional and central institutions have usually been confronted to pursue different agendas and to preserve their competence sphere. The lack of a proper representation framework in the EU fora, will undoubtedly not solve this situation and will make it even worse. Although during last decade some advances have been reached, as the participation of Basque and Navarrese foral institutions in some ECOFIN working groups, there is much work to do. If Central authorities do not provide a good response to this problem, more regional tensions will probably be added to the already difficult situation in Catalunya. This scenario would definitely have an economic impact on the short and middle term and it would not help to close institutional and social controversies, harming the living together, which is still very week in the Basque Country, where we are trying to rebuild it after decades of terrorism and political confrontation.
- **Assumption of own responsibilities, accountability, and transparency**: precisely, one of the best positive points of decentralization, if shaped by a clear and well-defined division of competencies, is that it allows for a better attribution of responsibilities by citizens, since they can know who is responsible for each policy. Nowadays, due to the insufficient participation of Spanish regions, and foral territories particularly in tax affairs, in the EU decision-making process, they have to face decisions made primarily by the Central layer of government. For instance, if the CCCTB decreases the funding of regionally produced or provided public services, such as healthcare or education, citizens would blame the regional government although it would be an outcome of a Central policy. At this moment, also foral institutions have to wait to transpose EU Directives related to taxation until Spain does it. This means that any delay by Spanish central institutions would have negative consequences for the legal certainty and quality of foral legal frameworks, and even assuming fines in extreme cases. This won´t be solved by granting foral institutions with more voice at the EU, since it is rooted in the interaction of foral and EU frameworks through the Spanish one, but it is just an example on how they could have to face responsibilities for decisions taken by others, carrying out electoral consequences. This could be improved by applying the proposals provided in the next chapter.

The three risks would have an economic impact since they would lead to a worse institutional quality, less efficient administration and weaker political stability, elements that literature of

[91] Ley 40/2015, de 1 de octubre, de Régimen Jurídico del Sector Público

growth[92] have consider clear drivers of development and sustained growth. These costs would surely overcome the possible savings derived from the lower management costs of a simpler representation structure of subnational entities at the EU and international fora.

5. Policy recommendations: a new framework for foral institutions´ role in the EU

The Belgian system would be a very good example for the participation of Spanish regions in the EU fora with regards to topics of their interest or among their competencies, being the main differential point the direct representation of the whole country by Regional Ministries at the ECOFIN. However, foral institutions need a specific framework in order to take into account their specificities. Furthermore, the actual Spanish framework already establishes this exception in its content, so there is no controversy on this base.

As stated, there is a very broad gap between law and reality, which requires to sketch a set of policy recommendations apart from new legal rules.

1. Spreading the understanding of the Economic Agreements

Both foral Economic Agreement, the Basque "Concierto" and Navarrese "Convenio" are unknown among the citizenship, who usually just remember the name due to the political instrumentation of them by detractors. For instance, according to the CIS (Spanish Centre for Sociological Research) in 2012 only 55% of Basque citizens had heard about it, and among them only the 15% recognized to be informed about how it works. These are very low figures considering how important self-government is for Basque.

A system which is not known by the people cannot be defended from the discourses of those who want to abolish it. But, even among politicians, there is a widespread lack of knowledge on this topic. One of the best examples is the speech by the President of Andalucia who mixed the unique cash box of the Social Security (which is fully centralized) with the Economic Agreement, even when they do have nothing to do with each other.[93] The second argument used against the Economic Agreement is that it does not pay its part for solidarity and convergence of territories. However, this only depends on the Central institutions and is a non-transferred competence. This means that if the Central government would decide to increase the funds dedicated to these goals, foral territories would pay their share as for the rest of non-transferred competencies.

All of these false arguments employed against the Economic Agreements, usually targeted exclusively against the Basque system, more mediatic than the Navarrese, could be responded by well-informed citizens, who could also be critical on the problems of a system that is not perfect. In addition, the materialization of a better framework for the participation of foral institutions on EU fora could only be achieved if there is social support, and for that citizens not only have to know what the Economic Agreement is, but also why is it so important for their institutions to be at the EU.

[92] TABELLINI, G. (2010). Culture and institutions: economic development in the regions of Europe. Journal of the European Economic association, 8(4), 677-716.

[93] EFE (4/12/2017): "Susana Díaz también rechaza la fórmula Urkullu para la financiación autonómica" http://www.elmundo.es/andalucia/2017/12/04/5a254541e5fdea447f8b45f2.html

2. Federalism in institutions

Institutions should be a mirror of society. In contrast with Austrian, Spanish is an asymmetric federalist society, in the terms defined by Jan Erk[94]. Political parties, trade unions or corporate associations are organized in regional basis and regional identity is very strong, being even stronger than national identity in some of the historic nationalities like Catalunya or the Basque Country, although institutions´ spirit remains quite unitary.

Last four decades of decentralization process deserve a positive consideration because it has helped to establish deeps roots of democracy, due to the institutionalization of political parties and the creation of a close link between citizens and their regional institutions as providers of healthcare and education. But this analysis demands some history to be reviewed. In fact, the Habsburg royal family, who governed the territories of contemporary Spain, until 1740, was an exponent of Germanic inspired decentralization. Afterwards, when the Borbón royal family attained the Crown, the centralistic French style was imposed in a kingdom which had always be so diverse an asymmetrical from the institutional perspective. With the Republic in 1873, Spain would revendicate its real pluralistic identity expressed in a project of a confederal Constitution. In the same line, the Federal Constitution of the Second Republic would resume this idea until Franco´s uprising in 1936 against the constitutional regime.[95]

This review shows that Spanish decentralization, surprisingly for many, who consider it a very particular case due to its rhythm and degree, has its root in centuries of tradition only interrupted by a change in the monarchy and two dictatorships.

Also, most political parties have understood the character of Spain as a country with diverse identities, to a larger or lower extent. This point was emphasized by Pablo Iglesias, leader of Podemos, in his speech on Rajoy´s impeachment[96]. His words pointed out that only those who understand Spain as a pluralistic and diverse society and its translation into institutions would be able to lead the modernization of the country and maintain its unity. The speech was directed to Ciudadanos with regards to its position about Catalunya and the Economic Agreements. In fact, Ciudadanos is the only political party calling for its abolition, and also without any representation in foral institutions, among large national parties.

Iglesias speech, very useful to illustrate this argument, remarked that even the Popular Party, sometimes critical with high levels of decentralization, has understood regional particularities, what would explain why participates in elections in coalition with other conservative regional forces such as FORO in Asturias, PAR in Aragon or UPN in Navarre.

Take into account the speech by Pablo Iglesias on Rajoy´s impeachment (the cost of being together in a plurinational country, e.g. Bolivia with the most extreme case of the tribes). Only those political parties who understand the Spanish reality as plural and diverse and translates it into institutions will be able to lead the modernisation of the country and maintain the country united.

[94] ERK, J. (2004). Austria: A federation without federalism. Publius: The Journal of Federalism, 34(1), 1-20.

[95] ARLUCEA RUIZ, Esteban. “Los fueros tras la Constitución de 1837 y la Ley de 1839”. Basque Autonomic Public Law. Universidad del País Vasco. November of 2016.

[96] IGLESIAS, Pablo (31/05/2018): Speech on the debate on Mariano Rajoy´s impeachment. https://www.youtube.com/watch?v=hFjTxXbv4dQ

Needless to say, that nationalistic parties are aware of it. But, as we see also national parties have shown some extent of understanding of the need for some degree of federalization of the State of Autonomies. For instance, PSOE has claimed during years for a federal reform of the Constitution, backed by Podemos´ plurinational state idea. Ciudadanos, in contrast with Austria, where liberals with conservatives are the ones defending a higher extent of decentralization, appear to not understand this. Furthermore, it has claimed to exclude minorities from parliament establishing a minimum threshold of the 3% of national votes in order to enter Spanish Parliament[97], which would leave some nationalistic parties outside.

The idea of the federal reform could help to spread and cultivate this institutional culture, if effectively implemented. Society usually goes faster than rules and laws, but there are some examples of the opposite too. For example, same-sex-couple marriage or anti-tobacco laws achieved to transform Spanish society towards a more tolerant and healthy scenario. This time, a federal Constitution could spread federalist spirit among institutions to make them interact in terms of actual bilateralism. However, they should be cautious not to fall in Italy´s mistakes in order to get it materialized. The main goal, to leave behind reluctances and complexes and start considering diversity a valuable element.

3. A new system for the participation of foral institutions

Counting with social support and a new institutional culture would allow applying in reality the new legal framework for foral territories´ participation in the EU decision-making processes related to taxation. The agreement, that should be negotiated in the Commission Mixta of the Economic Agreement, should ideally be reached due to the goal for a more respectful scheme for foral institutions´ competencies and not in return for nationalistic votes at the Congress, which has been the mechanism until now.

The new regulation would be limited by political feasibility, rather than by the rules and principles of the EU, what at least for the moment discard the possibility of a separate delegation or division of votes among the Spanish delegation. However, it should include channels to make their voice to be heard (division of speaking time) and the possibility that the foral representative could be head of the delegation. Also, a co-direction of the delegation should be created in order to include both foral and central representative at the same level, in order to avoid nowadays image of the representatives sit behind the leader of the delegation, always from the central administration.

Taking into account that representatives attending the working groups have usually a technical profile rather than political, there is no reason to believe that employees of foral tax administrations are not as competent as the ones working for the central administration. The scheme should be replicated for all fora in which the Economic Agreements are affected, starting from the working groups of the ECOFIN, to the ECOFIN plenary meeting itself and even at the OECD, where still there is no representation of foral institutions.

[97] RTVE (16/07/2018): "Albert Rivera plantea que los partidos deban obtener un 3% del total nacional de votos para entrar en el Congreso". http://www.rtve.es/noticias/20180616/albert-rivera-plantea-partidos-deban-obtener-3-del-total-nacional-votos-para-entrar-congreso/1751607.shtml

The importance of this issue is such that representative of foral institutions recognizes that even with the actual limited framework, they are glad to be there to receive the information of the European proposals and negotiations first-hand[98].

However, when designing the new system, the trade-off between the costs and the respect for the spirit of the Economic Agreement should be taken into account. On the one hand, the representatives could be one from Navarre and other from Basque institutions or just one for both. But it could also be one per Basque historic territory and other for Navarre. Although this last option would be the most purely foral, it would require excessive resources to be devoted to it. That is why I consider the second option the most reasonable, in line with actual procedures. It is not recommendable to gather Navarrese and Basque because, in contrast with the almost exact rules shared by the last, the former keeps some differences and, as we have seen before, both systems are not interconnected with each other.

Finally, a good article to be included is a protection clause for foral institutions from noncompliance by Spanish institutions. This new clause would allow foral institutions to transpose EU Directives without waiting for Spain to do so in cases in which the deadline is expired. This would follow the doctrine created by the Constitutional Court on the regulation of basic legislation on shared competencies allowing regions to elaborate them in temporary bases in order to legislate also development rules on the field when the Central State did not[99]. This way foral institutions would not have to face the negative consequences of Spanish delays. However, it is true that these rules would be temporary until Spain would pass its own transposition, after which a compatibility test should be applied and modifications elaborated, if needed, to harmonize both texts. This would mean that the legal certainty offered by faster transposition by foral institutions would be eroded. But would be very useful for cases in which the delay is longer.

4. EU commitment with regions

In addition to internal efforts to give more room to regions, the EU should show an increased commitment with it. As has been explained before, and how Moscovici[100] explained answering a question by the disappeared party UPyD about the position of the EU on the Economic Agreements as an obstacle for tax harmonization within the EU, particularly for the CCCTB, the EU respects the tax organization of each country as long as complies with EU rules.

Finally, the Committee of Regions should be boosted in order to grant to this body a larger role in the EU policy-making and new efforts should be devoted to continuing strengthening interadministrative cooperation between agencies in line with Directive 2011/16/EU in the field of direct taxation that was modernized by Directive 2011/16/EU. It should also be requested that every relevant policy such as the CCCTB proposal to be accompanied not only by a generic Impact Assessment but also with a regional analysis.

[98] DELEGATION OF THE GOVERNMENT OF NAVARRE IN BRUSSELS. Personal communication. May 22, 2018.
[99] STC 40/1981 de 28 de julio de 1981
[100] ALDE GROUP AT THE EUROPEAN PARLIAMENT TO PIERRE MOSCOVICI (04/05/2017): Question on "The Economic Agreement as an obstacle to European tax harmonization" http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+WQ+E-2017-003173+0+DOC+XML+V0//ES

6. Conclusions

The existence of diverse frameworks within a member state has not lead to harmful tax competition. In contrast, the general loss of the relevance of the CIT as a public revenue source has been driven by the international context. This allows, even if further research is necessary, defending foral competencies on corporate taxation as a useful tool to ensure self-government of foral territories in Spain, which are differentiated tax jurisdictions in this field.

The Constitutional Court has been requested to solve hundreds of competence issues between Central State and subnational institutions during last four decades of democracy. This is a sign of both, the unclear competence distribution system and the relevance of the defense of decentralization of power for institutions. For everyone, it appears to be very obvious that due to the principle of territorial competence, the Central State cannot intervene on subjects in power of regions and vice versa. However, since Spain is taking decisions at the EU on tax affairs without a proper and clear regime for the participation of foral entities on the debate, there are concerns on whether competence principle is respected in the international and community contexts.

According to this analysis, the CCCTB will have a deep effect on foral regions´ tax autonomy. Its outcome remains to be economically assessed. However, this proposal will only be compatible with the Economic Agreements of Basque Country and Navarre if foral territories have a word to say, are heard and take part in the negotiations.

This is possible to be achieved without modifying the legal framework, since it fully depends on political willingness, as has been evidenced. But new legal rules, inspired by the ambitious Belgian system would help to establish a scheme that fully respects foral territories competencies and institutional status. In addition, new federalist institutional culture and political commitment are needed to avoid the large breach between law in the books and law in practice, which requires political parties to understand plurality and diversity as intrinsic and structural characteristics of Spain, something that won´t disappear and it should be considered as a positive and valuable element, an opportunity rather than to serve to fuel political tension.

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