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## HIERARCHICAL CONNECTION IN THE SYSTEM OF SOURCES OF EU TAX LAW

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### **Vdovichena L.I., Babin I.I. Hierarchical connection in the system of sources of EU tax law.**

The article examines the hierarchical structure of the EU legal sources system and the interconnections between them, with a particular focus on tax law. It explores the institutionalization of values within the European legal system and the mechanisms through which these values are codified and implemented. The study emphasizes the necessity of properly incorporating EU legal norms into the national tax legislation of member states to ensure the uniform application of harmonized tax rules. Special attention is given to the pursuit of systematization and structuring in tax law, which is an indication of the advanced development of the EU's legal system. The importance of EU tax law sources is described, as they form a hierarchically organized structural-functional model. Specifically, the sources of EU tax law, as external forms of expression of tax-legal norms, are quite diverse in both quantity and content, and together they constitute a structurally functional system based on hierarchical principles, which is determined by the corresponding structure of EU law.

A key aspect of the analysis is the classification of EU legal sources into primary and secondary law, highlighting their hierarchical relationship. The research emphasizes that while primary sources, such as the founding treaties, establish the constitutional foundation of the EU legal system, secondary sources – comprising regulations, directives, and decisions – serve as instruments for legislative implementation. However, the diversity of normative acts within the EU legal order, including the influence of international treaties and judicial precedents, introduces complexities in determining the exact hierarchy of legal sources.

The article further explores the coexistence of multiple tax-legal systems, including the supranational EU tax system, national tax regimes of Member States, and regulatory acts at the local government level. It examines the dialectical tension between the principles of fiscal solvency and tax fairness, emphasizing the necessity of legal compromise in resolving conflicts between collective economic interests and individual rights. The study concludes that the evolving nature of EU tax law requires a flexible and adaptive legal framework capable of mediating between competing interests while ensuring legal certainty and coherence within the broader EU legal system.

**Key words:** EU tax law, tax system, sources of law, primary EU law, secondary EU law, hierarchy, tax harmonization.

### **Вдовічена Л.І., Бабін І.І. Ієрархічний зв'язок в системі джерел податкового права ЄС.**

У статті розглядається ієрархічна структура системи джерел права ЄС та взаємозв'язки між ними, з особливим акцентом на податковому праві. Досліджується інституціоналізація цінностей у європейській правовій системі та механізми, за допомогою яких ці цінності кодифікуються та реалізуються. Дослідження підкреслює необхідність належної інкорпорації правових норм ЄС

у національне податкове законодавство держав-членів для забезпечення однакового застосування гармонізованих податкових правил. Особливу увагу приділено прагненню до системності та структурованості в податковому праві, що є ознакою високого розвитку правової системи ЄС. Описано важливість джерел податкового права ЄС, які складають ієрархічно організовану структурно-функціональну модель. Зокрема, джерела податкового права ЄС, як зовнішні форми виразу податково-правових норм, що є доволі багатоманітними як за кількістю, так й за змістом, і у сукупності складають структурно-функціональну систему, сформовану на засадах ієрархічності, що і обумовлено відповідною структурою права ЄС.

Ключовим аспектом аналізу є класифікація джерел права ЄС на первинне та вторинне право, а також їхній ієрархічний взаємозв'язок. У дослідженні підкреслюється, що в той час як первинні джерела, такі як установчі договори, створюють конституційну основу правової системи ЄС, вторинні джерела, що включають регламенти, директиви та рішення, слугують інструментами для імплементації законодавства. Однак різноманітність нормативних актів у правовому порядку ЄС, включаючи вплив міжнародних договорів і судових прецедентів, створює складнощі у визначенні точної ієрархії джерел права.

У статті також досліджується співіснування декількох податково-правових систем, включаючи наднаціональну податкову систему ЄС, національні податкові режими держав-членів та нормативні акти на рівні місцевого самоврядування. У ньому розглядається діалектичне протиріччя між принципами фіскальної платоспроможності та податкової справедливості, підкреслюється необхідність правового компромісу у вирішенні конфліктів між колективними економічними інтересами та індивідуальними правами. У дослідженні зроблено висновок, що еволюційний характер податкового права ЄС вимагає гнучкої та адаптивної правової бази, здатної бути посередником між конкуруючими інтересами, забезпечуючи при цьому правову визначеність та узгодженість у рамках ширшої правової системи ЄС.

**Ключові слова:** податкове право ЄС, податкова система, джерела права, первинне право ЄС, вторинне право ЄС, ієрархічність, податкова гармонізація.

**Introduction.** The institutionalization of values within a supranational union of states necessitates the creation of legal norms for their implementation through recognition and codification in normative acts of varying legal nature, binding force, and implementation mechanisms. The provisions of EU legal acts, both in the field of taxation and in general, must be properly implemented into the national tax legislation of EU Member States. This ensures the uniform application of taxation rules that have been harmonized at the EU level.

When considering the sources of EU law from a general theoretical perspective, taking into account the universal principles developed by legal doctrine and confirmed by legal practice, it is crucial to recognize that understanding the nature and character of EU legal sources requires acknowledging their axiological significance [1]. Scholarly literature frequently highlights that EU tax law, the national tax legislation of Member States, and tax treaties concluded by these states possess their own unique language, concepts, and provisions [2].

Moreover, conflicts may arise between EU tax law, national tax legislation, and tax treaties, as reconciling and eliminating tax claims of each participant (state) in tax legal relations is an exceptionally complex task. This complexity stems from the fundamental issue of revenue generation and budgetary sufficiency for the participating states. The interrelationship and hierarchy between different segments of tax law must be clearly defined to anticipate tax consequences in cross-border situations.

The research of the sources of EU tax law has been repeatedly analysed in the scientific works of many scholars, as well as the study of the hierarchy of EU acts without reference to such a branch of law as tax law: M. Helminen, S. Olsson, W. Słomski, M. Lisiecki, L. Kurnicki, G. Jarosiński, A. Kaczorowska-Ireland, J. McCormick, K. Lenaerts, M. Desomer, R.B. Topolevskyi, O. Moskalenko, K. Smyrnova.

However, our main focus is not so much on identifying the sources of EU tax law as on establishing a hierarchical relationship between them, which will demonstrate the axiological value of any harmonisation processes in the EU tax and legal space.

At the present historical stage, multiple tax-legal systems coexist within a single framework, each associated with different forms of territorial associations: the tax-legal system of the European Union, the national tax-legal systems of the EU Member States, and the normative-legal acts of local self-government bodies. The increasing momentum of financial resource decentralization underscores the

significance of this process. Each of these tax systems is primarily characterized by a set of values embraced and shared by the respective socio-political community, forming a distinct macro-system. These values play a constitutive role in shaping both the vertical relationships between different components of the tax system and the legal system as a whole.

In the realm of taxation, the legal order of the EU is marked by an inherent dialectic between the opposing values of fiscal solvency and tax interest. This dialectic essentially reflects the necessity of seeking a compromise between values related to collective needs and those associated with the protection and promotion of individual freedoms. Therefore, it is imperative to establish a framework for the distribution of the tax burden among citizens to equitably allocate across the national community the costs required for building a welfare state. This necessity generates an axiological tension that permeates the legal system, shaping both substantive and procedural tax norms.

It is worth noting that the sources of EU law, unlike the domestic law of Member States, do not constitute a constant system capable, on the one hand, of uniting all sources into a monolithic resource (a source of normative regulation) and, on the other hand, of establishing a benchmark criterion for their distribution into relatively independent components. The forms of codification of EU tax law norms serve as a determining factor in the development of the European integration association and possess distinctive characteristics, incorporating elements of both international and domestic law sources.

Any organized legal system comprising different legal sources must establish relationships of subordination and supremacy among them to ensure the compatibility of lower-level sources with higher-level ones. The EU legal system is no exception – it is hierarchical by its very nature [4, p. 110]. It should be taken into account that the European Union is undoubtedly a unique phenomenon of our time due to the introduction of a new form of state association and methods of creating legal norms in the context of the coexistence of two legal systems – international and domestic. The formation of EU law, as a new type of systematic legal norms, is the result of the development of various legal systems of EU Member States. The sources of EU law, as one of the key components of the legal system, also exhibit significant distinctiveness.

The most commonly accepted and widespread classification divides EU law sources into primary and secondary sources. If primary sources – meaning the founding treaties – constitute the «Constitution of the EU», then secondary sources include regulatory legal acts (regulations, directives, decisions), which can be compared to national laws and subordinate acts, although such comparisons are highly conditional [5, p. 7].

The heterogeneity of EU tax law sources is associated with the large number of EU institutions that have the competence to issue normative acts, including in the field of taxation. Consequently, there is no single approach in scholarly literature to the classification of EU law sources in general or EU tax law sources in particular. The constructive-functional legal nature of the EU determines the flexibility, adaptability, and diversity of ways of forming legal norms, as well as mechanisms for their expression and codification in the form of legal sources.

An argument in favor of this is the extensive use within EU institutions' legal framework of specific normative legal acts, as well as extraordinary acts and other sources not characteristic of either national legal systems or the international legal system as a whole. A separate aspect of studying the sources of EU tax law is clarifying the nature of the relationships between them. First and foremost, it should be noted that the concept of a «system of legal sources», in a formal-legal sense, expresses the integrity of its structural elements.

For instance, R.B. Topolevskyi defines a system of «legal sources of law» as the totality of all forms of legal codification and organizational provision of information about universally binding rules of conduct (legal norms) within the entirety of their interconnections (genetic, structural, and functional), through which normative prescriptions of a legal branch, normative components of a national or regional (supranational) legal system, or the international legal order are objectified. This approach, in our view, can confidently be applied to understanding EU law sources, particularly in the field of tax law [6, p. 8].

Moreover, the properties of the system of legal sources identified by the scholar logically reflect the contemporary legal reality, considering the integration processes of our state. Specifically, these properties include: a) It consists of many heterogeneous components (e.g., legal sources of law, subsystems of the system of legal sources – legislation system, system of normative-legal agreements, case law, etc.), which interact due to systemic connections; b) It is impossible to unambiguously predict the future parameters of its development or determine how and in what manner it will evolve

and regulate particular spheres of social relations; c) It undergoes internal and external fluctuations, influenced by both other subsystems of the legal system and newly emerging legal sources; d) A sudden change in circumstances may lead to its instability and fragmentation, where part of the system of legal sources becomes non-functional or contradictory to another part, thereby paralyzing it; e) In the course of development, it transitions from one level to another – from customary unwritten law to codified written law, from fragmentary normative collections through codification to a complex dynamic system; f) In the process of functioning, systemic connections reveal new principles, legal positions, and prescriptions that were not anticipated during its formation and are not explicitly enshrined in legal sources; g) It includes several structures: hierarchical, national-territorial, and horizontal (sectoral).

However, if the interconnections between elements of the system of tax law sources are denied by rejecting formalist and deductive models, resolving conflicts between tax norms shifts to the competence of legal interpreters and practitioners (judges, administrators, taxpayers) to determine possible combinations suitable for maintaining coexistence within the international community. Classical legal thought must be reinterpreted to ensure «open» solutions that allow for regulatory compromises to mediate between conflicting interests and values depending on historical circumstances and the economic situation. Therefore, the scholarly literature often emphasizes the need to abandon rigid and binary «true/false» logic in favor of «possible», «probable», and «reasonable» logic [7, p. 18], as well as prioritizing mediation and compromise as possible forms of resolving conflicts between tax legal systems.

An interesting perspective is offered by Stefan Olsson, a professor of tax law at Karlstad Business School, who states that an EU-wide tax law system, in the sense of a complete tax system, does not exist – at least not beyond value-added tax (VAT) [8, p. 233]. The scholar notes that there is only the influence of EU legal sources on national tax legislation, which can be divided into two parts: 1) All national legislation must comply with the requirements of EU primary law, including fundamental freedoms (i.e., the founding treaties); 2) National legislation must be adapted to the requirements of EU secondary law (i.e., EU directives). This issue has been studied in detail in the monograph «EU Tax Law» [9], in particular, in Chapter 5.1.3 «Sources of EU Tax Law» [10, p. 537]. The relationship between EU legal sources and international public law is crucial in the context of the internationalization of Ukraine's tax law. This relationship is primarily determined by the nature of the European Union's functioning. The EU operates based on international public treaties. These treaties hold the highest legal authority in the EU legal order. They also define the legal status of other legal sources [11].

The hierarchical nature of EU law sources entails that legal norms enshrined in lower-level sources cannot contradict those established in higher-level sources. However, scholars frequently highlight that the absence of a «true» hierarchy of legal acts, familiar to national legal systems, does not mean the complete absence of hierarchy in EU law [12, p. 745]. There is an evident hierarchical relationship between constitutional acts of the EU, such as the founding treaties, and legal acts issued based on them. And as J. Ziller notes, in the modern literature on EU law, the formal hierarchy of norms is often substituted (confused) with the material hierarchy of norms based on values [13, p. 337].

Furthermore, in the contemporary doctrine of EU law, scholars often distinguish between formal hierarchy (hierarchy of legal norms) and material hierarchy (hierarchy based on values). As noted by A. Kaczorowska-Ireland, hierarchy between primary and secondary law is a crucial systemic characteristic of the Union's legal order and a fundamental element of its constitutional infrastructure [4, p. 29]. Ultimately, attention to the axiological aspect of EU tax law is based on recognizing the special significance of tax values for the community of Member States, including their role as catalysts for integration processes both within the EU and in expanding cooperation with third countries.

**Conclusions.** The tax legislation of the European Union significantly impacts both the domestic tax laws of EU member states and the way in which these laws should be applied. The pursuit of systematization and structure in tax law is an objective phenomenon that characterizes the entire legal system, and the presence of this feature in the legal system of the EU reflects its high level of development. One of the properties of the legal system is the external expression of legal norms in the relevant sources of law, which is also true for the legal system of the European Union. In this context, the sources of EU tax law, as external forms of expression of tax-legal norms, are quite diverse both in terms of quantity and content. Together, they form a structurally functional system based on hierarchical principles, which is determined by the corresponding structure of EU law.

Relations between different legal systems prompt the study of combinations of regulatory decisions through which systems can develop forms of harmonious coexistence of various values. From the perspective of positive law, a conflict between different legal systems should be resolved through forms of legal relationships that allow such diversity to coexist. In a structure characterized by an equal placement of different systems, it is impossible to find a higher-order norm (a kind of «meta-norm») that regulates conflicts between norms belonging to different systems, and therefore, conflicts between sources of law according to the hierarchical criterion. Deductive logic, which requires resolving contradictions based on the principle of one source having a higher status than another, can actually only be applied in vertical systems, that is, where one legal system is dependent on another.

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