

37th SESSION

Fair distribution of taxes in transfrontier areas

Potential conflicts and possibilities for compromise

Recommendation 438 (2019)¹

1. Europe's border regions are the laboratories of European integration. For 40 years, the Council of Europe has been in the forefront of developing this co-operation, changing the perception of Europe's internal borders from one of barriers to one of bridges, opportunities for co-operation that can and do benefit citizens on either side of the border. Against this backdrop, the need to ensure an equitable distribution of transfrontier worker tax revenues on both sides of the border stands out as one of the major challenges to such co-operation.
2. The free movement of labour across borders is one of the strengths of European co-operation, all the more important in the light of the fact that a third of Europe's citizens live in border areas. However, like any integration process, the free movement of labour leads to imbalances, particularly in terms of taxation.
3. Council of Europe member States generally apply the OECD rule that the worker pays tax at the place of work. The growth of cross-border working in recent years has highlighted the need for this principle to be accompanied by one of the fair distribution of this revenue, to the benefit of both the place of employment and the place of residence.
4. The European Union has no common policy on this, despite having underlined the desirability of establishing a common principle on cross-border taxation in a Commission Recommendation in 1993. In the absence of a common approach, the adaptation of legal structures to meet the needs of transfrontier working remains the responsibility of the authorities of each country, which has led to a multiplicity of bilateral agreements.
5. In many cases, systems of tax retrocession or financial compensation have been adopted to cover the excess of expenses (such as schools and infrastructure) borne by the place of residence. In other cases, no agreement has been concluded, leaving the local and regional authorities of the places of residence bearing costs much higher than the places of employment.
6. As a result, there are many situations in which the financing of public services in border areas is woefully inadequate as a result of this exclusive collection by the fiscal authority of the country of employment. This can cause serious tensions for the communities concerned and affect their ability to invest because of the budgetary pressure linked to demographic change exacerbated by the labour needs of the neighbouring country.
7. The risk of further aggravation of such unbalanced cross-border development is a challenge for European decision-makers. A line that divides rich and vibrant centres, concentrating jobs and wealth from suburban-dormitories, characterised by the impoverished communities is unsustainable in the long run. The unequal distribution of burdens and the benefits of employment can only weaken interregional links in the European continent and undermine territorial cohesion.

¹ Debated and adopted by the Congress on 29 October 2019, 1st sitting (see Document [CG37\(2019\)10](#), explanatory Memorandum), Rapporteur: Karl Heinz LAMBERTZ, Belgium (R, SOC)

8. In this context, it is necessary to deepen and organise the debate on tax policy in cross-border areas, knowing that the place of taxation is less relevant than the need for co-operation and agreement between the authorities concerned, and identifying new solutions to this problem.

9. For this debate to yield results, substantial progress needs to be made to improve the knowledge and understanding of the issue, through extensive research and data gathering, based on common indicators.

10. Reconciling taxpayer expectations with the provision of sufficient resources for tax administrations will require a co-ordinated approach to avoid double taxation and allocate taxing rights on both sides of the borders.

11. In view of the above, the Congress,

a. Bearing in mind:

i. the European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (Madrid Convention) of 21 May 1980, and its additional protocols (ETS Nos 106, 159, 169 and 206);

ii. Congress Resolution 363 (2013) on prospects for effective transfrontier co-operation in Europe;

iii. the report of the Foundation for the Economy and Sustainable Development of the Regions of Europe (FEDRE) on "The fair distribution of taxes and charges in cross-border areas" (December 2018) and the seminar it organised in October 2018 in Geneva, which brought together stakeholders of the targeted area;

b. concerned about the problems that local and regional authorities are facing in financing essential public services, including education, kindergartens, social housing and communication infrastructure in certain frontier areas;

c. convinced that stronger relations and partnerships between dynamic centres and areas of residence are important preconditions for the construction of virtuous business cycles, environmental performance, territorial cohesion and social sustainability in the Member States of the Council of Europe;

d. convinced of the viability of long-term cross-border strategies based on the sharing of the fruits of labour to develop common infrastructures;

e. concerned about the dynamics of tax competition between some member States and the need to ensure that certain regions and municipalities remain attractive places to live and work;

f. resolved to guarantee the principle of non-discrimination and to avoid double taxation;

g. recommends that the Committee of Ministers resolve to address this issue in its future work programme, by conducting a comprehensive survey of the issues concerned, including the need for systematic data collection and the development of common indicators on the intensity and direction of labour flows, demographic trends, community burdens and the consequences of different tax rates;

h. recommends that the Committee of Ministers invite the governments of its member States to:

i. promote co-development as a common goal, to promote economic growth, and to distribute the resulting tax revenues equitably and to transform them locally into improved quality of life;

ii. encourage the local and regional authorities of places of employment of transfrontier workers to contribute to the financing of the local public services used by these workers in their places of residence;

iii. support the technical, scientific or linguistic training of their border populations to enable them to make better use of cross-border job opportunities;

iv. create the necessary conditions to foster a multilateral tax dialogue in a more collaborative and co-ordinated framework, bringing together all levels of government;

v. standardise the conditions under which the charges are taken into account by the budget of the country benefiting from the labour taxation in favour of the territories of residence of the frontier workers (such as a percentage of the gross wages);

vi. harmonise the principles of burden-sharing between the countries which have borne the initial training costs of frontier employees and the countries which collect the labour tax of these employees, without having contributed to the cost of their training;

vii. harmonise the taxation conditions of frontier pensioners by fixing the place of residence, where the costs of aging are borne, as the place of taxation of pensions;

viii. support the development of Local Groupings of Cross-Border Co-operation (GLCTs) as a means of addressing these issues.