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Public Goods & Governance is a semi-annual academic journal, aims to publish original material within the field of public policy, public management, governance and administration. This includes articles, shorter notes and comments based on theoretically and empirically grounded research on public goods, public service delivery and other public functions in a wide range of sectors, especially focused on recent challenges of governmental roles and new governance models in the market economies.

The journal welcomes submissions (articles, notes and comments) from anywhere in the world from both academics and practitioners. The maximum word limit for articles is 2500 words. Notes (not full academic papers presenting new phenomena, ideas or methods in a brief form) and comments providing additional thoughts and critical remarks to previously published articles should not exceed 1000 words.

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IMPACTS OF COVID-19 PANDEMIC ON MULTILATERAL TRADING SYSTEM FROM THE PERSPECTIVE OF VIETNAM – A DEVELOPING COUNTRY*

Nguyen Duc Anh[1]

Abstract: After more than 25 years of establishment and development, the World Trade Organization (WTO) has been confronted with many challenges. Such obstacles have become more aggravated since the beginning of the COVID-19 pandemic. While pre-existing issues of the WTO have not been addressed, the multilateral trading system has faced new challenges under the unprecedented influence of the COVID-19 pandemic. There is no question that the WTO as a multilateral trade organization plays a pivotal role in maintaining economic globalization, mitigating damages, and revitalizing international trade. This paper analyzes the role of the multilateral trading system in monitoring and supporting countries to overcome the severe impacts of the crisis. In addition, the article also analyzes and evaluates the trade policies in response to the pandemic from a perspective of a developing country – Vietnam – thereby proposing several recommendations for Vietnam.

Introduction

After more than 25 years of establishment and development, the World Trade Organization (WTO) has been confronted with many challenges. Such obstacles have become more aggravated since the beginning of the COVID-19 pandemic. While pre-existing issues of the WTO have not been addressed, the multilateral trading system has faced new challenges under the unprecedented influence of the COVID-19 pandemic. There is no question that the WTO as a multilateral trade organization plays a pivotal role in maintaining economic globalization, mitigating damages, and revitalizing international trade. This paper analyzes the role of the multilateral trading system in monitoring and supporting countries to overcome the severe impacts of the crisis. In addition, the article also analyzes and evaluates the trade policies in response to the pandemic from a perspective of a developing country – Vietnam – thereby proposing several recommendations for Vietnam.

1. Existing issues of the WTO and the multilateral trading system

The World Trade Organization (WTO) is an almost all-encompassing organization[2] that seeks to regulate all important aspects of multilateral trade (Mossner 2014). One of its primary purposes is to liberalize international trade and to serve as a multilateral institution providing the global framework for peace and stability (Chowdhury et al. 2021). To date, after more than 25 years of development and establishment, the WTO

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[2] As of January 1 2022, the WTO has 164 members, accounting for 98% of world trade.

has made great contributions to global trade liberalization. In previous years, the multilateral trading system as represented by the WTO has made important contributions to economic development (WTO 2020c). The achievements of WTO range from law[3] to economy, culture, and society[4]. Therefore, it is undeniable that the WTO is an important organization that maintains international trade order, represents the multilateral trading system, and stabilizes world economic development (Guohua 2021, 21). The multilateral trading system consists of the WTO, its 164 Members, and its trade rules (Guohua 2021, 7). However, this multilateral trading system has been confronted with various challenges:

1.1. Firstly, deep internal divisions within member states

There are many disagreements among WTO member countries in their approach to globalization and international integration. Developed countries tend to be reluctant to continue to give developing countries more preferential treatment under the WTO framework, although Special and Differential Treatment (SDT) under existing WTO rules can be interpreted as a mechanism that enables a large developed country to help a small developing country to overcome domestic commitment problems in trade liberalization (Conconi & Perroni 2015). However, the WTO currently does not have specific criteria or definitions of developing countries which instead is set out by the self-announcement mechanism[5]. As a matter of fact, approximately two-thirds of the WTO's 164 members are developing countries (World Trade Organization 2022c) including high GDP countries such as China, India, Russia, Brazil, etc. This led former President Donald Trump to allege unfair treatment by the WTO and warn the organization that the US will withdraw from the WTO if it continues to be treated unfairly. In 2017, since President Donald Trump began his administration, feeling as though it has been treated unfairly by the Appellate Body, the United States has exercised its veto consistently (Swanson 2019). Despite the WTO's success, the United States is attempting to cripple the organization by targeting its dispute resolution system (Seals 2019).

On the other hand, for developing country Members, multilateral trade rules contain a number of provisions granting SDT which can help developing countries to liberalize and improve their trading prospects (Conconi & Perroni 2015). For instance, the Agreement on Agriculture permits developing country Members to undertake reform commitments on schedules different from (and more favorable than) those required of

[3] The WTO has established the global system of trade rules and reducing barriers to international trade; developed a system of rules for international trade dispute settlement; and contributed to the reform and modernization of the legal systems of member states.

[4] The WTO has helped poor countries achieve more equality in international trade relations; helped countries increase domestic governance capacity; promoted economic growth, the creation of job opportunities and cutting costs for businesses; enhanced the lives of people in member states; constituted improvements of the environment and public health and contributed to global peace and stability.c

[5] There are no WTO definitions of "developed" and "developing" countries. Members announce for themselves whether they are "developed" or "developing" countries. However, other members can challenge the decision of a member to make use of provisions available to developing countries.

developed countries (UNCTAD 2003) such as waived tariffs;[6] lower reduction obligations;[7] domestic support commitments;[8] export subsidies,[9] and longer implementation periods.[10] Nevertheless, these global free-trade rules can also undermine domestic production in developing countries (Tran 2020, 20). The more members an organization has, the more difficult it will be to reconcile their interests due to the different development level and conditions of each country. With the diversity of national interests of WTO members, balancing and maximizing these interests is a dilemma for the WTO.

1.2. Secondly, national protectionism is on the rise

Protectionism refers to government policies that restrict international trade to help domestic industries (Investopedia 2020). Trade protectionism is defined as a nation, or sometimes a group of nations working in conjunction as a trade bloc, creating trade barriers with the specific goal of protecting its economy from the possible perils of international trading (Abboushi 2010). In other words, protectionism is the sum of government trade policies intended to assist domestic producers against foreign producers in a particular industry, by means of raising the price of foreign products, lowering the cost for domestic producers, and limiting foreign producers' access to the domestic market (Abboushi 2010). The multilateral trading system has been affected recently since in 2018 there was a return of protectionism on behalf of the United States after decades of supporting free trade and leading efforts to lower international trade barriers (Fajgelbaum et al. 2020). Although the US is a free-market economy and a world advocate of international trade free of restrictions, it is a typical example of a trigger for protectionism. In particular, Donald Trump's "America First" foreign policy together with the consequences of the US-China trade war presented a withdrawal from the Trans-Pacific Partnership (TPP), a pledge to renegotiate the NAFTA, an FTA negotiation stop with the EU, etc. In response to the US move, China and the EU also increased their respective protectionist measures (Tran 2020, 21). With the moves of such big countries, the process of trade globalization is likely to be seriously threatened.

1.3. Thirdly, WTO rules are gradually becoming outdated

In recent years, the system of international trade rules of the WTO has not been sufficiently updated to address new issues. As such, the WTO and other trade agreements say nothing about areas such as the internet or censorship (Burri 2022). Due to the prevalence of the internet, many major issues related to the internet, for example,

[6] See Article 15.2, 9.2b(iv) WTO Agreement on Agriculture.
[7] Special and Differential Treatment measures in the Agreement on Agriculture took the form of lower reduction rates to be applied to fixed base period values of trade-distorting domestic supports, tariffs and export subsidies – which, for the developing countries, was two-thirds of the levels required of the developed countries in each of these three areas. No reductions were required for least-developed countries.
[8] See Article 6.2 WTO Agreement on Agriculture 2012.
[9] See Article 9.4 WTO Agreement on Agriculture 2012.
[10] See Article 9.2 and 15.2 WTO Agreement on Agriculture 2012.

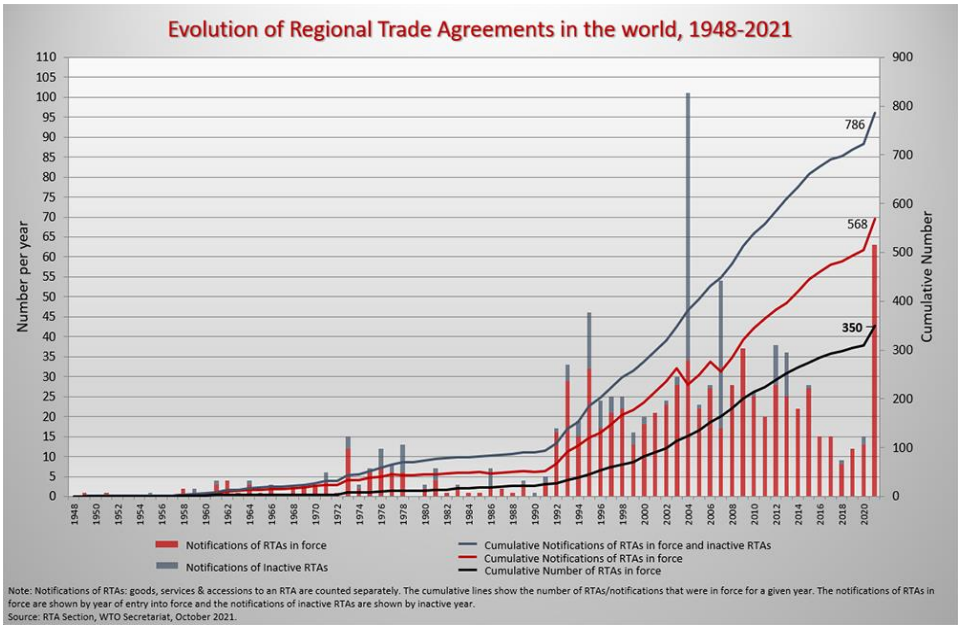
electronic commerce, remain open to the WTO. The lack of relevant WTO rules in this field allows authoritarian countries to exercise control over internet access, create cyberspace trade barriers, and abuse locally collected data (Chu & Lee 2019). Another issue that has rendered existing WTO rules outdated is the emergence of large previously communist economies. The prevalence of state-owned industries shakes the WTO's free-market foundations (Burri 2022, 27). Current WTO transparency rules cannot reveal the true extent of government intervention or guarantee fair competition (Burri 2022, 27). Along with that, the WTO Dispute Settlement Understanding (DSU) also reveals a variety of shortcomings, the largest of which involves its ineffective dispute resolution mechanism (Joseph 2013). To overcome these shortcomings, the WTO is required to take a completely new approach in reforming itself.

1.4. Fourthly, regional and free trade agreements with progressive and comprehensive trade rules are becoming more prevalent

The development of free trade agreements (FTAs) is partly based on the WTO rule system because WTO rules contain an exception that allows nations to discriminate in favor of countries within a free trade area (Meyer 2020). This is provided in Article XXIV GATT (1947) which creates a legal framework that aims to privilege regional trade agreements (RTAs) that increase global trade and prohibit those which merely divert it (Mossner 2014). As a result, the degree of the expansion of Article XXIV is demonstrated by the fact that there are now 319 agreements (excluding accessions) notified to the GATT/WTO (WTO 2022e)(See Figure 1).

Figure 1

RTAs currently in force (by year of entry into force), 1948 – 2021



Source: WTO 2022e

Free trade agreements are supposed to facilitate countries to develop new and more progressive trade rules based on existing WTO rules. FTAs have evolved and gone beyond eliminating restrictions on trade at the border into provisions for institutional harmonization (Athukorala 2020)[11] between the member countries, which are popularly known as "modern FTAs" (Athukorala 2020) or "new-generation FTAs". Thanks to these FTAs, it is easier for developed countries to impose standards associated with trade on developing and less developed countries: for example, standards on labor, environment, human rights commitments.[12]

However, it cannot be denied that the WTO trade system plays a pivotal role in the development of FTAs because the WTO established a multilateral rules-based system founded on non-discrimination. This is important for smaller, usually developing countries that would otherwise be subject to the protectionist whims of larger, more powerful trade partners (Elliott 2018). Although there is no black-and-white answer to the question whether FTAs are considered as the building blocks of global trade or stumbling blocks likely to obstruct multilateral trade liberalization (Kono 2020), the number of FTAs is on the rise with more comprehensive commitments than those of the previous WTO rule system. As a result, this could fragment the multilateral trading system.

2. Impacts of COVID-19 on the WTO and multilateral trading system

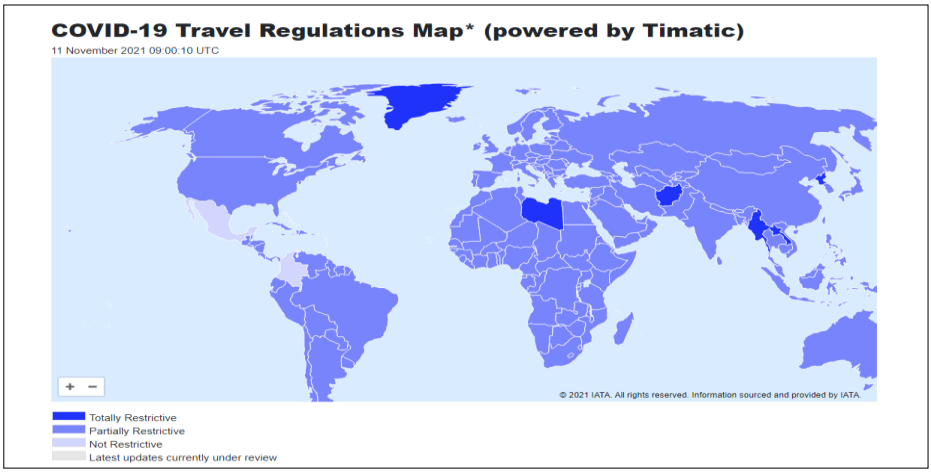
COVID-19 is the global pandemic with the greatest impact that has confronted mankind in the past century (Rongjiu 2020). As of 7 February 2021, there have been 386,548,962 confirmed cases of COVID-19, including 5,705,754 deaths (WHO 2022). As a global pandemic, the COVID-19 pandemic can spread across borders, therefore, countries almost everywhere in the world adopted restrictive measures to cope with the pandemic such as mobility restrictions, temporary border closures, export and import restrictions, subsidies and domestic support carried out in face with the pandemic (See Figure 2). Consequently, world trade and output grew faster than expected in the first half of 2021, after falling sharply in the second half of 2020 during the first wave of the pandemic (WHO 2022).

[11] These provisions are related to digital trade, intellectual property, health and safety issues, labour standards, labour migration, investment proportion and protection, banking and finance. This could lead to scepticism on how much deeper FTAs can go beyond the possibilities offered by the WTO process or unilateral reforms.

[12] See Chapter 13 "Sustainable developmment" of the European Union – Vietnam Free Trade Agreement.

Figure 2

COVID-19 induced travel regulations



Source: IATA 2022

These measures are necessary to be implemented as attempts to curb the spread of COVID-19. As a matter of fact international trade has always relied on the cross-border mobility of individuals (World Trade Organization 2022). Accordingly, these restrictive measures cause severe impacts on international trade systems. Therefore, international trade is considered as one of the potential victims of the current pandemic (Gruszczynski 2020). The WTO, which had already experienced problems with handling pre-existing issues, has found it even more difficult to make a difference under the influence of the COVID-19 pandemic (Rongjiu 2020).

2.1. Firstly, the interruption of global supply chains with numerous trade restrictions

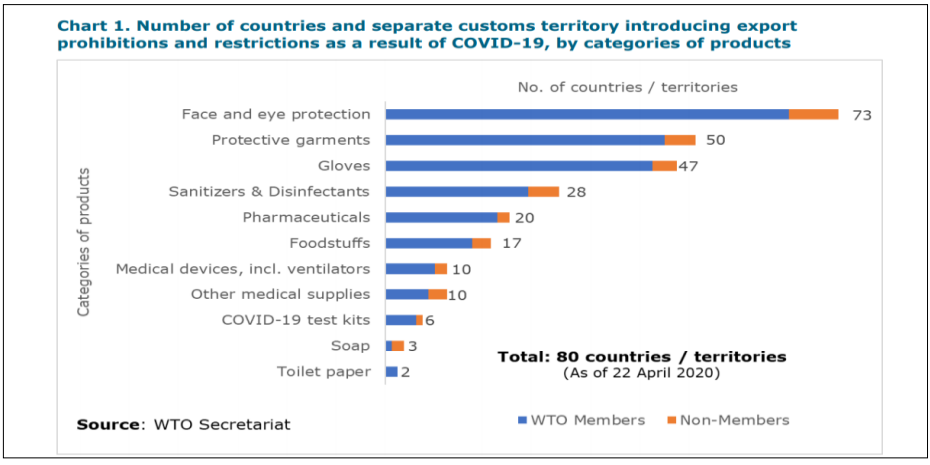
Various restrictive measures are implemented by countries in the fight against the spread of the COVID pandemic. According to a WTO report, 144 COVID-19 trade and trade-related measures on goods have been implemented by G20 economies. Of these, 105 (73%) were of a trade-facilitating nature and 39 (27%) could be considered trade restrictive. Export restrictions accounted for 95% of all restrictive measures recorded, and of these, 54% had been phased out by mid-October 2021. A total of 18 trade restrictions remained in place, of which 17 are export restrictions (WTO 2021b). Measures to curb the spread of the disease have shut down large swathes of the world economy, leading to dramatic downward supply and demand shocks (WTO 2020b) because supply-chain losses that are related to initial COVID-19 lockdowns are largely dependent on the number of countries imposing restrictions (Guan et al. 2020). This situation blocks the movement of trade in goods and services including medicine, medical supplies, medical equipment, and personal protective products. Whereas the concentration of some critical supply chains concentrated in China and elsewhere in a

few countries has left dependent countries vulnerable to supply shocks during times of crisis (Curran & Eckhardt 2021). Consequently, 80 countries and separate customs territories have introduced export prohibitions or restrictions as a result of the COVID-19 pandemic (World Trade Organization Secretariat 2022). (See figure 3). It is deemed that had China, highly developed western countries in Europe and the United States been affected, the global supply-chain effects would have been 12.6% of global GDP (Guan et al. 2020). When the countries are large exporters of goods on which the export prohibition or restriction is enacted, importers will suffer, and in particular poor countries with limited production capacity (World Trade Organization Secretariat 2022). Intervention in the world's supply chains made by countries can have a severe impact on pandemic prevention and control on a global scale.

When it comes to reducing supply chain interruption, countries are supposed to flout WTO rules rather than FTA regulations. To illustrate, FTAs do little to encourage the diversification of supply chains and in some cases actually exacerbate supply chain risks, especially through loose rules of origin (Meyer 2020. On the other hand, WTO rules constrain aggressive regulation of supply chain risks designed to prevent a crisis while providing exceptions for aggressive action only in the face of a crisis (Meyer 2020). As such, WTO rules, particularly Article XI[13] and Article XX[14] GATT (1947), provide a carveout and a number of exceptions and flexibility in response to a supply chain crisis during the pandemic. However, as mentioned in section 1, the establishment of FTAs shows an upward trend which makes the multilateral trading system more fragmented. As a result, this presents difficulties to the resilience of the multilateral trading system when supply chain risks can be exacerbated.

Figure 3

Number of countries and separate customs territory introducing export prohibitions and restrictions as a result of COVID-19, by categories of products



[13] Article XI GATT 1947 prohibits export restrictions.

[14] Article XX GATT 1947 introduces export restrictions in case of critical shortage and for human health reasons.

Sources: WTO 2020b

2.2. Secondly, facilitation of nationalism

Imposing export restrictions also trigger a domino effect that pushes other exporters to introduce similar restrictions. For example, Vietnam is the second-largest rice exporter (Statista 2022). Because rice is an essential food source, at the start of the COVID-19 pandemic, the Ministry of Industry and Trade of Vietnam proposed to suspend rice export from February to May of 2020 (Ministry of Industry and Trade of Vietnam 2022). More importantly, prohibitive and restrictive measures adopted in one country may lead other exporting countries to feel compelled to adopt similar measures. As a result, there would be a series of tariff barriers erected by countries to protect domestic goods which global trade is trying to limit. Due to the turbulence in global supply chains, the international trade system finds it hard to ensure the predictability of essential good supplies. It is understandable that this creates doubts about international trade or in other words, trust in the global value chain can be eroded. As such, there will be a trend of self-supply of domestic production instead of imports. This is referred to as a kind of "nationalism" in international trade.

To combat the COVID-19 pandemic, vaccines are an effective and preventative solution in the fight against the pandemic while vaccine manufacturing is an expensive, complex process, in which even subtle changes may alter the purity, safety, or efficacy of the final product (Hassoun 2021). High-income countries have scrambled to buy up more vaccines than they need, while low- and middle-income countries are left to rely on their limited resources or donations and charity (Hassoun 2021). This means poor countries may lack access to a vaccine for years (Bollyky & Bown 2020). COVID-19 vaccines are likely to be scarce for years to come. Many countries, from India to the U.K., have demonstrated vaccine nationalism (Emanuel et al. 2021), whereas coping with the global pandemic requires the synergy of the whole system. Therefore, maintaining and strengthening existing vaccine supply chains, by keeping open trade in vaccines and their intermediate goods, is essential (Emanuel et al. 2021). This questions the role of international institutions – for example, the WTO – in eradicating "vaccine nationalism"[15] (Oxfam 2022) and coordinating global vaccine supply toward global COVID-19 vaccine equity.

To sum up, according to the WTO, given the present uncertainty about the pandemic's likely trajectory, it is difficult to predict its ultimate impact on the global economy and trade (OECD 2022). In terms of international trade, the COVID-19 pandemic represents an unprecedented disruption to the global economy and world trade, as production and consumption are scaled back across the globe (World Trade Organization 2022). The COVID-19 crisis has underlined the relevance of rules-based free trade, as open markets and uninterrupted global supply chains are fundamental for access to medicines and other essential products (World Trade Organization 2022). Disruptions caused by trade-restrictive policies can severely delay the development,

[15] "Vaccine nationalism" is where countries prioritise their own citizens and insist on priority access to vaccines through bilateral deals.

production, and distribution of treatments and vaccines (Bhatia 2020) while so far, effective prevention measures have not been found and the pandemic has recurred in some countries (Rongjiu 2020). Accordingly, international cooperation and global endeavors are needed to jointly combat the pandemic.

3. The roles of the multilateral trading system in mitigating COVID-19 effects

'Global challenges require global solutions' has been a common refrain over the past year (Marceau & Parwani 2021). Looking back to the history of previous pandemics, global disease outbreaks such as influenza H1N1 in 2009, MERS-CoV in 2012, Ebola from 2013 to 2016, and Zika from 2013 to 2016 require a level of international cooperation in response to those pandemics (Coronado Martínez 2020). It is impossible for one country to counter against a global pandemic on its own: this also holds true with regards to the ongoing complications of the COVID-19 pandemic. However, the conceptual approach to COVID-19 response is still unsystematic, and it can be assumed that cooperation will be the best choice (Evdokimov & Guliyev 2020). The cooperation varies between different levels. In particular, at the global level, preparing an appropriate response in the face of the COVID-19 pandemic will be very difficult without the interactions of international institutions and countries. A collaborative response requires the global trading system to ensure seamless trade in pandemic-related products, services, and technologies (Bhatia 2020). As such, the question posed is how the WTO and the multilateral trading system mitigate COVID-19 effects.

3.1. Firstly, monitoring trade policy to ensure the smooth flow of essential goods and services through promoting global supply chains

As mentioned above, restrictive and prohibitive measures – especially import restrictions implemented by countries – can delay the production and distribution of medical supplies and vaccines to an extreme degree. Although the WTO rules allow countries to impose these measures in response to the pandemic, this requires the WTO to ensure that its rules regarding export prohibitions and restrictions are respected by WTO members and are consistent with WTO rules. More importantly, the main purpose of the WTO's supervision is to guarantee that these policies refrain from damaging global supply chains as much as possible. The G20 Ministerial Statement of 30 March 2020 stressed that "emergency measures designed to tackle COVID-19, if deemed necessary must be targeted, proportionate, transparent, and temporary, and that they do not create unnecessary barriers to trade or disruption to global supply chains, and are consistent with WTO rules". This means that WTO members are allowed to impose restrictive policies but with certain limitations. In this situation, the G20 and WTO play a key role in supporting this trust as a chamber for countries to discuss trade policy (Bacchetta et al. 2021) to promote resilience of global supply chains. Additionally, the WTO performs its monitoring functions to keep the use of counterproductive export restrictions to a minimum, as they tend to provoke trade-restrictive responses of trading partners, stifle incentives to produce, and make production more complicated in international value chains (Bacchetta et al. 2021).

3.2. Secondly, an international channel where country members join together to combat the COVID-19 pandemic

One of the great challenges of the multilateral trading system is the lack of transparency and cooperation among country members when it comes to imposing restrictions and prohibitions. According to WTO rules, WTO members are required to promptly notify and publish information about trade measures to the WTO and other WTO members [16]. A large part of measures notified to the WTO COVID-19 transparency scheme facilitates international trade (Marceau & Parwani 2021). However, until April of 2020, only 39 members have notified the WTO about the introduction of new measures under the decision on quantitative restrictions and only three have notified about export restrictions on foodstuffs pursuant to Article 12 of the Agreement on Agriculture (World Trade Organization Secretariat 2021). As a result, it will be difficult for countries around the world to know which measures have been enacted by whom and when. Insufficient information makes it difficult for country members to make decisions about importing goods and finding new suppliers in order to respond flexibly under the influence of the COVID-19 pandemic.

Moreover, as an international organization with the regulatory function of global trade, the WTO monitors and reviews transparency of trade policy and measures conducted by WTO members through the Trade Policy Review mechanism to produce certainty and predictability of trade policy. Transparency is a fundamental feature of the multilateral trading system (Marceau & Parwani 2021) which promotes trade to flow smoothly and efficiently. In respond to this, the WTO, as a platform for transparency, plays a central role in figuring out the information about COVID-related trade measures and ensuring that supply chains are kept open and restrictive trade policies are avoided (World Trade Organization Secretariat 2022). However, it should be taken into account that this leading role would not be fulfilled without the active cooperation by country members.

3.3. Thirdly, promote COVID-19 vaccine access and distribution

Without the capacity to produce their own vaccine against the COVID-19 virus, countries – especially developing countries – depend on COVID-19 vaccine production from other developed countries. When it comes to vaccine access in developing countries, intellectual property rights (IPR) are considered to pose a barrier to the sufficient manufacturing of vaccines, even though having licensed vaccines is not enough to achieve global control of COVID-19 (Wouters et al. 2021). This is because IP rights, for example, patents and the protection of undisclosed information – which includes clinical trial data – can have an important impact on the creation and manufacturing of medicines and vaccines to fight the COVID-19 pandemic (Marceau & Parwani 2021). The tension between IPRs and public health has become more contentious when, in October 2020, some countries like India and South Africa asked

[16] See Article 10.1 GATT 1947 and Article 5 Agreement on Trade Facilitation, and Decision on Notification Procedures for Quantitative Restrictions 2012.

WTO members to waive IP rights[17] under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) in relation to the „prevention, containment or treatment of COVID-19 in a certain period." However, it is believed that the proposals to waive IP rights for COVID-19 vaccines are unnecessary (Baachus 2020) and they can set a negative precedent as a bad policy (Mercurio 2021). While the TRIPS Council has continued to take into consideration the waiver request (TRIPS Council 2021), developing countries may be more vulnerable to the trade impacts of the pandemic than developed countries (World Bank US 2022) including vaccine access.

An action taken to ensure that international trade allows for equitable and affordable global access to medical supplies and equipment is completely necessary. To deliver on this challenge, a collaboration between international institutions could prove helpful. As such, several calls for a new commitment for vaccine access and defeating the pandemic have been made by the IMF, the World Bank, the World Health Organization (WHO), and the WTO. In particular, the WTO emphasized the importance of refraining from supply chain disruptions during the pandemic so that sufficient supply of COVID-19 vaccines may be reached. The WTO can facilitate the smoothness of international transport and travel to make the logistics sector more resilient to shocks, thus reducing the impacts of the crisis on supply chains and stabilizing trade costs.

In conclusion, on the positive side, this crisis is an ample opportunity for the WTO to consolidate and strengthen mutual trust in the multilateral trading system in order to address pre-existing issues of the global trading system and toward global effective solutions to mitigate the impacts of the unprecedented global pandemic. The global pandemic pushes the revitalization of multilateralism at the WTO. Regardless of what the WTO can do, when faced with global disasters like the COVID-19 pandemic, the optimal solution for countries is to pursue and defend multilateralism rather than national protectionism.

4. Responding to the COVID-19 pandemic from the perspective of Vietnam – a developing country – for the sake of the multilateral trading system

According to the WTO Information Note on the COVID-19 Pandemic and Trade-Related Developments in the Least Developed Countries (LDCs), COVID-19 poses the most daunting challenges to the trade of LDCs (Jusoh & Ramli 2021). In the early stage of the COVID-19 pandemic, Vietnam was globally recognized as one of the world's most successful countries in response to the COVID-19 pandemic (The United Nations News 2022). However, according to the World Bank, developing countries, especially in East Asia, where trade and tourism make up the bulk of the economy, have been severely damaged. Therefore, from the perspective of developing countries, Vietnam is still at risk of the return of COVID-19 waves due to the fragility of the health system, limited vaccine resources and rollout, and a high population density, all of which can put Vietnam in danger of the COVID-19 pandemic at any time. As a result, Vietnam has recorded 2.380.095 confirmed cases as of February 8, 2022 (Jusoh & Ramli 2021). Therefore, from above analysis, the author would suggest recommendations to be made

[17] Related to vaccines patents, copyrights, industrial designs, and undisclosed information (trade secrets).

for Vietnam, from the perspective of developing countries, to combat the pandemic in the current context:

4.1. Firstly, promote the multilateral trading system against the COVID pandemic

Given the current pandemic situation, a common request is being made for governments to take a common approach to international trade to avoid widespread economic collapse and the disruption of global supply chains on the road towards recovery and building a strong resilience. As mentioned above, international cooperation is an optimal solution in response to the crisis whereas protectionism can exacerbate the global health crisis and delay post-pandemic economic recovery. It is demonstrated that global cooperation in times of crises is preferred over national policies such as domestic production and export restrictions (Bacchetta 2021). Vietnam's recent emerging economy has gained achievements in the last two decades. A recent positive result is Vietnam's economic resilience to the impact of COVID-19 pandemic, as exemplified by the 2.9% GDP growth in 2020. Thanks to the economic integration policy, Vietnam recently moved to the group of 20 largest traders among WTO Members (World Trade Organization 2022). As such, Vietnam is willing to join hands with the international community and support multilateralism to make contributions to the multilateral trading system.

Consider minimizing the adoption of measures to limit international trade: As indicated above, restrictive and prohibitive measures for the sake of pandemic response are implemented, while failing to consider their long-term economic and trade consequences. To demonstrate, as the world's second-largest rice exporter, the Ministry of Industry and Trade of Vietnam suspended rice export in the early stage of the pandemic to secure domestic rice production: in contrast, this measure can not only impact global food security, but, in the long run, it may lead to the loss of export opportunities with good prices for one of the main rice exporting countries in the world. If it proves necessary to enact trade-restrictive measures, Vietnam should strictly comply with the WTO's recommendation on notification obligations and transparency. Vietnam should notify, as promptly as possible, all new restrictive measures on export, according to the WTO's rules – for example, the Decision on Notification Procedures for Quantitative Restrictions, the Agreement on Agriculture (Article XII), transparency rules of The WTO Trade Facilitation Agreement (Article I) – and also endeavor to provide additional information for other countries, whenever required.

4.2. Secondly, adopt some measures to minimize disruptions to the global supply chain

Ensure uninterrupted maritime transportation: The main mode of transport for global trade is ocean shipping because more than 80 percent of global merchandise trade by volume is carried out by sea (UNCTAD 2020) including goods, food, energy, raw materials, and manufactured components. Under the turbulence of the COVID-19 pandemic, Vietnam needs to be pursuant to recommendations of UNCTAD (especially in the context of air traffic delays) to maintain operations of carriers, especially those of critical medical supplies.

Provide adequate information to stakeholders: The government of Vietnam must clearly communicate and guarantee the accuracy of information about the pandemic as well as policies that affect trade to stakeholders. The Government's portal needs to provide transparent and complete information on all processes and procedures for domestic and foreign business. Governments should also support industry associations throughout their networks.

Promote the efficiency of digital customs: During the epidemic, minimizing physical contact in performing procedures is necessary. Alternatives to traditional trading methods such as commercial bills of lading should also be encouraged. Allowing traders to apply for and receive permits and documents online is an effective way to eliminate physical interaction and reduce the sources of viral infection.

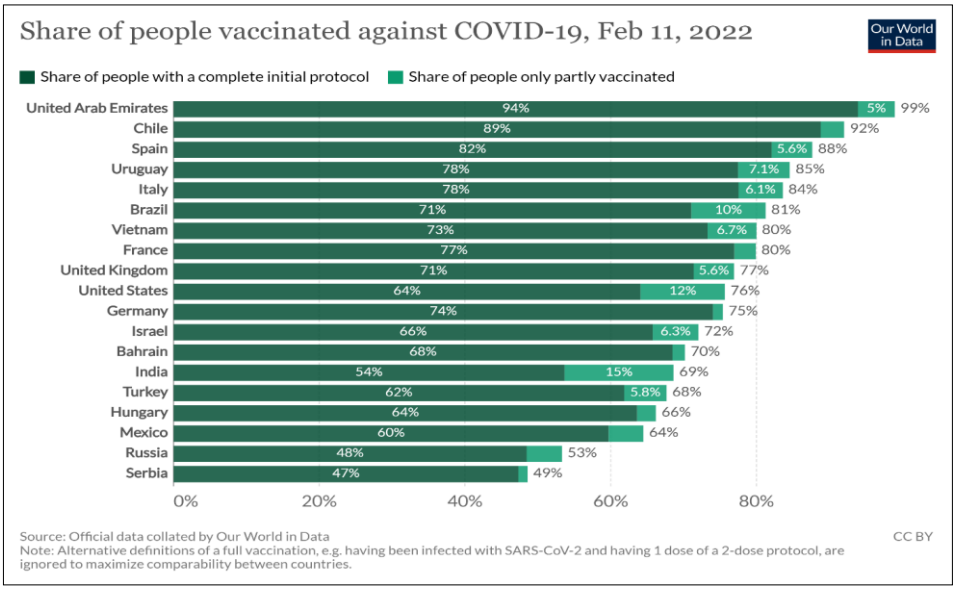
Provide legal support to traders: The impact and consequences of the pandemic on the economy and society are not fully visible yet. There can arise many legal problems from trade and business transactions around the globe (e.g. delay in contract performance, liability for breach of contract, force majeure). More importantly, the impact of the pandemic can cause damage to traders, even bankruptcy which puts stress and overload on the judicial system when disputes arise. Therefore, the government should take appropriate preventive and supportive measures for traders by encouraging alternative dispute resolution methods such as mediation to minimize damage to the parties so that international trade is still on the go.

4.3. Thirdly, take advantage of international cooperation to provide COVID-19 vaccine for citizens

As of February 2022, there are five internationally developed vaccines against COVID-19 that are in research and production in Vietnam and two more are currently being researched and developed by Vietnam (Ministry of Health of Vietnam 2021). This means that Vietnam has not yet produced its own vaccine against the COVID-19 pandemic. However, as a result, Vietnam’s vaccination rate of the first dose is 100% and the rate of basic full dose vaccination is 92.6% of the population aged 18 years and older as of 11 January 2022 (Ministry of Health of Vietnam 2021). Thanks to the policies toward multilateralism and international cooperation, Vietnam is the country with the 11th highest rate of vaccination against COVID-19 vaccine in the world although Vietnam’s own vaccine production is still in the process of research and development (See Figure 4).

Figure 4

Share of people vaccinated against COVID-19, Feb 11, 2022



Source: Our World in Data (2022)

Conclusion

The global spread of COVID-19 has posed major problems to the multilateral trading system and global supply chain. The answer to these problems does not lie in a single country but must come from consensus and solidarity from all countries in the world. The pandemic has given the world a message that each country cannot exist in isolation to combat the pandemic without cooperation and coordination. Global pandemic requires a global solution. In this scene, international cooperation is required in the fight against the COVID-19 pandemic. Therefore, there can be no substitute for multilateralism and international organizations such as the WHO and the WTO. As an international organization with monitoring function, the WTO has some role in mitigating the spread of pandemic through (1) monitoring trade policy to ensure the smooth flow of essential goods and services through promoting global supply chains; (2) promoting COVID-19 vaccine access and distribution; (3) being an international channel where country members join together to combat the COVID-19 pandemic.

Vietnam is a developing country with a population of almost 100 million people[18] (Worldometer 2022) and limited resources and poor-quality health care system. As of 2022, Vietnam has not produced a vaccine against COVID-19 yet. However, Vietnam is one of the few countries that has successfully slowed the pandemic thanks to the multilateral cooperation policies especially the vaccine diplomacy policy (Tran, Nguyen

[18] The current population of Vietnam is 99,180,084 as of August 11, 2022

& Nguyen 2022). Therefore, the successful story of Vietnam against the COVID-19 pandemic would be beneficial to others, especially countries countering with a growing pandemic (Van Nguyen et al. 2020, 989). Sharing the strategies that Vietnam used to successfully slow the pandemic is beneficial to others, particularly countries dealing with a growing pandemic. However, being threatened by limited health capacity for nearly 100 million, it is necessary for Vietnam to raise the spirit of international cooperation and support the multilateral trading system in combination with adopting measures to limit disruption of the global supply chain. All these actions show cases to the international community that Vietnam is always ready to cooperate and unite with countries around the world to repel the pandemic in the most effective ways. It is also a strong commitment of Vietnam in conformity with multilateral trade institutions - which have been the key to Vietnam's economic development in recent decades. Vietnam has been ranked amongst one of the most successful countries in managing COVID-19 with 2 572 confirmed cases and 35 deaths since the beginning of the outbreak (Ministry of Health Vietnam 2022). The success of vaccination coverage is attributed to multilateral cooperation. Within the WTO framework, Vietnam's viewpoint is to always support a fair, open and rule-based multilateral trading system (World Trade Organization 2022).

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WHY AND HOW CAN MANAGERIAL ACCOUNTING BE RELEVANT IN THE PUBLIC SECTOR?*[1]

Balázs Tóth[2]

Public sector services are a significant part of a nation's economy. The public sector, as one of the main performers of an economy, uses resources provided by the taxpayers. Therefore, the efficiency of its operation has high importance. This guides the attention to the role of a proper accounting system in the public sector. However, the role and the main characteristics of public sector accounting systems are disputed. Trends like New Public Management, Good Governance, and Good Government promoted the adoption of accrual accounting in the public sector.

Accrual accounting can provide a more punctual and reliable picture of an organization and can support the usage of managerial accounting tools, in contrast with cash-based accounting. Moreover, accrual accounting can support the creation of better performance measurement systems. The relevance of managerial accounting in the private sector is indisputable; however, this cannot be said in the case of the public sector. The aim of the study is to explain how the goals of public sector organizing trends affect the accounting system, and how managerial accounting can be relevant in the sector.

Introduction

In the last third of the 20th century, public sector organisations were perceived as slow, lacking in responsiveness and overly bureaucratic compared to the private sector, leading to the perception that the public sector was less efficient than the private sector (Peters & Pierre 1998). In addition, governance as a collective decision-making process has also been affected by democratisation and globalisation towards a loosening of state-centred decision-making (Hosszú 2018).

Until the 1980s, the Weberian bureaucratic model was the basis of democratic state organisation, but the management approach became increasingly important. Public sectors were also becoming increasingly large but inefficient and were less and less in line with societal expectations (Pongrácz 2016). The growth of public spending could not be prevented (Kovács 2014).

The aim of the study is to explain how the goals of public sector organizing trends affect the accounting system, and how managerial accounting can be relevant in the sector. The remainder of paper is organised as follows: the next section introduces the factors which called for the development of new state models, and presents the New Public Management, the Good Governance and Good Government trends. This section also points out the differences and similarities of these trends. Section 2 highlights the main advantages of accrual accounting and links these benefits with the objectives

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which are expected to be met by the accounting system. Furthermore, this section introduces the relevance of managerial accounting in the public sector and the possible reasons behind its marginal role.

1. Post-Weberian state models

By the 1970s, state institutions had become over-expansive, placing a heavy burden on citizens. The large welfare states were unable to meet the growing demands on public services, and the idea of a 'cheaper and efficient state' took centre stage (Hosszú 2018). This has led to an increase in calls for public sector reforms (Christensen et al. 2018), and a growing body of opinion calling for the transfer of business and market principles and management techniques to the public sector. These typically aim to increase the operational efficiency and effectiveness of the state while ensuring transparency. The relationship between the public and private sectors has changed, and the role of the state as a strong controller and regulator has become outdated (Peters & Pierre 1998). The argument in favour of reducing the role of the state was that while bureaucrats worked for the government, market actors sought their own welfare (Tullock 1965). For this reason, these actors are more interested in performing their tasks more efficiently and with higher quality.

Increasing pressure on the public administration ultimately led to a reform of the organization of the state. The three strands of these reforms are the technical approach, the value- and participation-based approach and the regulatory approach (Torma 2010). Their main features are summarised in Figure 1.

Figure 1

Theoretical models of management reform

Approach	Technical	Value- and participation-based	Regulatory
Related model	New Public Management – NPM	Good Governance	Neo-Weberian approach / Good Government
State	weak state	weak state	strong state
Ideology	priority of market	dominance of NGOs	dominance of state
Role of state	loosely regulates, supervises	coordinates, supervises, organises	controlling, strongly regulating
About democracy	participatory, representative consultation of civil society organisations	participation with broad consultation of civil society organisations	majority representation, direct consultation

Source: author's compilation based on Torma 2010 and Kovács 2014

1.1. The technical approach and the NPM

The basic premise of the technical approach is that even the most complex social systems can be broken down into simple technical processes. And the nature of the workflows and activities that result from this decomposition do not differ between private and public administrations (Torma 2010).

Its axiomatic starting point is that reducing public spending and improving the quality of public services can be achieved by increasing market coordination and competition (Rosta 2012a). This approach has rapidly gained popularity, particularly in Anglo-Saxon countries. One reason for this is that while in continental Europe there was a strong control over public services, in the US the concept of a strong state had not developed (Peters & Pierre 1998). In the 1980s, the adaptation of the principles of the New Public Management orientation became very popular among OECD countries, and its proposals were also popular in post-socialist countries.

According to the NPM, in the former state institutions, politicians and officials were allowed to pursue their own interests, resulting in high costs and low-quality community services. This highlights the importance of accountability (Hood 1995). NPM emphasizes the need to outsource those public functions that can be performed by the private sector, thereby increasing operational efficiency (Lentner 2019). The ideology puts the focus of operations on increasing efficiency, but these risks make democracy core principle of the public sector rather than a core principle (Wise 2002). The goals and tools of NPM are summarized in Figure 2.

The New Public Management proposes to unbundle the public sector into smaller units, organised according to the tasks they perform, thus defining responsibilities more precisely. It also aims to increase competition between public sector organisations and between public and private sector companies. Furthermore, it promotes the adoption of private-sector practices and encourages the efficient use of resources, reducing central constraints while increasing the accountability of individual actors. There is also a strong emphasis on the need for standardised performance measurement and evaluation. With appropriate benchmarking the efficiency and accountability of the public sector can be increased (Hood 1995). NPM calls for the cooperation of the public and private sectors. One example of this cooperation are Public-Private Partnerships (PPP). It is a form of public-private partnership in which the parties share the responsibility and risk of providing public services. In such partnerships, the State entrusts the private sector with a greater or full and more complex role than is usually the case (Varga 2016) PPP is generally a long-term agreement, which makes the recovery of costly infrastructure services available for the private contractor (Péteri 2017). PPP contracts had a positive impact in Europe (Kirovotko 2017), however, some of the literature points out the disadvantages of the PPP (Báger 2006).

Figure 2

Goals and tools of NPM

Category	Goals	Examples
Organisational transformation	Delegation of responsibility Reducing the level of hierarchy Separating political and managerial roles	City Manager Holding structure
Management tools	Strengthening output orientation Developing an entrepreneurial spirit in public administration	Performance-based agreements Performance-related wages
Budgetary reforms	Promoting the use of techniques similar to those used in business financial instruments	Cost calculation methods Introduction accounting method similar to those used in business environment
Participation/Partnership	Involving the public in decision-making and in the preparation of decisions	Support for small community partnerships E-democracy Cooperation with NGOs
Customer Orientation/Quality Management	Increasing the legitimacy of the public sector by improving service quality	Service level-based contracts E-government
Marketisation/ privatisation	Reducing the size of the public sector while increasing its efficiency through competition and market coordination	Privatisation Outsourcing PPP Public procurement

Source: Rosta 2012b

The NPM has confronted two major doctrines that pervaded the public sector. One was the differentiation between the public and private sectors. The other was a sharp separation of managerial and political actors, designed to prevent corruption and thus maintain public trust. The NPM would address accountability by breaking down these two principles, i.e., by reducing the differences between the public and private sectors and increasing accountability for the evaluation of results. A key element of this is the reform of accounting practices, i.e., the transfer of accrual accounting to the public sector (Hood 1995). The NPM assumes a competitive environment, dividing the population into smaller groups. Needs are not identified by experts, as in the Weberian state, but are assessed through the evolution of market needs, with a market and consumer-centered strategy (Hartley 2005). However, this assumes that society can assess its own preferences.

1.2. Value and participatory approach and the Good Governance

The core idea of the value and participation approach is that public decisions are not the prerogative of the bureaucracy but should be made with the involvement of stakeholders. In contrast to the NPM, the model puts the civil sector at the center, rather than the business sector. Decision-making is characterized by a search for a compromise and broad public consultation (Kovács 2014). The trend can be traced back to the World Bank's proposals in the 1980s (Pályi 2015).

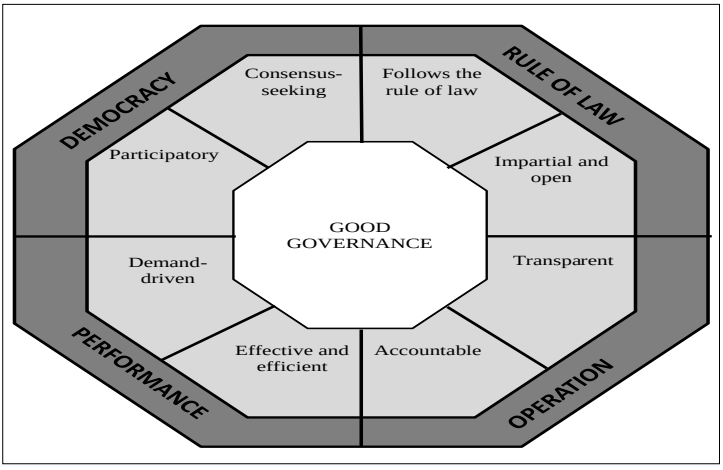
Good Governance is defined as a political and institutional environment in which human rights, democratic principles, and the rule of law are respected, Good Governance is based on transparent and accountable management of human, natural, economic, and financial resources (Vértesy 2014).

By involving stakeholders, ensuring transparency and accountability, the quality of governance can be improved. Within the framework of Good Governance, the state primarily uses the instruments of regulation, playing more of a mediating role between different social strata, and its allocative and redistributive role is more limited than in traditional models (Kovács 2014). The growing need to strengthen democracy also affects the design of institutions. Increasing transparency is a key element in supporting democracy. Coordination is seen as more society-centered (and thus less state-centered and market-centered) (Lynn 2008). Báger et al. (2010) suggest that the involvement of civil society in economic policymaking and its effective cooperation with the state can improve competitiveness.

A general characteristic of Good Governance, in compliance with the law and equal opportunities legislation, is that it is inclusive of others. It is consensual and encourages civil society to participate and cooperate. It is characterized by sound and efficient management and responsiveness. The government is accountable and transparent (Pályi 2015). The theoretical model of Good Governance is summarised in Chart 1.

Chart 1

Components of Good Governance



Source: Netherlands court of Audit 2014, 18

1.3. The regulatory approach and Neo-Weberian theory

The regulatory approach emphasises that the state must solve problems through regulation, by amending old rules or creating new ones. The focus on rule-making involves not just legislation but also the application and monitoring of the law. The regulatory approach emphasises the importance of the state and has the potential to steer the behaviour of citizens and organisations in the direction desired by the state. It can do this through the binding force of law and the enforcement of sanctions for violations, as well as through various incentives.

The concept is based on four principles. One (in contrast with the concepts presented in the previous subsections) is the centrality of the state. An important element is the renewal and application of the rules of public administration, the preservation of public services and representative democracy (Dunn & Miller 2007).

A significant change from the original Weberian concept is that it pays more attention to social needs in the design of the bureaucracy and that it encourages a managerial approach to bureaucratic compliance (a fundamental feature of Weberian philosophy) (Figure 3). This combination does not imply a mix of NPM and Weberian organisation, but rather the use of NPM elements that do not contradict the logic of Weberian state organization within the framework of Neo-Weberian public administration (Stumpf 2009). In this way, quality of services can be ensured, and real social needs can be met (Lynn 2008). Kuhlmann et al. (2008) argue that the Neo-Weberian approach can address the problem that arose when managerialist approaches were introduced. In the public spheres of continental Europe, rule-following had a much stronger cultural basis, so business practices could not really take root. The Neo-Weberian trend was able to emphasise the need to take culture and institutional context into account (Rosta 2012a), and to provide much greater openness to citizens (Pongrácz 2016).

Figure 3

Main features of the Neo-Weberian state

Weberian features	Neo-Weberian features
Strengthening the State's leadership in responding to globalisation, technological change and demographic and environmental challenges.	Internal orientation and a focus on bureaucratic rules rather than external orientation, with a focus on meeting citizens' needs and wishes.
Strengthening the role of representative democracy as the basis for the legitimacy of the state apparatus (at central, regional and local level).	Complementing representative democracy with means of consultation and direct expression of citizens' views.
Strengthening the role of administrative law as the basis for relations between citizens and the state, including equality before the law, legal certainty and detailed legal regulation of state interventions in social processes.	Modernising the legal system to ensure that resources within the administration are used in a results-oriented way rather than overly prescriptive. The focus of control is thus shifting from ex ante (input) control to ex post (output, outcome, impact) control.
Maintaining a well-defined status, culture and set of rules for the civil service.	The professionalisation of the civil service, which means that civil servants are becoming managers with professional competences in addition to legal expertise.

Source: author's compilation based on Rosta 2012a

The potential risk of Neo-Weberian state organisation is that organisations may be diverted from their original purpose, thus calling into question their legitimacy. In addition, anti-democratic elements may often be present in the functioning of such state organisations (Lynn 2008). Critics of this tendency argue that the 'checks and balances' on government power may not function properly and that the weight of the institutions that represent it may be diminished (Kovács 2014).

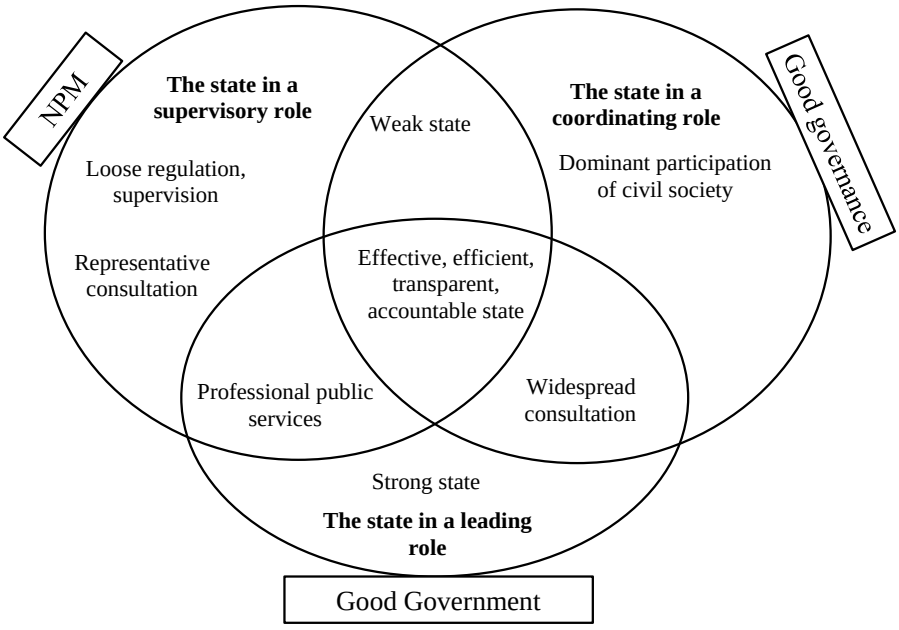
1.4. The relation between the theories

Overlaps can also be observed between the three tendencies. Transparency, accountability, and controllability of the state are considered important by all approaches, and the methods used are very similar at the organisational level. Perhaps the most striking example of this is the emergence of accrual accounting in the public sector, which is supported by all three strands. The difference lies in the role of the state: the NPM seeks to reduce the role of the state, the neo-Weberian approach seeks to strengthen it, while the Good Governance approach emphasises the role of the state in coordinating between different groups of society. However, apart from the role of the state, there are many similarities between the neo-Weberian state and other trends

(Chart 2). There is an overlap between the theories of the state, but they are not completely contradictory. The ultimate goal is the same: to create an effective, efficient, transparent and accountable state.

Chart 2

The relation between the theories



Source: author's compilation based on Tóth 2021, 218

The objectives set by the trends cannot be achieved without a properly structured and implemented accounting information system, which is why the development of an accounting system is an important element in any administrative reform.

1.5. How could the ultimate goals be defined?

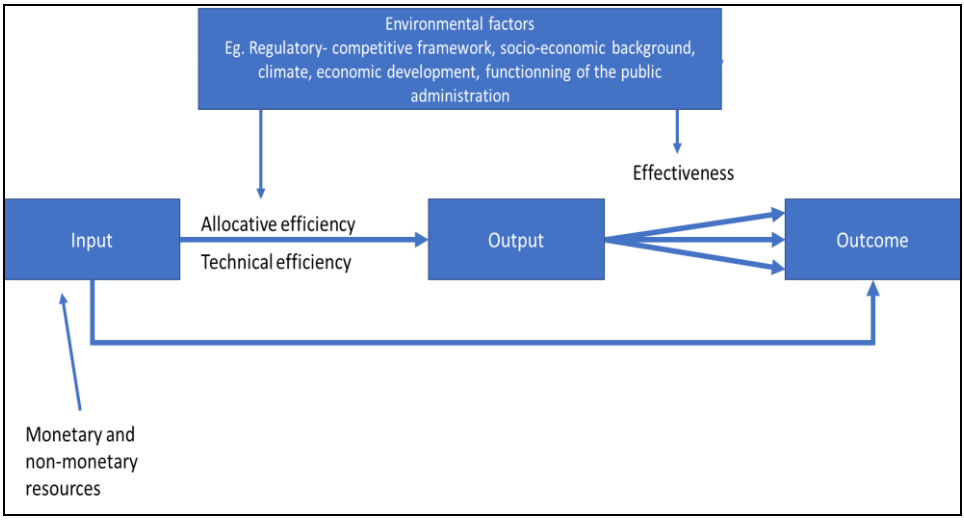
Transparency is understood as the requirement that the management of public funds should be accompanied by openness. In the principles of the State Audit Office of Hungary, great importance has also been attached to the control of the rules of the organised provision of tasks and the development of appropriate internal regulations. An important element of transparency is the timely fulfilment by organisations of their obligations to provide information and to disclose their public tasks as set out in their statutes. In addition, the organisation's managers should establish a traceable system for the flow of information within and outside the organization, which can be operated appropriately and securely (Domokos 2015).

Efficiency can be defined as the ratio of outputs generated to resources used. So, first and foremost, there is a need to properly measure inputs and outputs, and to track which resources are created to support which activities. It should also be pointed out that it is more difficult to quantify and monetise the value of factors of production in the public sector than in the private sector, and the same can be said for outputs (Mihaiu et al. 2010).

Effectiveness is a concept closely related to efficiency (Chart 3). While efficiency is related to the ratio of outputs to inputs, effectiveness can be described as the relationship between outputs and the effects induced. In practice, however, it is often only possible to compare impacts achieved with inputs, making it difficult to isolate the two concepts. It is important to be aware that efficiency and effectiveness do not depend only on the organisation of the state but are also influenced by various environmental factors which are difficult to isolate in the analysis.

Chart 3

Relation of the efficiency and effectiveness



Source: Mandl et al. 2008, 3

In addition to effective and efficient management, accountability is also an increasingly important factor in public finance analysis. Accountability is the requirement that public officials and decision-makers must be responsible for the resources they use and the powers they have (Mulgan 2000). Accountability encompasses the legal framework, reporting obligation organizational structure, strategy, procedures, and activities that ensure that the organization fulfils its legal obligations within a defined framework, under its publicly funded public mission and accountability as defined in its founding document (Domokos 2015).

In other words, the accounting system of the state should support the efficient use of resources, control the process of its use, and enable the persons and entities that

control the resources to have adequate information. In addition, it should also support the process of comparing alternatives, which can be facilitated by the management accounting methods described earlier. It is therefore of great importance that public assets, in all their specificities, are properly valued and that the processes that give rise to changes in them are timely and accurately mapped. The requirement to be up-to-date thus becomes important. Therefore, public sector accounting has become a critical element in the functioning of public finances.

2. How could accounting support the ultimate goals?

As we can see, modern states must aim to be accountable, transparent, efficient, and effective. To reach these goals, an appropriate accounting system is indispensable. This section highlights the main benefits of the adoption of accrual accounting and suggests some areas it can support the public sector to meet with these objectives.

2.1. Characteristics of accrual accounting

Accrual accounting is the only comprehensively accepted information system that provides a complete and reliable image of the economic and financial position and performance of the government (or any organization). It can capture the assets and liabilities as well as the revenue and expenses of an entity in a certain period. Accrual accounting can create a more accurate image from the events of the economy because it entails the creation of entries whenever economic value is created, transformed, or extinguished, regardless of any payment, while cash accounting only records transactions when the payment is done (European Commission 2013). Accrual accounting is timely in recording the accrued revenues and expenses and authorizes the broad assessment of financial position or periodic financial performance (Christensen et al. 2018).

Accrual accounting shows how an organisation is financed and whether activities met their cash necessities, while also providing an opportunity to evaluate the entity's ongoing ability to finance its activities and to meet its liabilities and commitments. Accrual accounting is easier to understand for external users of the information than the particular public sector reports. It provides the organisation an opportunity to display successful management of its resources, and it is useful in the evaluation of its performance. These benefits also allow taxpayers to measure and control the needs for taxes (Salleh et al. 2014).

As accrual accounting can provide a more up-to-date picture, it creates more punctual data on the costs and develops the cost-accounting. It also supports the development of the management of intangible assets and helps the improvement of internal and external audits (Tóth 2020).

As a consequence, accrual accounting supports the transparency and the comparability of different economic organisations, and with the proper recognition of the costs supports the effective and efficient management of resources.

2.2. How can management accounting be relevant in the public sector?

But what do we mean by management accounting? Management accounting is the set of activities that enable information users to make informed decisions by identifying, measuring and communicating economic information. Managerial accounting also seeks to produce future-oriented information, primarily to meet the information needs of stakeholders within the organisation. In this way, management accounting can directly influence the preparation and making of decisions, planning, evaluation, and control of activities (Prowle 2021).

As with other aspects, the toolbox of managerial accounting must consider the differences between the public and corporate spheres. The main difference is that profits that may arise in public organisations cannot be interpreted as a positive in the same way as in private sector organisations. They may signal that a public service is overpriced, or the population is overtaxed, neither of which is conducive to the creation of the public good. All of these observations should also be seen in light of the fact that some public sector institutions also have very broad functions and thus operate differently. For this reason, even within the public sector, it is not possible to create a single management accounting information system, and modified approaches must be adopted. Furthermore, unlike private sector, the public sector is typically not able to segregate its activities and must perform its tasks even if it can only do so at a loss or with low efficiency. The main differences between the two sectors are summarised in Figure 4.

Figure 4

Public organisations versus private organisations

Public organisations	**Private organisations**
Are usually monopolies	**Operating on competitive markets**
Serve the citizens	Maximize the investment's profit
Are driven directly or indirectly by politicians, which should reflect the interests of the citizens	Leaders of companies are responsible to shareholders, to the boards; they seek profit maximization
State organizations are more rigid due to the process of decision making and implementation	Are more flexible, easier to manage because the decision is taken by a single leader
Distribute, redistribute, and regulate resources	Produce and distribute resources
Are sometimes poorly funded, more or less	Are financed by their own productivity or by investment if such a decision is feasible
Citizens are often poorly informed and suspicious of government	Investors and shareholders are well informed, and the ongoing activities of the company and the market evolve

Source: Mihaiu et al. 2010, 133

The above suggests that different types of decisions in the public sector are subject to different decision-making logics, despite the growing importance of different social considerations in the corporate sector (Mihaiu et al. 2010). A further problem is that services are typically not sold (or, put differently, have no direct market value), and the

use of public resources typically has multiple objectives in parallel (Mandl et al. 2008). As a consequence, effectiveness and efficiency may be interpreted in different ways and thus require different managerial accounting information than in the private sector.

Thus, the measurement of profit and revenue may not be considered obvious, but the proper measurement and management of the use of resources (hence the recording of costs) is more so. The assessment of the costs of each activity or organisation can play a major role in preventing excessive deficits, allowing comparability between institutions (cost centres) carrying out similar activities, and allowing the financial impact of changes in service provision to be monitored. It can also provide a good starting point for pricing public services (Prowle 2021). Adequate estimation of the costs of services can be an essential element of effectiveness and efficiency studies, which can help inform decisions on service delivery choices and closely related to this, support the budget planning process (Sisa & Veress 2014; Prowle 2021). The potential applications of cost information are summarised in Figure 5.

Mikesell (2006) has highlighted the importance of benefit-cost analyses to reduce waste of taxpayer resources (Mikesell 2006), but also the role of political factors in decision-making processes (Brorström 1998), and the possibility that accrual-based data may prove to be even less meaningful than other accounting information (Pollanen & Loiselle-Lapointe 2012). Thus, the production of new data alone cannot improve efficiency.

Figure 5

Relevant areas for cost information in the public sector

Area	Description
Activity cost analyses	Cost information can be useful for determining the cost price of certain products or services, or for examining which activities generate losses. It can also be used to assess how an organisation's results change when it changes its output.
Budget reporting	An accurate knowledge of cost information is a major contribution to improving the quality of financial planning. Budgets become more predictable so that funding needs can be assessed more accurately.
Pricing	The pricing of public services is an important issue for public sector organisations. Although the purpose of pricing is fundamentally different from that of the corporate sector, estimating the value of the resources used to produce them and ensuring their return is not a secondary consideration.
Performance improvement and benchmarking	Changes in costs can be compared with the costs of other similar organisations. Such studies can help to improve organisational efficiency. This approach allows 'make or buy' decisions to be made, i.e., it can help to assess which activities are worth outsourcing and which are worth carrying out in-house.
Strategic financial planning	Cost information can help evaluate the impact of strategic decisions and organisational changes.

Capital investment appraisal	Public sector organisations also need to allocate capital for investment and new activities. A good understanding of costs is important for capital injections of a strategic nature, as well as for capital injections for operational tasks.

Source: author's compilation based on Prowle 2021

2.3. Why does managerial accounting have a marginal role in the public sector?

Prowle (2021) also points out that there are several limitations to the inclusion of cost analyses. One reason is that public sector organisations mostly create services rather than products. Public services, by their very nature, have some of the fundamental characteristics of services, such as intangibility, inseparability, transience (services are not stockable), or variability in quality. These make it difficult to define the product to which costs are assigned (for example, in the case of a hospital, the relevant cost unit may be a patient, a disease or a treatment). Another problem is that services are typically labour intensive. In practice, however, it is difficult to attribute the actual labour used to a specific activity or output. In addition, the high value of indirect costs adds to the difficulties. Although cost allocation methodologies are typically defensible, in many cases they are not sufficiently sophisticated to accurately allocate indirect costs between activities.

The analysis of the range of input sources in the public sector is also complicated, and this is particularly the case for indirect costs and opportunity costs (Mandl et al. 2008). Nevertheless, the analysis of efficiency cannot be disentangled from the problem of determining the value of outputs. Similarly, the judgement of efficiency is also variable, as the effects of individual activities are strongly influenced by wider economic and social factors.

Accurate estimation of the costs of production is difficult even under the output approach. The assessment of the effectiveness and efficiency of activities is also hampered by the difficulty of linking individual revenues and costs to an output. Another problem is that public sector activities often have indirect social impacts that cannot be monetised. Examples include health services and education, where the monetary value of positive impacts (e.g., increasing healthy life expectancy) is difficult to assess, and many externalities should not be overlooked. Furthermore, private sector organisations are free to choose their activities, keeping the profit-making process, whereas in the case of the state, there is no such choice due to the social importance of public services, i.e., services must be provided even at a loss (Mihaiu et al. 2010).

Flury and Schedler (2006) labelled as impossible to design accounting systems that focus on costs and performance for the internal management of a purely profit-concerned organization. They point out that managers and politicians in organisations are interested in different types of information. Stakeholders in organisations tend to focus on the original, decision-support functions of managerial accounting elements, while politicians are specifically interested in the total cost of an activity. As the latter group also has a role in shaping the accounting system used, it may even deviate from the ideal in the theoretical accounting sense.

Nevertheless, there may be more practical reasons that prevent management accounting from becoming established in the public sector. For example, there may be a

lack of relevant training, or a lack of human resource capacity, which means that public sector organisations do not have the staff to deal with the tasks beyond the mandatory reporting. Moreover, there is no guarantee that even if relevant information is generated (or if it is compelled by regulation), it will be used in decision-making.

In conclusion, although the opportunities offered by management accounting are one of the most attractive arguments for the introduction of accrual accounting, it is an approach that is less usable in practice. In addition to the selection of appropriate management accounting methods, great attention should be paid to the selection of appropriate areas of application. Thus, it is too much to expect the reformed government accounting information system to be able to support a detailed assessment of each activity. As is the case in the corporate sector, management accounting in the public sector should not be extended to the whole organisation but should be focused on a single activity. This approach can be used to assess the effectiveness of an institution performing a similar function, or to assess whether it is worth outsourcing a particular activity or carrying it out by the organisations of the public sector.

Conclusion

In this study, we have seen that post-Weberian theories share several common features, despite their different ideological foundations. The most significant of these is the motivation to achieve transparency, accountability, effectiveness, and efficiency. These goals can only be supported by an appropriate accounting system. The literature reviewed agrees that the accrual approach can support these objectives.

It can produce more accurate information on the costs of individual activities by providing a reliable and realistic picture. This allows better decisions to be made and performance to be evaluated. However, in many cases these expected benefits are not realised due to different theoretical or practical reasons.

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MEDICAL ON-CALL REFORM IN HUNGARY: AN INEFFICIENT SOLUTION TO THE PRIMARY HEALTH CARE SYSTEM*

Máté Sándor Deák[1] *– Lovas Dóra*[2]

The current form of the Hungarian general practitioner ('GP') system is unsustainable, as it is still unable to perform its role as a gatekeeper. Doctors working as retirees, the irreplaceable human resources, unorganized patient pathways, increasing workload, and untapped professional capacity result in a hospital-centric health care system while outpatient and inpatient clinics are unable to perform their original function, and increasing waiting times in all sectors of the sector weaken patients' confidence in healthcare. On the one hand, these problems raise dilemmas about the inefficient use of public money, on the other hand, the need for an organized integration of private health into the current structure. The state is also working to reduce the growing burden on GPs, however, a lack of experience often gives rise to solutions that tend to escalate the current situation.

Introduction

The basis of continuously available health care is the general practitioner and the pediatrician, who, together with the medical on-call services, must provide the needs and requirements of the residents of the practice 24 hours a day. The territorial care system includes the care obligation of the resident of the area. When organizing care, it must be taken to ensure that care is available at well-planned times. The walls of the GP system have been collapsing for a long time, and the most obvious evidence of this has been the inadequate functioning of the central on-call system. In the case of on-call care, every minute counts, it is important that the patient has access to life-saving and prevention of serious or permanent damage to health as soon as possible (The Fundamental Law of Hungary, Article XX). One consequence of the increasing workload on primary care is increased waiting times, which, however, are most unacceptable and can claim lives in emergencies. At the beginning of 2021, plans to reform the central on-call system were launched, including the fact that the systems maintained in parallel were unnecessary (ambulance, GP, emergency care) and that conflicts between the municipalities forced into the alliance caused most of the problems. In the opinion of the decision-makers, therefore, this is an organizational inadequacy and not a lack of financial resources.

The current structure is unsustainable and this is mostly due to organizational inadequacies, however, the solution chosen is, in our view, not only appropriate to the roots of the problem, but also to symptomatic treatment.

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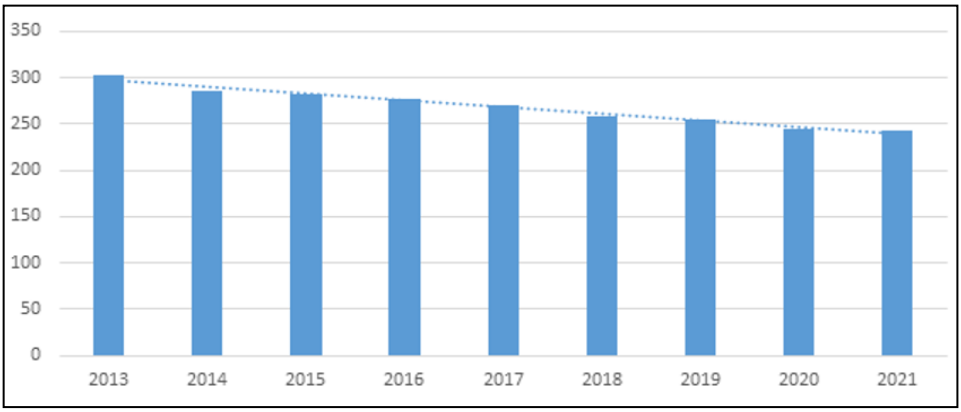
Figure 1

Number of GP surgeries nationwide



Source: NEAK (Nemzeti Egészségbiztosítási Alapkezelő, 2022.)

After all, the biggest fault of the on-call system was the loss of efficiency in cases of the increasing workload of already overburdened GPs, often retired, while the burden on a care system (ambulance service) with a similar problem was without adequate financial and human resources and consistent organizational solutions.

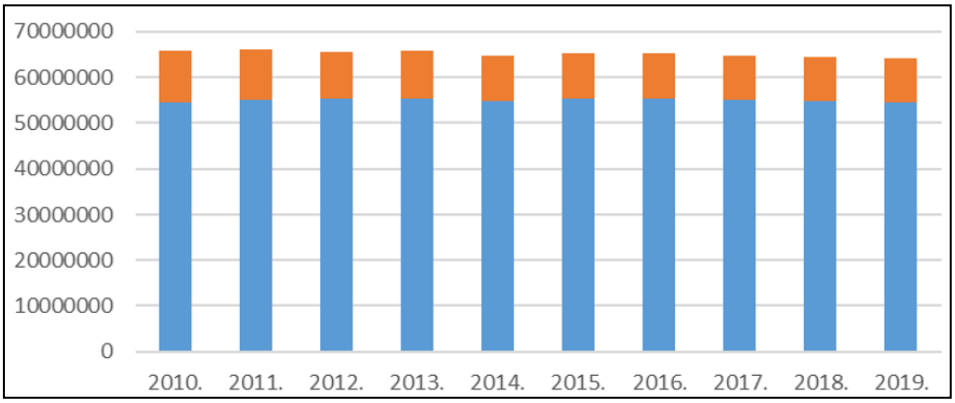
1. Veterinary horse of the reforms: On-call duty

The National Ambulance Service (Országos Mentőszolgálat, hereinafter OMSZ) is a central budgetary body under the authority of the Minister for Health, which divides the country into seven regional centers. OMSZ's participation in on-call care is not new. According to the Government Decree of 2004, in the framework of primary care, the out-of-order performance of general practitioner duties must be performed through an on-call service or a central emergency service, in which case the general practitioner cooperates with the ambulance service (47/2004. (V.11.) ESzCsM decree).Currently, the central medical on-call system is part of the primary care of the general practitioner, which helps to perform the “gatekeeper” function of this layer by taking a significant burden off the shoulders of the inpatient care system. According to the plans, following the successful pilot project in Hajdú-Bihar County, the on-call services would have ceased to exist by 2022, and district centers under the auspices of the OMSZ would have been established.

The importance of the reorganization is rooted in the fact that the lack of human resources in primary care is also felt during the provision of services. Most GPs retire, so there are age-related drop-outs and workloads. In addition, pediatricians are more affected, as they cannot be replaced by other doctors due to legal constraints, so their activities can be concentrated in fewer places.

Figure 2

Number of GP patients between 2010-2019



Source: NEAK

The aim of the change is to reduce the number of on-call sites (by establishing district centers), in the coordination and efficient operation of which the OMSZ would play a dominant role. The basic idea is not from the devil, and the involvement of the ambulance service in organizational matters in this way could be positive, but due to low salaries, lack of infrastructure, and lack of professional esteem, this organization also has difficulty in performing its tasks. This is also shown by the fact that from 2022 the central watch system was not operated by the OMSZ.

2. Funding issues

The services are financed from the Health Insurance Fund, as are other areas of health care. The basic amount of remuneration is HUF 42 per person, which varies by the multiplier specified by law (Article 19 43/1999. (III.3.) Government Decree).

In settlements with a population of up to 40,000, out-of-hours general medical care can be provided through a central duty, in which case the health care provider is entitled to an increased fee (especially in addition to the provision of a dispatcher service). However, despite the increase in GP salaries in 2021, the central emergency department will not be able to compete with the outsourced hourly rates for emergency care wards as well as inpatient wards.

Thus, the mandatory fulfillment of adequate general medical care required by local governments in the Act on the Local Governments of Hungary (Article 13(4) Act CLXXXIX of 2011) also imposes a significant burden on local entities, as they are often forced to balance it due to low funding. However, the quality of GP care depends on the economic strength of the municipality.

While according to NEAK data, there are 665 vacant GP practices in March 2022, this number is “only” 645 in June 2021, of which 24 have been vacant for nearly 15 years, 60 for more than 10 years, and 160 for more than 5 years. It appears that the 70% increase in the level of primary care wages since 2010 is not enough to deal with vacant practices, which is a problem in on-call care, among other things. The government's

solution, in addition to placing central services in the OMSZ, is to support the encouragement of communities of practice to address not only primary care problems but also to transfer some of the outpatient care to this scheme.

In our view, however, enforcing this form of cooperation also raises dilemmas. The rate of the increase in the salary of a general practitioner was made dependent by the legislator on the rate of cooperation (close 100%, loose 80%, no 30%). With the narrowing of the range of opportunities, the profession, which is already struggling with a lack of human resources, has received another blow. As a general rule, European Union law provides for a general prohibition of State aid, as provided for in Article 107 (1) TFEU. Only subsidies which come from State resources in such a way that they confer an economic advantage on those concerned and are not granted in a general manner (selective) and that the aid affects or is likely to affect competition and trade between the Member States are prohibited. However, primary health care falls within the category of services of general interest, which is not covered by the EU framework (nor Article 107 TFEU) but must be governed by the provisions of the Member States, so that the solution adopted by the legislator does not constitute a prohibited subsidy (Articles 14 and 106 TFEU, and Protocol No. 26 attached to the Treaty of Lisbon).

3. Hajdú Bihar County: Sample project

There are eighty-one municipalities in Hajdú-Bihar County and the area had twenty-one duty centers. In the pilot project launched in the summer of 2021, ten district centers under the control of the OMSZ would have been established instead of the latter, which will be operated from Debrecen and Hajdúszoboszló. It is planned that from January 2022, this structure would have prevailed throughout the country, however, the problems and difficulties that arose did not allow it.

In our opinion, the transformation is necessary and under the direction of the OMSZ, not only cost reductions would be achieved, but the reorganization would provide patient care and emergency care. The reason for this is that the current form of the GP system is unsustainable, due to the lack of human resources and the professional staff working as retirees.

4. Rescue officers

The new system is based on ambulance officers (health professionals with higher education). Involving them in on-call care strengthens effective patient care, as they can perform most medical interventions, but they are also rooted in their greatest limitations, as they do not include needs that are as common as prescribing or a funeral visit.

Another problem is that the new system has been set up so quickly that it is difficult to carry out the increased tasks while increasing the shortage of human resources.
In our view, more experienced rescue officers would be needed and some of the legal restrictions could be reconsidered in order to effectively ensure adequate patient care.

5. Organization and information

In Hajdú-Bihar county, two companies performed on-call tasks: az Országos Orvosi Ügyeleti Kft. (National Medical Services Ltd.) és a Debreceni Alapellátási és Egészségfejlesztési Intézet (Institute of Primary Care and Health Development of Debrecen).

These organizations employed GPs who were on call in the county. After the OMSZ took over, the channeling of the former GPs into the new system was (and still is) extremely slow, which also made it difficult to implement an effective on-call system. The effectiveness of the reorganization, which began barely half a year ago, is further weakened by the fact that patients have difficulty adapting to changed circumstances. For example, an old phone number that is no longer in use is often called.

6. IT development

In order to minimize costs and perform tasks efficiently, a modern IT infrastructure is required, which ensures a proper connection between the OMSZ and the general practitioners and patients.

As the on-call service is used in an emergency, there would be a need for quick and easy IT services and support for the work of the OMSZ. The current system is outdated, unsuitable for responding to the challenges of the age, so an IT investment that is currently costly but profitable in the long run would be good.

7. Financing

As a result of the Health Service Legal Relations Act (Act C of 2020), the salaries of GPs have increased significantly. The consequence of wage increases is that fewer and fewer doctors are on duty (in addition to performing their basic duties). In contrast, the wages of nurses have not changed, so those with experience often look for a more lucrative job, which makes it difficult for young people to transfer knowledge easily and quickly.

Summary

The reorganization of the on-call system is important as there is a shortage of human resources in primary care. Most GPs are retired, so they are expected to be out of work and less burdened by work. In our opinion, the organization of the on-call system under the control of the OMSZ would be suitable for solving some of the current problems affecting primary health care, however, the existing legal constraints and the inconsistency of implementation lead to systemic problems. This, in turn, delays changes to the on-call system at the national level. In our opinion, it would be worth considering extending the powers of ambulance officers, raising the salaries of OMSZ employees, and implementing modern IT solutions to reduce the burden on the general practitioner system, which is struggling with a lack of human resources and thus improve the efficiency of on-call care.[3]

[3] Certain parts of the research leading to this paperwere conducted in the framework of Project no. 134499 titled 'Increasing government intervention in market regulation' has been implemented with the

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"PARTICULARLY VULNERABLE": AT-RISK CONSUMERS IN THE EUROPEAN UNION CONSUMER PROTECTION REGIME*

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In a previous article, I explored the notion of the average consumer as defined in European Union law and its interpretation by the European Court of Justice. This current article aims to serve as a continuation of the previous study, with the objective of presenting a brief analysis of two potential interpretations of consumer vulnerability developed in the literature of consumer protection, followed by an examination of the appearance of a singular major exception to the average consumer concept within the European Union consumer protection regime: the narrow scope of consumers acknowledged as 'particularly vulnerable'.

1. Interpreting Consumer Vulnerability

The European Union's default benchmark of the reasonable and empowered average consumer can be examined in contrast with the notion of consumer vulnerability. While the importance of the concept is a common thread in the literature of European consumer protection law, there are significant disagreements in how exactly the vulnerable consumer standard should be applied in practice (Luzak 2016, 1-2). Two of the contrasting interpretations are worth briefly mentioning here, due to their arguments dealing with issues related to the provision of financial services to consumers.

Irina Domurath argues that vulnerability should replace the traditional information paradigm completely as the normative standard in the field of consumer credit and mortgage law – a segment of the financial services sector characterized by some of the most complex business-to-consumer transactions. This approach is predicated on three key arguments: first, the lack of actual freedom of contract in consumer law due to the stronger bargaining and market position of the commercial party. Second, the concept of the average consumer not being rooted in factual evidence, considering both the fact that actual consumers do not exhibit rational market behavior and the shortcomings of the information paradigm when the quantity and complexity of available information become overwhelming to the consumer. Finally, the lack of an EU model of social justice due to a preference for an 'access justice' approach – that is, justice interpreted as providing consumers with free and non-discriminatory access to the market – in order to protect the objective of internal market freedom (Domurath 2018, 133-35).

Norbert Reich, on the other hand, argues that the concept of vulnerability should be restricted to certain identifiable groups of consumers. These include physically and intellectually disabled consumers – two groups traditionally regarded as particularly vulnerable in business-to-consumer relations – and poor or 'economically marginalized' consumers; a group that is talked about much less often in the context of vulnerability.

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This approach bases economic vulnerability on studies showing that over-indebtedness leads to those living in poverty having to pay risk premiums to access a large number of goods and services, often including essential services such as energy, telecommunications, and housing. In the context of access to financial services, *Reich* posits that only those consumers *"who are in need of basic financial services and who, because of their economic situation, do not have access to them at all or who only have such access at unreasonable prices"* should be considered vulnerable (Reich 2018, 143-45). Regardless of their differences, these two approaches share the notion that the vulnerable consumer concept can constitute an important addition to European consumer law, particularly when it comes to the provision of financial services to customers.

Furthermore, the idea of vulnerability should also be contrasted with the more traditional concept of the disadvantaged consumer. The application of these two approaches to disempowerment (generally defined as a weakening of the position of consumers in the market) often yields similar results but the concept of disadvantaged consumers operates solely on the basis of socioeconomic factors (such as poverty, advanced age, lower educational attainment or belonging to a minority group). In comparison, the vulnerability concept posits that equating consumer disadvantage with the presence (or absence) of certain clearly defined socioeconomic factors does not align with actual consumer behaviour and will not therefore be suitable for identifying and addressing all forms of disempowerment (Commission 2011, 6-7). The vulnerability approach interprets consumer powerlessness as arising not only from the characteristics of the person, but from the interaction of these characteristics with a consumption situation. While different interpretations of vulnerability vary in their focus on different internal or external factors, the interactional nature of vulnerability remains a common thread. This focus on the interaction between the consumer's personal characteristics and marketing practices allows the vulnerability approach to be both more robust and more mindful of consumer agency in comparison with an interpretation of disadvantage based entirely on consumers objectively belonging to a particular group (Baker, Gentry & Rittenburg 2005, 128-29).

As *Peter Cartwright* points out, the term 'vulnerability' is not without issue, either. Some authors find that labelling particular consumers vulnerable is stigmatizing, creating the impression of a divide between 'vulnerable consumers' and 'the rest.' One solution to this issue is to consider vulnerability as relative and dynamic – an approach that is also compatible with our focus on the importance of marketplace interactions – and to recognize the vulnerability of different consumers in different circumstances instead of treating vulnerable consumers as a homogeneous group (Cartwright 2015, 119-38).

2. Consumer Vulnerability in European Union Law

We should touch upon the question of how the vulnerable consumer category found its way into Community law next. First, it is worth mentioning that while the majority of the ECJ's case law followed the information paradigm closely, there were a few cases when the Court took a more protective approach: the earliest and most impactful of these decisions being the Court's 1989 judgment in *Case C-382/87 Buet* (Waddington

2014, 14). In *Buet*, the Court found that a French regulation prohibiting the door-to-door sale of educational material did not constitute a disproportionate restriction of the Treaty provisions on the free movement of goods, given that *"the potential purchaser often belongs to a category of people who, for one reason or another, are behind with their education and are seeking to catch up. That makes them particularly vulnerable when faced with salesmen of educational material…"*

The Court's decision in *Buet* is very limited in its scope, only applicable in the specific context of the canvassing of educational material, and while a small number of later ECJ judgments (such as the decision in Case *C-441/04 A-Punkt Schmuckhandel v. Claudia Schmidt*) present similar arguments, the approach taken in these cases always remained an exception to the general rule of interpreting the consumer as reasonably circumspect, applicable only in cases where the Court examined national legislation that provides extra protection to a narrow and specific group of consumers (Domurath 2018, 126-27). Furthermore, with the EU's more recent consumer protection legislation leaning towards a total harmonization approach – both in general and in the specific context of off-premises sales – it is doubtful whether a case similar to *Buet* would lead to the same outcome (Reich 2018, 140-141).

Beyond these isolated cases, the vulnerable consumer concept has appeared in European Union legislation in the field of services of general economic interest (SGEIs). SGEIs were first defined by the European Commission as *"market services subject to specific public service obligations by virtue of a general interest criterion"* and later as *"economic activities which deliver outcomes in the overall public good that would not be supplied […] by the market without public intervention."* While Member States generally enjoy wide discretion in defining what exactly qualifies as an SGEI, this discretion is considerably narrower in areas where EU regulation exists: this includes services such as the supply of electricity, gas, water, postal services, telecommunications and may even extend to certain financial services: the Commission's 2011 recommendation on access to a basic payment account is based on the explicit acknowledgement that access to basic banking should be considered a SGEI, considering its importance *"for financial and social inclusion and to allow consumers to benefit fully from the single market."*

This idea of extending public service obligations to basic banking services is also argued for in literature based on the legitimate expectations of consumers and the enhanced corporate responsibility of banking service providers (Cartwright 2014, 134-35). While the broader category of services of general interest (SGIs) also includes non-economic services (such as social services, public health and social housing) that are not subject to EU internal market and competition rules, SGEIs are economic activities characterized by public intervention in their respective markets to ensure universal, continuous, equal – and in certain cases transparent and affordable – access (Johnston 2018, 99-100).

Beginning in the 1980s, market-oriented public service reforms across the EU led to deregulation, privatization, and trade liberalization in SGEI markets, promising greater choice and lower prices for consumers (Clifton, Díaz-Fuentes & Fernández-Gutierrez 2019, 267). During this period, the consumer was primarily seen as simply a market participant, and consumer protection considerations within the field of SGEIs appeared only on rare occasions, such as in the Court's decision in *Case C-320/91 Corbeau*,

(Johnston 2018, 109) in which the Court emphasized that a postal service monopoly that is *"entrusted with a service of general economic interest"* has a universal obligation to provide its service *"at uniform tariffs and on similar quality conditions, irrespective of the specific situations or the degree of economic profitability of each individual operation."*

It is against this backdrop of SGEI market liberalization that we can notice the greater recognition of consumer protection issues and the gradual development of the vulnerable consumer concept in Directive 2002/22/EC (Telecommunications Universal Service Directive), as well as the Second[2] and particularly the Third Internal Energy Market (IEM) Packages.[3] The Telecommunications Directive did not yet refer explicitly to a certain range of consumers as 'vulnerable' but placed a public service obligation on Member States by recognizing the right of all consumers to a contract with an undertaking providing public telephone services. The Second Electricity and Gas IEM Directives opted to use the terminologically ambiguous category of the 'vulnerable customer' as they established a wide-ranging public service obligation – in the case of the Electricity Directive, a universal service obligation – requiring Member States to ensure the provision of gas to all customers connected to the grid and the provision of electricity to all household customers at an affordable and non-discriminatory price and of a specified quality (Domurath 2018, 128-29). In implementing these obligations, Member States must ensure *"high levels of consumer protection"* and in particular, *"that there are adequate safeguards to protect vulnerable customers."* Since the Directives do not provide a concrete definition of the term, it is up to the Member States to specify the groups of energy customers that are to be deemed vulnerable (Johnston 2018, 116-117).

The Third IEM Directives were the first to contain a direct reference to 'vulnerable consumers' as such: the preambles to both the Electricity and the Gas Directives mention the importance of further strengthening the public service requirements established in these areas *"to make sure that all consumers, especially vulnerable ones, are able to benefit from competition and fair prices."* Furthermore, the public service obligations were expanded with more specific guidelines on how Member States should interpret vulnerability and through what methods they should address its consequences: these include referring to 'energy poverty' when defining vulnerable customers, the prohibition of disconnecting services to these customers in 'critical times,' and taking the appropriate measures to protect customers in 'remote areas' (while this final category had already been mentioned in the Second Package, here it changed from an optional consideration to an obligation of Member States). However, these categories were not explicitly defined in the Directives either; as such, wide discretion remained at

[2] Consisting of Directive 2003/54/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in electricity [2003] OJ L176/37 (Electricity Directive) and Directive 2003/55/EC of the European Parliament and of the Council of 26 June 2003 concerning common rules for the internal market in natural gas [2003] OJ L176/57 (Natural Gas Directive).

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Member State level (Johnston 2018, 117). Finally, Annex I of both Directives contains a limited range of more specific consumer protection measures concerning the basic contractual rights of final customers in the gas and electricity markets and the commitment of Member States to the implementation of intelligent metering systems.

These consumer protection considerations were finally brought to the forefront of regulatory attention with the entry into force of the Fourth Electricity Directive[4] in 2019. Article 3 of the new Directive requires Member States to ensure the *competitive, consumer-centred, flexible and non-discriminatory* functioning of their electricity markets as a general organizational rule. While the legislator is still primarily motivated by market considerations – as exemplified by the emphasis on rules such as the free choice of supplier and the freedom of suppliers to determine their prices, and by the continued use of the 'final customer' terminology in the majority of provisions signifying their applicability on both household and commercial customers – the Directive also sets out the requirements for a 'consumer-centred' market in specific detail in its Chapter III entitled 'Consumer Empowerment and Protection.' Chapter III incorporates and greatly expands the measures that previously appeared in annexes to the Directives and as guidelines for the provision of public service obligations. With regard to the basic contractual rights of customers, Article 10 introduces a range of new measures to protect the interests of household consumers and particularly, vulnerable ones; these include requirements that customers *"be provided with a summary of the key contractual conditions in a prominent manner and in concise and simple language"* and that *"suppliers shall offer final customers fair and transparent general terms and conditions, which shall be provided in plain and unambiguous language and shall not include non-contractual barriers to the exercise of customers' rights, such as excessive contractual documentation. Customers shall be protected against unfair or misleading selling methods."*

Article 28 deals specifically with vulnerable customers: while the definition of the concept remains the responsibility of the Member States, the Directive includes a more extensive set of guidelines than before, incorporating in particular certain potential sources of vulnerability such as *"income levels, the share of energy expenditure of disposable income, the energy efficiency of homes, critical dependence on electrical equipment for health reasons, age or other criteria"* while also reprising previously established categories such as energy poverty, critical times and remote areas. Finally, Article 29 requires Member States to establish and publish their sets of criteria used for the assessment of the number of households in energy poverty, taking into account factors such as *"low income, high expenditure of disposable income on energy and poor energy efficiency."* Given that the Directive sets 1 January 2021 as the deadline for transposition into national legislations, all Member States can now be expected to be in compliance with these heightened standards of consumer protection in the electricity market.

This approach moves beyond the view of consumers as purely rational entities whose market participation serves to maximize their individual utility and considers their heterogeneity; that some of them may not be in a position to access the purported

[4] Directive (EU) 2019/44 of the European Parliament and of the Council of 5 June 2019 on common rules for the internal market for electricity [2019] OJ L158/125

benefits of market reform (Clifton, Díaz-Fuentes & Fernández-Gutierrez 2019, 267-68). While the limited scope of these Directives means that they provide a higher standard of protection to consumers only in the context of the provision of services of general economic interest, the more protective approach taken here has the potential to influence future legal instruments in the field of consumer protection.

The earliest piece of legislation within the narrower field of consumer protection to explicitly refer to the vulnerability of certain consumers was the Unfair Commercial Practices Directive (2005/29/EC). Article 5 of the Directive calls for additional protection against those *"commercial practices which are likely to materially distort the economic behaviour only of a clearly identifiable group of consumers who are particularly vulnerable to the practice or the underlying product because of their mental or physical infirmity, age or credulity in a way which the trader could reasonably be expected to foresee."*

A similar provision appears in Recital (19) of the Preamble to the Directive. While the Directive uses the term 'particularly vulnerable consumers,' the definition it establishes refers to a 'clearly identifiable group' based on a small and exhaustively defined set of characteristics (mental or physical infirmity, age or credulity), and as such it is largely static in nature: a consumer is either considered vulnerable in every business-to-consumer interaction or not vulnerable at all.

This conceptualization of vulnerability omits many potential causes of vulnerability – such as poverty – and only differs from the traditional 'disadvantaged consumer' approach in the choice of terminology, having little in common with the dynamic and relational approaches developed in literature (Cartwright 2014, 127). This might prove particularly problematic in the field of financial consumer protection, considering that financial markets are so complicated and the service providers operating in these markets offer their services with such complex terms and conditions that, in practice, consumers are generally unable to meet the standard of a reasonable and well-informed 'average consumer.' In line with *Domurath's* earlier-referenced argument, it seems reasonable to claim that this area would benefit considerably from legislation adopting a more dynamic approach from literature that would allow for any consumer to be considered vulnerable with regard to the particularities of a specific business-to-consumer interaction.

The Commission's later guidance documents on the application of the Unfair Commercial Practices Directive provide further context to the evolving interpretation of the Directive's provisions. The first guidance document, released in 2009, makes reference to the concept of 'weak and vulnerable' consumer (Commission 2009): while the legislator opted against using it as the generally applicable standard, the inclusion of the concept was still deemed necessary to protect all types of consumers. The document then elaborates on the criteria used in Article 5 to define vulnerability: *mental or physical infirmity* may include sensory impairment, limited mobility and other disabilities; *age* may be considered both from the perspective of older (elderly people) and younger consumers (children and teenagers); while *credulity* is a neutral term that covers any consumer 'who may more readily believe specific claims.' (Commission 2009, 28-29) A limit to the vulnerability concept is the requirement of *foreseeability:* businesses are not held responsible for consumers being misled or acting irrationally

due to such an extreme level of naivety or ignorance on their behalf that the seller could not have been reasonably expected to foresee.

The second guidance document (Commission 2016b), released in 2016, introduces a new, multi-dimensional interpretation of consumer vulnerability based on the Commission's 2016 study on vulnerability across key markets (Commission 2016a). According to the study, consumer vulnerability can be defined along five core dimensions: consumers facing a heightened risk of negative outcomes or impacts on their well-being; consumers having characteristics that limit their ability to maximize their well-being; consumers having difficulty in obtaining or assimilating information; the inability or failure of consumers to buy, choose or access suitable products; and the higher susceptibility of such consumers to marketing practices. According to the guidance document, the fifth dimension – consumers being more susceptible to certain marketing practices – is the most relevant to the approach used by the Directive, closely matching the definition given in Article 5 ('particularly vulnerable to the practice or the underlying product') but in practice, the majority of consumers show vulnerability in at least one dimension while a third of consumers are vulnerable in multiple dimensions (Commission 2016b, 43).

Directive 2011/83/EU (Consumer Rights Directive) only mentions vulnerability briefly in Recital (34) of its Preamble, adopting the definition introduced in the Unfair Commercial Practices Directive: *"the trader should take into account the specific needs of consumers who are particularly vulnerable because of their mental, physical or psychological infirmity, age or credulity in a way which the trader could reasonably be expected to foresee."* The Directive does not elaborate further on this provision besides establishing its limits by noting that *"such specific needs should not lead to different levels of consumer protection"*; the Commission's 2014 guidance document is similarly reticent on the topic. As per the Commission's recent announcement, it will release new guidance documents to both Directives by 2022 as part of its New Consumer Agenda, set in action in November 2020. Since consumer vulnerability is considered one of the five key areas of the Agenda,[5] there is hope that the new documents will promote a more empowering approach towards the interpretation of the provisions on vulnerable consumers.

Conclusions

The power imbalance inherent in business-to-consumer interactions is further exacerbated in the case of certain consumers due to personal factors such as age, over-indebtedness or disability. The additional protections provided by the vulnerable consumer concept could prove particularly useful to these consumer subgroups, especially in the context of problematic sectors – such as the consumer financial services market – either applied on a case-to-case basis as an extension to the standard of the "reasonable and empowered" average consumer to protect the interests of those most at risk from certain commercial practices or potentially replacing the current

[5] It is worth mentioning that one of the specific objectives within this key area – *improving the availability of debt advice services in Member States* – is directly aimed at the previously mentioned 'particularly problematic sector' of the financial services market.

average consumer standard completely. To help identify cases of consumer vulnerability, detailed guidelines utilizing categories similar to the ones seen in the case of energy markets – such as "energy poverty", "critical times" and "remote areas" – could also be developed for other consumer markets, based on those characteristics that have the greatest potential to adversely affect the ability of consumers to make informed decisions in a specific sector.

While the term "particularly vulnerable consumers" has already made an appearance in EU consumer protection legislation, the current approach omits many potential causes of vulnerability – such as poverty – and only differs from the traditional 'disadvantaged consumer' approach in the choice of terminology, having little in common with the dynamic and relational approaches developed in literature. This might prove particularly problematic in the field of financial consumer protection, considering that financial markets are so complicated and the service providers operating in these markets offer their services with such complex terms and conditions that, in practice, consumers are generally unable to meet the standard of a reasonable and well-informed 'average consumer'. In line with *Domurath's* arguments referenced earlier, it seems reasonable to claim that this area would benefit considerably from legislation adopting a more dynamic approach from literature that would allow for any consumer to be considered vulnerable with regard to the particularities of a specific business-to-consumer interaction.

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WHAT ARE THEY DOING IN THE SHADOWS? IMPRINTS OF THE PREVALENCE OF INTIMATE PARTNER VIOLENCE[*1]

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The coronavirus epidemic has also opened a new chapter concerning cases of domestic violence – social and economic tensions, isolation, the difficulty of accessing external help, and the increase in alcohol consumption seemed to fill the gaps in the walls that had widened due to years of hard work. To illustrate, in several cases around the world, an increase of up to 25% was observed in countries with signalling systems (UN Woman 2020), while in Brazil, the number of domestic violence cases increased by 40–50%, in Cyprus and Spain, according to the reports of the respective states helplines received 20–30% more calls in the first days of the quarantine. In the United Kingdom, after strict curfews were introduced, the authorities received 25% more calls related to domestic violence (Sharma & Borah 2020, 759).

Introduction

However, intimate partner violence is no longer shrouded in obscurity despite the tense circumstances. The appreciation of the criminal offence in question has changed radically due to the support from the government and the civil sphere during the epidemic (Kormány.hu 2020; NANE.hu 2022), and the cases are becoming more and more visible towards the tenth anniversary of the criminal offence, with almost nine years of law enforcement practice behind us.

The paper endeavours to outline the current picture of intimate partner violence by processing and analysing statistical data, which project the image of a criminal offence that is increasingly emerging from invisibility.[3] The examination opens with some thoughts on domestic violence as a phenomenon, which provides the framework of the examined criminal offence, and its raison d'être. Subsequently, reflecting on the ideas cited in the present part of the paper, it is followed by a summary of the nine years of intimate partner violence and a collection of the impressions of its prevalence, processing the latest statistical data according to the set criteria. Considering that the paper was written in the spirit of displaying the greater or lesser results of the accumulated experiences with regard to intimate partner violence, the criminal offence that arises from its invisibility, it will be closed with a shorter conclusion, similar to this introduction.

1. Thoughts on domestic violence

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[3] „...this criminal offence is mostly invisible as if it does not exist." Garai 2017, 186.

The concept of domestic violence is basically used to denote acts of violence between family members and intimate (sometimes former) partners, typically – but not exclusively – taking place at home; however, the diverse definitions interpret the scope of the phenomena deemed to belong here quite differently (Virág 2006, 380; Szöllősi 2005, 23–39). The narrower perception refers to the abuse within a partnership. At the same time, a broader interpretation encompasses all violence between people living in a joint household or between relatives, including those brought up in a 'family-like situation', and also covers the so-called also systemic abuse, which affects those living in institutions; besides, the 'middle way' approach classifies abusive behaviours that appear in this 'arrangement' (by which we mean the family)[4] as the expressions of domestic violence (Virág 2006, 380–381). In terms of classification, it is customary to categorize certain types of domestic violence according to the nature of the abuse[5] and the victims.[6]

The conceptual and classificational uncertainties are a good indication of the fundamental peculiarity related to the recognition of domestic violence (Virág 2006, 382): based on the acquired experience under several types of research, the individual types of domestic violence seldom appear separately, but usually appear together, alternating each other, as parts of a process;[7] as the abuses occurring in the family as a system are difficult to separate from each other. Besides other arguments (Kanyuk 2016, 32–33; Kanyuk 2018a, 216–224; Kanyuk 2018b, 20–32), this view is also justified by the fact that domestic violence should be viewed as a sociological phenomenon, a criminological entity: although it can be regarded as one single entity by criminology, which examines criminality as a social phenomenon, substantive criminal law, which operates with normative categories, cannot, or would only be able to do so with difficulty (Pápai-Tarr 2017, 66; Virág 2006, 379).

As a consequence of the just discussed nature of domestic violence, it can therefore be stated that it – as a concept developed by criminology – covers a vast range of behaviours that violate human rights, which differ both in terms of their danger to society and their prohibition under criminal law (Váradi & Gilányi 2013, 515). The sanctioning of these acts was already present in our penal system (Gilányi 2015, 178–179); however, due to the pressure of civil movements and the catalyst-like role of the increasingly large number of research results, the criminalisation of domestic violence took momentum coloured by new elements in Hungary, as in other countries as well (Virág 2006, 394).

In several strategies, the legislator committed to developing legal institutions and provisions outside substantive criminal law. One example of this is Parliamentary Resolution No. 45/2003 (IV. 16.) on developing a national strategy for preventing and effectively treating domestic violence, adopted by the Hungarian National Assembly on

[4] The following study points out the difficulties of defining the concept of 'family' in a legal sense: Madai 2021, 338.

[5] Physical violence, neglect, emotional abuse, sexual violence or abuse and economic or social abuse. For more details, see Virág, Kulcsár & Rosta 2019, 584.

[6] Abuse of children – in some cases, former – spouse or partner, abuse of the elderly and other relatives. See more ibid.

[7] „The 'wife beating', for example, is usually coupled with continuous mental torture and is often accompanied by sexual violence." Morvai 1998, 14.

February 14, 2003. This considered the more careful application of the existing criminal law regulations and the introduction of some new legal institutions belonging to other branches of law (e.g., restraining order) to be a viable option; however, it did not consider the creation of a sui generis criminal offence to be justified. National non-governmental organisations (hereinafter: NGOs) representing the cause of action combating violence against women[8] saw in the creation of Act C of 2012 on the Criminal Code (hereinafter: Criminal Code, effective Criminal Code, CC) a good opportunity for the ideas represented by themselves – and those of international organisations[9] – to achieve to appear in domestic criminal law as well. Therefore, at the end of a period of more than a decade full of disputes and listing proposals for solutions, within one month before the entry into force of the Criminal Code, the Hungarian National Assembly adopted Act LXXVIII of 2013 on the amendment of specific regulations concerning criminal law. Section 19, Subsection (5), which piece of law defined the sui generis criminal offence of intimate partner violence,[10] which was incorporated in Section 212/A of the Criminal Code.

2. Nine years of intimate partner violence – observed through the prism of statistical data

The innumerable factors influencing the low registration of intimate partner violence are undeniable: the anomalies in the formulation of the criminal offence, such as conflicting opinions about the requirement of regularity, as well as the uncertainties concerning the questions regarding the classification and cumulation of different criminal offences that still exist to this day, supplemented by the natural latency arising from the nature of the phenomena itself, definitely could lead to the emptying of the criminal offence under examination.

[8] All along, NGOs have advocated the creation of a complex, comprehensive criminal offence. Finally, the popular initiative of Pálma Halász, the head of the Élet-Érték Foundation, led to a result: „the Hungarian National Assembly should put on the agenda that there should be a sui generis criminal offence of domestic violence in Hungary." See national popular initiative No. H/7685., adopted by the Hungarian National Assembly on September 17, 2012.

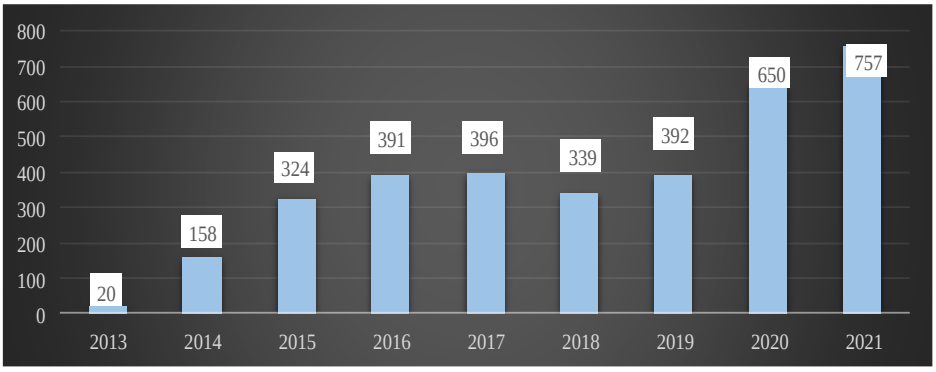
[9] Committee on the Elimination of Discrimination against Women (CEDAW), in its concluding comments in its Sixth Periodic Report concerning Hungary, acknowledged that the State Party had taken specific measures to combat domestic violence (see UN CEDAW 2006) but expressed concern about the lack of a sui generis criminal offence regarding violence against women and domestic violence (see UN CEDAW 2007). This direction was strengthened by the Council of Europe Convention on preventing and combating violence against women and domestic violence, better known as the Istanbul Convention (see Conseil de l'Europe 2011). The essence of the Convention is discussed in more detail in the following paper: Sebestyén 2018. In connection with the Convention mentioned above, it should be noted that the process of ratification is not without obstacles at the domestic and EU level as well. On several occasions, the European Parliament has called on the Member States that have not yet accepted the Convention, including Hungary, to ratify it without delay (see Europarl.europa.eu 2019; Europarl.europa.eu 2020). However, the Hungarian National Assembly expressly rejected the Convention's ratification in May 2020 (see Euronews 2020).

[10] It should be noted that even the naming of the criminal offence caused controversy. Among others, it was suggested that the term 'violence' should be defined as 'domestic', 'intimate', 'between cohabitants', or – based on the English sample – connect them with the expression 'at home'. Blaskó 2018, 217.

In addition to – and despite – all of the factors mentioned above, the trend in the number of registered criminal offences of intimate partner violence has been continuously increasing since its 'introduction' in July 2013 and looking at the most recent data processed in 2021, the trend shows an unbroken and increasingly marked increase (see Figure 1). The increase under the described circumstances is an absolute miracle and testifies to the necessity of the criminal offence in question. Furthermore, it is given particular emphasis by the fact that the number of registered criminal offences in total has started to decline since the introduction of the effective Criminal Code, and the total crime rate is decreasing to an unprecedented extent in Hungary (see Figure 2).

Figure 1

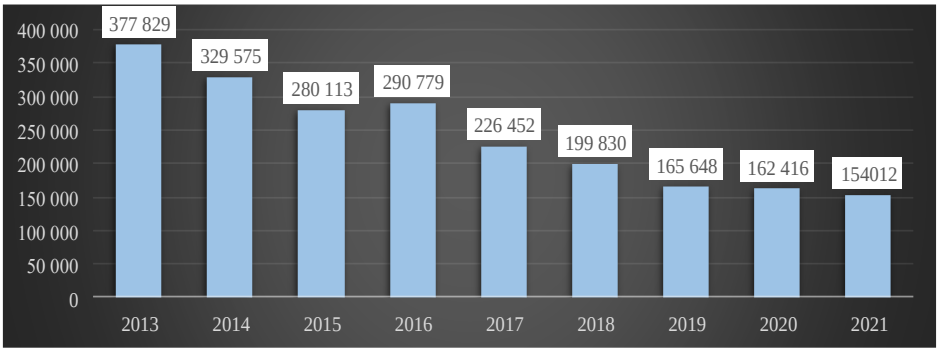
Registered intimate partner violence (2013–2021)



Source: Unified Criminal Statistics of the Investigation Authorities and the Prosecution Service (a), registered criminal offence: intimate partner violence

Figure 2

Registered criminal offences in total (2013–2021)



Source: Unified Criminal Statistics of the Investigation Authorities and the Prosecution Service (a), registered criminal offences in total

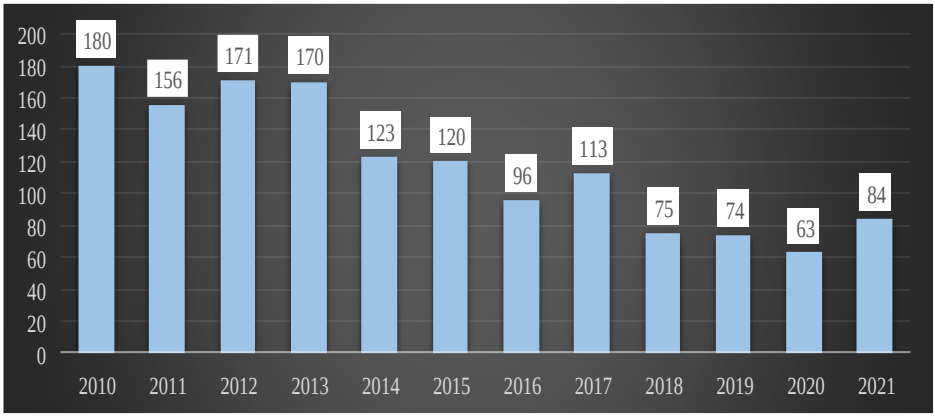
In parallel with the increasing number of intimate partner violence – in the 'favor' of the criminal offence becoming visible – the number of certain criminal offences mentioned in the discussed one is gradually decreasing, for which we will attempt to show some illustrative examples.

3. Imprints of the prevalence of relationship violence

The finding mentioned above is clearly 'visible' in the case of duress.[11] The number of criminal offences gradually decreased after the entry into force of intimate partner violence in 2013 (see Figure 3).

Figure 3

Registered duress (2010–2021)



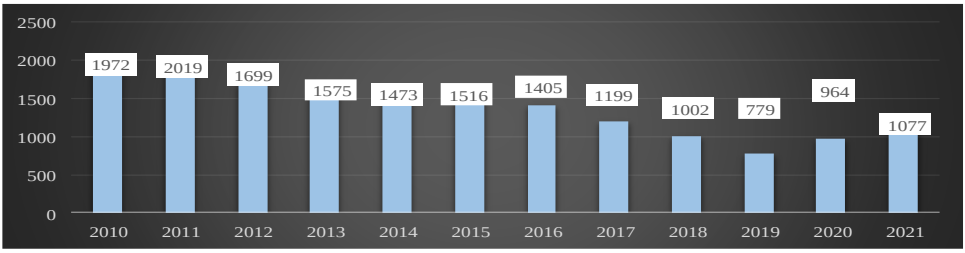
Source: Unified Criminal Statistics of the Investigation Authorities and the Prosecution Service; Handout of the Office of the Prosecutor General (b), registered criminal offence: duress

All this cannot be clearly stated when analysing the development of the number of abuse of a minor,[12] which may be since, due to the nature of the criminal offence, it is often in cumulation with intimate partner violence[13] (see Figure 4).

[11] Section 195 of the CC.
[12] Section 208 of the CC.
[13] See, for instance, the following judicial decisions: Debreceni Ítélőtábla Bf.4.339/2019/6.; Kúria Bfv.878/2019/9.; EBD2017.B.16.

Figure 4

Registered abuse of a minor (2010–2021)



Source: Unified Criminal Statistics of the Investigation Authorities and the Prosecution Service; Handout of the Office of the Prosecutor General (b), registered criminal offence: abuse of a minor

An illustrative example is the analysis of the number of victims involved in the crime of slander,[14] as by analysing the victims – rather than the criminal offence itself –, the statistical system enables a narrowing based on the relationship between the perpetrator and the victim.[15] In this way, it is visible that although slander – similarly to intimate partner violence – betoken an increasing number of registered crimes compared to the decreasing overall crime rate; narrowing it down to the range of victims of intimate partner violence, we have to consider a definite – although reversing in 2020 – decrease following the entry into force of 'competing' intimate partner violence in 2013, as of 2014 (see Figure 5).

Figure 5

Registered victims involved in the crime of slander (2010–2021)

[14] Section 227 of the CC.

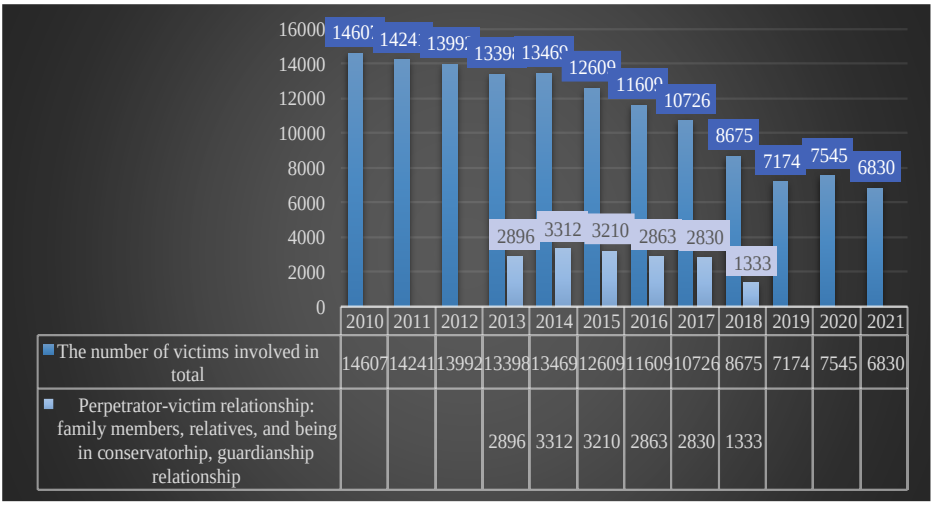
[15] It should be noted that this kind of narrowing is only possible between January 1, 2013, and June 30, 2018, due to changes in the statistical system that started in the second half of the year 2018. In this way, 2018 only contains the data for the year's first half concerning the relationship between the perpetrator and the victim.

Source: Unified Criminal Statistics of the Investigation Authorities and the Prosecution Service; Handout of the Office of the Prosecutor General (c), registered criminal offence: slander

The same experiences can be drawn concerning battery,[16] which shows the same statistical trends, but has a much higher number of victims than those involved in slander. In the present case, the decrease to the detriment of intimate partner violence due to the more significant numbers is even more visible in the statistical data as of 2014 (see Figure 6).

Figure 6

Registered victims involved in the crime of battery (2010–2021)



Source: Unified Criminal Statistics of the Investigation Authorities and the Prosecution Service; Handout of the Office of the Prosecutor General (c), registered criminal offence: battery

Closing remarks

At the end of our analysis, it can be concluded that intimate partner violence certainly raises many dogmatic and classificational questions and difficulties in interpretation (Pápai-Tarr 2015; Kanyuk 2016), and in the nine years that have passed, legal practice has not yet revealed all the problems. It also should be noted that in the 'mission' that intimate partner violence can be integrated into legal practice, the National Institute of Criminology gained invaluable merits by the preparing Research Report No. 2018/III.B/1.28. The report assessing the practical experience of intimate partner violence, based on criminal statistical data, round table discussions and professional

[16] Section 164 of the CC.

focus group consultations, prosecutor's questionnaires, and criminal document reviews, involved the processing of a total of 556 prosecution files (see Garai 2018).

Conscious of the anomalies regarding the criminal offence in question, the revealed statistical analyses are given even more weight. It attests to the fact that, despite all its difficulties, the situation of intimate partner violence produces increasing statistical presence even among the decreasing overall crime; the creation of the criminal offence was necessary despite the initial doubts, and there is a real need at its application. However, this finding also leads us to conclude that solving the problems surrounding the examined criminal offence has substantial significance. Intimate partner violence created in the sensitive area of the fight against domestic violence should serve as an accurate tool for those in need to fulfil their mission, and the dreams of those who patronise the criminal offence can also become a 'visible' reality.

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THE EFFECT OF REGISTRATION AND USE ON TRADEMARK OWNERSHIP*

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The reasons that lead to gaining the right to a trademark may be material facts and legal facts that are used and registered. Therefore, the ownership of the trademark is acquired by use, and the registration for this trademark is considered a decision of ownership. The trademark, and the immutable right to own the trademark is limited to a specific period of time, unlike what you see in the right of ownership concerning the real estate or the movable property, which is characterized as not restricted to a specific time from the foregoing. Registration leads to the emergence of this right and its acquisition in the trademark based on which this trademark (Stakheyeva, 2018, 3-19). Therefore, in this study, the researcher sheds a light on two requirements as follows: firstly, the registration of the Property Right in the Trademark. Secondly the impact of registration on the Ownership of the Trademark in Jordanian law and International Agreements.

1. Registration and use of the right of ownership in the trademark

The concept of intellectual property is not a new concept. It's believed that the spark of the intellectual property system was initiated in northern Italy during the Renaissance. In the year 1474 AD, a law was issued in Venice regulating the protection of inventions and stipulating the granting of an exclusive right to the inventor. The copyright system (Torremans, P., 2019) goes back to the invention of the typographical and discrete characters and the printing machine by Johannes Gutenberg in 1440 AD. At the end of the nineteenth century, several countries saw the need to establish laws regulating intellectual property. Internationally, two treaties have been signed that is the international basis of the intellectual property system: the Paris Convention for the Protection of Industrial Property 1883 and the Berne Convention of 1886 for the Protection of Literary and Artistic Works.

It allows the creator, the owner of the trademark, the patent, and the copyright to benefit from his work, labor and investment. That does not mean that he has monopolized thought over others, but rather the opposite, as these rights are contained in the legal articles of the Universal Declaration of Human Rights, which provides for the right to benefit from the protection of moral and material interests resulting from Attribution of the practical, literary or artistic production to its author (Sawyer, 2019).

1.1 Registration and use of the right of ownership in the trademark

This means that the registration of the trademark does not lead to the emergence of the right to it, rather it is a determination of that right only, meaning that the registration of the trademark does not benefit the Owner of the trademark as much as it is a presumption of that ownership, which becomes with it that the owner of the

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previous use of the trademark can always invoke that previous use of the trademark. In the face of those who registered it, therefore, according to this theory, the right to a trademark is for the first to use it (Cwik, 2014, 681-695), not for the first to register it." Accordingly, use is no longer a precondition for the registration of the trademark, as use has become a condition for the continued protection of the trademark after its registration, and there are marks that the owner does not intend to use it immediately after registration, rather he wants to retain the right to use it after a specific period, such as: the preventative trademark and the protective mark. This type of registration is known as the French system (Kur A., 2019). This system has several advantages, the most important of which is that it makes the owner (owner) of the trademark who is slack in registering his trademark assured of his right to ownership. The trademark owner who neglects its registration shall be safe from having his trademark usurped by others by registering it (Cross, 2008, 367).

1.2 Registration Establishing the Ownership Right in the Mark

This means that the registration of the trademark is considered a generator of the right of ownership in it, as the mere registration of the trademark is a sufficient reason in itself to establish the right to its ownership. Regardless of any previous use of it, the priority of use after the registration has taken place is not taken into account. (Hoffrichter, 2022, 38).

The Trips Agreement expressly forbids member states to impose use as a condition prior to submitting an application for registration. Article (15/3) stipulates that member countries may make the contract of registration dependent on use, but the actual use of the trademark may not be considered a condition for applying. It is prohibited to refuse a registration application simply because the intended use did not occur before the expiry of a period of three years from the date of submitting the application (Shapira, 2015).

This type of registration is known as the German system. Its adoption eliminates the disadvantages of the registration determined for the ownership of the trademark, as it determines the legal status of the person who registered the trademark permanently. If he refrains from registering his trademark and someone else has previously registered it, then according to this system the person who previously registered the trademark becomes the real owner of it, and if someone else takes precedence in using that trademark, the ownership of the trademark according to this system shall be for the first in registration and not the first in use.

1.3 Deferred Registration of the Ownership Right in the Mark

This means that the registration of the trademark is a prescriber of the right to that trademark in a beginner and then it becomes the originator of that right at its end, that is, the priority of the use of the trademark remains the basis for establishing the right to own that mark, while the registration of the trademark is just a determination of the right to it, and that is limited to a certain period. If that period elapses without objection or dispute in the registration, the latter becomes the originator of the right to the mark. Undoubtedly, the subsequent use of the registration is very important. That is because

its absence leads to the expunging of the trademark from the register after a specific period (Griffin, 1925).

This type of recording is known as the English system. This system is considered the common denominator between the French system and the German system in this regard. It is free from many disadvantages of these two systems, which made it more widespread than them (Gangjee, & Burrell, 2010, 282-295).

2. The Impact of Registration and use on Trademark Ownership in Jordanian law and International Agreements

In view of the global opening and the logistical and technological development in the field of transport and freight of goods, and due to the development of marketing and communication tools, trade has become very cross-border. So, it was necessary to have international cooperation to protect that transcontinental trade and industry. Given the above, international organizations and bilateral agreements between countries in the field significantly preserve the rights of trademarks, to reduce counterfeiting of trademarks, which exposes the process of commercial exchanges to significant risk and is unfair to the rights of owners of commercial and industrial activity around the world.

The World Trade Organization (WTO) is considered one of the most important international organizations that unite most countries in the world in regulating the trade process in general and the trademark process in particular. It is the sponsor of the "Madrid System for the International Registration of Marks of 1996" which is the most important international system in the registration of trademarks around the world. The researcher in this study explains the impact of registration on the ownership of the trademark nationally and internationally as follows.

2.1. The effect of registration on the trademark ownership

Article 29 of the Jordanian Trademarks Law No. (33) of 1952, provides that, The registration of a person as the proprietor of a trademark shall in all legal proceedings relating to the registration constitute evidence of the validity of the original registration of such trademark and all subsequent assignments and transfers of the trademark, also Article 26/1- b provides as follows. If a trademark is well-known and if it is not registered, then its owner may demand the competent court to prevent third parties from using it on identical or unidentical goods or services provided that such use indicates a connection between those goods or services and the well-known mark and provided that there is a likelihood of prejudice to the interests of the trademark owner because of such use. A likelihood of confusion shall be assumed if an identical well-known mark is used on identical goods.

It is clear from the text of the two aforementioned articles that Jordanian law has carried out the procedure for registering a trademark as nothing but a prelude to the legality of that procedure. That means that the effect of registration determines the right to the trademark only. That means that the registration of the trademark is nothing but a legal presumption on the ownership of the trademark for the one who made its registration. However, this presumption is not conclusive, that is, it may be proven otherwise.

Therefore, it can be said that the Jordanian legislator has made the basis of the right in the trademark to those who have previously used it, not to those who have previously registered it. (Nawafleh, 2010. 142).

The Court of Justice of the European Union (CJEU) decided that even if the trademark registration is in the name of a person who is considered a presumption of his ownership of the mark, unless this presumption may be demolished on counter-evidence, if the right of the person in whose name the trademark was registered is in conflict with the right of a previous user of this mark, the person who used it shall have priority over the person who is registered in his name and enjoys the right to request the registration numbering when there is a similarity between the two trademarks that would lead to deceiving the public. With reverse evidence, the former user of the trademark that has become distinctive for his goods has the right to name the trademark named after another person, and this is a recognition of the right of the former to use and use that mark, as he may invoke this against the one who registered his mark; registration does not preclude the claim of the former. In the use of that mark, he has the right to it and retrieves it in one of the ways established by law, and the burden of prior use falls on the plaintiff. The plaintiff has the right to prove this through all means of proof, because the fact of the earlier use is a material fact (Luginbuehl, 2019), (Kur, Dreier & Luginbuehl 2019)[2]

2.2. The effect of the use on the trademark ownership

The reason for acquiring the right to trademark ownership varies between different jurisdictions. In addition, the (TRIPS) did not impose a specific system for the acquisition of such a right, but rather equated the systems prevailing in national laws as some of these countries consider the trademark ownership system through the precedence of use, such as the United States, and other countries consider the trademark ownership system through the precedence of registration, such as Morocco. (Helbling. 1997, 413). There are some countries that adopt a mixed system of the two previous systems, which is the system of proving the ownership of trademarks through the precedence of use and the presumption of registration, such as the Jordanian law, as the Jordanian legislator has made the registration of the mark a determining effect; it considered the registration certificate to be nothing but preliminary evidence of the legality of the trademark, meaning that the registration of the mark and the certificate issued in this regard is a presumption of proving the ownership of the mark; it is a simple and inconclusive legal presumption that may be proven reversed by all methods of proof by the one who used it first. This means that the Jordanian legislator has made the ownership of the trademark arise with the priority of use, and the effect of registration has been limited to determining and disclosing this right. Use is the grounds for ownership and registration is a tool to prove the occurrence and date of use. This is

[2] *Technology & IP Newsletter*, No. 1 2014. International trade mark are subject to "genuine use" requirements in the EU, https://www.ashurst.com/en/news-and-insights/legal-updates/international-trade-mark-are-subject-to-genuine-use-requirements-in-the-eu/. See also, Interflora Inc., Interflora British Unit v Marks & Spencer plc, Flowers Direct Online Ltd,, Case C-323/09. European Court Reports 2011 I-08625, https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62009CJ0323.

what is learned from the extrapolation of Articles (29-32) of the Jordan Trademarks Law. (Al-Jabarin, 2010, 52). This is what the Jordanian Supreme Court of Justice ruled, as it ruled the following:

„The jurisprudence and the judiciary have settled that the registration of the trademark is a presumption of the ownership of the mark; even if it is a presumption of ownership of the mark, it is permissible to demolish this presumption with counter-evidence." (Supreme Court of Justice, 306/1995).

It also ruled: „Even if the trademark registration is in the name of a person who is considered a presumption of ownership of the trademark, this presumption may be destroyed with reverse evidence so that if the right of the person in whose name the trademark was registered affects the right of a previous user of this impact, the person who used it shall have priority over the person in whose name the trademark was registered; and he has the right to request a presumption of registration (dismissal) when there is a similarity that would lead to deceiving the public".(Supreme Court of Justice, 65/1972).

2.3. Actions Concerning Trademark Rights

„There are no significant restrictions in the actions contained in the rights of the trademark, unlike in other elements of intellectual property. That's attributed to the fact that the trademark is primarily intended for commercial purposes, and that it does not usually come from intellectual creativity, but rather is chosen from previous existent forms and appearances. It gives the product a distinctive feature from others". (Ramello, 2006, 547 ; Frohlich 2017).

Article (15) of the Jordanian Trademarks Law stipulates the following: If the application submitted to register a trademark is accepted and has not been objected to and the period specified for the objection has passed, or if the application is objected to and a decision is issued to reject the objection, the registrar shall register that trademark after paying the estimated fee. That applies unless the application was accepted by mistake or the court indicated otherwise. The trademark shall be registered on the date of the application considering this date as the date of registration. Thus, the applicant becomes the owner of the trademark registered in his name from the date of submitting the application for registration. Article (20) of the Trademarks Law sets the registration period at ten years. At the end of this period, the trademark owner loses his acquired right in it unless he renews it, which entails continuing to protect the trademark and then the owner of the trademark provoked it and preserved his rights during this period by exploiting this trademark and disposing of it in accordance with the provisions of the law.

From the foregoing, there are two main actions for trademark rights: an act of transferring ownership, and an act of transferring the benefit (an act other than a transfer of ownership):

1) The Actions of Transferring Ownership

Since the trademark is linked by virtue of its function to the store or commercial store as a symbol of distinguishing its products and merchandise. The question that arises is

whether the trademark owner can dispose of it alone, independently of the store or commercial store, or that disposal of it must be linked to the store or commercial store as well.

The transfer of ownership must be contained on a registered trademark. However, if it is not registered, the general rules of disposal are the ones that govern it. (Al-Haija, 2021, 28).

Article (19/1) of the Trademarks Law stipulates the following: The ownership of the trademarks may be transferred, assigned, or mortgaged without transferring the ownership of the commercial store that uses the trademark to distinguish its goods, assigning it or mortgaging it, and trademarks may be seized independent of the commercial store.

Based on this text, the researcher believes that the Jordanian legislator has permitted the trademark owner to dispose of his trademark in a manner that transfers ownership through sale or assignment. In the case of a sale, the conditions of the sale contract must be met. Article (465) of the Civil Code defines sale as „ the ownership of money or a financial right in return for a consideration". (Ebkar, 2001). The conditions for concluding a valid contract must also be met in civil law in terms of offer, acceptance, place, and reason, and by completing these conditions in the contract, the special conditions contained in the Jordanian Trademarks Law must be met in terms of the seller's ownership of the trademark subject of the contract. The trademark must be registered and recorded. It is legal and valid, and it is not mortgaged or seized for any person or reason, or related to the right of others. In order for the sale of the trademark to have its effects, the sale event must be registered with the Trademarks Registrar and published in the Official Gazette. (Kolawole,2018, 316).

The ownership of the trademark may be transferred in a non-consensual manner as if the trademark was sold by the public auction after the seizure was made from a creditor to the owner. However, in the case of waiving the trademark by the sole will of the owner (Yelnik, 2010, 203-219; Calboli, 2002, 47). The provisions contained in the article No. (253) of the Jordanian Civil Code shall apply to it. If the assignment is made, the ownership will pass to the assignee, but it will not be considered as such for others unless this is confirmed in the register and published in the official newspaper prepared for that. The registration is the owner. The buyer is not entitled to file an anti-counterfeiting lawsuit against others before registering the trademark in his/her name. The trademark may be ceded by the public auction if it is seized for a debt or if the company that owns the trademark is liquidated according to the procedures followed in the auction sale, and the liquidator undertakes this by a court decision, and in all cases. The trademark assignment must be registered with the Trademarks Registrar, provided that the instructions issued by the Minister of Industry and Trade regarding the transfer of trademark ownership are followed.

The Actions of Transferring Benefit.

The owner of the trademark may not want to permanently relinquish his ownership of it. He may grant others the right to put the trademark on his products or services for commercial purposes or mortgage to obtain a loan in favor of the trademark owner from the mortgagor, such as: a bank. (Tavares, P. S., Ziemer, A. A. & Randazza, M. J. 2017).

2) The license contract:

Article (26/2) of the Jordanian Trademarks Law stipulates the following: (The trademark owner may license one or more persons, under a written contract authenticated with the Registrar, to use his trademark for all or some of his goods. The owner of this trademark enjoys the right to continue using it unless otherwise agreed. The term of the license to use the trademark exceeds the period prescribed for its protection according to its registration).[3]

From the extrapolation of the text of the competition article, the researcher finds that it obligated the writing of the license and its documentation in a written contract with the Trademarks Registrar, which has implications in terms of obligations on the licensor, others, and the licensee specifically.

It is worth noting that the licensing contract for the use of the trademark does not affect the ownership of the trademark. The trademark remains owned by its owner. The licensee enjoys the right to use it for a certain period in return for a specific fee, the matter that prompted a part of jurisprudence to rightly say that the license contract for the use of the trademark is nothing but a form of leasing, the place of which is the use of the trademark. (Zakharov, 2005, 787).

3) The mortgage contract:

The ownership of trademarks may be transferred, assigned or pledged without transferring the ownership of the commercial store that uses the trademark to distinguish its goods or assign it, or mortgage it. It is also permissible to seize trademarks independent of the commercial store, which he resorts to obtaining a loan in favor of the trademark owner, as we mentioned earlier. In order for the mortgage to produce its effects, conditions must be met: a) that the mortgagor is the owner of the trademark; b) the mortgagor has the right to dispose of it; c) that the trademark is legally registered; d) the mortgage sign has been placed on the trademark registration with the Trademarks Registrar under the provisions of the law; e) the foreclosure incident shall be published in the Official Gazette.(Hutt, 1940, 66-77).

Through completing these conditions, the mortgagee creditor can invoke this mortgage against others, and the mortgage reference remains in place until the mortgagee creditor fulfills his debt, and this mortgage grants him/her the right to demand his/her debt ahead of all other ordinary creditors or those who are next in rank.

Conclusion

It is noted that the easiest way to prove rights in a mark is through trademark registration. One of the most important features of trademarks is that it is one of the

[3]Article 10(2) of the Trademark Directive (EU) 2015/2436 delineating the rights conferred by a trademark, reads: „the owner of that registered trademark shall be entitled to prevent all third parties not having his consent from using in the course of trade, in relation to goods or services," also Article 25/2 stipulates that „The owner of a trade mark may invoke the rights conferred by that trade mark against a licensee who contravenes any provision in his licensing contract".

important means in the success of the economic project, in particular in the field of competition at the international and local levels alike by use, so that the right is acquired through the actual use of it. Obtaining the right does not require a specific act, but rather requires the use of the mark, and despite the emergence of the right to the used trademark, it did not have protection like the registered trademark, meaning that the registered trademark enjoys more legal protection from the unregistered trademark because it enjoys penal protection, and this is a shortcoming in Jordanian legislation.

The phenomenon of trademark infringement remains widespread, and the reason for this may be due to the inconsistency of penalties and fines with the benefits and profits that the infringer may earn on the trademark. Therefore, the value of the prescribed fines should be increased, as well as the tightening of the penalties for physical coercion, especially the infringement of the intellectual property of goods bearing international trademarks has grave disadvantages, the most serious of which is endangering human life when using a commodity due to the chemical or electrical nature of services in this commodity that may harm the health and safety of its users, in addition to that it harms the product. That leads to the loss of importance and role. It will have an effect on the efficiency of the product.

According to the researcher, the existence of a sound intellectual property system would enhance the work environment in Jordan. It shall protect the health and safety of citizens and prevent the waste of public funds on counterfeit products of poor quality and perishable.

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GLOBAL MINIMUM CORPORATE TAX: THE TWILIGHT OF TAX AVOIDANCE FOR 'BIG TECH'?*

Márton Ferenc Bak[1]

The exponential growth in the importance of the digital economy and the dilemmas surrounding it fill a large part of today's legal discourse. Demonstrating the unheard-of advance of this new economic segment, a 2018 Commission report found that the largest digital companies had an average annual growth rate of around 14% in the seven years preceding the report, compared to 0.2% for 'traditional' transnational companies (European Commission 2018), and five of the six largest companies in the world were digital companies (Ross 2021).

Introduction

The legal discourse around the digital economy is, in my view, mainly concentrated around three areas of law: tax law, competition law and data protection law. The aim of this article is to review the path towards a global minimum corporate tax under the auspices of the OECD and the potential impact of the proposed legislation.

1. The need for regulation corporate tax at the global level

Before turning to the issues surrounding the specific draft, I think it is useful to briefly review the digital characteristics that have created the need for regulation at the global level.

First and foremost, it is worth noting that the current rules that underpin tax liability are clearly based on the physical aspects of the company. In essence, the imposition of tax is based on the physical presence of a company in the State concerned, with its establishment, means of production and employees. This is what we call the territoriality principle, which until recently was able to play its role as the basis of the tax law of the States. But with the rise of the digital economy, a very different approach is needed to lay the foundations for a modern tax system (Csabai & Czoboly 2016). The digital company, however, does not rely on tangible factors of production but primarily on the sale of intangible goods. A physical presence is not necessary for the provision of digital services, the place of provision (and hence of value creation) and the physical presence of the company are separated, and this simple fact undermines the system of the determination of tax liability based on the territorial principle (Varga 2020).

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2. Challenges raised by the existence of digital companies

Since the digital company provides online services that cross national borders, i.e., it is not geographically delimited, it is free to 'move' its place of establishment for tax purposes. Therefore Ireland, with its very low corporate tax rate (its strikingly friendly attitude towards monopolistic giants through various selective tax breaks (European Commission 2016), has become the European bastion of Big Tech (IFSC 2021).

It is worth saying a few words about Ireland's aggressive tax planning tools, which have contributed greatly to the demand for a global corporate minimum tax. The conceptualised 'double Irish' is a profit shifting scheme that allowed a US company to account for its European sales in the form of royalties through its Irish subsidiary, which, although Irish incorporated, is tax resident in Bermuda or other offshore havens. By using this method, the company avoids both domestic and Irish tax liability. This is because under Irish tax law, tax residence is determined by the place of management (specifically management). Thus, the Irish subsidiary of a US transnational company, managed from Bermuda, is 'taxed' under Bermudian rules. The 'double Irish-Dutch sandwich' is very similar, except that by including a Dutch company, an additional tax base erosion is created by the deduction of royalties. Two Irish subsidiaries and a Dutch subsidiary are required, the US company transfers intellectual property rights to Irish company A, Irish company A then sublicenses the intellectual property rights for a royalty to the Dutch company, which sublicenses them to Irish company B, which is a subsidiary of Irish company A and (thanks to the Irish legislation described above) is based in Bermuda or another quasi 'tax-exempt' jurisdiction. Thanks to the ongoing royalty deductions (under Irish law, royalties on IPR licences are deductible from the tax base), the tax base payable is significantly reduced. All of these tax avoidance techniques are perfectly legal, but the Irish government banned their introduction in 2015 and ordered companies already using them to stop using them by 2020.

Another aspect of the problem is that corporate tax rates vary significantly due to the lack (or perhaps impossibility) of harmonising international tax law. Hence the logical conclusion for the digital company's management to establish its physical presence in a country with the lowest possible tax rate.

By the way, I would like to point out that there has been a steady downward trend in corporate tax rates around the world in the so-called 'race to the bottom', as countries have sought to encourage investment and attract capital-intensive companies by lowering corporate tax rates to improve their competitiveness. For the reasons outlined above, many states have tried to come up with some form of regulation to impose taxes on digital companies that generate revenue in their markets but do not pay taxes. Of these, the French attempt has perhaps had the greatest repercussions, given that it has sparked a small-scale trade war with the United States (Office of the United States Trade Representative 2019), where the Donald Trump administration has seen the French effort as an attack on US companies (Portfolio 2019). The digital tax was eventually suspended.

To add a domestic dimension, Hungary has also tried to find a way to tax the digital giants, in the form of an advertising tax. Under this, Hungarian-language advertising on the Internet became a taxable activity, which also made companies that are not registered in Hungary subject to the tax. Google brought an action, but the Court of

Justice of the European Union found no evidence that the Hungarian legislation would disadvantage companies not established in Hungary, and only found infringements in the system of sanctions.

However, efforts at Member State level are not sufficient to tackle global tax avoidance by transnational corporations. The United States has typically been hostile to isolated attempts to tackle the problem, and it typically requires large-scale cooperation. The blueprint eventually began to take shape within the OECD at the request of the G20 countries. The aim was to develop a structure that could adequately address the problem of profit shifting and tax base erosion. On 8 October 2021, 136 countries agreed within the OECD on a draft reform of the tax system for transnational corporations based on two pillars (OECD 2021).

The first pillar develops rules on profit shifting to ensure a fairer distribution of profits between jurisdictions for large income transnational corporations. In simple terms, this means that the right to tax is partially shifted from their home jurisdiction to the jurisdictions in whose markets they do business and generate profits, whether or not the company has a physical presence there. Multinational companies with global turnover above €20 billion and a profit margin above 10% will be subject to the new rules, and 25% of profits above the 10% threshold will be transferred to the jurisdiction of the market concerned. The first pillar is expected to shift $125 billion of taxing power per year (OECD 2021).

The second pillar provides for a specific tax rate, which after lengthy negotiations was finally set at 15%. It is important to note, however, that the new legislation under discussion will apply to companies with a turnover of over EUR 750 million, so the aim is not to standardise all corporate tax practices, but to target the largest companies, mainly through their subsidiaries. Indeed, the tax avoidance practices of transnational companies (as can be seen from the schemes described above) clearly suggest that the network of subsidiaries is a key element in these mechanisms. It is the transfer pricing machinations and intellectual property relations between subsidiaries (in particular the endless system of sub-licences) that make the profit shifting practices of these firms so effective.

The global corporate minimum tax also essentially seeks to remedy the problem by eliminating transfer pricing, with the undoubtedly necessary premise of treating the group as a single, huge economic entity, which clearly implies that it does not recognise sales (and hence profits) without the involvement of a 'third', external party. It thus negates the transfer of profits between the group's subsidiaries (Sikka 2015). The initiative has been signed by 136 OECD member countries, whose economic output accounts for 90% of world GDP. The proposal is certainly a step forward and a necessary one, but I would like to point out some rather worrying factors. Previous opponents of the proposal (including Hungary) have succeeded in drastically extending the transitional period for entry into force of certain provisions. In my view, this will result in a 'dilution' of the package of measures, given the unparalleled economic and political leverage potential of the target group.

I would also like to draw attention to the fact that, in my view, it is inevitable that states will continue to have a significant interest in providing tax breaks and other selective benefits to 'Big Tech' companies with significant R&D potential and which are

innovation strongholds. This was particularly the case in Ireland, where the Commission highlighted billions in tax avoidance by Apple.

There is also the dilemma of the reaction of tax havens, such as Bermuda, the Cayman Islands, and the Isle of Man, which have joined the initiative, but whose economic attraction is their low or non-existent tax rates. There is a risk that they will not let this undoubtedly significant advantage melt away. This is also true, albeit to a lesser extent, for states such as Hungary, which is the last EU Member State to join the supporters of the global minimum corporate tax rate; that is, states that wish to maintain their competitiveness through low corporate tax rates. It should be mentioned that in 2021, Hungary raised a last-minute objection to the adoption of the 15% minimum corporate tax by the European Union, thereby preventing the agreement that would have raised the minimum tax to legal force in the Union. There is a chance that the European Union (without Hungary) will introduce the global minimum tax within the framework of strengthened cooperation.

Conclusions

To sum up, I find the initiative absolutely desirable and revolutionary in its kind, as it has resulted in a broad international agreement in an area that typically falls within the competence of nation states, and one which has seen minimal harmonisation of legislation. At the same time, I see several pitfalls in this concept: the very colourful toolbox of tax optimisation, conflicts of interest between developing and leading economies, the Big Tech lobby and the reservations of tax havens and 'reluctant' states could easily render an otherwise blessed initiative weightless.

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MILESTONE: THE INTRODUCTION OF A GLOBAL MINIMUM TAX AS A POSSIBLE SOLUTION FOR TAX AVOIDANCE*

Ildikó Krivanics[1]

It seemed, that Hungary, too, has accepted the proposal made by the OECD regarding the global minimum tax, which is planned to apply to the taxation of profits of larger multinational companies from 2023 onwards. In June 2022, however, Hungary blocked the European Union's agreement on the global minimum tax. Cyprus, Estonia and Ireland also oppose the EU directive.

The goal of the framework signed by 136 countries in Paris is to introduce a universal (minimum) 15% tax – with regards to Hungary, applied to business profits generated in the corporate, industrial, and other sectors – for companies (e.g., Facebook, Google, Microsoft, Apple) with group-wide revenues exceeding 750 million USD. From the beginning, the supporters focused on the fiscal aspects – the revenue-generating capability of taxes –, meanwhile the opposers (e.g., Hungary) considered the long-time investment more important (e.g., the role of low tax rates in the encouragement of investments). A consensus regarding the framework has been achieved, and while the detailed rules are still being developed, the advantages and disadvantages of the proposal are already clearly visible.

Introduction

Previously we have written about how the introduction of a global tax minimum can cause a significant difference in the economy of not only Hungary, but the whole world (Bak 2022). Many may question why this step is so imperative, why it is justified, and what the history behind it is. How big of an impact the still ongoing coronavirus pandemic had on the introduction of the minimum tax further deepens the question, since, as a result of the crisis starting in 2019/20, multiple countries decided to limit the tax income of multinational companies, and the displacement of their profits to tax havens. 136 countries, including Hungary, signed the proposal in October 2021.

1. Proposal

The development of the global minimum tax's draft by the OECD (Organisation for Economic Co-operation and Development) has already begun in 2019. The draft can be divided into two large segments: 'Pillar 1' and 'Pillar 2'. The first part relates to the taxation of digital enterprises (in cases where their activity is not localised), while the second part is linked to the global minimum tax and the enterprises engaging in „real economic activity". The goal of the first pillar is to make multinational companies pay taxes in not only the countries they originate from, but in the locations of their subsidiaries as well. This way, if the subsidiary's tax liability does not reach the minimum tax amount, the parent company's country can collect the tax difference. If

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they don't exercise their right, the other countries where they have subsidiaries could collect the difference.

The second pillar of the draft aims to set a minimum tax rate (as of right now 15%), which opens up the possibility to reduce the tax avoidance of multinational companies. The importance of this measure lies in the fact that a multinational corporation pays significantly less tax if they base their corporation in a country where the corporate tax rate is lower than in their country of origin. The corporate tax rate heavily differs in the European Union as well: e.g., in Malta the tax rate reaches 35%, while in Montenegro or Hungary it is 9%, among the lowest in Europe. See Figure 1, based on data from December 2021 (Bray 2021). The acceptance of the proposal could result in the compensation of these deviations, since if the tax liability of a multinational corporation's subsidiary does not reach the minimum rate, the difference will have to be paid in the corporation's home country (Adó Online 2021).

Figure 1

Statutory Corporate Income Tax Rates in certain European Countries, 2021

Country	Tax Rate
Malta	35%
Cyprus	12.5%
Gibraltar	12.5%
Ireland	12.5%
Republic of Moldova	12%
Andorra	10%
Bosnia and Herzegovina	10%
Bulgaria	10%
Republic of Kosovo	10%
The former Yugoslav Republic of Macedonia	10%
Hungary	9%
Montenegro	9%

Source: Bray 2021

2. The advantages of the global minimum tax

The main benefit of the introduction of the global minimum tax matches the main goal of the project, reducing tax avoidance, although it could prove beneficial in many other aspects as well. The OECD describes these advantages in its impact analysis, the most important of which is that the solution based on consensus provides a favourable investment opportunity, since it can encourage investment by increasing predictability, transparency, and tax security.

Additionally, the OECD mentions the indirect impacts of the global minimum tax, from which I would like to highlight a few:

1. Budgetary margin: as a result of the revenue growth, the support for the public finances will be guaranteed, which is particularly relevant for developing countries.

2. Moderate tax competition: the less intense tax competition may have the effect of supporting public finances in the longer term.
3. Impact on corporate competition: the competition between corporations, as well as the outcome, could be influenced by the fact that larger multinational corporations must pay greater taxes than previously (OECD 2020).

3. The disadvantages of the global minimum tax

In addition to the benefits listed above, there may of course also be negative consequences. The corporate tax competition affects where the individual companies invest – not only international, but national investments as well –, since the rate of the corporate tax is relevant, as well as where they must pay it (Bauer 2020). Eliminating the differences could result in smaller countries being seen as less of a favourable investment option compared to larger ones. The reason for this is that larger companies might prefer larger countries to smaller ones, because of their more significant market attractiveness.

The different tax rates between the different countries form one of the bases of tax competition between countries. The OECD aims to reduce this competition – in addition to combating tax avoidance and promoting fair taxation –, although impact analyses need to be performed in order to determine how this will affect the economy as a whole. According to an impact analysis concluded by the OECD, annually a 50-80 billion USD global tax revenue is to be expected, thanks to the innovations of the first and second pillar. Despite everything, impact analyses concluded in some individual countries are not available for the public, or they were not even completed at all. The framework is seen by many as not as flexible in terms of tax bases, thus it can be detrimental in countries that operate with higher tax rates but determine their tax bases otherwise. Because of these differences, numerous companies operating in countries where the tax rate is higher than the OECD rate may also be subject to the regulation.

Hungary is among the countries that have accepted the proposal. Although it is important to highlight that this was not always the case. In 2021, the government still rejected the OECD's proposal. Several arguments have been put forward in favour of rejection. The country's corporate tax rate is minimal compared to the tax rates of other countries, so they can only incorporate the 15% minimum tax in the form of a tax increase. The other argument is jurisdictional rather than economical since it's connected to the fact that the determination of the tax rate and the tax policy is national competence (HVG 2021). Compromises had to be made in favour of the Hungarian side: thus, the corporate tax rate will not change; a 10 year transitional period will be established, during which the tax return will decrease, and a reduced tax calculation will apply, moreover the taxation will not affect the corporations performing real, actual economic activity (Kovács 2021).

So, when our country accepted the proposal, it considered the complex effects of the framework. It is important to consider that if a corporation chooses a country to invest in, their decision is not only influenced by the tax rate, but for example the skilled workforce, the development of digitalisation, and the infrastructure as well. Furthermore, the minimum tax rate applies to the taxes on company profits taken

together (e.g., TAO, IPA), while it provides a discount to companies performing real economic activities; this way there will be no increase in burden for the majority of the affected. In addition, the framework will contain numerous customisable points, which could further improve the competitiveness of our country.

Summary

Overall, the OECD's two-pillar proposal, which includes the global minimum tax, may have negative effects, as well as multiple positive ones; although looking at both sides, I still believe the positive effects remain dominant if the implementation of the regulations into practice happens according to plan. Based on the impact analysis done by the OECD, this draft could contribute to increasing tax revenue, improving investment factors, and can also have a favourable impact on developing countries. On top of all this, the most important goal is to minimize tax avoidance, and this solution is certainly a milestone in this regard.

The final detailed rules would have been adopted in 2022 and would have entered into force by 2023. Since the determination of tax rules within the European Union is a national competence, the process would also require the adoption of a common directive in this area within the community and its implementation at the national level. The target date of 2023 is considered by many to be too ambitious and unsustainable. In June 2022 Hungary blocked the European Union's agreement on the global minimum tax. Cyprus, Estonia and Ireland also oppose the EU directive.

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- *Example*: (Marcou 2016, 18)

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Boswell, C. (2008). The Political Functions of Expert Knowledge: Knowledge and Legitimation in European Union Immigration Policy. *Journal of European Public Policy* 15(4): 471–488.

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- *Reference to a chapter in an edited book:*

Marcou, G. (2016). The Impact of EU Law on Local Public Service Provision: Competition and Public Service. In Wollmann, H., Koprić, I., & Marcou, G. (Eds.), *Public and Social Services in Europe: From Public and Municipal to Private Sector Provision*. Basingstoke: Palgrave Macmillan, pp. 13–26

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